



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr I Vickers

v

Wilson of Kendal Limited

Heard at: **Manchester**

On: **17 to 21 November 2025**
5, 6 January 2026 (in chambers)

Before: **Employment Judge Kenward**
Ms C Metcalfe
Mr B McCaughey

Appearances

For the Claimant: **in person**
For the Respondent **Ms R Jones** (Counsel)

RESERVED JUDGMENT

- (1) The complaint of unfair (constructive) dismissal (contrary to Employment Rights Act 1996 sections 94, 95(1)(c), 98 and 111) is not well-founded and is dismissed.
- (2) The complaint of automatically unfair dismissal by reason of having accompanied or sought to accompany another worker to a disciplinary and / or grievance meeting (contrary to Employment Relations Act 1999 section 12(3)) is not well-founded and is dismissed.
- (3) The complaint of victimisation by being subjected to detriment on the ground that the Claimant accompanied or sought to accompany another worker to a disciplinary and / or grievance meeting (contrary to Employment Relations Act 1999 section 12(3)) is not well-founded and is dismissed.
- (4) The complaint of failing to permit the Claimant to take time off during working hours for the purpose of accompanying another of the Respondent's workers to a disciplinary and / or grievance meeting (contrary to Employment Relations Act 1999 sections 10(1)(b) and (6)) is not well-founded and is dismissed.
- (5) The complaint of a failure to make reasonable adjustments (contrary to Equality Act 2010 sections 20 and 21) is not well-founded and is dismissed.



- (6) The complaint of unpaid holiday pay (contrary to Working Time Regulations 1996 regulations 13, 13A and 30) is not well-founded and is dismissed.

REASONS

Introduction

1. These proceedings arise out of a breakdown in the working relationship between the Claimant, who worked as an HGV driver, and the road haulage firm which employed him. The Claimant's case was that this was as a result of the "backlash" which he received as a result of seeking to accompany two colleagues to workplace meetings.
2. Whilst still employed, the Claimant brought proceedings in the Employment Tribunal complaining of the Respondent victimising him for seeking to attend / attending such meetings and not providing him with paid time off for attending one such meeting.
3. In April 2024, by which point various grievance processes had not resolved matters to the Claimant's satisfaction, the Claimant was struggling at work because a long standing back condition had flared up. The Claimant commenced a period of sickness absence from 19 April 2025. The Respondent wrote to the Claimant on 25 April 2024 to invite him to a welfare meeting to discuss his sickness absence. The Claimant resigned two days later giving two weeks' notice. He subsequently brought further complaints of constructive dismissal, victimisation and a breach of the duty to make adjustments.
4. The case was heard over the course of five days on 17, 18, 19, 20 and 21 November 2025. There was insufficient time to conclude deliberations on 21 November so the parties were informed that the case would be adjourned to 5 January 2026 when it would be listed in chambers for the Tribunal to deliberate as to the decision and the reasons for any decision, with the Judgment and Reasons to be provided in writing as a reserved decision.

The proceedings

5. In order to be able to commence proceedings, the Claimant complied with the requirement to notify ACAS of his prospective Claims for the purposes of early conciliation. He did so on 18 January 2024 in respect of his first Claim and 15 July 2024 in respect of his second Claim. Early conciliation certificates were issued on 22 January and 19 July 2024 respectively. The first ET1 Form of Claim was received by the Tribunal on 11 February 2024. The second ET1 Form of Claim was received by the Tribunal on 21 July 2024. The List of Issues identified that these dates meant that any complaint made in the



second Claim about a cause of action which arose on or before 15 April 2024 might be out of time.

6. At section 8.1 of the first ET1 Form of Claim, the only box ticked by the Claimant was that in respect of bringing "*another type of claim*" which was described as "*refusing to accept me to accompany a fellow work colleague to a grievance appeal and now escalating to victimisation*". He did not tick the box in respect of bringing a complaint of discrimination or any of the separate boxes to indicate the protected characteristic involved in any discrimination complaint. There was no discrimination complaint at this stage.
7. At section 8.2 of the ET1 Form of Claim, the Claimant set out the details of his Claim and identified the detrimental treatment to which he alleged he had been subjected.
8. The Respondent originally filed Grounds of Resistance which defended the Claim on the basis that it was a complaint of victimisation contrary to Equality Act 2010 section 27.
9. After resigning with effect from 10 May 2024, the Claimant brought his second Claim. At section 8.1 of the second ET1 Form of Claim, he ticked the applicable boxes for bringing complaints of unfair (constructive) dismissal and disability discrimination.
10. A preliminary hearing for case management had already been listed and then took place before Employment Judge Tobin on 15 August 2024 before the Respondent had filed a Response to the second Claim. At the hearing, the various detriments about which the Claimant was complaining were identified as complaints of being subjected to detrimental treatment under sections 10 and 12 of Employment Relations Act 1999 in relation to seeking to accompany two separate workers at a disciplinary hearing and a grievance hearing respectively. The case was listed for a final hearing. However, as a Response to the second Claim had not yet been received, a List of Issues was not formulated, and directions were instead made requiring the parties to agree a List of Issues for the final hearing and for amended Grounds of Resistance to be filed and served.
11. In the event, it was necessary to finalise the List of Issues at the beginning of the final hearing with the complaints to be determined listed as below.
 - (1) Failure to permit the Claimant to take time off during working hours for the purpose of accompanying another of the Respondent's workers (Employment Relations Act 1999 sections 10(1)(b) and (6)).
 - (2) Victimisation by being subjected to detriment on the ground that the Claimant accompanied or sought to accompany another worker to a



disciplinary and / or grievance meeting (Employment Relations Act 1999 section 12(1))

(3) Constructive unfair dismissal (Employment Rights Act 1996 sections 94, 95(1)(c), 98 and 111).

(4) Automatically unfair dismissal by reason of having accompanied or sought to accompany another worker to a disciplinary and / or grievance meeting (Employment Relations Act 1999 section 12(3)).

(5) Failure to make reasonable adjustments (Equality Act 2010 sections 20 and 21).

(6) Unpaid holiday pay (Working Time Regulations 1996 regulations 13, 13A and 30).

12. The List of Issues identified the issues (or questions) which would need to be determined in respect of these various complaints. The format of Tribunal's conclusions provides our answers to the questions as to liability identified in the List of Issues. The issues identified included issues in relation to time limits and disability.

Evidence

13. In terms of documentary evidence, the Tribunal was provided with a Bundle of 382 pages.
14. In terms of witness evidence, the Tribunal had Statements of Evidence from the Claimant and from Julie Wilson, a Director of the Respondent. The Tribunal also heard oral evidence from these witnesses.
15. The Claimant also provided a Disability Impact Statement to which he exhibited a number of medical reports.

Relevant law

Right to be accompanied.

16. The relevant parts of Employment Rights Act 1999 section 10 deal with the right to be accompanied at a disciplinary or grievance hearing, as set out below.

“(1) This section applies where a worker —

(a) is required or invited by his employer to attend a disciplinary or grievance hearing, and

(b) reasonably requests to be accompanied at the hearing.



(2A) Where this section applies, the employer must permit the worker to be accompanied at the hearing by one companion who –

(a) is chosen by the worker; and

(b) is within subsection (3)....

(3) A person is within this subsection if he is —

(a) employed by a trade union of which he is an official ...,

or

(c) another of the employer's workers.

(4) If —

(a) a worker has a right under this section to be accompanied at a hearing,

(b) his chosen companion will not be available at the time proposed for the hearing by the employer, and

(c) the worker proposes an alternative time which satisfies subsection (5), the employer must postpone the hearing to the time proposed by the worker....

(5) An alternative time must—

(a) be reasonable, and

(b) fall before the end of the period of five working days beginning with the first working day after the day proposed by the employer.

(6) An employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under subsection (1)(b)".

17. The relevant parts of Employment Rights Act 1999 section 10 are as set out below.

"(4) For the purposes of section 10 a disciplinary hearing is a hearing which could result in —

(a) the administration of a formal warning to a worker by his employer,

(b) the taking of some other action in respect of a worker by his employer, or

(c) the confirmation of a warning issued or some other action taken.

(5) For the purposes of section 10 a grievance hearing is a hearing which concerns the performance of a duty by an employer in relation to a worker".



Victimisation

18. The relevant parts of Employment Rights Act 1999 section 12 deal with the right not to be subjected to detriment or dismissal on the ground of having accompanied or sought to accompany another to a disciplinary or grievance meeting, as set out below.

“(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that he ...

(b) accompanied or sought to accompany another worker ... pursuant to a request under [section 10].

(2) Section 48 of the Employment Rights Act 1996 shall apply in relation to contraventions of subsection (1) above as it applies in relation to contraventions of certain sections of that Act.

(3) A worker who is dismissed shall be regarded for the purposes of Part X of the Employment Rights Act 1996 as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that he ...

(b) accompanied or sought to accompany another worker ... pursuant to a request under [section 10]”.

Disability

19. “Guidance on matters to be taken into account in determining questions relating to the definition of disability” has been issued under Equality Act 2010 section 6(5) of the Equality Act 2010. Where relevant, this Guidance (the “Equality Act 2010 Guidance”) is to be taken into account by adjudicating bodies, including Employment Tribunals, in determining whether a person is a disabled person. The guidance gives illustrative examples.
20. A person is disabled within the meaning of Equality Act 2010 section 6(1) if he or she has “*a physical or mental impairment*” which has a “*substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities*”.
21. Substantial is defined as meaning “*more than minor or trivial*” in Equality Act 2010 section 212(1).
22. In conducting the assessment as to whether the effect is “*substantial*”, regard should be had the cumulative effect of this impairment (see Equality Act 2010 Guidance, paragraph B4) and the focus should be on what the Claimant “*cannot do or can only do with difficulty, rather than on the things that* (the Claimant) *can do*” (see Goodwin v The Patent Office [1999] IRLR 4, at paragraph 35 and Equality Act 2010 Guidance paragraph B9).



23. The Appendix to the Equality Act 2010 Guidance provides an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities, as set out below.
- “In the following examples, the effect described should be thought of as if it were the only effect of the impairment:*
- difficulty in getting dressed, for example, because of physical restrictions,*
- difficulty using transport; for example, because of physical restrictions, pain”.*
24. Similarly, the Appendix provides an illustrative and non-exhaustive list of factors in respect of which, if they are experienced by a person, it would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities, as set out below:
- “experiencing some discomfort as a result of travelling, for example by car or plane, for a journey lasting more than two hours”.*
25. Equality Act 2010 Schedule 1 paragraph 5 provides that an impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if measures are being taken to treat or correct it and, but for that, it would be likely to have that effect.
26. Equality Act 2010 Schedule 1 paragraph 2(1) provides that the effect of an impairment is long-term if it has lasted or is likely to last for at least twelve months or is likely to last for the rest of the life of the person affected.
27. Paragraph 2(2) of Schedule 1 to the Equality Act 2010 provides that if an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is treated as continuing to have that effect if the effect is *“likely to recur”*. In this legal context, *“likely to recur”* means that *“it could well happen”* (see paragraph C3 of the Equality Act 2010 Guidance and see also Boyle v SCA Packaging Limited [2009] ICR 1056, HL).
28. In Swift v Chief Constable of Wiltshire Constabulary [2004] ICR 909, EAT, (noting the consideration of this case by the House of Lords in Boyle v SCA Packaging Limited [2009] (above)), the EAT emphasised that the question for the Tribunal is not whether the impairment itself is likely to recur but whether the substantial adverse effect of the impairment is likely to recur. The Tribunal must therefore identify the effect of the impairment with a degree of precision, since a substantial adverse effect resulting from a different impairment that was not the consequence of the condition initially diagnosed would not qualify as a recurrence.
29. In the case of Cruickshank v VAW Motorcast Limited [2002] ICR 729, EAT, the Employment Appeal Tribunal held that the time at which to assess the



issue of disability (whether there is an impairment which has a substantial adverse effect on normal day-to-day activities) is the date of the alleged discriminatory act.

30. Moreover, the case of All Answers Limited v W [2021] EWCA Civ 606, CA, confirms that the date of the discriminatory act is also the material time when determining whether the impairment has or is likely to have a long-term effect. Paragraph C4 of the Equality Act 2010 Guidance stresses that anything that occurs after the date of the discriminatory act will not be relevant.
31. The burden of proof is on a Claimant to satisfy the Tribunal that he or she has a relevant disability for the purposes of the Equality Act 2010.

Knowledge of disability

32. Under Equality Act 2010 section 15(2) an employer (A) cannot be liable for discrimination arising from disability if “*A shows that A did not know, and could not reasonably have been expected to know, that B had the disability*”.
33. Equality Act 2010 Schedule 8 paragraph 20 provides that the duty to make adjustments does not arise if the employer “*does not know, and could not reasonably be expected to know*” that the employee has a relevant disability and “*is likely to be placed*” at the disadvantage in issue.
34. In Pnaiser v NHS England [2016] IRLR 170, EAT, it was explained that, in respect of knowledge of disability, these provisions “*do not require knowledge (whether actual or constructive) of the precise diagnosis of the disability in question*” but do “*require knowledge (actual or constructive) of the facts constituting the disability*” namely that “*the individual is suffering from a physical or mental impairment which has substantial and long-term adverse effects on his or her ability to carry out normal day-to-day activities*”, and the “*question what a Respondent knew or should reasonably have been expected to know is one for the factual assessment of a Tribunal*”.
35. Paragraph 5.15 of the Equality and Human Rights Commission’s statutory Code of Practice on Employment states that employers must “*do all they can reasonably be expected to do*” to find out whether a Claimant has a disability. What is reasonable will depend on the circumstances. However, this is an objective assessment.
36. In Gallop v Newport City Council [2014] IRLR 211 CA, the Court of Appeal cautioned against the “*unquestioning adoption*” of the “*unreasoned opinions*” of occupational health advisers. It was stressed that “*the responsible employer has to make his own judgment as to whether the employee is or is not disabled*”, although in “*making that judgment, the employer will rightly want assistance and guidance from occupational health or other medical advisers*”. Further guidance was given as below.



“That assistance and guidance may be to the effect that the employee is a disabled person; and, unless the employer has good reason to disagree with the basis of such advice, he will ordinarily respect it in his dealings with the employee. In other cases, the guidance may be that the opinion of the adviser is that the employee is not a disabled person. In such cases, the employer must not forget that it is still he, the employer, who has to make the factual judgment as to whether the employee is or is not disabled: he cannot simply rubber stamp the adviser's opinion that he is not”.

Burden of proof in discrimination cases

37. *Equality Act 2010 section 136* provides for a shifting burden of proof, as set out below.

“(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”.

38. The burden of proof starts with the Claimant. It is for the Claimant to prove facts from which the Tribunal could infer, in the absence of any other explanation, that the treatment was at least in part the result of the Claimant's relevant protected characteristic. At the first stage, when considering what inferences can be drawn from the primary facts, the Tribunal must ignore any explanation for those facts given by the Respondent and assume that there is no explanation for them. It can, however, take into account evidence adduced by the Respondent insofar as it is relevant in deciding whether the burden of proof has moved to the Respondent. If such facts are established, then the burden of proof transfers to the Respondent to establish on the balance of probabilities that the protected characteristic formed no part of the reasoning for the impugned decisions or treatment.
39. The mere fact that the Claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy the first stage of the shifting burden of proof. It may be that the employer has treated the Claimant unreasonably. That is a frequent occurrence quite irrespective of the race or age or other protected characteristics of the employee and will not, by itself, be enough to shift the burden of proof (see Bahl v The Law Society [2004] IRLR 799, and Zafar v Glasgow City Council [1998] IRLR 36).
40. It is not necessary in every case for a Tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of



considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the shifting burden of proof (see Brown v Croydon LBC [2007] IRLR 259, CA, at paragraphs 28 to 39).

Duty to make reasonable adjustments

41. Where a provision, criterion or practice” of the employer “*puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled*”, Equality Act 2010 section 20(3) imposes a duty on an employer “*to take such steps as it is reasonable to have to take to avoid the disadvantage*”.

42. Equality Act 2010 section 21 provides simply that a failure to comply with the above requirements is a failure to comply with the duty to make reasonable adjustments, and that a failure to comply with the duty gives rise to discrimination against the disabled person.

43. Guidance was given by the Employment Appeal Tribunal (Elias P) in Project Management Institute v Latif [2007] IRLR 579, EAT, as set out below.

“The ... Claimant must not only establish that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it could properly be inferred that there is a breach of that duty. There must be evidence of some apparently reasonable adjustment which could be made. We do not suggest that in every case the Claimant would have had to provide the detailed adjustment that would need to be made before the burden would shift. However, we do think that it would be necessary for the Respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not”.

44. Further guidance was given by the Employment Appeal Tribunal in Royal Bank of Scotland v Ashton [2011] ICR 632, EAT, as set out below.

“It is not — and it is an error — for the focus to be upon the process of reasoning by which a possible adjustment was considered... [I]t is irrelevant to consider the employer’s thought processes or other processes leading to the making or failure to make a reasonable adjustment.’ This essentially brings us back to the fact that the duty to make reasonable adjustments is cast in terms of ‘steps’ that would have an efficacious practical benefit in terms of relieving the substantial disadvantage to which the Claimant is subjected by the PCP”.



Constructive dismissal

45. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed where the employee terminates the contract of employment "*with or without notice in circumstances in which he is entitled to terminate the contract without notice by reason of the employer's conduct*".
46. This amounts to a constructive dismissal in which an employee is entitled to resign where the employer is in fundamental breach of the contract of employment and the employee's resignation will be treated as amounting to a dismissal by the employer.
47. In Western Excavating v Sharp [1978] 1 All ER 713, CA, it was explained that a fundamental breach of contract occurs where the employer commits a significant breach, which goes to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more the central terms of that contract. In such a case the employee is entitled to treat himself or herself as discharged from any further performance and resign. In legal terms, this is referred to as a repudiatory breach of the contract of employment. This test as to whether there has been a repudiatory breach of the contract of employment by the employer is an objective test. It is not sufficient that the employee subjectively perceives that there has been such a breach is a fundamental breach. However, it was also made clear that an employee relying on a breach of contract in this way must make up his or her mind and resign soon after the breach, or otherwise it may be held that the employee has waived his or her right to treat the contract as having been terminated by the employer's repudiatory breach of contract and has effectively affirmed the contract. The burden is on the employee to show that a dismissal has occurred.
48. A constructive dismissal may result from a breach of an express term, such as the rate of pay stipulated in the contract, or from a breach of an implied term in the contract of employment, such as the implied term of trust and confidence.
49. The implied term of trust and confidence was defined by the House of Lords in Malik v Bank of Credit [1998] AC 20, HL, as being to the effect that the employer shall not "*without reasonable and proper cause, conduct itself in a matter calculated (or) likely to destroy or seriously damage the relationship of confidence and trust between employer and employee*".
50. A constructive dismissal may result from either a single act, or from the cumulative effect of a series of acts. Where it is based on the cumulative effect of a series of acts, the last act, often referred to as the last straw, need not be a breach of contract in itself, but it must be capable of contributing something



to the cumulative breach of contract (see London Borough of Waltham Forest v Omilaju [2005] All ER 75, CA).

51. In Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1, CA, it was confirmed that, when resigning and claiming to have been constructively dismissed, an employee who is the victim of a continuing cumulative breach of the implied term of trust and confidence is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation, provided the later act forms part of the series (see paragraph 51).
52. If the employee's resignation is found to amount to a constructive dismissal, the Tribunal will still need to consider whether or not the dismissal was fair in accordance with the provisions of Employment Rights Act 1996 section 98.
53. Employment Rights Act 1996 section 98(1) provides that in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show — "*(a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*".
54. Employment Rights Act 1996 section 98(4) provides that "*where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) — (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case*".

Unlawful deductions from wages

55. ERA 1996 section 13(1) provides that an employer shall not make a deduction from wages of a worker employed by the employer 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. An employee has a right to complain to an Employment Tribunal of an unauthorised deduction from wages pursuant to ERA 1996 section 23. The definition of "wages" in section ERA 1996 includes holiday pay.

Holiday pay

56. Working Time Regulations 1996 regulations 13 and 13A entitle a worker to paid annual leave.



57. Under Working Time Regulations 1998 regulation 14(2) a worker is entitled to be paid in respect of any statutory leave that is outstanding on termination of employment. A complaint in relation to unpaid holiday pay can be brought both as a complaint in respect of unauthorised deductions from wages and also as a complaint under Working Time Regulations 1998 regulation 30.

Findings of fact and conclusions

(1) Disability.

58. *Did the Claimant have a physical impairment?*

The Claimant suffered from a back condition. He had provided a Statement of Evidence as to the impact of any disability. In this Statement, the Claimant described the impairment relied upon as amounting to a relevant disability as being severe pain in lower back, resulting in limited bending movements, constant pain in lower back and constant sciatica problems with numbness in upper leg region.

59. *Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?*

The Tribunal was satisfied that, during the period in issue in the proceedings, the symptoms of the Claimant's back condition adversely impacted on his normal day-to-day activities in a way which could be described as substantial in that it was more than trivial with the examples which the Claimant gave (in relation to the impact during a flare-up of symptoms) including struggling to get dressed in terms of being able to put his socks on and finding it difficult to get in and out of motor vehicles. The Tribunal noted that the guidance to Tribunals on the definition of disability identifies normal day-to-day activities as including getting dressed and using transport. It was clear to the Tribunal that there would be a substantial adverse effect on normal day-to-day activities when the Claimant was having a flare-up in terms of his symptoms, in that there would be a significant adverse impact on his mobility and he would have difficulties in standing up having been seated.

60. *If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*

In terms of medication, the Tribunal noted that when the Claimant had flare-ups, at least in December 2021 and April 2024, he needed to take anti-inflammatories, and he was also prescribed in April 2024 with a muscle relaxant.

61. *Would the impairment have had a substantial adverse effect on the Claimant's ability to carry out day-to-day activities without the treatment or other measures?*



This was not a situation where the medication was making the difference between there being no substantial adverse effect on the Claimant's ability to carry out day-to-day activities and there being such an impact. Such medication would merely have made the Claimant's symptoms more bearable or tolerable during the course of any flare-up.

62. *Were the effects of the impairment long-term? Did they last at least 12 months, or were they likely to last at least 12 months; if not, were they likely to recur?*

On the evidence before us, there was no evidence of the condition having a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities outside the period of any flare-up, and in terms of the dates of any flare-ups, the Tribunal only had evidence of the flare-ups which took place in December 2021 and April 2024 with there also having been reference to the symptoms which prompted a medical report provided in 2015, although the report only tells us that the Claimant reported low back pain and numbness of the left foot for a period of some months.

63. Applying the test which we have to apply, which is whether another flare-up was something which could well happen, the Tribunal was satisfied that, as of April and May 2024, another flare-up was something that was likely to recur. In arriving at this conclusion, the Tribunal took into account the history of the previous two flare-ups and also the evidence which existed as to the state of the Claimant's back at the material time, most obviously in the radiology report dated 25 April 2024 which showed significant findings in terms of disc bulges, mild-to-moderate spinal canal stenosis and degeneration. Although it post-dated the material time by a few weeks, the Tribunal also noted the history of the matter set out in the report of 21 June 2024 which was clearly describing, in its second paragraph, the situation which would have existed in April 2024.
64. On the basis of the reasoning set out above, the Tribunal concluded that, as at the date of the causes of action complained about as amounting to disability discrimination, the Claimant's back condition amounted to a disability within the definition of section 6 of the Equality Act 2010.

(2) Knowledge of disability

65. *Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability, and, if so, from what date?*

On the evidence which we heard, the Claimant was suffering from a flare-up in relation to his back in December 2021 and this resulted in him having a day off work as well as having a conversation with the transport manager, Nigel Graham, from which Nigel Graham would have been aware that the Claimant was suffering from back symptoms as of December 2021. Whilst the Claimant



suggested in his evidence that he would have referred to his back history in any conversation with Nigel Graham, the Tribunal noted that the Claimant stopped short of confirming that he had actually done so. In the circumstances, the Tribunal did not have evidence before it which confirmed, on the balance of probability, that such a conversation had actually taken place. We simply had the Claimant's assumption, volunteered in 2025, that it is something that he would have mentioned.

66. The Claimant claims in his Statement of Evidence that he informed the office on 4 April 2024 that he was suffering from serious back pain and needed to go and get a doctor's appointment and some anti-inflammatories. In fact, in his oral evidence to the Tribunal, he accepted that the reference to 4 April 2024 was wrong as it was 5 April 2024 which he took off work. In any event, it was neither 4 April nor 5 April 2024 on which he obtained a doctor's appointment and some anti-inflammatories in that the documentary evidence in the Bundle shows that the anti-inflammatories had been prescribed to him on 3 April 2024.
67. However, the timeline set out in his e-mail of 19 April 2024, which is fairly contemporaneous, does show that he had made the Respondent aware that he was having "*some back problems*" as he had provided the Respondent with a self-certificate on this date in respect of being absent from work for the following day.
68. The Tribunal was satisfied that, on the balance of probabilities, if the Claimant was telling the office that he was unable to work on 5 April 2024, he would have told the office that the reason that he could not work was because he had back pain which was serious enough for him to need to take the day off work.
69. The Claimant's timeline from 19 April 2024 states that, on 6 April 2024, he discussed coming back to work, with William Tranter, on the basis that the transport planners could facilitate multiple local drops so that he was not sitting in the lorry for long periods allowing his back to stiffen up.
70. We find that, on or around 6 April 2024, a conversation had taken place between the Claimant and William Tranter in the office about the Claimant coming back to work during the course of which the Claimant had indicated that he would be able to return to work in order to do local deliveries as this would reduce the time that he would be sat in a lorry driving. The Claimant's Statement of Evidence does not specifically mention communicating any more information regarding his back condition but we find that, on the basis that the office would have been aware from the previous conversation that the reason that the Claimant had been off was because of his back, the office



would have been aware that the Claimant's back condition was still giving rise to symptoms as of 6 April 2025 moving into the following week.

71. The Claimant then worked a full week between Monday, 8 April 2024 and Friday, 12 April 2024. His weekly timesheet shows that he drove a total distance of 2634 km over the course of the five days. This involved, from Monday to Thursday, a total number of 10 drops. In the context of the journeys which the Claimant would usually have been undertaking, this meant that he was doing relatively short journeys for the entire week.
72. The Claimant did not bring any issues to the attention of the Respondent regarding this working schedule causing him any difficulties, and, on the face of it, he managed to complete his duties for this working week notwithstanding his back condition. The Tribunal notes the inconsistency between the Claimant's evidence in his Statement of Evidence and his evidence to the Tribunal. In his Statement of Evidence, the Claimant was complaining that, from the second day of this week, namely 9 April 2024, the Respondent was in breach of the agreement to give him shorter distances. The timeline dated 19 April 2024 was to the same effect, in that he was complaining that, from 9 April, his work schedule was requiring him to sit longer in the vehicle, and this caused him further pain. This is not really borne out by the weekly timesheet for the week of 8 April 2024 which shows that the Claimant did three drops on Monday, two drops on Tuesday, three drops on a Wednesday, and then two drops on the Thursday. In fact, in cross-examination, he accepted that his working schedule for the entire week was a schedule which involved shorter journeys than was normal and that it was only the following week when the length of the single journeys which he was being required to undertake became an issue.
73. Towards the end of the week, having been given an instruction to wash his truck, the Claimant did bring it to the attention of the Respondent that he was still suffering from back pain and informed the office that, instead of washing his truck himself, he had stopped at the Boston truck wash in order for his truck to be washed. In his timeline dated 19 April 2024, he states that the office had been informed that he was still suffering from lower back pain and felt that washing his truck himself would injure his back further.
74. The Claimant complains that over the course of the following days, he was given work which involved longer journeys, so that there were two drops on Monday and Tuesday, and one drop only on Wednesday and Thursday. Over the course of the four days, he drove a total of 2336 km. He did not bring it to the attention of the Respondent that this work schedule was causing him any issues at the time. In his oral evidence to the Tribunal, he explained that, as a former member of the military, his attitude was one of just getting on with the job and "*I thought I can do this*".



75. However, on 19 April 2024, the Claimant then had to take the day off sick and so did no driving on that Friday.
76. The Claimant e-mailed Julie Wilson at 7.37 am on Friday 19 April setting out a timeline with the entries which have already been set out above. The Claimant complained that, this week, *“the deliveries have been between Wissington and Liverpool resulting in long periods of sitting in the truck causing me severe pain in my lower back”* The e-mail did not provide any further information regarding the Claimant’s back problems but did cut-and-paste health and safety executive guidance in relation to the responsibility of employers to protect their workers by avoiding work activities which can cause back pain wherever reasonably practicable. At the end of the e-mail, he complained that he had not been consulted about his back issues and that the work schedule with which he had been provided amounted to ignoring his request for *“aid in my recovery”*. He alleged that the Respondent was maliciously seeking to injure his back further and cause further pain and did not care as long as the company was making money.
77. Julie Wilson did not reply to this e-mail on 19 April 2024. The reason seems to have been that she was seeking advice from her Solicitor with the result that she did not reply to the e-mail until Thursday, 25 April 2024 which was shortly before she was due to be going on holiday. She had also been told that the Claimant had a sicknote for the week.
78. Having obviously obtained advice from her Solicitor, Julie Wilson wrote to the Claimant on 25 April 2024 seeking to arrange a meeting to discuss the Claimant’s absence, although the letter was hoping that he would be feeling much better. The meeting was only being arranged for 8 May 2024 because Julie Wilson was due to be away on annual leave until shortly before then. The purpose of the meeting was described as being to understand the current position regarding any return to work and any adjustments that may be required. In so far as the Claimant had raised the possibility of shorter runs or multi-drop work as an adjustment, it was stated that this could be discussed in further detail at the meeting. The letter was also a little bit ambiguous as to the position in respect of obtaining an occupational health report. The letter suggested that the Respondent would consider whether to refer the Claimant for an occupational health report and suggested that occupational health would contact the Claimant in order to make an appointment. In actual fact, it seems that Julie Wilson was intending that the possibility of any occupational health referral was something that was going to be discussed at the meeting on 8 May 2024, so would only be actioned after that date.
79. We were satisfied, having set out the information which the Respondent had, that the Respondent did not, at any stage, have actual knowledge regarding the Claimant’s disability.



80. The issue arises as to whether they had constructive knowledge at any stage.
81. The context in which this issue falls to be considered includes the fact that this was an employee who, on entering his employment, had completed a medical questionnaire which had specifically asked him as to whether he suffered from, or had ever had, back problems, and he had entered a tick in the applicable box to answer the question in the negative. The Tribunal recognises that there had been an issue in respect of the Claimant's back in December 2021, but this only caused a brief absence from work. In the circumstances, the extent of the information which the Respondent had was largely that which had been provided in April 2024. We have asked ourselves whether a tipping point was reached at an earlier point in time, prior to the Claimant's e-mail to Julie Wilson of 19 April 2024, in order to cause the position to be one in which the Respondent could reasonably have been expected to have made the enquiries which would have caused it to be in the position of knowing that the Claimant had a relevant disability. Certainly, as Julie Wilson conceded in her evidence, the situation at the end of the week of 8 April 2024 was such that the Respondent's planners might have been expected to have asked more questions of the Claimant regarding his ability to undertake duties the following week, particularly when he had indicated that he was still suffering from back problems which were preventing him from washing his truck. On the other hand, the Tribunal balances this against the paucity of information actually provided by the Claimant regarding his back condition at this time. In the end, the Tribunal has concluded that the tipping point at which the Respondent could reasonably have been expected to have made the requisite enquiries was on 19 April 2024 when the Claimant wrote to Julie Wilson setting out a timeline and describing his back condition in terms which made it clear that he was giving rise to serious symptoms and suggesting that it had caused legal duties to be engaged on the part of his employer in terms of avoiding work activities which would cause back pain and making an assessment in terms of reducing the risk of back pain and applying necessary control measures. The Claimant specifically complained that he had not been consulted about his condition. As a result of this e-mail, Julie Wilson sought advice from her Solicitor. It is abundantly clear that, as a result of this e-mail, it did become important for the Respondent to establish the position in respect of the Claimant's back injury as soon as possible.
82. The issue becomes, in a practical sense, when the Respondent would actually have acquired constructive knowledge as a result of taking the steps which it might have taken arising out of the Claimant's e-mail of 19 April 2024. There was an unfortunate delay in taking any steps. This seems to have been partly caused by Julie Wilson taking legal advice. It should not have been necessary to seek legal advice in order to recognise the need for further information regarding the issues which the Claimant was setting out in his e-



mail of 19 April. It seems to the Tribunal that, given that the e-mail had been sent by the Claimant whilst he was off sick, was criticising the Respondent for not having consulted him as to his condition, and was criticising the Respondent for not taking action, it should have been replied to, notwithstanding the fact that the Claimant was off sick, and notwithstanding the fact that the Claimant had previously criticised the Respondent for communicating with him when he was not at work. Replying to the e-mail would simply have involved inviting the Claimant to provide more information or suggesting the possibility of a meeting or inviting him to provide his consent so that an occupational health referral could have been made. Clearly, obtaining occupational health advice would have taken at least a week. Arranging a discussion with the Claimant might have taken a few days. Whilst a reply by e-mail might have been obtained from the Claimant fairly quickly, it would have depended upon the adequacy of any information provided in the reply. In short, the Tribunal thinks that it is unlikely that the Respondent would have been in the position of having constructive knowledge regarding the Claimant's disability before 27 April 2024 which is the date when he put in his resignation.

(3) Breach of duty to make adjustments

83. *Did the Respondent have the following PCPs:*

(1) a requirement to drive significant distances and / or undertake long journeys as part of the role of an HGV driver;

(2) a requirement to undertake the duties of an HGV driver with limited opportunities to take a break and / or to cease to be in a seated position?

It is not disputed that the Respondent had a provision, criterion or practice which involved a requirement to drive significant distances and to undertake long journeys. As counsel conceded, it was the "*nature of the game*". However, in relation to the suggestion that there was a requirement to undertake the duties of an HGV driver with limited opportunities to take a break and / or cease to be in a seated position, the Respondent's position was that a driver would be able to take as many breaks as he or she wished. It was pointed out that the Claimant had conceded, during the course of his evidence, that his workload was achievable. Whilst the Claimant did concede this, the Tribunal nevertheless concluded that it was an inevitable requirement of the duties of the Respondent's drivers that they would have limited opportunities to take a break and / or to cease to be in a seated position where they had duties which involved then having to drive distances in excess of 600 km a day. To use the phrase coined by counsel, it was in the nature of the game that it was unavoidable that a driver such as the Claimant would be



in a seated position while driving for significant periods of time with only limited breaks.

84. *Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:*

(1) long journeys and / or limited breaks from a seated position aggravated the Claimant's back condition; and / or

(2) long journeys and / or limited breaks from a seated position caused the Claimant to stiffen up so that he could not bend over and had reduced mobility?

The Tribunal accepted the Claimant's evidence that long journeys and / or limited breaks from a seated position aggravated his back condition at times when he was having a flare-up of his back condition and that this placed him at a substantial disadvantage compared to someone without his disability. The Tribunal also accepted his evidence that long journeys and / or limited breaks from a seated position had the effect that he could not bend over and had reduced mobility. The Tribunal rejected the Respondent's argument that this was not significant as a disadvantage in terms of most people having a degree of stiffness or needing to stretch after a long car journey. It seemed to the Tribunal that, whilst this may be the case, the extent of the issue as far as the Claimant was concerned, when he was having a flare-up of his back condition, was much worse than most people or people without his disability would experience. We accepted the evidence in his Disability Impact Statement which described his situation after undertaking driving duties, during the course of a flare of his back condition, in a way which described himself as being stiff and not being able to stand up properly after undertaking driving duties and further indicated that after a long period of time in the same position he would be stiff and have limited back movement.

85. *Did the Respondent know, or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?*

For the reasons set out above in dealing with the issue of knowledge, the Tribunal is satisfied that the Respondent would have had actual or constructive knowledge of any substantial disadvantage at the same point in time as it had constructive knowledge of the disability.

86. *What steps could have been taken to avoid the disadvantage? The Claimant suggests:*

(1) adjusting the Claimant's duties and / or work schedule so that he had fewer longer journeys and / or shorter journeys and / or an increased number of drop-offs or stops;



(2) adjusting the Claimant's duties to that there was a greater opportunity to take breaks from being in a seated position.

The Tribunal was satisfied that steps could have been taken to avoid the disadvantage, namely adjusting the Claimant's duties and / or work schedule so that he had fewer longer journeys and / or shorter journeys and / or an increased number of drop-offs. These would have been reasonable adjustments for the Respondent to have made once it had or could reasonably have been expected to have had knowledge of the Claimant's disability and the substantial disadvantage. However, this would not have been before 27 April 2024.

87. The issue becomes whether it was reasonable for the Respondent to take those steps after 27 April 2024 when the Claimant had resigned. The Claimant was still off sick from work at this point in time. At 6.52 am on 27 April 2024 he submitted a sickness certificate which he had obtained the previous day and which covered a sickness absence for a further eight days until 3 May 2024. The GP had not ticked the box to indicate that the Claimant "*might be fit for work taking account of the following advice*". Having sent this sickness certificate as a WhatsApp message to the Respondent's duty phone, the Claimant then blocked the duty phone as a contact. Later on 27 April 2024, the Claimant gave notice of his intention to resign with his final day being Friday, 10 May 2024. Julie Wilson, who dealt with staffing issues was away at this point in time. The sickness certificate expired on Friday, 3 May 2024. The following Monday, 6 May 2024 was a bank holiday. Thereafter, there was only the short remaining period of four days of the two weeks' notice which he had chosen to give. Julie Wilson was back on Tuesday, 7 May 2024. She wrote a letter to the Claimant on that day acknowledging receipt of his letter of resignation and noting that they were due to meet on the following day, Wednesday, 8 May 2024, to discuss an occupational health referral in order to assess when the Claimant might be fit to attend work. However, her letter stated that, in the light of the Claimant's intention not to return to employment by virtue of his resignation, she was proposing to convert the meeting and use the time to discuss the reasons for his resignation in more detail.
88. During the subsequent meeting, the Claimant was asked how he was feeling with the Claimant replying that he was "*feeling so much better now*". He then described the history of his back condition (which would not have been necessary if this was information which had already been provided to the Respondent) before the note recorded that he said "*he is good now*" and "*just needs to manage it, take time off to get himself back to where he normally is*". The note then recorded some discussion about whether the Claimant would get a further sick note with Judy Wilson suggesting that this was needed and the Claimant saying that he was going to get a sick note for the week.



89. In these circumstances, where the Claimant had already resigned, and was off sick, the Tribunal does not consider that it was reasonable for the Respondent to have to take the steps concerned in respect of a notice period which had such a relatively short period of time to run. Put bluntly, if the Claimant was expecting the Respondent to make reasonable adjustments, he had acted too soon in terms of submitting his resignation. In the circumstances, there was no breach of the duty to make reasonable adjustments on the part of the Respondent.

(4) Holiday pay

90. A dispute had arisen, whilst the Claimant was still employed, over whether or not he should be treated as taking holiday over the Christmas and New Year period.
91. In his first ET1 Form of Claim, one of the detriments that the Claimant complained about as amounting to victimisation was that, on 3 January 2024, he found out that the Respondent was treating him as having taken (paid) annual leave in respect of the three bank holidays over the Christmas and New Year period, whereas he had entered these three dates on his timesheet as unpaid leave.
92. The Tribunal is satisfied that this was not an act of victimisation (this is dealt with further below) but arose from the interpretation applied, in good faith, by the Respondent, to the applicable clauses in the contract of employment. The Claimant took issue with this interpretation.
93. Clause 4.1 of the contract of employment stated that the Claimant's holiday entitlement was "*5.6 weeks per year including bank/public holidays*".
94. The Respondent's position was this meant that the Claimant's holiday entitlement amounted to 20 days of annual leave and then he was entitled to the eight public / bank holidays which are standard, so as to amount to 28 days per year. In other words, the effect of this was that eight days of his 28 days' statutory holiday entitlement had to be taken on the standard eight bank holidays.
95. The alternative interpretation, and effectively that of the Claimant, was that the total entitlement of 28 days took into account any entitlement to have bank holidays off work but did not necessarily require the bank holidays to be taken as holiday.
96. When dealing with the position in respect of the three bank holidays over the Christmas and New Year period, clause 4.1 arguably needs to be read in conjunction with the second part of clause 4.4 which states that, except "*in exceptional circumstances and approved by a director before being booked, no holidays must be taken from 20th December until 2nd January inclusive*".



The reference to holidays in this clause could have been qualified by making it clear that it did not apply to bank holidays on the basis that they were automatically to be taken on the days on which they fell. Similarly, the reference to “20th December until 2nd January inclusive” could have been qualified so as not to include the dates on which the three bank holidays fell, but the use of the word “inclusive” means that the period has been defined in such a way as to include the dates of the three bank holidays.

97. This was consistent with the way in which the contract had operated in that the Respondent operated 365 days a year and in previous years employees whose working week was from Monday to Friday had been allowed to take unpaid leave if they had not actually worked on the bank holidays in question.
98. Conversely, on the face of it, these working practices were not consistent with the three bank holidays over the Christmas / New Year automatically being taken as annual leave in terms of being treated as days on which an employee was taking part of his or her 28 days’ statutory annual leave entitlement.
99. It seemed to the Tribunal likely that this part of clause 4.4 had been inserted into the contract of employment to deal with a specific need to make sure that employees were available during the period between 20 December and 2 January (because the Respondent operated 365 days a year), but in inserting the clause, the draughtsman had created an ambiguity because the clause was, on the face of it, arguably inconsistent with clause 4.1.
100. The Tribunal had regard to the *contra proferentem* rule which is a legal principle for interpreting ambiguous contract clauses, providing that the clause should be construed against the party that drafted it. This means the interpretation that is least favourable to the drafter is adopted.
101. In the circumstances, the Tribunal preferred the interpretation which had the effect that the bank holidays which arose in respect of Christmas Day, Boxing Day and New Year’s Day, were not automatically treated as annual leave because an employee would be required, unless there were exceptional circumstances, to have taking those dates as annual leave approved by a director.
102. The consequence of this interpretation is that, having treated the Claimant as having taken paid annual leave on these dates, the Respondent had reduced the Claimant’s annual leave entitlement by three days. In other words, at the point in time of the termination of his employment, his outstanding annual leave entitlement should have included three more days.
103. There is a calculation of the Claimant’s outstanding annual leave entitlement, as at the termination of his employment in an e-mail sent on 13 May 2020. In the course of evidence, the Claimant accepted that this was effectively a



correct record of the annual leave which he had taken. Effectively, his entitlement for the period from 1 July 2023 until 10 May 2024 was 24.164 days. This meant that he had exceeded his leave entitlement by 2.836 days. If three days was added back onto his holiday entitlement, then his outstanding holiday entitlement, as at 10 May 2024, would have been 0.164 days.

104. However, the Claimant's final pay had been reduced by two days' pay on the basis that this was the figure by which he had exceeded his holiday entitlement (rounded down from 2.836). It is arguable that this deduction should not have been made on the basis of our decision as to the contractual position so that the Claimant would have been entitled to wages for 2.164 days in respect of his outstanding holiday entitlement / and or on the basis that any deduction in respect of holiday pay amounted to an unlawful deduction.
105. On the other hand, on the basis that the Respondent had treated the Claimant as taking paid annual leave on the three bank holidays, he would have received three days' pay, which would become an overpayment if his outstanding annual leave entitlement was revised so that the Claimant had not taken paid annual leave on these dates but had taken unpaid leave (as was his case). In other words, he had been paid for three days which should have been treated as unpaid.
106. Thus, it could be suggested that any deduction was cancelled out by any overpayment (leaving aside the rounding up / down which had happened).
107. However, ultimately, the Tribunal concluded that the issue was academic. The Tribunal was not satisfied that there was a complaint before the Tribunal in respect of pay for outstanding holiday (or unlawful deductions). On neither ET1 Form of Claim, at section 8.1, was the applicable box ticked in respect of claiming to be owed holiday pay (or wages). The issue of being required to take annual leave on the three bank holidays was raised in both Claims, but effectively as a complaint of being subjected to a detriment for having sought to accompany or having accompanied a colleague at an applicable meeting. The right to be paid in lieu of untaken holiday only arises on termination of employment. Similarly, any complaint in respect of an unlawful deduction from wages made on the basis of having, as at the termination of employment, exceeded any accrued holiday entitlement, only arose when that deduction was made from any final pay. Thus, the first Claim could not be treated as having made any such complaints as any relevant cause of action had not yet arisen. Moreover, the second Claim did not make any such complaint.



108. It follows that the Tribunal concluded that there was no entitlement to an award for holiday pay (or unlawful deductions from wages in respect of holiday pay).

(5) Right to time off to accompany worker

109. *Did Craig Glover reasonably request to be accompanied by the Claimant at a disciplinary or grievance hearing?*

In relation to the meeting which the Respondent had arranged to take place with Craig Glover, the Tribunal was satisfied that this was not a meeting which was within the scope of section 10 of the Employment Relations Act 1999. This was not a formal disciplinary meeting or a formal grievance meeting. It was described, in the letter which required the attendance of Craig Glover, as a fact-finding meeting. It was not a meeting at which disciplinary action within the scope of section 13(4) could have been taken. The tribunal was satisfied that this was made plain by the letter which described the meeting as being to discuss an incident “*so that we can establish the facts of the matter before any further action is considered*”. Considering any further action, in terms of disciplinary action, would have involved a further meeting. It was effectively an investigatory interview. If there was any scope for doubt from the wording of the letter, the position was made plain by the Respondent, as can be seen from the text message sent by Craig Glover to the Claimant where he described having been told that it was “*just a chat about what happened*”.

110. *Did Anthony Boyd reasonably request to be accompanied by the Claimant at a disciplinary or grievance hearing?*

In relation to Anthony Boyd, the position is that he was due to be attending a grievance meeting and had originally wanted to be accompanied by his union representative. However, it transpired that his union representative was going to be unavailable for weeks and so, on Friday, 24 November 2023, he texted Julie Wilson saying that he would like the Claimant to attend with him instead. As such, the Tribunal was satisfied that, at 11.14 am that day, Anthony Boyd s had made a request to be accompanied at a grievance meeting by the Claimant.

111. The reply of Julie Wilson, sent 12.45 pm, did not refuse that request. However, it indicated that the Respondent would “*struggle to get Ian up to the office when he is based in Lincoln*” and suggested that “*I don’t mind waiting for your union rep?*” Julie Wilson added that, obviously, “*I am keen to get this sorted quickly [though] if possible, so is there anyone else?*” The reply sent by Anthony Boyd at 13.51 pm was to the effect that he was also “*wanting it sorted quickly*” and “*I will attend on my own*”, which he described as “*fine*”. It is noteworthy that Julie Wilson then replied to the e-mail at 14.00 pm to say, “*I’m*



happy to wait but if [you are] sure, we will keep meeting for Monday – it should be pretty straightforward”.

112. In these circumstances, the Tribunal was satisfied that Anthony Boyd had actually withdrawn his request to be accompanied by the Claimant approximately 2½ hours after the original request had been made.

113. *Did the Respondent fail to permit the Claimant to take time off during working hours for the purpose of accompanying Anthony Boyd and / or Craig Glover at a disciplinary or grievance hearing?*

The Tribunal accepted the evidence of Julie Wilson that the Claimant contacted her by telephone on 24 November 2023 to confirm that he was taking annual leave on 27 November 2023 to visit family in Barrow and would attend the meeting with Anthony Boyd while he was in the area.

114. It is a fact that the Claimant did subsequently attend the grievance meeting and accompany Anthony Boyd.

115. Notwithstanding Julie Wilson's understanding of the position, prior to attending the meeting, there had been exchanges between the Claimant and Richard Wilson regarding the basis upon which any payment for that day would be treated, with Richard Wilson suggesting that the attendance would be treated as (paid) holiday and the Claimant not being in agreement with this. However, the Respondent, insofar as this had been its position, subsequently changed its position and confirmed on 20 December 2023 that the Claimant would be paid *“the 14 hours you’ve written on your timesheet will refund your holiday”*. In the circumstances, the Claimant was paid for accompanying Anthony Boyd at the grievance meeting, and this was the position which had been reached by the point in time when he submitted his Claim to the Employment Tribunal.

116. As such, looking at the wording of section 10(6) of the Employment Relations Act 1999, the Tribunal was not satisfied that there had been a breach of the applicable statutory provisions so that there was no outstanding cause of action at the point in time when he commenced proceedings. The requirement is that an employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers *“in accordance with a request under subsection (1)(b)”*. Anthony Boyd had made such a request at 11.14 am on 24 November on the basis that his union representative was unavailable, but it was withdrawn at 13.51 pm.

117. As such, at the point in time when the Claimant attended the meeting by way of seeking to accompany Anthony Boyd, there was no live request for the purposes of section 10 of the Employment Relations Act 1999.



118. In any event, the Claimant's attendance at the meeting was subsequently treated as paid time off for the purpose of accompanying Anthony Boyd at the meeting concerned.
119. In relation to the fact-finding meeting attended by Craig Glover, for the reasons set out previously, the Tribunal was satisfied that this was a meeting outside the scope of sections 10 and 13 of the Employment Relations Act 1999.

(6) Victimisation by being subjected to detriment / breach of implied term

120. Under section 13(1) of the Employment Relations Act 1999, the Claimant has brought complaints alleging this he has been unlawfully victimised by the Respondent on the basis of being subjected to detrimental treatment on the ground that he had "*accompanied or sought to accompany another worker ... pursuant to a request under that section*" (which refers to section 10 of the Employment Relations Act 1999).
121. The List of Issues set out the 13 alleged detriments being relied upon for the purposes of these complaints of victimisation for having accompanied or sought to accompany a colleague to an applicable meeting. The same 13 alleged detriments are also relied upon for the purposes of the Claimant's constructive dismissal case. In other words, he alleges that these alleged detriments gave rise to a breach of the implied term of trust and confidence, such as to amount to a repudiation of the contract of employment by the Respondent, and so as to entitle him to resign on the basis of having been constructively dismissed.
122. It follows that, in considering each alleged detriment, the Tribunal needed to consider both whether:
 - (1) each alleged detriment amounted to detrimental treatment to which the Claimant was subjected on the ground that he had accompanied or sought to accompany another worker, pursuant to an applicable request, to a disciplinary or grievance meeting; and
 - (2) each alleged detriment either gave rise to a breach of the implied term of trust and confidence or contributed to a cumulative breach of the implied term of trust and confidence (namely the contractual obligation on the part of the Respondent not to act in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent).
123. The Tribunal was satisfied that there was a significant area of overlap between the Claimant's case as to victimisation and his case as to constructive dismissal so that the analysis applied to the complaints of victimisation was generally applicable, in relation to each alleged detriment,



to the Claimant's constructive dismissal case. This was because, at the heart of the Claimant's case, he was alleging that trust and confidence had been destroyed or seriously damaged as a result of actions on the part of his employer which he described as a "*backlash*" against him because he had attended or sought to attend the meetings in question.

124. In terms of victimisation, the statutory provisions under section 13(1) of the Employment Relations Act 1999 are only engaged where there is a request within the scope of section 10.
125. In relation to any request made by Craig Glover, for the reasons set out above, the Tribunal has already concluded that there was no such request as the meeting concerned was not a disciplinary hearing or grievance hearing. It follows that any complaint that the Claimant was subjected to detrimental treatment on the ground that he sought to accompany Craig Glover at the meeting concerned fell to be dismissed on that basis.
126. Similarly, on the basis of the conclusions set out above, any complaint that the Claimant was subjected to detrimental treatment on the ground that he sought or did accompany Anthony Boyd at the meeting which took place on 27 November 2023, must fail given the conclusion reached by the Tribunal that the request had been withdrawn. There was no longer a live request. Anthony Boyd had informed his employer that he would attend the meeting on his own.
127. However, in the alternative, the Tribunal has nevertheless gone on to consider the separate and individual alleged acts of detriment upon which the Claimant seeks to rely. In relation to each such alleged detriment, the issue is whether the treatment of the Claimant was on the ground that he had accompanied or sought to accompany Craig Glover and / or Anthony Boyd to the meetings in issue (placing to one side the issue as to whether any meeting or request was within the scope of the Employment Relations Act 1999).
128. Before looking at the individual acts of alleged detriment, it also needs to be recognised, as the Respondent argued and the Tribunal accepted, that the first four complaints of detriment amounting to victimisation really, properly analysed, amount to the detriment being that of the Respondent being alleged to be in breach of the Claimant's rights under section 10 of the Employment Relations Act 1999.
129. Two points follow. The first is that, again, these complaints would fail on the basis of the Tribunal's conclusions, set out above, as to the provisions of section 10 of the Employment Relations Act 1999 not being engaged either because the meeting concerned was not within the scope of the section or there had ceased to be a request within the scope of the section.



130. The second point is that this is not, properly analysed, a complaint of victimisation. The Respondent referred the Tribunal, to the decision, at first instance, of Employment Judge Fowell in Andrews v Abellio London Limited (2021) Case Number 2300331/2018 (unreported), which itself cited and relied upon four other decisions at first instance, to similar effect, with the point being that victimisation contrary to section 13 of the Employment Relations Act 1999 does not arise where the detriment itself is the alleged breach of the employee's rights under the Act, for example, in refusing to allow the employee to be accompanied at an applicable meeting. Employment Judge Fowell held that "*there has to be an exercise of the right ... followed by a refusal, followed by dismissal or a detriment*", so that "*the denial of the right*" cannot "*itself be a qualifying detriment*". This was a case where the detriment in question was that of a worker to be accompanied rather than (as here) the right of a worker such as the Claimant to accompany another worker. However, the Tribunal was satisfied that these same reasoning must apply. Otherwise, every breach of section 10 of the Employment Relations Act 1999 would also amount to a detriment contrary to section 12 of the Act and section 11 of the Act which provides for a remedy for breaches of section 10 would be otiose.
131. Further or alternatively, the Tribunal turned to consider the position in respect of the individual acts or omissions of alleged detriment set out at paragraph 6.1 of the list of issues.
132. In doing so, the Tribunal also considered these complaints of alleged detriment for the purposes of considering the Claimants constructive dismissal case.
133. (1) *Richard Wilson refusing to allow the Claimant time off during working hours for the purpose of accompanying Anthony Boyd and / or Craig Glover at a disciplinary or grievance hearing (paragraph 6.1.1 of the List of Issues).*

Notwithstanding the fact that Anthony Boyd had indicated that he had decided to attend the meeting on his own, the Claimant had contacted Julie Wilson by telephone on 24 November 2023 suggesting that he would be taking annual leave on 27 November 2023, would be in the Barrow area and would therefore attend the meeting with Anthony Boyd. This certainly seems to have been the position which was understood by the office planners who messaged the Claimant on Sunday 26 November 2023, at 11.12 am, under the understanding that the Claimant was due to be on holiday on the following day, albeit the Claimant replied by suggesting that he was not taking holiday as he had not accrued enough days. Nevertheless, the Claimant still attended the meeting on 27 November 2023. The Tribunal thinks that it is more likely than not that the Claimant had told Julie Wilson that he would attend the meeting as he was going to be on holiday anyway but subsequently decided



to pursue the issue of being paid for attending. This would certainly be consistent with the understanding which the Respondent seems to have had as of 26 November 2023 regarding the Claimant being due to be on holiday on the following day.

134. In other words, what seems to have happened is that approximately half an hour after Anthony Boyd messaged the Respondent saying that he would attend the meeting on his own, the Claimant seems to have taken it upon himself, presumably as a result of some communication between the Claimant and Anthony Boyd, to ring Julie Wilson to say that he would take annual leave on 27 November 2023 to visit people he knew in the Barrow area and would attend the meeting whilst he was in the area. As such, it would appear that this was the understanding of Richard Wilson when a telephone conversation subsequently took place on the Sunday. In his oral evidence to the Tribunal the Claimant suggested that the text message sent on the Sunday, to the effect that he was not taking holiday on the Monday "*as I've not accrued enough days*", was sarcastic or tongue in cheek. In evidence, he accepted that he was in a position to take holiday even if he had not accrued sufficient days or did not have enough days outstanding (which would be consistent with the fact that, when his employment later came to an end, on the Respondent's analysis (albeit flawed), he actually owed the Respondent holiday).
135. In the circumstances, the Tribunal was satisfied that the position adopted by Richard Wilson in the course of the telephone conversation on 26 November 2023 was because of the understanding Richard Wilson had, at that point in time, regarding the Claimant having indicated that he was going to attend the meeting anyway because he was going to be taking time off and would be in the area. The position adopted by Richard Wilson was not a position which was adopted for the purposes of victimising the Claimant for having sought to accompany Anthony Boyd at a grievance meeting. In any event, the Respondent would have understood that the request had been withdrawn by Anthony Boyd, so that the Claimant was effectively attending of his own volition rather than pursuant to a request within the scope of the Employment Relations Act 1999. Further or alternatively, the Claimant was being paid in respect of the time off, albeit the payment was on the basis that he was taking the time off as holiday, which was his choice. It followed that the Tribunal concluded that this complaint was not well founded.
136. It also follows that, based on the above factual analysis of the treatment in issue, the Tribunal was not satisfied that the actions (or omissions) of Richard Wilson amounted to Richard Wilson having behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent. This is particularly so when those



actions are seen in the context of the content of the telephone call on 26 November 2023 (see further below) about which the Claimant also complains but, during which, on the Claimant's own case, it is clear that Richard Wilson was at pains to make it clear, in relation to the position of the Respondent, as explained during that telephone call, that *"we are ... not falling out over this"*.

137. *(2) Richard Wilson speaking with the Claimant in a telephone call on 26 November 2023, to the effect that "we are not arguing about this, we are not falling out over this", but the Claimant would have to use his holiday in order to attend any disciplinary or grievance meeting and / or the manner and tone of Richard Wilson in speaking to the Claimant and / or "venting" at him and / or thereby undermining the Claimant in his role as the worker's companion.*

Again, this is really a complaint alleging that the Respondent did not allow the Claimant to exercise his rights under section 10 of the Employment Relations Act 1999.

138. That said, there is a possible additional complaint which involves complaining about the tone or manner of any communication (and possibly the content insofar as the complaint about the content amounts to complaining about more than communicating an alleged refusal to allow the Claimant to exercise his rights under Employment Relations Act 1999 section 10).
139. On this basis, the Tribunal considered the factual basis of the complaint. In relation to the telephone conversation on 26 November 2023, the Tribunal notes that no issue was raised by the Claimant, as to the way in which the telephone conversation was conducted by Richard Wilson, in the period immediately following the telephone call. Thus, for example, his email of 28 November 2023 to Julie Wilson does not specifically raise the issue, or indeed hint at the issue. It seems to have been raised for the first time in the Claimant's e-mail on 18 December 2023, some three weeks after the meeting, at a point in time when the Claimant was seeking to pursue a formal appeal against the decision made in respect of the issue as to any payment for his attendance on 27 November 2023. At that point in time, the Claimant was referring to having previously submitted an informal grievance, but the issue does not seem to have been raised any earlier. In his e-mail of 18 December 2023, the Claimant described the telephone conversation with Richard Wilson, on the basis that it lasted 13 minutes, which is certainly confirmed by telephone log records, with the description extending over just half a dozen lines. The description of the call describes it as aggressive but gives no further detail regarding that save to say that that *"I was told in no uncertain terms - that we are not arguing about this, were not falling out over this and I would have to use a holiday to [attend] the meeting"* On one view, this was capable of being interpreted as simply Richard Wilson putting forward his position in relation to the matter in a way which was designed both to be conciliatory and



/ or draw a line under the matter. Later on in his description of the telephone conversation, the Claimant stated that *"I did say that I understood why Mr Wilson was venting at me, but to be fair I don't understand why I've been subjected to this victimisation and bullying"*. However, it is not clear that any reference to victimisation and bullying is referring to what had taken place during the telephone conversation.

140. The Claimant raised the issue of the telephone conversation in his ET1 Form of Claim, but provided minimal evidence about it in his Statement of Evidence which simply stated that Richard Wilson had informed him that *"I would have to use a day's holiday"* with no reference being made to the way in which the telephone conversation had been conducted by Richard Wilson. The lack of any evidence-in-chief from the Claimant regarding the telephone conversation was pointed out in the course of cross-examination where it was suggested that the Claimant cannot have been troubled much by the telephone conversation since there was an absence of any reference to the issue in his Statement of Evidence. The Claimant's reply was to the effect that he was troubled in that he had raised the issue afterwards, which was presumably referring to his e-mail of 18 December 2023, and he further stated that he thought that the evidence in the case was that of the whole Bundle of documents, which was, again, potentially referring the Tribunal to the content of his e-mail of 18 December.
141. In the circumstances, the Tribunal was effectively left with simply the Claimant's description of the telephone conversation in his e-mail of 18 December 2023. In terms of whether Richard Wilson said words to the effect of *"we are not arguing about this, we are not falling out over this"*, the Tribunal considered that it was likely that Richard Wilson had said words to this effect. However, the Tribunal concluded that this was simply part of Richard Wilson discussing the position in a way which made it clear that the position was not open to discussion, which was his prerogative as a director of the Respondent.
142. In so far as the Claimant has complained in the ET1 form of Claim as to the manner and tone of Richard Wilson and Richard Wilson *"venting"* at him, the Tribunal noted that there was very little, even in the Claimant's e-mail of 18 December 2023, to provide a basis for arriving at any conclusion regarding the manner and tone of Richard Wilson. Insofar as it was being suggested that the label *"aggressive"* applied, this was not a label that the Claimant himself used in the e-mail of 18 December 2023 in that he simply commented that his *"wife was in the room when I took the phone call she said that it came across as quite an aggressive conversation"*.
143. It was not clear either from the e-mail, or the Claimant's evidence, that the Claimant's wife would actually have heard any part of the conversation by



Richard Wilson, as distinct from the part of the conversation which consisted of the Claimant's responses to Richard Wilson. In the circumstances, the Tribunal was not satisfied that it was being provided with a basis to conclude that the conduct of Richard Wilson during the telephone conversation had actually been aggressive.

144. Insofar as the Claimant makes reference to Richard Wilson "*venting at me*", the written and oral evidence of the Claimant did not really explain to the Tribunal the way in which it was being suggested that Richard Wilson was venting at him. The Tribunal notes that the e-mail of 18 December 2023 stated that "*I did say that I understood why Mr Wilson was venting at me*". The verb "*to vent*" amounts to no more than referring to the expression of a strong emotion. The Claimant has not explained the way in which Richard Wilson was expressing any strong emotion and the Tribunal was not in a position to conclude that this amounted to a detriment, particularly if it amounted to no more than Richard Wilson making it clear what his position was in relation to the matter and / or suggesting that he was not prepared to have a debate or discussion about his position.
145. In terms of the suggestion that Richard Wilson was thereby undermining the Claimant in his role as the worker's companion, the Tribunal notes that this is not an allegation specifically made by the Claimant in his ET1 Form of Claim and, in any event, the Tribunal did not accept that this was the effect of any conversation which took place between Richard Wilson and the Claimant.
146. Insofar as there was any focus or consideration given by the Respondent to issue of the Claimant attending any meeting, that focus was on the practicalities of the Claimant attending a meeting which was a significant distance away from where he would normally be undertaking his working duties for the Respondent together with the issue as to how any such attendance should be treated in terms of remuneration, in that, on the Claimant's case, it appears possible that the Respondent may not have appreciated initially the requirements in respect of an employee being granted paid time off in order to accompany a colleague at a meeting. However, the Tribunal notes that the Respondent appears to be an employer which had no real issue with employees being appropriately accompanied at disciplinary and grievance meetings, as indicated by the text messages sent by Julie Wilson to Anthony Boyd which made it clear that she was happy to facilitate Anthony Boyd being accompanied at any grievance meeting, together with the letter sent to Craig Glover in respect of the fact-finding meeting where, although there was no requirement to facilitate the worker being accompanied by a companion, the Respondent nevertheless made it clear that it was prepared to allow Craig Glover to be accompanied by a colleague



or trade union representative. It follows that the Tribunal concluded that this complaint was not well founded.

147. Similarly, on the basis of the above factual analysis of the treatment being complained about by the Claimant and having regard to Richard Wilson having made it clear that they were not going to fall out over the matter, the Tribunal was not satisfied that this was treatment of the Claimant by Richard Wilson which was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent.
148. *Initially not paying the Claimant the correct wages for attending a grievance meeting as a worker's colleague on or about 27 November 2023 (6.1.3)*

Not paying the Claimant expenses for attending the grievance meeting on or about 27 November 2023 (6.1.4).

The Tribunal considered these two complaints together.

149. The Tribunal was satisfied that the way in which the Respondent sought to deal with the issue as to any payment of the Claimant for his attendance at the grievance meeting was not in order to victimise him for a protected act of having sought to attend that meeting. The Tribunal's conclusion arises out of the findings of fact that we have already made, in particular that it was the Claimant who originally indicated that he would attend the meeting on the basis that he was going to be on holiday and in the area anyway so that this was the basis upon which Respondent originally proposed to deal with the matter. However, when the Claimant objected to the issue as to any payment being dealt with in this way, ultimately the Respondent agreed to pay him in respect of a day's work on that date, even though he had effectively only attended a meeting for an hour. Thus, on 19 December 2023, Julie Wilson confirmed her agreement to pay the Claimant for the 14 hours that he had entered on his time sheet for this date and to restore the day's holiday to his leave entitlement. The Claimant's reply queried if the "*company is ONLY willing to pay the 14 hours*". Julie Wilson replied asking what "*else were you wanting*" which prompted a list from the Claimant of five items. The only item which related to seeking payment was the first item which was seeking a £10 food allowance and confirmed that payment was not being sought in respect of fuel / mileage. The other items were effectively proposals on the basis of which "*we can close this grievance down and say it was a miscommunication between both parties*". Julie Wilson responded to these proposals including agreeing to the food allowance and following her response sent another e-mail asking the Claimant to "*confirm that we are now all sorted with the Grievance Appeal?*" The Claimant responded the following morning saying that "*I will be taking no further action on the grievance matter*". As such, the Tribunal was satisfied that the position adopted by the Respondent was based



on its understanding of the position and subsequently involved a willingness to seek to resolve the position amicably when the Claimant pursued his different understanding of the position. These were not actions to victimise him for having sought to attend or having attended a grievance meeting with a fellow worker. It follows that the Tribunal concluded that these complaints were not well founded.

150. In terms of whether this treatment involved or contributed to any breach of the implied term of trust and confidence, on the basis of the Tribunal's conclusions as previously set out as to the Claimants complaint under section 10 of the Employment Relations Act 1999, no entitlement to payment for attending the meeting had arisen, the Claimant had elected to do so of his own volition, and was paid in respect of that day as he had chosen to take it as paid annual leave. On the basis of the factual analysis already set out, the Tribunal has concluded that the Respondent was entitled to proceed on such a basis. It follows from that conclusion that there was similarly no breach of any express term of the contract of employment in relation to any entitlement to payment by way of wages or expenses.
151. In terms of any entitlement to expenses, it is to be noted that section 10 of the Employment Relations Act 1999 does not specifically or expressly give rise to such an entitlement, and the Claimant did not refer the Tribunal to any other express term or other contractual basis for being entitled to be reimbursed his expenses for 27 November 2023.
152. When the Claimant took issue with the Respondent having proceeded on the basis on which it did, the Respondent ultimately agreed to pay the Claimant for the entire day in respect of having attended the meeting, restored the day of annual leave to his annual leave entitlement and paid the Claimant the food allowance which he had requested where the Claimant had made it plain that he was no longer pursuing the matter of any other expenses. On this analysis, Insofar as there had been any earlier breach (in other words, contrary to our conclusions set out above), it had ceased to be a live breach and / or by accepting such payment, the Claimant had waived any earlier rights in respect of any earlier breach.
153. Properly analysed, the matter had been resolved. From the correspondence over its resolution, it is clear that the Respondent arrived at this resolution in the interests of seeking to maintain a good working relationship with the Claimant. Indeed, this involved responding to proposals put forward by the Claimant for resolving the matter which, at least at face value, have been put forward on the same basis.
154. *Treating the Claimant, without adequate notice or otherwise, as having taken paid holiday on Christmas Day, Boxing Day and New Year's Day (6.1.5).*



The Tribunal refers to its detailed analysis of the applicable terms of the contract of employment, which was set out earlier above.

155. The Tribunal was satisfied that this did not amount to victimisation. It simply reflected the interpretation which the Respondent based on the contract of employment, erroneously as the Tribunal ultimately decided. However, it was an interpretation which applied to everyone in the same position as the Claimant and not just the Claimant. The evidence in the Bundle included text messages being sent to other employees of the Respondent similarly providing them with confirmation of the position, namely, that, if they had not worked the bank holidays in question, those days would be deducted from their annual leave allowance, rather than treated it as unpaid leave. These were friendly messages from the Respondent's payroll lady (Vicky) complete with a "Smiley" emoji, couched in terms of being a reminder of the position.
156. In terms of the reliance placed by the Claimant upon these steps taken by the Respondent as having given rise to or contributed to a breach of the implied term of trust and confidence, the Tribunal was not satisfied that this was the case. The case of the Claimant is effectively that this was the start of the "*backlash*" against him for having sought to support his colleagues, Craig Glover and Anthony Boyd. As stated, this is inconsistent with the Respondent seeking to rely upon the same contractual provisions, to the same effect, with other employees. The Tribunal was not satisfied that this was an elaborate ruse designed specifically to target the Claimant under the guise of appearing to treat other employees in the same way.
157. Although the Tribunal has concluded that the Respondent had incorrectly interpreted the contract of employment, it is less straightforward identifying whether this involved (at least prior to the Claimant's resignation) any breach of the contract of employment and, if so, the actual breach. As stated, the initial effect would be that of the Claimant being overpaid through being paid for three days of annual leave which he had put on his timesheet as unpaid leave. Patently, this would have the potential effect of reducing his contractual annual leave entitlement (which effectively mirrored his statutory entitlement) but the Tribunal was not referred to evidence of the Claimant actually being refused annual leave. Indeed, he accepted in his oral evidence, that it was possible to take annual leave even in circumstances where, at a given point in time, he did not have any accrued days. The evidence was that the Claimant, by the time that his employment ended, had accrued an annual leave entitlement of 24.164 days but had taken 27 days. Thus, having the bank holidays concerned treated as paid annual leave, although it had notionally reduced his annual leave entitlement by three days, had arguably not stopped him taking annual leave, because he had exceeded his



entitlement by approximately three days. In this sense, he had not been refused paid annual leave to which he was entitled.

158. The Claimant's point was that the Respondent had failed to give him any or any adequate notice of requiring him to take annual leave on the three bank holidays concerned. However, the written contract was silent as to the requirement or right in respect of any such notice. Clause 4.3 contract of employment did include provisions as to the notice required of an employee in seeking to take annual leave and required of the employer in seeking to defer annual leave (but was silent as to any notice required where an employer was requiring an employee to take annual leave). Regulation 15(4) of the Working Time Regulations 1998 does provide that if an employer is going to require an employee to take annual leave on a particular date then the amount of notice which is required to be given is "*twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates*". The Claimant had been told that he was not required to work on Christmas Day or Boxing Day on 22 December 2023 and had been told that he was not required to work on New Year's Day on 30 December 2023. There was no real evidence as to the precise terms in which this was communicated, but from the way in which the Claimant completed his timesheet, his assumption or understanding seemed to have been that this meant that he would have unpaid leave on these dates, whereas it seems clear from the Respondent's position that the effect of this notification, read with the contract of employment (applying the Respondent's interpretation of the applicable clause) was that this meant that the time off would be treated as paid annual leave. The Tribunal has decided otherwise.
159. However, in all the circumstances, the Tribunal has decided that the issue over whether or not the three bank holidays concerned should be treated as unpaid leave or annual leave did not give rise to a repudiatory breach of the contract of employment. It was not conduct on the part of the Respondent going to the root of the contract. The Claimant was paid for these days. The issue which arose was not one which went to the root of the contract but ultimately related to whether the wording which the Respondent had inserted into the contract, presumably to cover the scenario, had been effective in doing so. The dispute was as to interpretation.
160. (6) *Vicky Hartley insisting that the Claimant submit a self-certificate sickness form on 15 January 2024.*

The Tribunal was not satisfied that there was any detriment to the Claimant in relation to this issue. The Respondent needed the Claimant's self-certificate sickness form in order to process the statutory sick pay which he was entitled to be paid. The completion of the form was a standard requirement for any employee of the Respondent who was off sick for seven days. The Claimant



did think that he had submitted a form online, but it appears that, although he may have completed the form online, it was not automatically submitted but needed to be downloaded and he had not done this. It was entirely understandable that the Respondent should then take the step of seeking to chase the Claimant for the provision of a document which was needed by the Respondent in order to process the statutory sick pay which it was in the Claimant's interests to have processed in order to receive the pay to which he was entitled.

161. Similarly, in the absence of detriment, the treatment of the Claimant in issue did not cause or contribute to a breach of the implied term of trust and confidence. Quite the opposite: the Respondent was taking steps to ensure that the Claimant received the payment to which he was entitled. Indeed, this particular episode is a good example of the Claimant seeking to interpret innocuous or well-intentioned treatment as the reverse.

162. *(7) Telling the Claimant, when he tried claiming for four CPC lessons, that as he had only worked for three full years, he could only claim for three CPC lessons.*

In evidence, the Claimant accepted that he was told that he could only claim for three CPC lessons in October 2023, so the complaint is misconceived and falls away as the treatment pre-dates the protected act.

163. In any event, the Tribunal was satisfied that the Respondent's position in relation to any entitlement to be paid for CPC training did not amount to victimisation. It simply amounted to the Respondent applying the terms of the Claimant's contract of employment which only entitled him to payment for the cost of one training module per year. On this basis, the Respondent honoured the Claimant's contract of employment in so far as he was reimbursed for the cost of three CPC training modules which was consistent with the fact that he had completed three full years of employment. This was not treatment to which he was subjected on the ground that he sought or did accompany a colleague to an applicable meeting.
164. It also follows that this episode did not cause or contribute to a breach of the implied term of trust and confidence. The Respondent was seeking to treat the Claimant in accordance with his contract of employment. Again, the Tribunal considered that this was an example of The Claimant seeking to attach significance to treatment or episodes in support of his narrative of victimisation when the significance being attached was misplaced.
165. *(8) On 30 January 2024, Julie Wilson covertly recording a grievance meeting between herself and the Claimant.*



The grievance meeting with the Claimant took place with Julie Wilson and Nigel Graham in attendance, with the latter stated to be in attendance for the purpose of taking notes. There was a delay in providing the outcome as Julie Wilson was on three weeks of annual leave from 1 February 2024, which was explained at the end of the meeting and in an e-mail sent on 23 February 2024 following the return to work of Judy Wilson. The outcome letter was dated 2 March 2024. There was then an exchange of communications between the Claimant and Julie Wilson as to the accuracy of the minutes leading to Julie Wilson volunteering the information, in an e-mail sent on 13 March 2024, that she had typed the minutes from her recording of the meeting so that they were as accurate as they could be. The Claimant replied to this e-mail on the same day. In relation to the issue of the meeting having been recorded, he simply stated that *"I was not informed that the meeting was being recorded and as such would like a copy of the recorded meeting under data protection"*. The primary issue raised in this e-mail was that the e-mail from Julie Wilson had been sent when the Claimant was on annual leave and that sending the e-mail before his return from annual leave amounted to *"another way of harassment"*.

166. The Tribunal was satisfied that the reason Julie Wilson covertly recorded the grievance meeting was so that she had as full a record as possible of the meeting and so as to order to protect herself in circumstances where it would have been clear to her that the working relationship between the Claimant and herself was in the process of breaking down and the Claimant was making it clear that he was contemplating legal proceedings, as indicated by the commencement of early conciliation on 18 January 2024. Similarly, this was not treatment to which he was subjected on the ground that he sought or did accompany a colleague to an applicable meeting.
167. On the other hand, this was treatment of the Claimant which was indicative of a lack of trust between the Claimant and the Respondent which reflected the uneasy and difficult relationship which had developed between the Claimant and the Respondent in circumstances where the Respondent was concerned as to the need to protect its position given the Tribunal proceedings which had been commenced and the concern of Julie Wilson that, if she did not have an accurate record of the meeting, she would be at risk of the Claimant seeking to misinterpret or attach undue significance to anything that was said in the meeting.
168. The Tribunal also notes the conciliatory tone of the grievance outcome letter in which the Respondent had sought, constructively and in good faith, to engage with the issues being raised by the Claimant and was at pains to emphasise the Respondent's willingness to work constructively with the Claimant moving forward, for example by suggesting further meetings to



review matters and emphasising that the Respondent's "*aim is to ensure our staff are happy working for us and we welcome any queries as you know*".

169. In the circumstances, the Tribunal was not satisfied that this was conduct on the part of the Respondent which was, in itself, calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent.
170. *(9) Photographs being taken inside the Claimant's company truck showing keys left in the ignition with doors locked, and / or, on or about 25 March 2024, Nigel Graham criticising the Claimant for leaving the keys in the ignition of his truck.*

The Tribunal was satisfied that this complaint was out of time for the reasons which follow later below.

171. In any event, the reason for a photograph being taken of the Claimant's truck showing the keys left in the ignition was because of the legitimate concerns of Nigel Graham regarding the fact that this compromised security. This was a relatively informal way of bringing an issue to the Claimant's attention which needed to be brought to his attention. Had Nigel Graham and / or the Respondent been wanting to victimise the Claimant because of any protected act involved in seeking to accompany colleagues at meetings, then the Tribunal considered that it is likely that the Respondent would have used this opportunity to have taken formal action against the Claimant, which the Respondent did not. It follows that the complaint is not well founded.
172. Similarly, this conduct on the part of the Respondent was not consistent with the Respondent being an employer who was conducting itself in a way which was calculated or likely to destroy or seriously damage the trust and confidence between employer and employee. The conduct of the Respondent was consistent with the Respondent being an employer who was prepared and willing to continue the employment relationship, rather than take advantage of potential disciplinary issues which might provide it with an opportunity to take the opposite approach.
173. *(10) From 9 April 2024 onwards, failing to adhere to an agreement made on 6 April 2024 between William Tranter and the Claimant in relation to providing the Claimant with shorter driving times and routes due to his back issues.*

On the basis of the Tribunal's findings of fact and conclusions in relation to the issue as to reasonable adjustments, the Tribunal was not satisfied that there was any victimisation involved in the matters raised in this paragraph.

174. The Claimant had told the office that he was unable to work on 5 April 2024 due to back pain which caused him to need to take the day off work. On 6 April 2024, he discussed coming back to work, with William Tranter, on the



basis that the transport planners could facilitate relatively shorter journeys. In oral evidence he accepted that this had been achieved for the week from Monday 8 April 2024 although he still drove a total distance of 2634 km over the course of the five days, with the documentation showing that, for example, there were ten drops over the first four days. The Claimant did not bring any issues to the attention of the Respondent regarding this working schedule causing him any difficulties. He did tell the office that he needed to get his truck washed at a truck wash rather than do it himself as he was still suffering from back pain. The following week did involve longer journeys (so fewer scheduled stops), but he did not bring it to the attention of the Respondent that this work schedule was causing him any issues at the time and told the Tribunal that his attitude was "*I thought I can do this*". However, on 19 April 2024, the Claimant then went off sick and e-mailed Julie Wilson. Although there was a delay in her replying, caused by Julie Wilson considering that she needed to seek legal advice, her reply made it clear that she would arrange a meeting which could include discussion as to the possibility of shorter runs or multi-drop work as well as obtaining occupational health advice.

175. The genesis of this complaint is that the Claimant alleged in his e-mail to Julie Wilson that the work schedule that he had been given involved the Respondent maliciously seeking to injure his back further and cause further pain and did not care as long as the company was making money. The Tribunal was not satisfied that this was the case. Whilst working, the Claimant was signed as fit to do his job and was doing a job which involved, on the part of his employer, day to day scheduling decisions, taking account of various factors. The complaint is really about those doing the scheduling not having sufficiently taken account of the Claimant's back issues as one of the factors. The evidence before the Tribunal is vague as to the extent of any discussion with Will Tranter in terms of precisely what was "*agreed*" or the period which was to be involved. Insofar as the Claimant's case is that the issues he reported regarding washing his truck indicated that his back symptoms were still an issue, then perhaps this should have been more clearly communicated in terms of this needing to be taken into account in the scheduling for the following week. The reality is that the Claimant was given a schedule for the Monday and the Tuesday of that week which involved two drops having been scheduled each day, which was not dissimilar to the previous week which the Claimant ultimately agreed in evidence had been acceptable, and it was only on the Wednesday and the Thursday that he had a schedule with one drop only and does not seem, on his own evidence, to have raised any issue at the time as to this. Ultimately, the Tribunal was satisfied that there was no evidence that the scheduling about which the Claimant complains was by reason of the Claimant having sought to accompany or accompanied colleagues to applicable meetings over four months previously.



176. Further or alternatively, there are also time issues in relation to this complaint (see further below) although, as this complaint is complaining of treatment over a period, this only applies to the part of the complaint which is outside the primary time limit.
177. On the basis of the analysis set out above in relation to the above treatment, the Tribunal was not satisfied that this was treatment which caused or contributed to a breach of the implied term of trust and confidence. It was indicative of an employer who was actively seeking to provide and schedule work for the Claimant in accordance with his contract of employment. To some extent, the Respondent proceeded on the basis that, in terms of being scheduled for work, the ball was in the Claimant's court, as indicated by e-mails either seeking confirmation as to the Claimants availability, or respecting the position when he communicated that he was not fit to undertake scheduled work.
178. (11) *On 12 April 2024 instructing the Claimant to wash his truck*
- The Tribunal was satisfied that this complaint should be dismissed as out of time (see further below).
179. In any event, it was not clear to the Tribunal that this was a complaint which was a separate complaint. In the ET1 Form of Claim for the second Claim, the Claimant simply states that "*I was instructed on 12 April to wash my truck; I informed them by WhatsApp message that I was still suffering from lower back pain and I didn't want to injure my back further and that I would obtain a wash from a truck wash facility in Boston*". In relation to his other complaints, the Claimant relies upon this communication as having provided the Respondent with the information that, as of 12 April 2024, he had a continuing back problem. In the Claimant's Statement of Evidence, he simply refers to having been told to wash his truck and trailer himself in the yard on 11 April 2024 and provides no additional information to the details already given in the ET1 Form of Claim. In other words, there is no evidence before the Tribunal to the effect that the instruction was anything other than a reasonable instruction which it would normally be appropriate for the Respondent to make of the Claimant, or that the Respondent was aware, when the instruction was given, that the Claimant was physically not able to wash his truck or that, the Claimant having made this clear, there was any problem with the Claimant having done so or with the alternative arrangements for washing the truck which the Claimant had suggested. More pertinently, the Tribunal was not satisfied that this had anything to do with any previous issue in respect of the Claimant having sought to accompany colleagues at applicable meetings.
180. Similarly, in relation to causing or contributing to any breach of the implied term of trust and confidence, on the basis of the analysis set out above, the



Tribunal was not satisfied that any contractual significance attached to the Respondent having given the Claimant any instruction in respect of cleaning his truck or the Claimant having indicated that, because his back, it was necessary to make other arrangements.

181. *(12) From 4 April 2024, failing to discuss the Claimant's needs in respect of his back problem.*

The Tribunal has already set out fully, in dealing with the issue of knowledge of the Claimant's disability, the relevant communications which took place between the Claimant and the Respondent in relation to his back problem, and the Claimant's needs arising from his back condition. The record of those communications is largely self-explanatory and speaks for itself. On the basis of the Claimant's own timeline, his needs were certainly discussed with William Tranter on 6 April 2024. The Claimant then worked a full week between Monday, 8 April 2024 and Friday, 12 April 2024. The Claimant did not bring any issues to the attention of the Respondent regarding this working schedule causing him any difficulties. His back condition was clearly discussed in relation to the issue of the Claimant washing his truck. He did not bring it to the attention of the Respondent that his work schedule during the following week was causing him any issues at the time. In his evidence to the Tribunal, he explained that his attitude was one of just getting on with the job and "*I thought I can do this*". On 19 April 2024, the Claimant then went off sick. Whilst there was a delay in Julie Wilson replying, this was, as discussed above, because she considered it prudent to get legal advice. Taking this action would have been influenced by the tone and content of the e-mail and the fact that proceedings had already been commenced. Once she had that advice, Julie Wilson put in place arrangements to discuss the Claimant's back condition with him, including whether occupational health advice should be sought and whether adjustments should be made. The way in which the Respondent dealt with the matter was not done on the ground that the Claimant accompanied or sought to accompany another worker to an applicable meeting more than four months previously.

182. Further or alternatively, this is another complaint where there are also time issues (see further below) although, as this complaint is complaining of treatment over a period, this only applies to the part of the complaint which is outside the primary time limit.
183. Again, on the basis of the analysis already provided by the Tribunal, the Tribunal was not satisfied that the Respondent's dealings with the Claimant in relation to his back issue in the period from 4 April 2024 caused or contributed to any breach of the implied term of trust and confidence. It is significant that the communications between the Claimant and the Respondent over this issue had reached the point, on 25 April 2024, of Julie



Wilson sending a letter to the Claimant which was, again, very conciliatory in tone, and was entirely consistent with the Respondent wanting the employment relationship to continue and being prepared to put in place arrangements and measures to make sure that happened, together with arranging a meeting to consider any further steps. On 27 April 2024 the Claimant resigned.

184. *(13) Ignoring the Claimant's phone calls and messages to the office over the last few months of his employment?*

The Tribunal was not satisfied that the Claimant's phone calls and messages to the office were being ignored. They were certainly not being deliberately ignored. Any such allegation was largely inconsistent with the documentary evidence to which the Tribunal was directed in the course of the case. Indeed, the evidence was to the effect that the Claimant had deliberately taken measures himself to restrict the ability of the Respondent to contact him. Ultimately, the Tribunal was satisfied that any communication issues that existed were not as a result of treatment by the Respondent done on the ground that the Claimant accompanied or sought to accompany another worker to a meeting.

185. Similarly, taking account of this same factual analysis, the Tribunal was satisfied that any communication issues that existed did not amount to the Respondent treating the Claimant in a way which was calculated or likely to destroy or seriously damage the relationship of trust and confidence so as to cause or contribute to a breach of the implied term of confidence.

(7) Time issues

186. In terms of time limits, the first ET1 Form of Claim had been dated 11 February 2024. The Claimant had then notified ACAS of a prospective Claim against the Respondent on 15 July 2024, obtained an ACAS certificate on 19 July 2024 and issued the second Claim on 21 July 2024. In so far the second ACAS certificate potentially covered any new complaints which were outside the scope of the first ACAS certificate, it followed that, where the alleged detriments complained about had occurred after the issue of the first Claim on 11 February 2024 and before 16 April 2024, the complaints about those detriments were out of time in terms of the primary time limit of three months adjusted for early conciliation.
187. Whilst, the Tribunal recognises that it is the Claimant's case that any detrimental treatment complained of between these dates amounted to part of a series of similar acts so as to amount to continuing victimisation which continued beyond this date and which continued until his resignation, this was not ultimately borne out by the conclusions reached by the Tribunal with



regard to the Claimant's complaints of victimisation by being subjected to detrimental treatment.

188. There was nothing to indicate that it would not have been reasonably practicable to have brought proceedings within the applicable time limit. As such there was no basis for extending any time limit. It followed that complaints in respect of alleged detrimental treatment between 12 February 2024 and 15 April 2024 fell to be dismissed as out of time.

(8) Constructive dismissal / unfair dismissal

189. For the purposes of the Claimant's constructive dismissal case, the alleged treatment relied upon as having breached the implied term of trust and confidence (so as to entitle the Claimant to resign on the basis that he had been constructively dismissed) was the same alleged treatment which was complained about as amounting to victimising the Claimant by subjecting him to detrimental treatment on the ground that the Claimant accompanied or sought to accompany another worker to an applicable meeting.
190. The Tribunal relies upon its analysis of that alleged treatment set out above in dealing with both the detriments relied upon for the purposes of the complaint of victimisation and the Claimant's case that the same detriments gave rise to or contributed to a breach of the implied term of trust and confidence. In the light of our conclusions in relation to the allegations set out at paragraph 6.1 of the List of Issues, it follows that the Tribunal was not satisfied that the Claimant's treatment by the Respondent amounted to treating the Claimants in a way which was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent so as to give rise to a breach of the implied term of trust and confidence or a repudiatory breach of any other term of the contract of employment. The Tribunal was not satisfied that there was a fundamental breach of the contract of employment in terms of there being a breach which was so serious that the Claimant was entitled to treat the contract as being at an end.
191. In any event, it was far from clear to the Tribunal that the Claimant had resigned in response to any purported breach (and, if so, which of the alleged breaches). The Claimant's resignation letter did not refer to specific breaches but rather sought to explain and justify the Claimant's resignation on the basis of the Claimant's judgement as to the Respondents business ethics and its treatment of other employees, as set out below.

"When I first started working here back in October 2020 I saw this as a job through to retirement, but over this six months my eyes have been opened up to how money driven this company really is and what it will do, from threatening Jak Hayes (Sedamyl) with his P45 for not wanting to work [past]



his WTD and getting an infringement to Anthony Leason (Lockerbie-Hartlepool) to being told to work a 1.5 hours [past] his working day and just write it out on a print out.

It's time to abandon ship".

192. As such, insofar as it was necessary to decide the issue, the Tribunal was not satisfied that the Claimant had resigned in response to any alleged breach.
193. In this context, it was not entirely clear what the purported last straw was which prompted the Claimant's resignation. On the face of it, he resigned two days after the Respondent had sent the Claimant a letter making arrangements for a meeting with a view to resolving the immediate issues which related to the Claimant's absence from work due to his back condition. Although an earlier meeting would clearly have been better and although the delay from the date of the letter seems to have been due to the absence of June Wilson from work, the letter nevertheless made it clear that, if the Claimant had any questions in the meantime "*please do not hesitate to contact me*". Insofar as the Claimant had any issues or found any aspect of the letter or 25 April 2024 to be unsatisfactory, he did not communicate them before resigning or in his resignation e-mail.
194. The Claimant's complaint of constructive dismissal has subsequently come to rely upon treatment dating back to October 2023 (the issue in respect of not being able to claim for the fourth of four CPC lessons). On the basis of the conclusions already set out above, the Tribunal was not satisfied that the various alleged detriments complained about by the Claimant gave rise to a cumulative breach of the implied term of trust and confidence or otherwise gave rise to a breach of the contract of employment which was continuing at the point of resignation. The live issues at that point in time of the Claimant's resignation were those relating to his absence from work due to his back condition. Whilst a number of the earlier issues had been pursued by way a grievance, the Tribunal was satisfied that, by continuing to work to his contract of employment, the Claimant had affirmed the contract of employment in relation to the alleged breaches of contract which dated from 25 March 2024 or before.
195. On the basis of the conclusions which we have already set out above, it follows that the Claimant was not constructively dismissed. In the alternative, on the basis of the Tribunal's conclusions as to the complaint of victimisation by being subjected to a detriment, as well as the Tribunal's conclusions as to the reasons for the Claimants resignation, if, contrary to be Tribunal's conclusions above, there was a dismissal, the reason or principal reason for dismissal was not that the Claimant had accompanied or sought to accompany another worker to a meeting pursuant to a request under



Employment Relations Act 1999 section 10. He was not victimised by being dismissed.

196. It follows that the Claimant was not constructively dismissed. It further follows from that conclusion that the Claimant was not unfairly dismissed.

Outcome

197. The outcome is that the various complaints are not well founded and do not succeed. Consequently, the Claim is dismissed.

Approved by
Employment Judge Kenward

Dated 5 April 2026

Sent to the parties on
15 May 2026

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For the Tribunal office