



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms L Wade

**Respondent:** Delpin Ltd

**Heard at:** Liverpool

**On:** 8-10 December 2025 (in person)  
12 December 2025 (by video)

**Before:** Employment Judge Buzzard  
Mrs Robinson  
Mr Williamson

## REPRESENTATION:

**Claimant:** In Person

**Respondent:** Mr B Hendley (Solicitor)

**JUDGMENT** dismissing all claims having been given at the hearing, and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

## REASONS

### The Claims

1. The claimant made the following four claims:

- 1.1. Unfair dismissal;
- 1.2. discrimination arising from disability;
- 1.3. discrimination by failure to make reasonable adjustments; and
- 1.4. victimisation

## The Law and Issues in Dispute

### 2. *Unfair Dismissal Claim Jurisdictional Issue*

- 2.1. The claimant was still an employee at the date she presented her claim. At that time the claimant had not been given notice of dismissal, nor had she given notice of resignation.
- 2.2. At no point has the claimant sought to amend her claim.
- 2.3. Accordingly, there is a jurisdictional issue for this claim. Can a claim of unfair dismissal be part of a claim form submitted when there has been no dismissal or notice of dismissal?

### 3. *Unfair Dismissal – other issues*

- 3.1. There is no dispute that some time after presentation of this claim the claimant resigned. It is this termination of employment that the claimant now seeks to claim was an unfair dismissal.

- 3.2. Section 95(1)(c) of the Employment Rights Act 1996 states that:

*“(1) For the purposes of this Part an employee is dismissed by his employer if*

*(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer’s conduct”.*

- 3.3. Therefore, a claimant can bring an unfair dismissal claim based on her own resignation, a situation which is commonly known as constructive dismissal.

- 3.4. To establish that she has been constructively dismissed, a claimant must show, following **Western Excavating (ECC) Ltd v Sharp** [1978] IRLR 27:

- 3.4.1. that there has been a breach of contract;

- 3.4.2. that it was a fundamental breach or the last in a series of incidents constituting a fundamental breach; and

- 3.4.3. that she left in response to the breach and after the breach she did not do something that affirmed she wanted her contract of employment to continue despite the breach.

- 3.5. The fundamental breach can be of an express or implied term. An implied term commonly relied upon, as in this case, is the implied term of trust and confidence, a fundamental term of every contract of employment. **Malik v. BCCI** [1997] IRLR 462 considered how to determine whether this has been

breached or not. In that case the court stated that an Employment Tribunal when determining this must look at:

- 3.5.1. What was the conduct complained of?
- 3.5.2. Did the employer have reasonable and proper cause for the conduct?
- 3.5.3. If not, was the conduct complained of calculated and likely to destroy or seriously damage the employer-employee relationship of trust and confidence.
- 3.6. In **Claridge v Daler Rowney Ltd** [2008] IRLR 672 EAT, it was reiterated that an employer's conduct must amount to a breach of contract fundamentally undermining the employment relationship for there to be a constructive dismissal. Merely unreasonable conduct by itself is not sufficient.
- 3.7. In this claim the conduct complained of for the unfair constructive dismissal claim was the same two alleged acts of the respondent that she argues to have been unfavourable treatment for her claim of discrimination arising from disability (see below).
- 3.8. The respondent did not seek to argue that any constructive dismissal that was found to have occurred could be fair. The respondent's position, if there is a valid unfair dismissal claim, is that the claimant's resignation was not a dismissal at all. This position was adopted at the start of the hearing, when the list of relevant issues was discussed with the parties.

#### 4. Disability Discrimination

- 4.1. Part 5 of the Equality Act 2010 applies to employees and prohibits discrimination against employees in the workplace. In relation to discrimination s39 states:

***39 Employees and applicants***

- (2) *An employer (A) must not discriminate against an employee of A's (B)—*
  - (c) *by dismissing B;*
  - (d) *by subjecting B to any other detriment.*

- 4.2. The right to make a claim in an Employment Tribunal in relation to a breach of these provisions of Part 5 comes from Chapter 3 of Part 8 of the Equality Act 2010. Specifically s120 states:

- "120(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—*
- (a) *a contravention of Part 5 (work);"*

- 4.3. Under this a Tribunal has the jurisdiction to determine if prohibited discrimination has occurred.
- 4.4. The definition of discrimination comes from Part 2 of the Equality Act. This firstly creates the concept of protected characteristics, the relevant one here being disability. Part 2 Chapter 2 goes on to define the different types of discrimination.

## **5. Discrimination arising from disability**

- 5.1. There is more than one form of discrimination based on disability. The first relevant form of discrimination in this claimant's claim is discrimination arising from disability. This is defined by s15 of the Equality Act as when:

### ***15 Discrimination arising from disability***

*(1) A person (A) discriminates against a disabled person (B) if:*

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and*
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

- 5.2. The claimant must show that she has been treated unfavourably.
- 5.3. The claimant has identified two alleged acts of unfavourable treatment. These are:

*Unfavourable treatment 1:* That Ryan Delpinto accused the claimant of being intoxicated in work on 3 August 2023, and suspended her on that basis; and

*Unfavourable treatment 2:* That on 4 August 2023, the deputy manager, Claire Miello, told other staff that the claimant wouldn't be going back and tried to get people to sign statements criticising her.

### ***5.4. Unfavourable treatment 1***

- 5.4.1. The respondent agrees that the claimant was suspended. The respondent further agrees that the reason for the suspension was that it had been reported that the claimant appeared to be intoxicated in work. The respondent did not accept that Mr Delpinto had accused the claimant of being intoxicated.

- 5.4.2. The respondent did not seek to argue that suspension would be an act of unfavourable treatment. The respondent did not accept that the claimant had been accused of being intoxicated.
- 5.4.3. Establishing unfavourable treatment is not sufficient to succeed in a claim of discrimination arising from disability. For unfavourable treatment to be discrimination arising from disability the claimant has to have been subjected to the unfavourable treatment because of something arising from her disability.
- 5.4.4. In this case the claimant claims that any appearance of intoxication was a result of her prescription medication, that she was taking as treatment for her disability.
- 5.4.5. It was not in dispute that as of 3 August 2023 the respondent had not been told by the claimant what medication she was taking or that it could make her appear to be intoxicated.
- 5.4.6. For this claim there is a defence available to a respondent. This comes from s15(1)(b). The defence is made out if the respondent establishes that the unfavourable treatment was a proportionate means of achieving a legitimate aim.
- 5.4.7. In this claim the respondent identifies the legitimate aim of needing to ensure the safety of vulnerable service users by ensuring staff were fit and safe for work.

#### *5.5. Unfavourable treatment 2*

- 5.5.1. There is no dispute that as part of the investigation conducted by the respondent staff who had concerns about the claimant were asked to put those concerns into written statements.
- 5.5.2. There is a dispute regarding whether the deputy manager was telling staff that the claimant would never return. This dispute falls to the Employment Tribunal to determine based on the evidence presented.
- 5.5.3. Even if this unfavourable treatment occurred, the claimant has to establish it was done because of something that arose from her disability. The claimant suggests that there was a belief that she had a problem with alcohol which was the reason for this unfavourable treatment.

### **6. Reasonable Adjustments**

- 6.1. The relevant provision relating to the duty to make reasonable adjustments is to be found in section 20 of the Act which sets out that

## **20 Duty to make adjustments**

*(1) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

6.2. The claimant relies for this claim on an alleged provision, criterion or practice ("PCP") of not having regular meetings for supervision and support.

6.3. The claimant identifies two substantial disadvantages this caused her, one in relation to each claimed disability, as follows:

6.3.1. That she was not able to explain to the respondent the impact of her gastric issues on her work without such meetings; and

6.3.2. That the claimant's depression meant that she needed supportive involvement of her manager in order to do her job well.

## **7. The Burden of Proof**

7.1. Considering the claimant's claims for discrimination the burden of proof is determined by s136 of the Equality Act. The relevant parts of this section state:

*"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

7.2. This in effect reverses the traditional burden of proof so that the claimant does not have to prove discrimination has occurred which can be very difficult. Section 136(1) expressly provides that this reversal of the burden applies to 'any proceedings relating to a contravention of this [Equality] Act'. Accordingly, it applies to both the claimant's discrimination and his harassment claims.

7.3. This is commonly referred to as the reversed burden of proof and has 2 stages.

7.3.1. Firstly, has the claimant proved facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent committed an unlawful act of discrimination? This is more

than simply showing the respondent could have committed an act of discrimination.

- 7.3.2. If the claimant passes the first stage then the respondent has to show that they have not discriminated against the claimant. This is often by explanation of the reason for the conduct alleged to be discriminatory, and that the reason is not connected to the relevant protected characteristic. If the respondent fails to establish this then the Tribunal must find in favour of the claimant. With reference to the respondent's explanation, the Tribunal can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case.
- 7.4. It is not necessary for the Tribunal to approach these two elements of the burden of proof as distinct stages. The court of Appeal in **Madarassy v Nomura International plc** [2007] EWCA Civ 33 gave useful guidance that despite the two stages of the test, all evidence should be heard at once before a two stage analysis of that evidence is undertaken.

## 8. Evidence Heard

- 8.1. The Employment Tribunal heard witness evidence from the claimant on her own behalf. In addition, one further witness Susan Carroll, presented evidence on the claimant's behalf.
- 8.2. For the respondent evidence was heard from the respondent's managing director, Mr Delpinto, and the deputy manager Claire Miello.
- 8.3. All witnesses had produced written statements which the Employment Tribunal read. Those statements were either in the agreed bundle of documents, or alternatively in the bundle of separate statements that had been exchanged.
- 8.4. Each witness at the outset of their evidence confirmed that they had recently read their statement and that it was true and accurate to the best of the recollection, knowledge and belief.
- 8.5. The Employment Tribunal were also directed to an agreed bundle of documentary evidence where relevant.
- 8.6. The Employment Tribunal considered the brief written submissions of the claimant and the submissions of the respondent.

## 9. Findings and Conclusions

- 9.1. *Discrimination arising from disability – unfavourable treatment 1*

- 9.1.1. The respondent's evidence was clear. Concerns had been raised that the claimant appeared intoxicated at work and it was necessary to suspend her to investigate. The respondent's position is that the nature of their business meant it was essential to fully investigate all such concerns to ensure the safety of vulnerable service users.
- 9.1.2. The evidence was not that Mr Ryan had accused the claimant of being intoxicated, but that he had suspended the claimant following reports that she appeared to be intoxicated. The evidence was not that alcohol had been identified specifically as the cause of the intoxication.
- 9.1.3. The Employment Tribunal does not accept that the claimant was accused of being intoxicated, at least no more than in the sense that anyone suspended when a concern is raised may perceive the suspension as accusatory.
- 9.1.4. The unanimous view of the Employment Tribunal was that the actions of the respondent were a proportionate means to achieve the identified legitimate aim.
- 9.1.5. The suspension was on full pay. The suspension was to facilitate an investigation. The respondent was not aware that the claimant was taking medication that could have such effects. Even if she was, it would be proportionate to investigate and consider further if there were such effects. Accordingly, regardless of whether the respondent was aware that the claimant's alleged appearance of being intoxicated may have been caused by prescribed medication, the actions of the respondent in suspending the claimant on full pay whilst the concerns that causes were investigated would not amount to unlawful discrimination. This is because such steps would be a proportionate means to achieve the legitimate aim of ensuring the safety of vulnerable service users by ensuring staff were fit and safe for work.

## 9.2. *Discrimination arising from disability - Unfavourable treatment 2*

- 9.2.1. This alleged act of unfavourable treatment is considered in two parts. Firstly that staff were told the claimant would not be returning to work, and, secondly, trying to get colleagues to sign statements criticising the claimant.
- 9.2.2. Telling people that the claimant would not be returning to work:
  - 9.2.2.1. The claimant alleges this was said by Claire Miello.
  - 9.2.2.2. The claimant's witness, Mrs Carroll, confirmed that she had a "*vivid recollection*" of this. She was not however able to recall when that

recollection was from, or even when she was last in work at the respondent's premises. Mrs Carroll did recall that this comment was made when the claimant was absent on sick leave.

9.2.2.3. Claire Miello in evidence stated that she had no recollection of saying the claimant would never be returning to the work with the respondent.

9.2.2.4. It is noted that around this time the claimant submitted a fit note that ran from the day after her suspension and that covered two months.

9.2.2.5. The Employment Tribunal do not find that the evidence presented suggests that Mrs Miello informed Mrs Carroll or anyone else that the claimant would never be returning to the respondent. Mrs Carroll by her own evidence, lacks a clear recollection of dates and events, including even being able to estimate when she last worked for the respondent. Mrs Miello has no recollection of the alleged comment. It is entirely realistic that information to the effect that the claimant would not be returning for some time, given she was signed off on long term sickness, was conveyed.

9.2.2.6. Accordingly, based on the evidence presented this alleged act of unfavourable treatment has found not been shown to have occurred.

### 9.3. *Discrimination arising from disability – trying to get people to sign statements criticising the claimant*

9.3.1. The respondent does not deny that staff who had concerns about the claimant were asked to put those concerns into written statements. The respondent does not accept that took the form of trying to get people to sign statements criticising the claimant.

9.3.2. The only evidence the claimant has to support this allegation came from Mrs Carroll. Her evidence was not that she was asked to sign a statement, but that:

*“In August 2023 I was approached by other members of staff who asked me whether Claire, the deputy manager, had asked me to write a statement about [the claimant's] behaviour in work to which I told them I had not.*

*I was told by the staff members that Claire had asked them to write negative, false, things about [the claimant] within those statements.”*

- 9.3.3. This is the very definition of hearsay. Mrs Carroll gave evidence of what others had told her that Claire Miello said. Due caution was exercised in accepting such hearsay evidence. This is even more so given that there is no dispute that statements were requested by the respondent, the dispute is limited to whether Claire Miello asked staff to put untrue things in those statements.
- 9.3.4. Furthermore, when the claimant resigned the respondent invited her to reconsider this. That does not appear to be consistent with an inference that the respondent was looking for people to tell lies as a basis to remove the claimant from the workplace for any reason.
- 9.3.5. For this reason the Employment Tribunal did not find that requests for people to make dishonest statements about the claimant were made.
- 9.3.6. Establishing unfavourable treatment is not however sufficient: for the claim of discrimination to be made out, the conduct complained of must be also be *'because of something arising as a consequence of'* the claimant's disability.
- 9.3.7. Even if such requests for statements had been made, the Employment Tribunal would not have found that action was done because of anything that arose from the claimant's disability.
- 9.3.8. The claimant in her own evidence identifies the motive as *"retaliation as I had taken a member of staff back that they didn't like"*. That is not connected to her disability. Unfavourable treatment for that reason would not be because of anything that arose from the claimant's disability.
- 9.3.9. Accordingly, even if this alleged unfavourable treatment had occurred, the Employment Tribunal would not have found that it was done because of something arising from the claimant's disability. Therefore it would not have been found to have been an act of unlawful discrimination.

#### 9.4. *Discrimination by failure to make reasonable adjustments*

- 9.4.1. The claimant relies for this claim on an alleged provision, criterion or practice ("PCP") of not having regular meetings for supervision and support.
- 9.4.2. The claimant was clear in her evidence that there were no such meetings. The claimant stated that if there had been any such meetings there would be records of them, and no such records are in the bundle, therefore the meetings could not have occurred.

- 9.4.3. The respondent's evidence, given by Mr Delpinto, was that there were such meetings. They are a regulatory requirement and there were multiple inspections whilst the claimant was employed, for which evidence of such meetings would have been required. In addition, there is no record of the claimant raising a concern that there were no such meetings.
- 9.5. In the bundle of documents there were records of two meetings in July 2023. Claimant's evidence was that at these meetings no notes or minutes were taken, so the documents in the bundle were not genuine. Regardless, the claimant did not dispute that the meetings occurred. It is noted that the claimant in her statement says the following:
- "I had an informal meeting with Mr Delpinto approx. mid July following my discharge..."*
- 9.6. There was no dispute identified at this hearing that the claimant was diagnosed with depression from early July 2023. There was at least one, the respondent says two meetings, before the claimant was suspended on 3 August 2023.
- 9.7. The bundle contained copies of the messages exchanged between the claimant and Mr Delpinto around this time. There were summaries of what had been discussed in the two meetings that the respondent says occurred in the bundle, albeit there was a conflict of evidence about whether those documents were created during or following the meetings. These documents do not support the contention that there was a lack of meetings or a lack of support from the respondent.
- 9.8. The Employment Tribunal does not find the evidence presented to be consistent with a picture of there being no meetings.
- 9.9. For this reason, the Employment Tribunal prefer the evidence of the respondent. There are records of meetings in the month after the claimant's diagnosis with depression, and the respondent had passed inspections for which evidence of supervisions would be a regulatory requirement. Accordingly, it is found that the alleged PCP of not having supervisory meetings was not applied to the claimant. For this reason the claimant's claims of discrimination by failure to make reasonable adjustments must fail.
- 9.10. Regardless, the Employment Tribunal find that the claimed substantial disadvantages have not been shown to have existed. Taking them in turn:

9.10.1. *Claimed Disadvantages related to gastric issues:*

- 9.10.1.1. The claimant claims that the lack of supervision meetings meant she did not have the opportunity to explain to her employer the problems her gastric health issues caused her with work.
- 9.10.1.2. The Employment Tribunal have had sight of the text message interactions between the claimant and Mr Delpinto. Those in no way suggest that there was any reason the claimant could not have explained her problems if she either needed or wanted to do so.
- 9.10.1.3. This is consistent with the evidence given at the hearing by Mr Delpinto. It is also consistent with a message sent by the claimant on 14 July 2023, in which she wrote "*Hi Ryan, just to say thank you for the support, I really do appreciate it.*"
- 9.10.1.4. In the light of this evidence the Employment Tribunal does not find that the claimant would have been, or was, placed at a disadvantage of being unable to explain her gastric problems to the respondent if, or because, regular formal supervisions were not undertaken.

9.10.2. *Claimed Disadvantages related to depression:*

- 9.10.2.1. The claimant claims that the lack of supervision meetings meant that she was not able to do her job well.
- 9.10.2.2. The period when this disadvantage could be encountered because of depression is from around the date of the diagnosis of depression until the claimant went onto long-term sick leave. The claimant never returned to work from her sick leave so was not doing her job after the date her sick leave commenced. That period was from early July to 4 August 2023.
- 9.10.2.3. There was no evidence that in the brief period after the claimant became depressed up to the point of her suspension that supported the claimant's assertions that she could not do her job well due to a lack of support.
- 9.10.2.4. During this brief period, the claimant was away from work for over a week.
- 9.10.2.5. Without evidence that the claimant actually encountered the claimed substantial disadvantage, it cannot be found that the disadvantage existed. It is also noted that there was no evidence to support the claimant's assertions that any such disadvantage could or would have been mitigated by more supervision meetings.

Accordingly, it could not be found that the provision of such meetings would have been a reasonable adjustment.

#### 9.11. *Victimisation*

- 9.11.1. The claimant relies on the presentation of this claim as the relevant protected act. Making a claim of discrimination to an Employment Tribunal is a protected act. This was not disputed by the respondent.
- 9.11.2. The claimant identifies a single detriment as being an act of victimisation. That detriment is the failure to provide a reference for the claimant in response to a request from a prospective employer. The reference request was made in March 2024.
- 9.11.3. The respondent evidence was that the reference request did not appear to be authentic. It was in the form of an email from a gmail address. There was no company logo or number provided, no telephone number given and the location of the prospective employer, not being local, was described as being unexpected.
- 9.11.4. Given this the respondent's evidence was that they asked for "*something more official, on company letterhead paper with company name, contact numbers, email address and not from an email address*". The respondent's evidence was that they got no response to that request, so no reference was supplied.
- 9.11.5. The claimant's evidence was that she believed the prospective employer who wanted the reference had tried to call the respondent twice with no success. There was no evidence presented to support this, other than the claimant's belief.
- 9.11.6. There was no dispute that a later request for a reference, from a different prospective employer of the claimant, was responded to with a reference being supplied.
- 9.11.7. The claimant in cross examination agreed that the reference request she complains about did not look official. She went further and explained that she herself might not have responded to such a request without question. It was the claimant position that the respondent could have done some online research to find the prospective employer's details, including a phone number and then called them to check if the request was genuine. Whilst the Employment Tribunal found this is something the respondent could have done, it is found to be a proactive step that very few employers would take. The failure to take such a step in no way supports any inference about the respondent's motives.

9.11.8. On balance, the evidence does not establish facts from which the Employment Tribunal could infer that the reason for the failure to provide the first reference was that the claimant had made an Employment Tribunal claim. Even if such an inference were possible, the Employment Tribunal accept the reason for not supplying the reference put forward by the respondent was the true reason and was a reason that is in no sense whatsoever related to the fact that the claimant had presented this claim.

9.11.9. Accordingly, the claimant's victimisation claim cannot succeed. It is not found that a reference was not supplied because the claimant had claimed discrimination.

### *9.12. Unfair dismissal*

9.12.1. The claimant submitted this claim at a time when her employment was continuing. When the claim was submitted the claimant had not been dismissed, had not been given notice of dismissal and had not resigned or given notice of resignation. She was still employed although currently absent from work for health reasons.

9.12.2. It is not possible to make a claim of unfair dismissal if there has been no dismissal, or even notice of a dismissal.

9.12.3. The claimant at no point appears to have made an application to amend her claim to reflect the fact that her employment had ended.

9.13. The time limit for making a claim of unfair dismissal is three months from dismissal (plus time for early conciliation). An extension of time can only be given where it was not reasonably practicable for the claimant to have made the claim in time. There is no basis upon which the claimant argues this. On this basis there would appear to be no prospect of any application to amend the claim at this time succeeding.

9.14. Accordingly, the claimant's claim of unfair dismissal cannot succeed. Since the date when the claimant's employment had terminated, no claim of unfair dismissal has been presented or added to this claim. For this reason, there can be no finding that the claimant was unfairly dismissed.

9.15. That being noted, the alleged breaches of mutual trust and confidence that the claimant sought to rely on to render her resignation a dismissal at law have been considered in full as part of her other claims. As explained above, they have all either been found not to have occurred or, to the extent they did occur, to have been a proportionate means to achieve a legitimate aim.

9.16. It follows from this that, to the extent any of the alleged mistreatment occurred, it must logically have been found that the respondent had a proper cause for

doing what they did. Those actions found to have been taken by the respondent have also been found to have been a proportionate means of achieving a legitimate aim. Accordingly they could not be said to be actions taken without reasonable and proper cause.

9.17. This means that the actions of the respondent would not have been found to have amounted to a breach of the implied term of mutual trust and confidence in any event. Without such a breach, the claimant cannot establish that her resignation was a constructive dismissal, meaning that no claim of unfair dismissal could have succeeded. Accordingly, even if the claimant had amended her claim to include one of unfair dismissal based on the identified actions of the respondent, such a claim could not have succeeded.

Approved by:

**Employment Judge Buzzard**

**28 January 2026**

Judgment sent to the parties on:

18 March 2026

For the Tribunal:

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Notes

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