EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001593/2025

Held in Glasgow on 19, 20, 21, 22, 23 January and 12, 13 March 2026

Employment Judge E Mannion

Mr A Vetesi	**Claimant** **In person**
Tesco Stores Limited	**Respondent** **Represented by** **Mr G Dunlop** **Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is as follows:

1. The claimant does not have the requisite two years' service for a claim of ordinary unfair dismissal under Section 94 of the Employment Rights Act 1996 and so his claim is dismissed.

2. The claimant's claim of detriment on the ground of making a protected disclosure under Section 47B of the Employment Rights Act 1996 is unsuccessful and so dismissed.

3. The claimant's claim of direct race discrimination under Section 13 of the Equality Act 2010 is unsuccessful and so dismissed.

4. The claimant's claim of an unlawful deduction of wages under Section 13 of the Employment Rights Act 1996 is unsuccessful and so dismissed.

5. The claimant's claim of a breach of the Working Time Regulations 1998 in respect of rest breaks is unsuccessful and so dismissed.

REASONS

Introduction

1. This is a claim for ordinary unfair dismissal, detriment on the grounds of making a protected disclosure, race discrimination, breach of the Working Time Regulations 1997 in respect of rest breaks, and unlawful deduction of wages. All claims are denied by the respondent.

2. A bundle of documents were agreed between the parties. Some additional documentation was presented on the first morning of the hearing by the claimant who sought to add these to the bundle. There was no objection to this and these documents were duly added and paginated. Mr Dunlop also sought to update the disciplinary procedure that formed part of the bundle as the version in the bundle post-dated the dismissal. There was no objection to this either.

3. At the outset of the hearing, the issues at set out at pages 60 – 63 of the bundle were discussed and agreed.

4. I explained the process of the hearing for the benefit of the claimant, in particular the need to put his position to the respondent witnesses and challenge their evidence if he did not accept it. During the course of the hearing, assistance was provided to the claimant in formulating cross examination questions to various respondent witnesses. The purpose of submissions and what they should cover was also explained to the claimant.

5. Following a direction at the preliminary hearing on 14 September 2025 that the respondent would give evidence first, I heard from the following witnesses in the following order:

    (i) Terrance Blackshaw

    (ii) Elaine Brand

    (iii) Tracy Allen

    (iv) Aimee Corr

    (v) Ross Graham

    (vi) Murray Leslie

    (vii) Paul Mc Carter

    (viii) the claimant

Relevant law

6. In order to bring a claim of ordinary unfair dismissal, an employee must have two years' continuous service at the time of dismissal.

7. Section 212(1) of the Employment Rights Act 1006 ("the ERA") provides that "*any week during the whole or part of which the employee's relations with his employer are governed by a contract of employment counts in computing the employee's period of employment*" for the purposes of calculating continuous service.

8. Section 212(3) states that any week "*during the whole or part of which the employee is – (a) incapable of work as a consequence of sickness or injury, (b) absent from work on account of a temporary cessation of work, or (c) absent from work in circumstances such that, by arrangement or custom he is regarded as continuing in the employment of his employer for any purpose*" will count towards the period of continuous service.

9. Section 210(5) of the ERA states that "*a person's employment during any period shall, unless the contrary is shown, be presumed to have been continuous*." It is for the employer to rebut the presumption of continuity.

10. **Section 47B** of the ERA prohibits an employer subjecting an employee to a detriment because the employee made a protected disclosure.

11. A protected disclosure is defined in **Section 43B** of the ERA as

> "…. *any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(a)that a criminal offence has been committed, is being committed or is likely to be committed,*
>
> *(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
>
> *(c)that a miscarriage of justice has occurred, is occurring or is likely to occur,*
>
> *(d)that the health or safety of any individual has been, is being or is likely to be endangered,*
>
> *(e)that the environment has been, is being or is likely to be damaged, or*
>
> *(f)that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

12. An employee requires to have a reasonable belief, at the time of making the disclosure, that it was in the public interest. The phrase 'in the public interest' has not been defined in legislation and so the tribunal has to decide based on the circumstances of the case whether a disclosure is made in the public interest. In considering if the disclosure is in the public interest, the tribunal should have regard to the following: the numbers in the group whose interests the disclosure serves; the nature of the interests affected and the extent to which they are affected by the wrongdoing; the nature of the wrongdoing; and the identity of the wrongdoer. (**Chesterton Global Limited v Mohamed Nurmohamed [2017] EWCA Civ 979**.)

13. Where an employee has a genuine and reasonable belief that the disclosure is in the public interest, this does not have to be their primary motivation in making this disclosure.

14. The tribunal cannot substitute their view for the public interest. It remains that it is the reasonable belief of the employee that the disclosure is in the public interest. (**Babula v Waltham Forest College 2007 ICR 1026, CA).**

15. It is no longer the case that a disclosure requires to be made in good faith, but the motivation can be relevant to the assessment of compensation.

16. **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** confirms that a worker suffers a detriment if a reasonable worker would or might take the view that they have been disadvantaged in the circumstances in which they had to work. The employee does not need to show physical or economic consequences although an 'unjustified sense of grievance' is not enough.

17. The burden of proof in discrimination cases is set out in **Section 136 of the Equality Act** which states that "*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*."

18. Section 136 is a two stage test. In the first stage, the claimant is required to set out their prima facie or first instance case of discrimination. If at the first stage an inference of discrimination could be drawn, then it must be drawn in the absence of an explanation to the contrary. The question for the Tribunal at the first stage is not whether they *would* find discrimination based on the facts, but whether they *could*. In such instances, the burden of proof then

shifts to the respondent for the second stage of the test, to prove, on the balance of probabilities, a non-discriminatory reason for conduct.

19. If the claimant fails to discharge their burden at the first stage, that is they fail to make out a prima facie case of discrimination, then the burden does not fall to the respondent to provide a non-discriminatory explanation.

20. The lead cases on the two stage test are ***Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases*** 2005 ICR 931, ***Lang v Manchester City Council*** [2006] ICR 1519 EAT, ***Madarassy v Nomura International plc*** [2007] ICR 876, CA and ***Ayodele v Citylink Limited*** [2018] ICR 748, CA. The following principles can be derived from those cases:

    a. At the first stage, in deciding if a prima facie case is made, the Tribunal must consider both evidence adduced from the claimant and the respondent. If the respondent's evidence is that the conduct in question did not occur or that it does not amount to less favourable treatment, then the Tribunal is entitled to have regard to that.

    b. There is a vital distinction between fact or evidence from the respondent and the respondent's explanation for the alleged discriminatory treatment. The explanation cannot be considered at the first stage. It only becomes relevant for consideration if the burden of proof passes to the respondent.

    c. Proving a difference in treatment and having a protected characteristic is insufficient to pass the burden of proof to the respondent. Doing so would only prove a possibility of discrimination. Something more is required.

21. **Section 13 of the Equality Act 2010** states that "*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*."

22. When looking at comparators, **Section 23 of the Equality Act 2010** provides that there should be "no material difference" between the claimant and comparator.

23. **Section 13 of the Employment Rights Act 1996** prohibits an employer from making deductions from an employee's wages unless "the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction."

24. The Working Time Regulations 1998 govern the obligations of an working time and break time. Specifically, Regulation 10 provides the right to a rest period of "no later than eleven consecutive hours in a 24-hour period during

which he works for his employer. Regulation 11 provides the right to an uninterrupted rest period of not less than 24 hours in each seven day period of work. Regulation 12 provides where a worker's daily working time is more than six hours they are entitled to an uninterrupted rest break of not less than 20 minutes.

25. A worker can seek to enforce these rights where an employer has "refused to permit him" to exercise the rights under Regulations 10-12. In order to comply with these Regulations, an employer should take active steps to ensure working arrangements that enable to take rest breaks. Workers cannot be forced to take rest breaks but they should be positively enabled to do so. (**Grange v Abellio London Ltd 2017 ICR 287 EAT**)

Submissions

26. Both parties made submissions at the conclusion of the evidence. For brevity, these are not included in detail here but for the avoidance of doubt, these submissions were carefully considered when coming to the decision below.

Observations on the evidence

27. It was the respondent's submission that the claimant was not credible. The Tribunal was referred to points where the claimant's evidence did not marry up with his claim, where points were raised in evidence which were not put to respondent witnesses and were not in the originating documentation.

28. Where a claimant is a litigant in person, there needs to be an acknowledgment that the manner in which they present their claim will not always follow the manner in which an advocate or solicitor would present their case. They may not challenge evidence, failing to understand the importance of this. They may bring up points in evidence which were not put to other witnesses. They may set out background narrative which did not form part of the original claim form. Where this occurs, the Tribunal will consider what weight to put on that evidence. By presenting a case in this way, there can be inconsistencies in the claimant's evidence versus their ET1 versus the internal process which form the base of the claim. It does not automatically follow that a claimant in those circumstances is not credible. A claimant who is a litigant in person is giving their evidence without the benefit of any notes, or any reminders of relevant dates or figures or the key facts which he wants to make the tribunal aware of that a representative would have. In this particular case, there was a break of more than a month between the claimant's examination in chief and his cross examination. Failing to recall exactly what was said in examination in chief, particularly when the claimant has been unable to take a note of his own evidence to review, does not necessarily go to credibility.

29. The Tribunal considered that on the whole the claimant was credible.

30. The claimant's evidence was not always reliable however, specifically on the rest breaks and wages claim. His evidence in respect of the claim for rest breaks and linked wages claim was vague and lacking in detail. He was unable to specify when these breaches occurred save for a general month and year. Various concessions were made by the claimant to confirm that at times he finished his shift an hour early which accommodated his one hour break and that he was responsible for taking his breaks when on shift. He also confirmed that he would remind others to take their breaks. The lack of detail from the claimant meant that the there was insufficient detail to make specific findings on this aspect of his claim.

31. The tribunal found that the claimant's evidence in respect of the disciplinary process, the dismissal and the protected disclosures was on the whole reliable. The facts of the disciplinary process were not in dispute. Rather the claimant and the respondent perceived the claimant's actions differently and when there was a negative outcome for the claimant, namely his dismissal, he believed that his race and/or disclosures he raised influenced that decision. While this belief was not found to be accurate, it does not impact the reliability of the claimant's evidence.

32. The respondent witnesses were on the whole credible and reliable. Their accounts accorded with contemporaneous documentation and they were able to answer the questions put to them clearly and with sufficient detail.

Findings in fact

33. The Tribunal makes the following findings of fact on the balance of probabilities having considered the evidence heard.

Continuity of service

34. The claimant was employed initially by the respondent as a temporary worker in December 2022. He was retained after the Christmas period and in early 2023 became a shift leader. In March 2024, he resigned from his role to move to Dubai. His last day of employment was 30 April 2024. There was no arrangement between him and the respondent that his employment would continue past 30 April 2024. His employment came to an end on that date. He returned to his role with the respondent on 16 June 2024. This was a new period of employment and the claimant was assigned a new employee number.

Disciplinary issue

35. The claimant was dismissed on 1 April 2025. He was dismissed for gross misconduct for taking a damaged 'wasted' air fryer without processing it through the tills.

36. The respondent runs a practice whereby all employees can buy shop stock at reduced or zero prices. As items are reduced they will be marked with a sticker that has a bar code on it and the reduced price. This reduced price may be zero. All items from the respondent store needs to be processed through their till points, even if they are marked at £0.00. This is to ensure that an accurate record of stock levels is retained.

37. At the back of the respondent store where the claimant worked is their warehouse. All stock is delivered to here and stored in cages – tall three sided metal storage containers on wheels. A section of this warehouse is the electrical bond. This is a locked section which stores electrical items for sale in the store. Within the warehouse are cages for wasted products such as food items which are past their sell by date and other non-food stuffs which are damaged and cannot be sold.

38. In terms of wasted electrical items, that is electrical items which cannot be sold or have been returned due to a fault, these are either recycled via an external organisation or they are returned to a large depot, Saltley, where they are processed. If returned to Saltley, they need to be marked as damaged, returned or wasted and are given a new number to scan at the Staley depot. Once returned to Saltley and processed there, the respondent can receive a credit for damaged items from the supplier.

39. In December 2024, an air fryer was damaged by water in the warehouse. It was moved to general waste rather than electrical waste. On 11 December 2024, a driver picking up general waste refused to take the air fryer in his lorry as it was damaged and not general waste. Following this, the claimant when purchasing items from the store at the end of his shift brought the air fryer to the self service tills. He did not scan the air fryer but took it with him. The air fryer was not processed through the tills. He did so as he was aware it could not be sold by the respondent.

40. Following this transaction, Mr Blackshaw Team Manager met the claimant briefly as he was leaving the store and noted his shopping and the air fryer. He asked the claimant if he got a bargain and felt that the answer he got was evasive. He considered the interaction later that day and decided review CCTV. He reviewed the CCTV of the till transaction and in consultation with Mrs Brand, Team Manager decided to begin disciplinary proceedings against the claimant.

41. Mr Blackshaw and Mrs Brand had worked with the claimant during both periods of employment with the respondent. They had a good working relationship with him. Mr Blackshaw had previously given the claimant a lift home after his shift. Mrs Brand organised a collection for the claimant when he left his job in April 2024. Neither Mr Blackshaw nor Mrs Brand held negative views about the claimant's Romanian nationality.

42. At some point in 2024 a customer adviser, Martin McAteer attempted to purchase a packet of biscuits at the self service till using a clubcard voucher. This transaction could not be completed as the value of the product was lower than the value of the voucher but Mr McAteer took the biscuits in any event as though the transaction was complete. This was brought to the attention of Mrs Brand who spoke to Mr McAteer on an informal basis. No formal disciplinary action for theft was taken against Mr McAteer.

43. The claimant was invited to an investigation meeting on 17 December 2024 by letter sent by Mrs Brand on 13 December 2024. The allegation as per the letter was "taking multiple products from store 2550 without any method of payment being made on 11/12/2024." This meeting was ultimately postponed until 12 February 2025 due to the claimant's sickness absence and a grievance he raised. At this point Mr Blackshaw was appointed as investigator rather than Mrs Brand.

44. At the investigation meeting on 12 February 2025, the claimant confirmed that he took the air fryer without paying for it, stating that it was waste.

45. On 14 February 2025 the claimant emailed Mr Wallace, seeking copies of various documents including the investigation report, witness statements, meeting notes, policies and procedures and his own employment records. These documents were sent to the claimant by special delivery on or around 28 February 2025.

46. A disciplinary hearing was scheduled to take place on 1 April 2025 with Murray Leslie, Store Manager from another respondent store in Falkirk undertaking the role of disciplinary officer. The claimant confirmed during the hearing that he took the air fryer but that it was waste. Mr Leslie concluded that the claimant should have known not to take the air fryer and that doing so without checking with other managers was theft and so the respondent did not have any trust in him. He found that this amounted to gross misconduct. He dismissed the claimant that day, 1 April 2025 confirming his decision in a letter dated the same day.

47. Mr Leslie was not aware that the claimant was Romanian. At the time Mr Leslie came to his decision to dismiss, the claimant had not yet made a protected disclosure.

48. The claimant appealed this decision on 11 April 2025 and an appeal hearing was convened. The appeal hearing was chaired by Paul McCarter, Store Director and took place on 22 April 2025. He concluded that the grounds of appeal were not upheld and that dismissal was the correct decision in the circumstances. Mr McCartner considered all the information before him including alternatives to dismissal before upholding the decision to dismiss.

49. Mr McCarter was aware that the claimant raised a grievance but not the detail of that grievance. He was aware that the claimant had made some kind of complaint about licensing but not the detail of this. The protected disclosure in respect of licensing made on 11 April played no part in his decision to uphold the dismissal.

Protected disclosures

50. The claimant made various comments to persons in managerial positions about the difficulty he found in taking a break during his shift in 2023 and 2024.

51. On 11 December 2024, the claimant said to Mrs Brand at the start of her shift words to the effect “I hope I get to take my break.”

52. On 17 December 2024, the claimant emailed Mr Wallace, raising a grievance about the difficulty in taking breaks on shift, the resulting impact of this on his health and the ongoing disciplinary matter. The grievance was referred to Mrs Corr to hear. She organised a formal grievance meeting with the claimant given that it raised concerns about management. She declined to hear or deal with any aspect of the grievance which considered the separate disciplinary matter. A grievance meeting took place on 22 January 2025 where the claimant was given an opportunity to set out his concerns.

53. During this hearing, Mrs Corr suggested to the claimant that a lot of the issues he was concerned with could be dealt with informally such as a stress risk assessment, training, ongoing discussion with his line manager Mr Wallace. The claimant agreed that an informal resolution was best. Mrs Corr wrote to the claimant on 7 February 2025 setting out her recommendations, which Mr Wallace was to put in place. The claimant then met with Mr Wallace to discuss these on 23 February 2025. Some of these recommendations were put in place although the claimant declined a stress risk assessment and a referral to Occupational Health.

54. On 11 April 2025, the claimant emailed the Licencing Board at Falkirk Council setting out concerns in respect of licencing practice at the respondent store, specifically the practice whereby written-off alcohol was given to colleagues in exchange for a donation to charity in line with the minimum unit pricing, that there were multiple failed Think 25 test purchases and inconsistencies in alcohol sale procedures.

Rest breaks

55. All employees in managerial positions are responsible for taking their own breaks when on shift. The claimant typically worked three shifts early shifts (5am to 2pm) per week on Sunday Tuesday and Wednesday. These shifts usually lasted nine hours and he was entitled to breaks amounting to one and a half hours over the course of that shift. Shift leaders do not have set break times and can decide when to take these breaks.

56. Where shift leaders are working an early shift, that is 5am until 2pm, it was the practice that rather than take an hours' break, they would instead finish at 1pm. They would also be entitled to a further half an hour break during their shift which might be taken in two fifteen minute breaks or a half hour break. The claimant participated in this practice by finishing early in lieu of taking an hours' break when on early shift.

Wages

57. Employees of the respondent are not paid for their rest breaks. The respondent had a practice whereby if an employee was unable to take a break during their shift due to workload or similar circumstances, they would let their line manager know and an adjustment would be made to their pay for that day. The claimant did not seek adjustments to his pay for failure to take breaks.

Decision

Did the claimant have two years' service in order to raise an ordinary unfair dismissal claim?

58. It is not in dispute that the claimant left the respondent's employment in April 2024 and returned to the same role in June 2024. What was in dispute was whether the contract was broken as at 30 April and so breaking service or whether it continued during the period 30 April to 16 June when he resumed working.

59. The tribunal concluded that there was sufficient evidence set out by the respondent to rebut the presumption of continuity of service. The claimant resigned by letter, explaining that he intends to move to Dubai and "pursue a new career path". It is clear from this letter that the claimant intends the contract to come to an end on 30 April, and not to continue after that date. The weeks between 30 April and 16 June 2024 were not governed by a contract of employment. The claimant was not undertaking tasks during that time. He was not being paid. When he returned in June, he was given a new employee number and the paperwork completed was entitled "new started

checklist". As there was a break of more than a week, the claimant's continuity was broken.

60. In the absence of two years' continuous service, the claimant could not raise a claim of ordinary unfair dismissal. His unfair dismissal claim was therefore dismissed for lack of jurisdiction.

Did the claimant reasonably believe that the disclosures were in the public interest?

61. The respondent confirmed in their submission that the only aspect of Section 43B they were disputing in respect of the disclosures was the public interest aspect. The other elements of the disclosures - whether they were a disclosure of factual information, whether they tended to show one of the listed failings in Section 43B and the claimant's reasonable belief in same - are therefore accepted points.

62. The disclosures covered two topics – the ability to take breaks and the respondent's licencing practices as it related to damaged or unsold alcohol.

63. The disclosure in respect of breaks is considered first. The respondent's submission, that the evidence was concerned only with the claimant's inability to take breaks, is accepted. The disclosures relating to breaks were not presented as a wholescale issue within the workplace, whether at that particular respondent store or across the respondent workplace generally. When making comments to managers about his breaks, these related only to his personal experience, not a wider issue. When making this disclosure in the grievance process, it was framed as a issue that was facing the claimant, which has health implications for him, albeit there was discussion more generally at that time about understaffing, workload and prioritisation of same. It remained that the discussion on the topics of workload, understaffing and prioritisation of tasks was centred on the impact for the claimant. The claimant's evidence was not that he was also advocating on behalf of the workforce, or other colleagues that he was responsible for as shift leader. In terms of the extent of the wrongdoing and the identity of the wrongdoer, it is accepted that the respondent as a large employer would have knowledge of their responsibilities for adequate breaks under the Working Time Regulations and access to both HR and legal advice on this point. Despite these factors, the Tribunal found that the claimant did not have a reasonable belief that the disclosures regarding breaks were made in the public interest. Neither his evidence during the hearing nor the contemporaneous discussions with the respondent at the time of the disclosures, whether when telling managers on shift that he needed a break, in the grievance submitted on 17 December 2024 or during the grievance meeting itself, suggested anything other than this being an issue the claimant personally was facing. The tribunal found that

the claimant did not have a reasonable belief at the time of making the disclosures that they were in the public interest.

64. In respect of the disclosures relating to the respondent's licensing practices, the tribunal found that the disclosure to the licencing board on 11 April 2025 was in the public interest and the claimant had a reasonable belief of same. The persons whose interest the disclosure served were employees who 'purchased' written off alcohol in exchange for charitable donations without age verification or the rigours of licensing laws applying to that transaction. The respondent is a very large national supermarket chain who has knowledge and experience of their licensing obligations and responsibilities. All employees are put through specific training on these licensing responsibilities. Licensing laws and regulations are in place to ensure that only people over the age of 18 are able to purchase alcohol. As with all food or drink items, there is a responsibility on shops to ensure that only items which are fit to be consumed are available for purchase. The fact that these items were only available to employees of that one store and not the general public does not diminish the public interest aspect.

65. The tribunal found that the claimant did not have a reasonable belief that the disclosure made during the course of his investigation meeting on 12 February 2025 was made in the public interest. The claimant answered 'yes' to a question raised by Mr Blackwell about whether he knew of the respondent's practices with written off alcohol. There was nothing in that disclosure which indicated that the claimant was concerned with public health. Further, had Mr Blackwell not asked the question, there is no indication that the claimant would have brought this up by himself.

66. The only disclosure which the tribunal found to amount to a protected disclosure under Section 43B was the disclosure to the licensing board on 11 April 2025.

67. To be clear, the Tribunal has not found that the respondent's actions amounted to a breach of licensing laws or regulations. It is not the purpose of the Tribunal to establish the truth of a disclosure as both parties were reminded in the course of the evidence. Instead the Tribunal only looks at the disclosure through the prism of the relevant aspects of Section 43B. Finding that the disclosure was made in the public interest does not amount to a finding that the disclosure was accurate or true.

Did the claimant suffer detrimental treatment as a result of making protected disclosures.

68. The disclosure to the licencing board occurred on 11 April 2025. Any potential detriments which occurred before that date cannot be linked to the making of that disclosure.

69. The following alleged detrimental treatment therefore could not have occurred as a result of making a protected disclosure on 11 April 2025:

    a. Pressurising the claimant into the internal grievance process and then failing to resolve the grievance in December 2024 and January 2025;

    b. Focusing on the disciplinary allegations rather than addressing the grievance issues;

    c. Inconsistent treatment with Mr McAteer in that there was an informal discussion with Mr McAteer and the claimant was subject to the formal disciplinary process which began in December 2024;

    d. In terms of the decision to dismiss taken by Mr Leslie on 1 April 2025, subjecting the claimant to procedural disadvantages, specifically the failure to disclose material on time, an unclear stock/policy and a failure to consider alternatives to dismissal.

70. The final point at d above - failure to disclose material on time, an unclear stock/policy and a failure to consider alternatives to dismissal – are relevant to the appeal hearing and decision which was made on 22 April 2025 and were therefore considered.

71. The Tribunal did not find that there was a failure by the respondent to provide him with the material on time for the appeal hearing or that the claimant was at a procedural disadvantage as a result. The claimant asserted in evidence that documents such as witness statements and the hub investigation were given to him during the investigation but not before his investigation meeting. There is no legal requirement to provide documents to an employee in advance of an investigation meeting. What is required is to share documents in advance of the disciplinary hearing, which occurred in this case. The claimant had all relevant documentation at the time of the appeal hearing. I was not brought to a policy or procedure which required all documentation to be shared at investigation stage. The claimant was therefore not placed at a procedural disadvantage.

72. The claimant’s position in respect of the unclear stock/returns policy was that had it been clear what should be done with a written off and/or wasted electrical item at the point when the delivery driver refused to take it on his truck, he would not have been in the situation he was now in. Even if it were the case that this policy was unclear, the lack of clarity was not down to the

claimant's disclosure on 11 April. The tribunal found no link between the disclosure made and any apparent ambiguity in the stock/returns policy.

73. The final alleged detriment was that there was no proper consideration of alternatives to dismissal. The claimant's position was that there was no consideration of the alternatives set out in the appeal checklist. Mr McArdle's evidence, which was accepted, was that during the adjournment at the end of the appeal hearing he took the time to reflect on what was discussed in the hearing and the appeal folder and consider if anything was there to allow him to change the decision or whether it was fair and reasonable to uphold the decision to dismissal. The tribunal found therefore that there was consideration of alternatives to dismissal at the appeal hearing.

74. In conclusion, the tribunal did not find that the claimant suffered any detriments as a result of making a protected disclosure on 11 April. This aspect of his claim fails.

75. Both the claimant and the respondent made submissions in respect of the dismissal itself and the potential link between the protected disclosure and the decision to dismiss. However, the claimant's case as per the list of issues agreed between the parties in advance of and again at the outset of the hearing does not include dismissal as a potential detriment. Nor does it include a claim of automatic unfair dismissal under Section 103A. The Tribunal therefore has not made any determination on dismissal and any links to the protected disclosure, aside from noting that the disclosure post-dated the decision to dismiss.

Was the claimant subjected to direct race discrimination whereby he was subjected to the formal disciplinary process and dismissed?

76. The claimant's position is that he suffered direct race discrimination compared with a colleague Martin McAteer. The claimant was subjected to formal disciplinary processes and ultimately dismissed. Mr McAteer had an informal discussion, no formal disciplinary process and no dismissal. The burden of proof in the first instance is on the claimant to show not only a difference in treatment but that the treatment could be because of his race.

77. The claimant's case was that there is a subconscious reliance on negative stereotyping of Romanian people as dishonest or likely to steal. He pointed to the fact that the situation with the air fryer was not clear cut. It was a product which had been classified as waste. It was not going to be sold in store. It was going to be returned to returns depot for processing and/or recycled. In his view, this was not the same as taking an air fryer ready for sale on the shelves and not paying for it. He was not taking an item that was available for sale. There was an inference that he viewed it as akin to the colleague shop where

items are marked at £0.00 – if the respondent is unable to sell it, there is no loss to them. He also pointed to the actions of the respondent in respect of alcohol which was classified as waste where colleagues could "buy" this in exchange for a charitable donation, again as the respondent was unable to sell it.

78. He also pointed to the fact that a colleague, Martin McAteer, was found to have left the store with a packet of biscuits which he had not paid for. Instead of treating that as a formal disciplinary issue, he was spoken to informally and provided an explanation for his actions without the rigour of a formal disciplinary process.

79. There was an inference drawn from the fact that the respondent treated the theft of small food items differently to electrical items, even ones which were unsellable due to water damage. There was also a clear difference in treatment of Mr McAteer and the claimant, in that Mr McAteer's potential theft was dealt with informally was the claimant's was not and that Mr McAteer was not dismissed for his theft. However, what the claimant failed to show in both his evidence and his questioning of the respondent witnesses was that this difference in treatment was because of his race. There was no "something more" as per Madarassy. There was only a difference in treatment and the fact of a protected characteristic. There was no evidence of overt discrimination or specific negative treatment of the claimant linked to his race prior to this incident. The relevant employees did not make comments which were racially insensitive or amounting to harassment relating to race for example. There was no evidence that Mr Blackshaw or Mrs Brand, who instigated the disciplinary proceedings against the claimant held negative views about Romanian people or were involved in negative stereotyping of Romanian people, even at a subconscious level. Rather both witnesses spoke of having a good working relationship with the claimant, and appeared to be relatively friendly with him in the workplace. There was no evidence available to the Tribunal to draw an inference, even at a subconscious level, that the difference in treatment was due to the claimant's race.

80. The Tribunal therefore concluded that the claimant did not discharge his burden of proof. There was no "something more" aside from a difference in treatment. While it is appreciated that dismissal in these circumstances where the claimant vehemently denied that he did anything wrong may lead to him questioning if his race and negative stereotyping of his race factored into the decision making, there was no evidence to demonstrate that this was the case.

81. The claimant's case for direct race discrimination is therefore unsuccessful.

Did the respondent breach Regulation 10, 11 and 12 of the Working Time Regulations 1998 by refusing to provide rest breaks?

82. The claimant's evidence on this claim was vague. He was unable to say when there was a failure to provide a 20 minute break every six hours as per Regulation 12. In respect of the breaches of Regulation 11, he maintained this happened in December 2022, May 2023 and December 2024. He was unable to provide specifics as to the shifts where he was not provided with an uninterrupted rest period of 24 hours. The breaches of Regulation 10 occurred in December 2022, May 2023 and December 2024 as per the claimant but again there was no specificity as to dates. The claimant's time sheets formed part of the bundle and these were brought into evidence. They did not suggest a failure to provide interrupted rest period of 11 or 24 hours in the months alleged.

83. In the absence of specific evidence from the claimant that he was not provided with 20 minute breaks every half hour and uninterrupted rest period of 11 or 24 hours, the tribunal was unable to make findings to allow a determination that the respondent breached their obligations under the Working Time Regulations 1998. This claim therefore is unsuccessful.

Was there an unlawful deduction from the claimant's wages in that unpaid breaks were deducted when he was unable to take these breaks?

84. The wages claim follows on from this. The claimant maintained that as he was not getting breaks during his shift, which should have amounted to one and a half hours, he was underpaid as he worked ten and a half hours rather than the nine he was paid for. Again the claimant was unable to specify in evidence as to when this happened or the pay period for which the deduction related. The tribunal was not brought to wage slips or timesheets to evidence where breaks were untaken and subsequent deductions from wages made. He accepted that there was a practice whereby his timesheet/pay would be updated if he was unable to take his break but he did not make arrangements for this at the time. In the absence of these specifics the tribunal was unable to make findings to substantiate this claim. This claim is therefore unsuccessful.

Date sent to parties 20 April 2026