



EMPLOYMENT TRIBUNALS

Claimant: Mr D Shah

Respondents: McCurrach UK Ltd

Heard at: Manchester

On: 16, 17, 19 & 20 March 2026

Before: Judge C Cowx (sitting alone)

REPRESENTATION:

Claimant: Mr Shah represented himself

Respondent: Miss Stella English, Litigation Consultant

JUDGMENT having been sent to the parties and written reasons having been requested by the claimant in accordance with Rule 60(4)(a) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

REASONS

1. The claimant brought claims of direct discrimination on grounds of disability contrary to Section 13 of the Equality Act 2010, failing to make reasonable adjustments contrary to Sections 20 and 21 of the Equality Act 2010, harassment contrary to Section 26 of the Equality Act 2010 and victimisation contrary to Section 27 of the Equality Act 2010.
2. The Tribunal heard evidence from the claimant. For the respondent Mr Andrew Begg, Mr Gregor Gillon, Chris Brown and Laura Birnie gave evidence.

FACTS

1. The Tribunal found the following facts.

2. At all material times during the claimant's (C) employment with the respondent (R) he was disabled by two impairments: chronic small bowel obstruction and intervertebral disc protrusion. However C failed to identify these precise impairments to R when asserting disability.
3. C was employed by R from 21 June 2023 to 13 September 2024.
4. R is a wholesale supplier of beverages and C was employed as a "Territory Manager" on the R's team selling the "Rockstar" energy drink.
5. C was responsible for making visits to R's retail customers, attending their stores, delivering stock, putting new stock on displays and taking away unsold stock. C performed this role in Manchester. C was expected to make a number of calls to customers each day with ten calls being regarded as the norm.
6. In January 2024 Mr Andrew Begg (AB) became C's regional manager and direct line manager.
7. From 27 February to 4 March 2024 C was on sick leave. He returned to work on 5 March on and that day he carried out an unusually high number of customer calls, namely thirty. He said he did this in an effort to make up for the days he had off sick which was not disputed.
8. However, when AB checked C's sales data he found numerous mistakes. C did not deny making these mistakes. As C's line manager, AB planned to have a meeting with C on 6 March to discuss the errors. As his line manager, and absent evidence to the contrary, this was a reasonable action for a line manager to take. However, the meeting did not go ahead as C went sick for the rest of the day.
9. Later in the day on 6 March 2024 C posted a comment on R's national WhatsApp group in which he stated that he was leaving the company due to "*derogatory and untoward behaviour*". C took two days sick leave on the 6th and 7th of March.
10. On seeing C's message, AB tried to call and text C to see if he was OK. C replied to say that he had gone home with a migraine.
11. On 8 March, AB sent C a further message to check on how C was feeling. C replied as follows:

I'm starting to feel better and coming back into work. I have a disability and long-term health issues that can have a profound effect sometimes. This does not affect my ability to perform my role. I work really hard, but sometimes I have to take things easy and make adjustments when necessary. This is very private and personal to me. In spite of this, it was not the only reason I was off, which is a personal matter which I have discussed with senior management, which I'm not privy to divulge.
12. Prior to the hearing C provided no evidence regarding which senior manager or managers he said he had spoken to about his absence and when.

13. Mr Gillon, C's senior line manager, made no mention of C contacting him about his absence on the 6 and 7 of March. If C did speak with senior management as claimed, then one would expect supporting evidence of the same to exist and to be produced. When pressed in cross examination he said he spoke to Phil Clarey. C produced no evidence to support this, and R did not have an opportunity to make enquiries with Mr Clarey about this. In the absence of convincing evidence I found he did not speak to senior management at all as claimed in his message to AB on 8 March 2024.

14. On receiving the text from C on 8 March, AB went into action by contacting HR to see if anything was recorded about C having health issues. HR confirmed that C did not divulge anything to the R on joining it.

15. On 11 March AB met with C on a Teams call and AB covered a number of relevant issues. He began by advising and directing C not to make as many shop calls as he did on 5 March as it was excessive and would result in mistakes.

16. AB then asked C about the message he posted on the national WhatsApp group on 6 March. C was adamant that he did not wish to discuss his reasons for posting it and that it was private matter.

17. AB then asked C about his message on 8 March in which he referred to health issues and disability. I regarded this record of the Teams meeting as a vital and determinative piece of evidence when it came to C disclosing his health conditions. It is clear from the questions and answers recorded that AB had no previous knowledge of C having serious health issues or that he had a disability or disabilities.

18. It can be seen from this record that AB acted sensitively and supportively, in an attempt to glean information from C about his health conditions. C repeatedly said he was not willing to share any information with AB about his health, even when AB suggested that he might be able to support C with reasonable adjustments. AB said:

...if it is physical I might be able to support with manual handling adjustments or anything to do with driving for example, let me know if there is anything I can do to make adjustments, if people struggle with mental or physical I am obliged to support people.

19. After the Teams meeting, AB followed up with a summary of it in an email to C the same day. He referred to C's unwillingness to share information about his disability and long-term health issues. Again, he asked C to let him know if there were any adjustments or support C needed for his role and pointed out that he owed him a duty of care as his manager.

20. By the end of the Teams meeting all AB knew was that C had some sort of physical health condition, but not what it was, how serious it was, what the impact of it was on C's day to day activities or what adjustments might need to be made for C.

21. Also in this meeting, AB raised the matter of absence. In oral evidence C asserted that this was one of three failed attempts by AB to take disciplinary action against him. But the record shows this was not the case at all.

22. AB merely made C aware that his most recent absence, the third in a 6-month period, had triggered an email on the R's sickness absence policy and that if there was a fourth then he was required by the same policy to have a conversation with C about it.

23. AB said that C would need to keep an eye on his absence but that "*if you are ill you are ill.*" This part of the conversation, about C's absence record, might have been the basis of the alleged derogatory comment "*They don't like absences.*" If it was, then C's recollection of the comments made by AB were distorted and inaccurate and the comment was not made in the terms asserted by C. The meaning of AB's remark was clearly one of recognition that regardless of policy, a person may need to take time off if they are ill. It was in no way a threat.

24. In the meeting on the 11 March, AB also touched upon C's reference to having already spoken to a senior manager about the reasons behind his message on the national WA group on the 6th, but this was something else C did not wish to discuss.

25. I found it likely that AB's management intervention in response to the errors made by C on 5 March, which were due to his completing far more calls than the norm, was some sort of trigger for C and that he felt a sense of grievance as a result. However, any such sense of grievance on C's was part was unjustified as AB was doing no more than his job as a line manager, identifying mistakes by his team members and trying to prevent repetition.

26. In oral evidence, C insisted that it was not only AB who knew about his serious long term health issues. In cross-examination he said that when he worked under AB's predecessor, he was hospitalised and he sent his manager photos of himself in hospital. He could not remember exactly when that was but thought it was mid-2023.

27. I referred myself to C's sickness absence record when employed by R which C told me was an accurate record. His first sickness absence, and the only one prior to AB becoming his line manager, was for two days on 2 and 3 Nov 2023.

28. In evidence, C produced only three pages from his medical records. One of these pages is headed "Significant Past" which lists a number of short entries for such things as small bowel obstruction, with dates. None of these events coincide with the alleged hospitalisation between the start of his employment in June 2023 and when AB took over as his line manager in January 2024. The only entry in his medical records about admission to hospital during his employment with R is for 13 July 2024.

29. C's GP provided a letter on 1 April 2025 which refers to yearly hospital admissions. I therefore accepted he has had yearly hospital admissions for his bowel obstruction, but the GP evidence does not go so far as to state when those

admissions were. At its highest, the GP's letter is evidence of hospitalisation once a year. Without supporting medical evidence, which I find would exist if what C told me was true, I rejected his assertion that he was in hospital at some point between starting his employment with R and when AB became his manager.

30. C did not produce anything from his medical records to show a hospital admission during the time he was employed by R from June 2023 to the end of that year. For 2024 he produced a record of a hospital admission in July 2024 only.

31. I did not therefore accept R was aware of multiple hospital admissions. I did not accept that he informed any of his immediate or senior managers about health issues prior to the WA message to AB on 8 March.

32. I also found that his oral evidence about sending photos to his line manager from hospital in 2023 was false and made up on the spot because of the absence of any such photographs or medical records of the same.

33. Contemporaneous evidence from C's senior manager, Mr Gregor Gillon, (GG) further and seriously undermined C's claim that R knew about his disability. On 18 March 2024 Mr Gillon wrote to C on two subjects arising from the message on the national WhatsApp group on 6 March and the subsequent message to AB on 8 March.

34. GG offered to resolve any concerns C had about derogatory comments and to provide him with support. GG also referred to C's mention of disability, and he mentioned his willingness to support colleagues with disability. GG pointed out that there was nothing on C's file about disability and he and AB were unaware of how this impacted upon C.

35. GG concluded the meeting by offering a confidential discussion, including discussion about reasonable adjustments. A letter about this was emailed to C and on that same day.

36. On a later date, which C believes was 26 March 2024, there was a telephone conversation between GG and C, which C recorded covertly. Initially C did not wish to rely upon this recording as evidence. His explanation for this was that he had no complaint to make against GG.

37. C told me that the recording included a discussion about reasonable adjustments. I told C that it was a matter for him whether or not he wished to rely on the recording, but I pointed out that if he later asserted that adjustments were promised by GG in the conversation and this was disputed by R, then the recording might amount to best evidence. Alternatively, I said I might draw an adverse inference from his failure to produce the recording.

38. The next day C produced the recording. R did not object to it and so I admitted it into evidence. What was provided was not the complete recording. It was about 9 minutes of what I understand was a 20-minute recording.

39. I asked C to explain why the full recording was not produced. He told me that he recorded the conversation on his phone but that the data file was corrupted. I was not satisfied by this explanation. I found it more likely than not that the whole recording would have been lost if it had become corrupted. I found it more likely that C provided an edited version of the recording, omitting those parts of it which either undermined his case or did not support it.

40. There was nothing in the recording of the conversation with GG on 18 March about C's health issues or reasonable adjustments. The only matter of relevance on the recording was C's complaint about AB, which I shall return to shortly, and C's wish to move to a different team.

41. On 25 March 2024, GG wrote to C. His letter was primarily about C's allegations against AB and derogatory comments, but GG again raised the topic of C's health. GG made it very clear that neither he, AB nor the company had any information about his health situation, but that they wanted to discuss this with him so that they could support him with whatever reasonable adjustments were necessary.

42. This letter of 25 March was another clear and unequivocal prompt to C that R had no knowledge of his health conditions which he asserted amounted to disabilities.

43. C was again asked to provide information about his health at a Teams meeting on 27 March 2024 after a further period of absence. This meeting was conducted by AB and another manager, Laura Birnie (LB). The manner in which AB questioned C about his health, which is evident from the record of the meeting, is inconsistent with C's assertion that AB knew about his health conditions. Once again, C remained tight lipped and refused to disclose information. All he would say was that his absences were due to his health issues and disability, but again he insisted that these did not affect his work.

44. If AB or anyone else in the company had the knowledge C claims they did, then there would have been no need for GG to write what he did in his letter and no need for AB to question C about his health at the meeting on 11 March. Furthermore, these were obvious opportunities for C to correct any false or mistaken assertion that R had no information about his health conditions, but he did not do so.

45. In oral evidence, C's evidence shifted back and forth. When it was put to him that the first time he told AB about disability was on 8 March he said "*No. I was just confirming by text what I told him in writing but I can't recall when.*" Later, when asked about the extent of his disclosure to AB, his evidence was that he told AB that he had a disability and no more. He said he told AB that he had long term health issues that have an impact but due to their nature he had never discussed it with anyone. Yet moments later when he was asked to agree that AB did not know any details about his health conditions. He said "*No, he knew. I told him I wanted to keep it private.*" He also said that he had told AB about his health conditions "*millions of times*". His evidence on this point was so inconsistent I rejected it as false.

46. On the subject of the alleged derogatory comments made by AB, the first time these five comments were documented was on 15 January 2025. C asserted these were made in the period from December 2023 to June 2024. AB became C's line manager in January 2024 so the alleged comments cannot have been made before January 2024.

47. I inferred from the WhatsApp message to the national group on 6 March and what C said to GG on 26 March that the alleged derogatory comments, or the majority of them, occurred prior to the conversation with GG on the 26th if comments were made at all. C made no note of the alleged comments at the time, yet he was able to quote them word for word in his claim form in January 2025 which was about a year after they were said to have been made. He said he could recall them clearly because of the impact they had on him.

48. C claimed that he spoke to a senior manager about his wish to leave R and I drew the inference from this that he meant that he made a complaint about AB to that particular senior manager. It was not until his oral evidence, when asked by Miss English, that he said that the senior manager was Phil Clarey.

49. On 26 March C had the 20-minute conversation with GG who was keen to get to the bottom of C's complaint. This was an obvious opportunity to put on the record the specifics of his complaint, but he did not do so.

50. GG in fact asked C to provide examples of the derogatory comments, but C would not do so. He said he wanted to keep the matter private and was reluctant to raise a formal grievance. It was GG who impressed upon C the need for transparency and due process and that he preferred to do things properly by way of the company's grievance policy.

51. In the meeting with AB and LB on 27 March 2024, AB asked C if there were any other factors besides health which were causing him to go absent. C replied that he had spoken to management about them and that he could put in a grievance about AB, but he did not want to.

52. This was an opportunity for C to reveal the derogatory comments and to put them on the record, but again he chose not to do so. I recognised that he may have simply have not wanted to discuss them with AB at that meeting but alternatively whatever comments he had in mind at that time and at the time of the conversation with GG on 26 March were not necessarily the same as those recorded in his claim form months later.

53. Turning then to the grievance. In oral evidence C insisted that he submitted a written grievance about AB to GG. If one follows the objective evidence on this point, one can see that C was unwilling or reluctant to submit a formal complaint about AB.

54. In the conversation with GG on 26 March C's position was that he did not want to submit a grievance. However, in his email to GG on 28 March he wrote that he now wanted to submit a grievance. GG replied that he would set the process in motion by having a Grade 2 manager appointed to deal with it.

55. C's evidence on when and how he submitted a grievance was again vague and inconsistent. The gist of his evidence initially was that by merely telling GG that he wanted to make a formal grievance and the fact a manager had been appointed to deal with it, amounted to actually submitting a grievance in his mind. He then altered his position and said he submitted his grievance by email on 28 March. In fact that email shows C merely indicated that he would submit a grievance and not that he had done so.

56. In oral evidence on the second day of the hearing C said that after receiving GG's email of 14:45 on 28 March, which informed him that a manager would be appointed to handle his grievance, C said that his understanding was that he would give the grievance manager the information he needed at the grievance hearing. His meaning being that he believed he did not have to provide any information before that time. I rejected that suggestion because GG made it clear to him that the information was needed beforehand, in order to progress any complaint.

57. C then went on to insist that he did submit a written grievance to GG, but he did not have a record or a copy of it. R does not have a copy of a written grievance from C or any record of him submitting one. On 30 April 2024, GG sent a further email to C making it clear that the complaint about AB would be closed if C did not submit a written statement in line with R's grievance policy and GG sent C a copy of that policy.

58. C did not respond to GG's email of 30 April 2024. The weight of evidence clearly favours the R on this point. C did not submit a formal grievance against AB at any time.

59. In regard to an OH referral, the respective positions of the parties is essentially the same as for the grievance: C insisted he did what was required of him by submitting a form and R insisted nonsuch was received. Again, C was unable to produce a copy of the form or a record of having submitted it to R. R has no copy of such a form or any record of receiving one.

60. The objective evidence in the form of the recording of the conversation between GG and C, the Teams meetings between AB and C on 11 and 27 March, and emails and letters from GG to C on 25 and 28 March make R's position very clear, which was that it was keen to support C by making reasonable adjustments. But in order to do that C had to first supply more information about his health conditions and the impact of the same, but he failed to do so.

61. Specifically, when he said that he needed an automatic vehicle GG told him a OH assessment would be needed before such an adjustment could be approved. I find it more likely than not that a large company such as R, with a HR department, would have a record of C submitting an OH form if he did submit one. If he did submit one and then heard nothing back from R, then one would expect him to have chased the matter up, but there is no evidence of him doing so.

62. In regard to reasonable adjustments, there is a record in the correspondence between GG and C of C asking for the automatic vehicle and a different trolley,

although he did not provide any of the information R reasonably required to investigate this request. There is no record of him asking for extra or longer breaks as an adjustment.

63. C's evidence on the recorded conversation with GG was also inconsistent with his own recording of that conversation. Much of the recording produced by C, which as stated I found had been trimmed down by C, was on the subject of C transferring to a different team and different manager within R's business.

64. C insisted that this was a done deal and agreed with GG. But that was not the case at all as GG made it very clear that whilst he would explore the possibility of a transfer, he was not guaranteeing it.

65. The last area of evidence of note was in regard to the disciplinary process which led to C's dismissal. The grounds for that dismissal and the decision to dismiss C did not feature in the case at all at the hearing. C did not challenge R on the grounds of his dismissal. His case was that the disciplinary proceedings and his eventual dismissal was in retaliation for raising a grievance about AB and the disciplinary process was unfavourable treatment based on his disability.

66. C made much of the timing of the initiation of the process. The letter inviting him to a disciplinary hearing on 5 July 2024 was written and sent to him on 2 July 2024. He complained that this was evidence of R's animosity towards him because he asserted that he was in hospital on 2 July, and R knew he was in hospital. C insisted that he was in hospital from 1 July. I rejected his evidence on this point because it is inconsistent with his sickness absence record which he told me was accurate. That record shows he was absent from 3 July and not 1 or 2 July.

67. This particular allegation was also inconsistent with C's own medical records which only show a hospital discharge on 13 July but no evidence of admission on any day before that date. Therefore, he was not in hospital or off sick when R sent him the letter.

68. In the round I found C to be an unreliable and incredible witness. In oral evidence he was vague and evasive, altering his evidence as he went along. Certain parts of his testimony were contradicted by external objective evidence such as his own recording of his conversation with GG where no agreement was reached to move him to another team, contrary to his assertion. C was not in hospital on the date he complains of unfavourable treatment in the form of the disciplinary letter. He did not submit a written grievance or an OH referral form as he claimed and he did not speak to another senior manager about AB, because all of these things could be easily proved by documentary or witness evidence if true.

The Law

69. The relevant law on direct discrimination, failing to make reasonable adjustments, harassment and victimisation is contained in the Equality Act 2010 in the following sections:

Section 13 Direct Discrimination

- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Section 20 Duty to make adjustments

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
- (2) The duty comprises the following three requirements.
- (3) 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.
- (4) The second requirement is a requirement, where a physical feature 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.
- (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

Section 21 Failure to comply with duty

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Section 26 Harassment

- (1) A person (A) harasses another (B) if—

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Section 27 Victimisation

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because:
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act -
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

Applying the law to the facts

70. Harassment. Having considered all of the evidence in the round I have found C's evidence to be generally unreliable and not credible. I find that AB did not make the comments C relies upon as unwanted conduct. C was clearly unhappy with AB when AB spoke to him about the excessive number of customer calls he made on 5 March and the mistakes he made as a result. C regarded this as micromanagement. C took offence at AB's intervention. But such intervention was reasonable and to be expected from a line manager.

71. This was the catalyst for the events that followed. C wanted a move from AB's team because AB's management style did not suit him. After initially suggesting resignation, he began to explore the possibility of an internal transfer using a vague and undefined allegation against AB as the basis for such a move.

72. In his own evidence, C was vague about when the alleged comments were made and in what circumstances, yet he was able to recall the comments word for word about a year after they were said to have been made. If he was word perfect in this recall then I would expect him to recall something of the circumstances in which the words were uttered, but he could not do so.

73. C insisted on keeping his powder dry throughout the remainder of his employment with R and it was only after his dismissal that he made these specific allegations. If the comments were made as claimed in his claim form of 15 Jan 25, C would have kept a written record of them, and he would have provided details of them to GG when asked in their conversation on 26 March 2024.

74. I drew an adverse inference from C's refusal to disclose precise details of the alleged comments verbally to GG or in writing in a written grievance statement, and his failure to keep a record of the comments which he insists were so inflammatory. I find that the comments alleged were not made and were made up by C at the time he submitted his claim to the ET.

75. Because the comments were not made at all there was no unwanted conduct related to a relevant protected characteristic. Furthermore, there was no conduct which had the purpose or the effect violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C. For these reasons this complaint was dismissed.

76. Direct Disability Discrimination. There were three alleged detriments to this complaint. The first was the alleged derogatory comments made by AB. As already explained, I have found AB made no such comments.

77. The second and third were connected, in that these are the instigation of disciplinary proceedings against C and his eventual dismissal at the end of that process.

78. Those acts amounted to detriments, but I had to decide if they amounted to less favourable treatment and if so, was it because of disability? I concluded that the answer to both of these questions was "No" for the following reasons.

79. The disciplinary process and dismissal had nothing to do with any complaint about AB and were not because of disability. The way in which C brought his case was that AB was to blame for the disciplinary process and his eventual dismissal. He insisted that everything was engineered by AB in retaliation for his complaint about AB. C specifically stated that GG, LB and Chris Brown did not knowingly or directly discriminate against him or treat him less favourable.

80. In the absence of any evidence on the point, and given the way C brought his case, the alleged less favourable treatment was not because of his disability, and this particular claim must fail on that basis alone. He asserted that he was treated less favourably than non-disabled employees when disciplinary action was taken against him. He said this was because of his complaint against AB. R said it had

nothing to do with that complaint; it was entirely to do with performance and manipulating data in breach of company policy.

81. At the hearing C did not challenge R's reason for his dismissal. He did not produced any evidence to suggest there were not reasonable grounds for initiating a disciplinary investigation against him and for his eventual dismissal.

82. Given that the basis for the investigation and dismissal was not challenged C failed to persuade me that he was treated any less favourably than a colleague without a disability if the same suspicions or concerns arose.

83. I asked myself whether C's complaint against AB played any part in initiating the disciplinary process? I found it did not. C did not submit a formal grievance in writing, but he did make an informal complaint about AB to GG, albeit one lacking in any detail. He did accuse AB of inappropriate behaviour and claimed to fear AB would target him. AB was aware that C had raised some sort of grievance against him. But was this knowledge a reason for initiating the disciplinary action which led to his dismissal?

84. Taking the evidence in the round, I was not satisfied this was a factor at all. The record of the meetings between AB and C show that AB was keen to address C's concerns and to support him. Despite C threatening to make a formal complaint, no such complaint was submitted. At the end of April 2024, the complaint issue had blown over. But concerns about C's performance, particularly the accuracy of his data capture, persisted. C's performance and not the complaint or his disability was the true reason for the disciplinary action and his dismissal. For these reasons this complaint is dismissed.

85. Reasonable Adjustments. The PCPs were finally identified and agreed at the beginning of this hearing. They were:

- 30-minute lunch breaks
- Use of manual vehicles
- Use of non-automatic or non-adjustable trolleys

86. The first question was whether these PCPs put C at a substantial disadvantage compared to someone with his disabilities? The primary disability in relation to these PCPs was C's intervertebral disc protrusion, although the bowel obstruction would no doubt be connected to a need for breaks.

87. Did these PCPs put C at a substantial disadvantage? I found they did not. On more than one occasion when he was asked by AB about the impact of his disabilities C stated that they did not interfere with his role.

88. If I was wrong about that then I considered whether R knew or could reasonably have been expected to know that C was likely to be placed at a disadvantage. In this instance R's duty to support its disabled staff with reasonable adjustment was made especially difficult by C. He repeatedly told AB that his disabilities did not interfere with his role. However, on 28 March he did raise with GG a request for a different trolley and an automatic vehicle. From this discussion R

at the very least had cause to suspect that C may have been at a substantial disadvantage because of PCPs 2 and 3, but not PCP 1 which was not raised by C.

89. From that point R was under a duty to take such reasonable steps to avoid C suffering serious disadvantage. But, R did not fail in that duty. R took all reasonable steps to avoid C suffering a disadvantage. AB and GG were proactive in trying to support him. The first step was to identify the nature of his disabilities; the impact they had on him at work and what measures could be taken to support.

90. R did everything that was reasonably expected of it. The adjustments C requested were not put in place because he would not cooperate with GG, AB or anyone else working for R at that time.

91. C may have been reluctant to discuss the details of his health conditions with AB or GG, and there was no requirement for him to do so, but R could not be expected to provide make adjustments without information of the kind C failed to provide. In his email to C on 28 March 2024 GG made it clear that a different trolley could be provided relatively easily, but before he could do that GG needed to know C's requirements and how a new trolley should differ from his existing one. C did not answer the question and so a special trolley could not be supplied to him.

92. It was reasonable to expect C to undergo a OH assessment before he could be given an automatic vehicle. R operated a fleet of manual vehicles and so a special purchase would have had to be made for an automatic vehicle. Throughout, the R complied with its duty under Sections 20 and 21 of the Equality Act 2010 by taking such steps as it was reasonable to have take to avoid C being disadvantaged. For the above reasons this complaint was dismissed.

93. Victimisation. The allegation was that C was subjected to disciplinary investigation and action, and was eventually dismissed, because C had done a protected act or that R believed C had made a protected act.

94. There was no protected act in C's case and R had no grounds to think C had done a protected act. Subsection (2) of Section 27 of the Equality Act 2010 defines protected acts. C did not do any of those things listed in the definition and he did not give R reason to think he had.

95. In this case C relies upon disability as his protected characteristic. The essence of his case was that AB of victimised him on grounds of disability. But the evidence in this case do not support that. At no time before the disciplinary process began did C claim that AB's alleged conduct towards him was in any way because of or motivated by his disability. AB knew nothing about C's health conditions and neither did GG. C's complaint to GG about AB, which was not pursued through the formal grievance route, was not a protected act because it was completely silent on anything to do with disability or any other aspect of the Equality Act. This complaint failed for the aforementioned reasons.

Judge C J Cowx

15 April 2026

REASONS SENT TO THE PARTIES ON
23 April 2026

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FOR THE TRIBUNAL OFFICE

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