



EMPLOYMENT TRIBUNALS

Claimant: AS

Respondent: PN

Heard at: Reading

On: 16, 17, 18, 19 and 23 February 2026
and (tribunal only) on 20 February 2026

Before: Employment Judge Hawksworth
Mrs V H Parsons
Mrs C Tufts

Appearances

For the claimant: Mr F McCombie (counsel)
For the respondent: Mr L Harris (counsel)

JUDGMENT

The unanimous decision of the tribunal is that:

1. the complaint of wrongful dismissal succeeds;
2. the complaint of discrimination arising from disability under section 15 of the Equality Act 2010 succeeds in relation to the dismissal and the appeal against dismissal;
3. all other complaints fail and are dismissed.

By consent, the respondent is ordered to pay the claimant compensation in the sum of £35,000.

REASONS

Introduction

1. Anonymity and restricted reporting orders were made by EJ Annand at a hearing on 6 February 2026. In this judgment and reasons, the parties and witnesses are referred to using initials randomly assigned by EJ Annand.

Summary of claim and response

2. The claimant worked for the respondent as a technician from 25 October 2021 until his summary dismissal on 27 October 2023. He claimed unfair dismissal, wrongful dismissal, disability discrimination and age discrimination. Prior to the hearing before us, the claimant withdrew his complaint of age discrimination.
3. The respondent defended the claim. The respondent said that dismissal was not in breach of contract and that the claimant was fairly dismissed for conduct reasons and was not subject to discrimination.

Hearing and evidence

4. The hearing took place in person at Reading tribunals on 16, 17, 18, 19, 20 and 23 February 2026. There was a bundle of 461 pages. A new page 462 (a print out from the respondent's electronic HR record for the claimant) was added by consent in the course of the hearing.
5. After reading the witness statements, we heard evidence from the claimant and his witness DR on the afternoon of day 1 and the morning of day 2. We heard from the respondent's witness KA on the afternoon of day 2, and from the respondent's witnesses QP, ZL, RM and TR on day 3.
6. On day 4 both counsel made helpful written and oral closing comments.
7. The tribunal met for deliberation on the afternoon of day 4 and on day 5.
8. We told the parties our judgment and reasons on day 6 (23 February 2026). For ease of understanding, after giving an overview of our decision and summarising the issues, we explained, taking each of the legal complaints in turn, what we had decided about any disputed facts, what the legal tests are, and what we concluded after applying the legal principles to the facts.
9. We gave the parties some time before starting to hear evidence on remedy, and they reached an agreement on compensation which they asked to be recorded as a judgment by consent.
10. The respondent asked for written reasons. As we explained to the parties, we have set these written reasons out slightly differently to the oral reasons we gave on the day of the hearing in that in our written reasons our findings of fact, the legal principles and our conclusions are in separate sections. We have also added this introduction.

Issues

11. The issues for us to decide in this case were set out in a case management summary which followed a preliminary hearing on 7 October 2024 and in a three page document agreed between the parties and approved by the tribunal at that hearing, called the schedule of allegations. That schedule is a list of the treatment the claimant is complaining about, in date order, and identifies the type of unlawful conduct each is said to be, in other words it says what legal label attaches to each factual complaint.

12. The list has allegations numbered 1 to 14, with numbers 15 to 17 at the end explaining the complaints of failure to make reasonable adjustments.
13. During the hearing, there was some additional clarification of the complaint of discrimination arising from disability. Mr McCombie clarified the 'something arising from disability' relied on by the claimant, and Mr Harris clarified the 'legitimate aims' relied on by the respondent. These points had been set out in an earlier draft list of issues and there was no objection on either side to these clarifications being provided. We explain the clarifications in more detail later.
14. At the end of the hearing the claimant withdrew allegation number 5, which was a complaint about BC keeping notes on the claimant.
15. The respondent accepted that the claimant was disabled by ADHD/ASC.

Findings of facts

16. This section of the judgment explains what we decided happened in the claimant's case. We do not include all the facts we heard about. We focus on those matters which form the factual basis of the complaints and others which assist us to decide the issues before us.
17. Undisputed facts are included here to assist in understanding the complaints and the chronology. Where the parties disagree about what happened, we decide, by reference to the evidence that we heard and read, what we think is most likely to have happened. There were relatively few disputed facts here.
18. The claimant worked for the respondent as a technician from 25 October 2021 until his summary dismissal on 27 October 2023.

The claimant's neuropsychologist appointment (allegations 1, 2 and 3)

19. On 1 September 2022 the claimant was diagnosed with ADHD. He told the respondent about his diagnosis. In February 2023 the claimant invited KA, the owner of the respondent, to attend an appointment with his neuropsychologist so that his neurodivergence could be better understood at work.
20. KA said that he would come to the appointment with the claimant. We find (accepting KA's evidence) that KA told the claimant that he would pay the respondent's HR consultant, QP, to accompany him to the appointment. We find that this was said in a supportive way, to convey that KA wanted to invest in supporting the claimant and his career.
21. KA and QP attended the appointment with the claimant. By the time of the appointment on 15 March 2023, the claimant had also been diagnosed with ASC.
22. We accept the evidence of KA that, at around this time, KA told the claimant that his ADHD/autism was 'not a problem for [the respondent]'. We accept that he said it in this way, rather than, as the claimant alleged, saying that ADHD/autism was 'not [the respondent's] problem'.

23. We make our findings about the comments made by KA based on his evidence and other evidence we have seen of email correspondence and meeting notes which demonstrate the respondent's supportive approach to the claimant's diagnosis.
24. We do not find that these two comments made by KA (as we have found them to have occurred) had the purpose or the effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him. We find that the effect was, as the claimant described in his supplemental statement, that it made him feel uncomfortable.

The first disciplinary procedure (allegation 4)

25. In March/April 2023 the claimant was subject to a disciplinary procedure. The respondent became aware that, while he was reorganising some racks, the claimant put some cable in his toolbox to take home. He was going to strip the cable and return it to the respondent to be sold as scrap. The stripped cable would have an increased scrap value. Money from the sale of scrap was put by the respondent into a social fund for staff.
26. The claimant acknowledged that he should have asked a manager about whether the cable was scrap, rather than making the decision himself. He was given a formal written warning by QP.
27. Allegation 5 was withdrawn.

The discussions with BC (allegations 6 and 7)

28. In about September 2023 the claimant had a conversation with BC, his line manager, about medication. We find that in this conversation, the claimant referred to taking double his dose of medication. We find that BC was concerned for the claimant and replied that his personal view was that he himself preferred not to rely on medication, let alone double medication.
29. The comment could be described as clumsy, but we do not find that this comment (as we have found it to have been made) had the purpose or the effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
30. On about 28 September 2023 the claimant was talking to BC while BC was looking at the claimant's electronic HR record. The claimant could see over BC's shoulder that his medical reports were on his record and accessible by BC. The claimant contacted QP about this and she removed the claimant's medical reports from the record. We find that access was granted to BC by mistake and we accept his evidence that he did not actually read the reports.
31. We do not find that the issue with the claimant's records was done with the purpose of violating his dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. It was done by mistake. We

find that it did not have that effect either, based on the way the claimant described the issue in his email to QP, and his account of it in his statement.

Events on 3 October 2023 (allegations 8, 9 and 10)

32. On 3 October 2023 KA needed to move the claimant's car because it was blocking the warehouse entrance. When he did so he noticed a large box in the back of the claimant's car which was taped shut with the respondent's branded tape. KA opened it and found a significant quantity of lighting profiles and diffusers. KA took photographs of the box. He spoke to the warehouse manager who told him that the claimant had not been given permission to take the items.
33. Later the same day, KA had a phone call from a supervisor ZL. ZL said that at the start of their shift, the claimant he had commented that he was tired because he had toothache that had kept him awake. ZL told the claimant that he should clean his teeth twice a day. The claimant was upset by this comment and asked ZL, 'You know I have severe ADHD, do you want me to hit you?'
34. KA asked ZL and another colleague, RM, to send him an email explaining what had happened.
35. KA decided to conduct an investigation. He told the claimant that he would be suspended while the investigation was being carried out and that he would be paid while on suspension. We find that KA did not say that the claimant would 'cost him money again because of HR costs'. We make this finding because we think KA is unlikely to have said this in circumstances where QP was working on a retainer and there would not have been any additional HR cost, and because KA's overall approach was supportive of the claimant.

The second disciplinary procedure (allegations 10 and 11)

36. BC was appointed to carry out the investigation into the two allegations against the claimant. He reviewed the CCTV and photographic evidence and obtained verbal or written statements from those involved. He carried out an investigation meeting with the claimant on 19 October 2023. The claimant was accompanied at the meeting by DR and he provided a pre-prepared statement. At the investigation meeting the claimant said that he was being treated unfairly because of his disabilities. The claimant's account differed to what the warehouse manager had said about in whether the claimant had permission to take the items. BC interviewed the warehouse manager again about this.
37. We do not find that KA was directing the investigation from the background. He understood that, because of his initial involvement, he should not be a part in the investigation. A reference to him requesting witness statements refers to the initial fact-finding steps taken on the day on the incident, as explained at paragraph 34 above, not to involvement with the ongoing investigation (page 274). We accept KA's evidence that when BC sent the draft investigation report to him, KA told BC to send it to QP instead.

38. BC completed the investigation report. He concluded that the first allegation should not proceed to a hearing because of the mitigating factors of toothache and the unacceptable comment by ZL which may have fuelled the outburst. He concluded that the second allegation should proceed to a disciplinary hearing. The evidence showed that the claimant had packed up the items and had carried them to his van. It showed that he did so with assistance from two colleagues and without hiding what he was doing.
39. TR was the manager at the disciplinary hearing which took place on 26 October 2023. The claimant was accompanied at the meeting and provided a pre-prepared statement. The statement said that the claimant's actions on 3 October 2023 were related to his ADHD. He said he believed the items were scrap and that he had permission to take the items. At the hearing the claimant said that he was being treated unfairly because of his disabilities.

The dismissal and appeal (allegations 12 and 13)

40. TR decided that the claimant should be dismissed. He did not accept that the claimant believed that he had permission to take the items. He said that with the claimant's knowledge and experience, he would have realised that the items were not scrap. The claimant said that his conduct was related to ADHD/ASC; we accept TR's evidence that he considered this, but he gave it little weight.
41. QP called the claimant on 27 October 2023 to tell him that TR had decided to dismiss him, effective immediately. The dismissal was confirmed in writing on 31 October 2023. The dismissal letter said that acts of misconduct of the type committed by the claimant were included in the disciplinary procedures as warranting summary dismissal.
42. The claimant appealed against his dismissal. An independent HR consultant who had not previously been involved heard the appeal on 16 November 2023. She upheld the dismissal in a letter dated 24 November 2023, concluding like TR that the claimant must have known that he did not have permission to take the items.

Subject access request (allegation 14)

43. The claimant made a subject access request after his dismissal. There was some initial confusion about what documents he was seeking. QP sent the claimant some documents using a link, but he had trouble accessing them.
44. We find, on the basis of the email exchanges between QP and the claimant, that the respondent was doing its best to respond to the request.

The complaints about reasonable adjustments (allegations 15, 16 and 17)

45. The respondent allowed employees to take scrap home to use for personal projects, if they had permission from their line manager. We do not find that the respondent knew that this practice could disadvantage the claimant because of his disability. The claimant's medical reports gave more general information about him struggling to follow instructions, but the claimant had acknowledged during the first

disciplinary process that he had done the wrong thing and would not do it again. We find that the respondent did not know and could not reasonably have been expected to know that there was any specific disadvantage to the claimant from its scrap policy.

46. The respondent had a staff handbook. It included an instruction which said 'You must not remove [the respondent's] property from the organisation's premises unless prior authority from your line manager has been given'.
47. The respondent had a disciplinary procedure which was contained within the staff handbook. The claimant says that he was disadvantaged in the first disciplinary procedure. The respondent did not know and could not have been expected to know that the first disciplinary process disadvantaged the claimant. The claimant did not say anything about this. His medical reports did not address it. It was reasonable for the respondent to understand that the claimant was participating fully in the process and acknowledging the issues raised. He confirmed that his conduct was unaffected by his medication.

Our findings about the claimant's belief

48. For the purposes of the complaints of wrongful dismissal and disability discrimination, we make findings about whether the claimant believed that he had permission to take the items he took on 3 October 2023.
49. Our conclusions about what the claimant believed on 3 October 2023 are different to those reached by the respondent's decision makers. We accept that the claimant had a genuine belief that he had permission to take the items he took on 3 October 2023. We make this finding for the purpose of the wrongful dismissal and disability discrimination complaints only. It is made in part on the basis of the claimant's evidence to us and the medical evidence, including a letter of 7 May 2025, which was information which was not available to the respondent at the time of the dismissal.
50. We accept the claimant's evidence that the warehouse manager told him:
 - 50.1. On a previous occasion, prior to 3 October, that he could take materials if they were in the scrap bin, and we accept that the claimant understood the scrap bin to include the outside crate and the inside yellow bin; and
 - 50.2. A few days before 3 October, that he could take some small offcuts that were left on the saw bench.
51. We accept that, on the basis of these two conversations, the claimant concluded that he had permission to take all the items he packed into the box on 3 October. He interpreted his conversations with the warehouse manager rigidly, or in a black and white thinking way, which is something inherent in his condition. Other people without the claimant's disability and without his way of looking at things might have paused when packing up the items to consider whether the permission really covered them all, or whether they could still be used in other projects. But that would have been a matter of interpretation, which is different to the claimant's way

of thinking. We accept that in the claimant's belief, he had been given permission by the warehouse manager.

52. We are supported in this finding by the fact that:

- 52.1. First, the claimant packed up the items in view of and with the assistance of his colleagues, taped them up with the respondent's branded tape, and carried them to his van without making any attempt to hide what he was doing. That is not suggestive of him doing something he knew he had no permission for; and
- 52.2. Secondly, when he needed to use materials for a personal project on an earlier occasion, he had paid the respondent for them. There is nothing to suggest that the claimant would not have paid on this occasion if he had thought he had to.

53. For these reasons, we have accepted that the claimant believed that he had permission to take the items he packed into the box on 3 October 2023.

The law

54. There was broad agreement between the parties about the legal tests we have to apply.

Unfair dismissal

55. Section 98 of the Employment Rights Act 1996 says:

“(1) In determining for the purposes of this Part 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.

(2) A reason falls within this subsection if it—

...

(b) relates to the conduct of the employee...

(4) 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.”

56. It is for the employer to show the reason for dismissal. If the employer shows a potentially fair reason for dismissal, a neutral burden applies when considering the fairness of the dismissal in the circumstances.
57. In a complaint of unfair dismissal where the reason for the dismissal is conduct, the role of the tribunal is not to examine whether the employee is guilty of the misconduct. The employer must show that, at the time of the dismissal, it believed the employee to be guilty of misconduct (*British Home Stores v Burchell* [1980] ICR 303).
58. If the respondent establishes conduct as the reason for dismissal, the tribunal goes on to consider, applying a neutral burden, whether:
- 58.1. at the time of dismissal, the employer had reasonable grounds for believing that the employee was guilty of that misconduct; and
 - 58.2. at the time that the employer formed that belief on those grounds, it had carried out as much investigation as was reasonable in the circumstances and
 - 58.3. the decision to dismiss and the procedure adopted by the employer were within the range of reasonable responses open to the employer.
59. The tribunal must not substitute its own view of the appropriate penalty for that of the employer.

Breach of contract/wrongful dismissal

60. The Tribunal has jurisdiction to consider a complaint of breach of contract under Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. This includes a complaint that a summary dismissal was a wrongful dismissal (that is a dismissal without notice in circumstances where the employer was not entitled to dismiss without notice).
61. In relation to a breach of contract claim concerning a failure to give notice of dismissal, the approach is not the same as in a complaint of unfair dismissal. In a case of wrongful dismissal, the tribunal must decide whether:
- 61.1. the claimant actually committed the misconduct; and
 - 61.2. the misconduct was of a sufficiently serious nature to amount to a repudiatory breach justifying summary dismissal.

Direct discrimination

62. Section 13(1) of the Equality Act says:

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

Discrimination arising from disability

63. Section 15(1) of the Equality Act 2010 provides that a person (A) discriminates against a disabled person (B) if:

“(a) A treats B unfavourably because of something arising in consequence of B’s disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.”

64. Section 15(2) says that:

“Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

65. In *Pnaiser v NHS England* 2016 IRLR 170, the EAT summarised the approach to be taken under section 15.

65.1. The tribunal must identify whether there was unfavourable treatment and by whom.

65.2. It must determine the cause of or reason for the treatment, focusing on the conscious or unconscious thought processes of the alleged discriminator.

65.3. There may be more than one reason or cause for the treatment and, as in a direct discrimination case, the ‘something’ need not be the main or sole reason for the treatment but it must have at least a significant (more than trivial) influence so as to amount to an effective reason for or cause of it.

65.4. The tribunal must determine whether the reason or cause (or a reason or cause) is something arising in consequence of the claimant’s disability. That is an objective question and does not depend on the thought processes of the alleged discriminator. The expression ‘arising in consequence of’ could describe a range of causal links, for example it could include more than one link.

65.5. If an effective reason or cause is ‘something arising in consequence of’ the claimant’s disability, the tribunal will decide whether the respondent can show that the treatment is a proportionate means of achieving a legitimate aim. At this stage, the test is an objective one for the tribunal.

Failure to make reasonable adjustments

66. The Equality Act imposes a duty on employers to make reasonable adjustments. The duty comprises three requirements, in this case, the first requirement is relevant. This is set out in sub-section 20(3):

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

67. Paragraph 20 of schedule 8 of the Equality Act says that an employer, A, is not subject to a duty to make reasonable adjustments:

“if A does not know, and could not reasonably be expected to know

–

...

(b) ... that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.”

Harassment

68. Under section 26 of the Equality Act, a person (A) harasses another (B) if

“a) A engages in unwanted conduct related to a relevant protected characteristic, and

b) the conduct has the purpose or effect of –

i) violating B’s dignity, or

ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.”

69. Unwanted conduct amounts to harassment if it has the required purpose or, in the alternative, the required effect. In a claim based on the effect of conduct, a lack of intent by the alleged harasser is not a defence. In deciding whether conduct has the effect referred to, the tribunal must take into account:

“a) the perception of B;

b) the other circumstances of the case;

c) whether it is reasonable for the conduct to have that effect.”

Victimisation

70. The word victimisation is used in a technical sense in the Equality Act 2010. It includes subjecting someone to detrimental treatment because they have made a complaint of unlawful discrimination under the Equality Act, or because they have done something else in connection with the Equality Act.

71. Section 27 of the Equality Act says:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because –

a) B does a protected act...

(2) Each of the following is a protected act -

a) bringing proceedings under this Act

...

*c) doing any ... thing for the purposes of or in connection with this Act;
d) making an allegation (whether or not express) that A or another person has contravened this Act."*

72. 'Detriment' is given a wide interpretation. It means putting under disadvantage, or doing something that a reasonable worker would consider to be to their detriment (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11).

Burden of proof in complaints under the Equality Act

73. Sections 136(2) and (3) provide for a shifting burden of proof:

"(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) This does not apply if A shows that A did not contravene the provision."

74. This means that if there are facts from which the tribunal could properly and fairly conclude that there has been unlawful discrimination, the burden of proof shifts to the respondent.

75. If the burden shifts to the respondent, the respondent must provide an adequate explanation, which proves on the balance of probabilities that the respondent did not discriminate.

76. The respondent would normally be expected to produce cogent evidence to discharge the burden of proof. If there is a prima facie case and the explanation for that treatment is unsatisfactory or inadequate, then it is mandatory for the tribunal to make a finding of discrimination.

Conclusions

77. We apply these legal principles to the facts as we have found them to reach our conclusions on the issues for decision by us.

Overview

78. We start our reasons with an overview of our decision, identifying the key points which have led us to reach our decision.

78.1. In relation to the wrongful dismissal complaint, we found that in October 2023 the claimant genuinely thought that he had permission to remove the materials he took from the respondent's warehouse. We have made this finding in part on the basis of the claimant's evidence to us and the medical evidence, including the 2025 doctor's letter. We have decided that the claimant's conduct on 3 October 2023 was not gross misconduct that justified immediate dismissal, and so the wrongful dismissal complaint succeeds.

- 78.2. We have also decided that the dismissal was because of something related to the claimant's disability, namely a tendency to see communications in black and white terms, and that applied to the way he saw his communications with the warehouse manager. We decided that dismissal was not proportionate in these circumstances. As the appeal upheld the dismissal, that was also not proportionate. In short there were less discriminatory ways of dealing with this situation to achieve what the respondent wanted to achieve. That means that the complaint of discrimination arising from disability succeeds in relation to the dismissal and the appeal.
- 78.3. The legal tests in those two complaints require us to consider the circumstances on an objective basis, that is to decide what we think happened, and whether we think dismissal was justified or proportionate. However, the test in the unfair dismissal complaint is different. For that claim, we have to look at things as the employer saw them, without taking other information into account. We accept that at the time they made their decisions and on the material they had before them, both TR and the appeal manager believed that the claimant did not think he had permission to take the items. They reached a different conclusion to us on that important factual aspect. For the unfair dismissal complaint, we do not consider what we would have done, we consider what a reasonable employer could have done. There might be more than one option there: there could be a range of approaches open to a reasonable employer. We have decided that the respondent's approach was one of the approaches which a reasonable employer could have taken in these circumstances. That means that, although we have decided that the dismissal was in breach of contract and amounted to discrimination arising from disability, it was not an unfair one. It can be unusual for a dismissal which is not justified to also be fair, but we have decided that this is one of those cases where this applies.
- 78.4. None of the complaints about the respondent's treatment of the claimant prior to dismissal have succeeded. The respondent did not subject the claimant to less favourable treatment, or unfavourable treatment or harassment because of his disability, or to any detrimental treatment because of being asked to attend the meeting with his neuropsychologist, or because he said he was being treated unfairly because of his disabilities.
- 78.5. The respondent did not fail to make reasonable adjustments for the claimant. These claims as framed by the claimant were not straightforward to understand and it may be that, as EJ Hyams suggested at the preliminary hearing, the complaint is better understood as a complaint of discrimination arising from disability. In relation to reasonable adjustments, an essential element of the complaint is that the respondent knows that some feature of its working arrangements, for example a policy or practice, disadvantages the claimant because of disability. Here, we have found either that the respondent did not have the policy or practice it was

alleged to have or, where it did, that at the relevant times the respondent did not know that the claimant was at a disadvantage because of it.

- 78.6. In relation to the pre-dismissal complaints of discrimination arising from disability, while we have concluded that some of the treatment complained of was because of something arising from disability, we have found that it was justified (it was a proportionate means of achieving a legitimate aim).

Dismissal complaints

79. We now explain our reasons in more detail, starting with the complaints about dismissal. There are three of these: unfair dismissal, wrongful dismissal and dismissal as a complaint of discrimination arising from disability.

1. Unfair dismissal

80. We start with the reason for dismissal: whether misconduct was, as the respondent says, the reason for dismissal. We have to decide whether the respondent genuinely believed that the claimant was guilty of misconduct. We have decided that TR did genuinely believe that. He did not accept that the claimant thought he had permission to take the items. He concluded that from the claimant's knowledge and experience over 2 years employment it would have been clear to him that they could be reused by the business in other projects. The appeal manager reached the same conclusion for the same reason.

81. We have not found there to have been any hidden agenda in relation to the decision to dismiss.

82. There are four other important questions for us, and we consider them on a neutral basis. We have called them questions a to d.

83. Question a: at the time of the decision to dismiss were there reasonable grounds for the belief? We have concluded that there were. The claimant did not deny taking the items. There were photographs and CCTV and the respondent's decision makers could see what had been taken. There had been a previous warning for something similar.

84. Question b: At the time they made that decision had they carried out a reasonable investigation? We have concluded that they had. BC had completed a detailed report which included reviewing the photos and CCTV and speaking to or getting statements from everyone relevant, including the claimant. Where a discrepancy of the evidence arose, in relation to whether the warehouse manager had given permission for the items to be taken, BC followed up and rechecked the position with the warehouse manager.

85. Question c: overall, was the procedure adopted a fair one? We have concluded that it was. The claimant had an investigation interview and a disciplinary hearing, and the respondent permitted him to be accompanied to both by someone outside the normal policy. He was provided with the documents relied on by the respondent. Different managers were appointed as investigator, decision maker

and appeal manager. The decision makers had no prior involvement. We have not found that KA was directing things from the background.

86. Question d: Was it within the range of reasonable responses to treat this as a reason to justify dismissal? We have concluded that it was:

- 86.1. The handbook was clear that employees could not remove the respondent's property from the organisation's premises without prior authority from the line manager, and this type of conduct was identified as the type of conduct which justifies summary dismissal;
- 86.2. The claimant had a previous warning in which he acknowledged that it was wrong to remove property without permission;
- 86.3. The dismissing manager considered whether the claimant's conduct was related ADHD/ASC, although he gave this factor little weight.

87. For those reasons, based on the material that the decision makers TR and the appeal manager had, the conclusions they reached about the claimant's belief, and reviewing the approach the respondent took, and the procedure as a whole, we have decided that the decision to dismiss fell within the range of reasonable responses. It was a fair dismissal.

88. We appreciate that it may be surprising that this complaint about dismissal does not succeed but two others do. The key reason is the difference in the legal tests: we review the employer's approach for this complaint, but make our own factual decisions and consider an objective approach for the other two complaints. We will explain our conclusions on those next.

2. Wrongful dismissal

89. The complaint of wrongful dismissal is a complaint of breach of contract in respect of notice. The claimant was dismissed without notice because the respondent considered him to have committed a fundamental breach of contract which justified immediate dismissal.

90. In this complaint, the legal test is different to the test in an unfair dismissal complaint. Here, we do not focus on what the employer believed and whether their decision was one which was open to them. Rather, in the complaint of wrongful dismissal, we make our own factual findings about the alleged conduct, and consider on an objective basis whether the conduct was a fundamental breach of contract entitling the respondent to dismiss without notice.

91. Our conclusions about what the claimant believed on 3 October 2023 are different to those reached by the respondent's decision makers. We accept, as we have explained in our findings, that the claimant had a genuine belief that he had permission to take the items he took on 3 October. There was no element of wilful or deliberate misconduct, or gross negligence, to make this the kind of conduct which justifies summary dismissal. We have concluded that the claimant's conduct on 3 October 2023 did not amount to gross misconduct that justified immediate dismissal. For these reasons, the wrongful dismissal complaint succeeds.

3. Discrimination arising from disability in relation to dismissal

92. The third complaint about dismissal is discrimination arising from disability. That is a complaint under section 15 of the Equality Act 2010. Section 15 says that unfavourable treatment by an employer which is because of something arising in consequence of disability is unlawful, unless the treatment is justified. To be justified the treatment must be a proportionate means of achieving a legitimate aim. Broadly, that means there must be a good reason to do it, and there must not be any less discriminatory way of the employer achieving what it needs to achieve.
93. We are looking here at the complaint about dismissal (allegation 12) and the complaint about the appeal against dismissal (allegation 13).
94. There was no dispute between the parties that the claimant was dismissed because he took the items on 3 October, boxed them up and put them in his van. The dismissal was unfavourable treatment which was because of that conduct. The respondent knew that the claimant had ADHD/ASC.
95. We have to decide (on an objective basis) whether the conduct arose in consequence of the claimant's disability. We have concluded that the conduct was something arising in consequence of ADHD/ASC. The claimant adopted black and white thinking, not in how he viewed the rule in the respondent's handbook, but in how he viewed the instructions given to him by the warehouse manager. He believed that he had been given permission to take items from the scrap bins and that he could take some other specific items from the saw bench. He did not consider that what he had been told might vary according to circumstances, in other words that there might be a need for interpretation of the instructions he had been given. That fell squarely within the characteristically rigid perception of communication which the doctor says in the letter of 7 May 2025 is inherent in the claimant's condition.
96. As the dismissal was because of conduct arising in consequence of ADHD/ASC, we go on to consider whether dismissal was objectively justified, in other words whether dismissal was a proportionate means of achieving a legitimate aim. That is an objective decision for us, not a review of the employer's approach.
97. The respondent relied on the aims of protecting company property and ensuring standards of behaviour. Those were legitimate aims. However, there were less discriminatory ways of achieving those aims. For example, the respondent could have taken action short of dismissal such as giving the claimant clearer instructions, requiring him to obtain written permission for every item of scrap he removed for personal use, or giving a blanket ban that he was not permitted to take any scrap for personal use. Those would have been less discriminatory ways of preventing this conduct from happening again, and meeting the respondent's aims.
98. As we have said, this is an objective assessment for us, not a review of what the employer has done. However, our decision on justification is reinforced by the lack of evidence of careful consideration by the decision makers about the extent to which the claimant's disability may have played a part in his conduct on 3 October 2023 and, if it had, what other options could have been considered. The burden at this stage is on the employer to show that the dismissal is justified, by reference to cogent evidence. Evidence that it had properly considered the impact of ADHD and the alternatives in light of that was missing.

99. For these reasons, we have concluded that the complaint of discrimination arising from disability in relation to the dismissal (allegation 12) succeeds. As the appeal concerned essentially the same treatment, allegation 13 succeeds for the same reasons.

100. Those are our reasons for our decisions in relation to the complaints about dismissal, two of which have succeeded.

Complaints about pre-dismissal conduct

101. Next, we come on to explain our decision in relation to the complaints about the things which happened before dismissal. None of these complaints have succeeded. We are going to explain why, taking each of the five different legal complaints in turn.

1. Direct disability discrimination

102. Direct disability discrimination is where an employer subjects an employee to less favourable treatment and the reason for the treatment is the disability itself. There are four allegations of direct disability discrimination here. Three relate to comments by KA and by BC, and there is also the issue of the claimant's medical records.

103. These complaints have not succeeded. This is for two main reasons: either we have not found that the treatment happened as alleged, or where we have found that the treatment happened as alleged, we accept that it was not because of disability.

104. Allegations 2 and 3 are about comments by KA. We have found that these comments were not made as alleged. We accepted KA's evidence that he told the claimant that he would pay QP to accompany him to the meeting with the claimant's neuropsychologist, and that this was said to convey the wish to invest in the claimant. We also accepted that KA said that ADHD/autism was not 'a problem for' the respondent.

105. Neither of these comments were less favourable treatment of the claimant. They were supportive of him.

106. Allegation 6 is about a comment made by BC. We have accepted BC's evidence that he made this comment about his own medication, not about the claimant's. We accept that it was said out of concern for the claimant, and in response to the claimant saying something about doubling his medication. BC's comment was not less favourable treatment of the claimant.

107. Allegation 7 is about the claimant's medical records on the respondent's HR system. We find that the claimant's medical reports were uploaded to the respondent's HR platform and that at some point BC was given access to them. However, this was done by mistake, and as soon as the claimant made QP aware of it, she removed the reports from the system. We accept that BC had not read the

reports. Again, we do not find that this amounted to less favourable treatment of the claimant.

108. All the complaints of direct disability discrimination fail.

2. Reasonable adjustments

109. The second of the complaints about pre-dismissal matters is the alleged failure to make reasonable adjustments for the claimant. These claims as framed by the claimant were not straightforward to understand. They cover similar ground to and may be better understood as the complaint of discrimination arising from disability about the dismissal.

110. The duty to make reasonable adjustments is set out in section 20 of the Equality Act. Where an employer knows that a feature of their working arrangements disadvantages an employee because of a disability, the employer is under a duty to make adjustments to prevent or reduce that disadvantage. The feature is called a provision, criterion or practice (PCP).

111. The claimant relied on three features of the respondent's working arrangements or three PCPs. These were allegations 15, 16 and 17. The complaint based on all three of the PCPs fails.

112. Allegation 15 is based on the respondent having a practice of allowing scrap to be taken for personal projects. We have found that the respondent had this practice. However, this complaint fails because we have not found that the respondent knew that its practice of allowing scrap to be taken disadvantaged the claimant. The claimant had acknowledged at the first disciplinary hearing that he would not do it again. There was nothing from which the respondent could or should have known that the claimant was at a particular disadvantage in relation to the specific practice of allowing scrap to be taken for personal use.

113. Allegation 16 is based on the lack of a written policy for personal use of scrap. This complaint fails because the respondent had a written policy which applied to taking scrap for personal use – namely the paragraph in the staff handbook about removal of property.

114. Allegation 17 is a complaint based on the disciplinary procedure as a PCP. This complaint is not entirely clear. From the summary of the disadvantage, it seems to relate to the claimant's understanding of the disciplinary procedure during the first disciplinary process. However, the suggested adjustment is 'not dismissing the claimant' which must refer to the second disciplinary process, and does not appear to address any disadvantage arising from the first disciplinary process. Further and in any event, we have found that the respondent did not know and could not have been expected to know that the first disciplinary procedure disadvantaged the claimant.

115. For these reasons, the complaint of failure to make reasonable adjustments fails in relation to all of the three PCPs relied on.

3. Discrimination arising from disability

116. As we have explained, section 15 of the Equality Act says that unfavourable treatment by an employer which is because of something arising in consequence of disability is unlawful, unless the treatment is justified. We have already dealt with the complaints about dismissal and the appeal against dismissal. There are four allegations of discrimination arising from disability which relate to pre-dismissal treatment of the claimant. They are allegations 4, 8, 9 and 10.
117. Allegation 4 concerns the disciplinary procedure and warning in March/April 2023. We accept that this conduct was likely to have been something arising in consequence of disability, namely the claimant's misinterpretation of the instructions he was given about clearing the racks. However, we have decided that carrying out an investigation and giving a warning (which is obviously less serious than dismissal) were, in these circumstances, proportionate ways of achieving the respondent's aims of protecting company property and standards of behaviour.
118. Allegation 8 in part concerns the respondent's response to the exchange between the claimant and ZL. Our conclusions here are similar. The claimant's conduct was something which arose in consequence of disability, because it was an example of the claimant being perceived as aggressive when that was not his intention. However, the words used by the claimant, even though they were phrased as a question and whatever his intention, were words which it was reasonable to perceive as threatening. In those circumstances, it was proportionate to investigate the claimant's conduct, with a view to achieving the legitimate aim of protecting standards of behaviour. No disciplinary action was taken.
119. Also included as part of allegation 8 is the comment made by ZL. We have not concluded that this comment was because of something arising in consequence of disability. The claimant relied on four things arising in consequence of disability:
- 119.1. Impulsivity;
 - 119.2. A tendency to see communication in black and white terms;
 - 119.3. His communications sometimes being perceived as aggressive when that was not his intention; and
 - 119.4. The fact of needing to accommodate neurodiversity in HR matters dealt with by the respondent.
120. ZL's comment was not made because of any of these things. The claimant said that dental problems were linked with ADHD because of difficulty maintaining routine. The complaint was not put in those terms, and we were not taken to any evidence in support of that. The complaint fails because the treatment was not done because of something arising in consequence of disability.
121. This part of allegation 8 might have been better understood as a complaint of harassment. Even then, while we agree with BC's conclusion in the investigation that the comment was unacceptable, if this complaint had been brought as a complaint of harassment, we would have decided that the comment did not meet the threshold required to amount to unlawful harassment.
122. Allegation 9 relates to the comment made by KA that the claimant would be paid during suspension. We have found that KA he told the claimant that he would

be paid while suspended. We have found that he did not say that the claimant would 'cost him money again because of HR costs'. Telling the claimant that he would be paid during suspension did not amount to unfavourable treatment. This complaint fails for that reason.

123. Allegation 10 is about the suspension and the second disciplinary investigation. The suspension and second disciplinary investigation happened because of two things: the claimant's response to ZL, and taking the profiles. Both of these things were, for reasons we have already explained, things which arose in consequence of disability. However, for the same reasons we have explained in relation to allegations 4 and 8, it was proportionate for the respondent to suspend the claimant and to carry out a disciplinary investigation, with a view to achieving the legitimate aims of protecting company property and maintaining standards of behaviour. The suspension and disciplinary investigation, steps which stopped short of dismissal, were proportionate. We have concluded that only the dismissal went further than was proportionate.

124. Therefore, none of the allegations of discrimination arising from disability about the pre-dismissal conduct succeed.

4. Harassment related to disability

125. Section 26 of the Equality Act prohibits harassment, including harassment related to disability. Harassment for these purposes is defined as unwanted conduct which is related to disability and which has the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The 'purpose or effect' part of the test requires us to look at both the intention of the person doing the conduct (their purpose), and the effect of the conduct on the other person. When we look at effect, there is an extra element: if the conduct has the required effect on the person, we go on to consider whether it is objectively reasonable for the conduct to have had that effect.

126. There are four allegations of harassment (allegations 2, 3, 6 and 7). All relate to conduct pre-dismissal.

127. Two of these (allegation 2 and allegation 3) relate to comments by KA. As we have explained, we have found that KA did not make the comments as alleged. We found that the conduct (as we found it to have occurred) was not unwanted conduct with the purpose or the effect required by section 26. We found that it made the claimant feel uncomfortable, which does not meet the level required. Even if the conduct had the required effect, we would have concluded that, viewed objectively, in circumstances where KA was being supportive of the claimant, it would not have been reasonable for it to have done so.

128. Allegation 6 concerns the comment made by BC about medication. We have found that the comment made by BC, while it could be described as clumsy, did not have the purpose or effect required. If we had found that it had that effect, we would have concluded that it was not, viewed objectively, reasonable for it to have done so in the context in which it arose.

129. Allegation 7 concerns the claimant's medical reports mistakenly being made available to BC. We have found that this was done by mistake, not for the purpose of harassing the claimant. We have not found that it had the required effect either. Even if it had done, in circumstances where it happened by mistake, it was corrected when brought to the respondent's attention and BC had not looked at the reports, it would not have been reasonable for it to have that effect.
130. In summary, none of the conduct as we have found it to have occurred met the threshold to amount to unlawful disability-related harassment.

5. *Victimisation*

131. Victimisation is used in a technical sense in section 27 of the Equality Act. Unlawful victimisation happens when an employer subjects an employee to detrimental treatment because the employee has done what is called a 'protected act'. Protected acts include making a complaint about discrimination, or doing something else in connection with the Equality Act.
132. The respondent accepts that the claimant did protected acts when he invited KA to attend the meeting with his neuropsychologist in March 2023, and when he said in the investigation meeting and disciplinary hearing in October 2023 that he was being treated unfairly because of his disabilities. (These protected acts were listed in the schedule as allegations 1 and 11.)
133. The claimant made nine allegations of victimisation. Other than allegation 14, they were made in the alternative to the other complaints. None of these complaints succeed. Some of the treatment, such as the comments which form the basis of allegations 2, 3 and 9, would not amount to detrimental treatment. Further, there is nothing to suggest that any of the treatment relied on in the victimisation complaints happened because of the protected acts, such that the burden of proof on this complaint would shift to the respondent. But in any event, we are satisfied that none of the treatment complained of happened because of the protected acts.
134. In the case of allegation 14, the delays and difficulties with the response to the claimant's subject access request were not because of the protected acts. The respondent was doing its best to reply to the claimant's request but some clarification was required and there were some technical problems with getting the documents to the claimant.
135. None of the complaints of victimisation succeed.

The time limit and the complaints in the round

136. The complaints that have succeeded are wrongful dismissal and discrimination arising from disability in relation to the dismissal and appeal. These complaints were brought in time. Taking into account the date the claim was presented and the Acas extension, anything which occurred after 18 October 2023 was within the three month primary time limit. Both the dismissal and the appeal happened after that date. Therefore the complaints about the dismissal and the appeal were made in time. There are no further issues for us on the time limit question.

137. Finally, in addition to considering each of the complaints individually, we step back and look at the claim in the round. This is required in claims like this where there are a lot of individual complaints. It is necessary to avoid taking an overly fragmented approach, because the full picture may shed light on individual complaints. Having considered the full picture, we are satisfied that the respondent was generally supportive of the claimant and mainly took appropriate steps after being told of his disability. However, there was a failure to properly consider whether the conduct on 3 October 2023 was connected with disability, and whether there were less discriminatory alternatives to dismissal. We have concluded that the conduct was something arising from disability, and that there were less discriminatory ways the respondent could have dealt with it and achieved its aims.

Remedy

138. After we told the parties our decision on which complaints succeeded and which did not, there was sufficient time to take a break before we started hearing evidence to help us decide what compensation or other remedy the claimant should be awarded. During that break the parties reached an agreement on what compensation should be paid to the claimant. They asked us to make a judgment by consent on the question of remedy, which we have done.

**Approved by:
Employment Judge Hawksworth**

Date: 9 March 2026

Sent to the parties on: 1 May 2026

For the Tribunals Office