



EMPLOYMENT TRIBUNALS

Claimant: Mr A Hughes

Respondent: BS Eaton Limited

Heard at: Midlands West Employment Tribunal (CVP)

On: 20 May 2026

Before: Employment Judge A Smith

Representation:

Claimant: In person

Respondent: Mr C Baran, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The respondent has made an unlawful deduction from the claimant's wages from 22nd June 2020 until 30th August 2020 and is ordered to pay to the claimant the gross sum of £4,755.58 in respect of the amount unlawfully deducted.

REASONS

Claims and Issues

1. This hearing was listed as a result of a successful appeal of my previous Judgment in this case. The matter was remitted back to the Employment Tribunal by the

Employment Appeal Tribunal to deal with one specific aspect of the case. This is the matter, and the only matter, which was dealt with during this hearing.

2. My previous Judgment determined that:

“The respondent has made an unlawful deduction from the claimant’s wages from 22nd June 2020 until 30th August 2020 and is ordered to pay to the claimant the gross sum of £4,755.58 in respect of the amount unlawfully deducted.”

3. In reaching that decision, I took into account various arguments and submissions. One of those was whether the claimant was ready, willing and able to return to work during that period. I found that the respondent had not proven that the claimant was not so (§78). And as a result, the claimant was entitled to his wages during that period.

4. The Employment Appeal Tribunal concluded that I had made an error of law:

“The Tribunal misapplied the burden of proof which is on the employee to show that he was ready, willing and able to work when this is challenged.” (quotation from summary)

5. Therefore, the issue before me today was as follows:

5.1. Has the claimant proven that between 22 June 2020 and 1 September 2020, he was ready, willing and able to work.

6. I note for the utmost of clarity, that the burden of proof rests on the claimant for this issue.

7. It is accepted by both parties that, if I found that the claimant has not met the burden of proof on this point, the claimant would not succeed in his claim. It also follows that both parties accepted that, if I found that the claimant has met the burden of proof on this point, the claimant would succeed in his claim.

8. One matter which also needs to be highlighted, was the Employment Appeal Tribunal’s comment as follows:

“I am accordingly going to remit the case to the same Employment Tribunal to decide whether, applying the proper burden of proof, the claimant was, during the relevant period, ready, willing and able to work. I would anticipate that this would

be a short hearing given the findings already made. It is clear that at the remitted hearing the parties would not be able to go behind these findings of fact. Mr Hughes would simply assert, I imagine, that he was, at all stages, ready, willing and able to work and Mr Baran, representing the appellant on remission, would be able to cross-examine him.” (§11)

9. I am therefore bound by my previous findings of fact on this issue.

Procedure, documents and evidence heard

10. I was provided with one bundle, totalling 159 pages including the index. The bundle included the original witness statements from the claimant, Mr Oliver Eaton and Mr Bill Cowie.
11. The claimant provided the Tribunal and respondent with an additional ten pages. The respondent did not object to those documents being considered as part of this matter but highlighted that they were not likely to be relevant to the issue in question. Further, those documents were part of the bundle for the first hearing. I therefore permitted these documents as a late addition.
12. The bundle also contained a new witness statement of Mr Eaton, designed to focus on the issue to be determined today. No new statement on behalf of the claimant was produced and the claimant confirmed he did not wish to rely upon one.
13. The witness statement of Mr Eaton appended to it 20 pages of new evidence, which contained emails sent and received at the relevant time. This evidence was not presented to the Tribunal at the first hearing. There was no explanation from the respondent for that, other than a confirmation that they had subsequently been disclosed in accordance with their ongoing duty of disclosure. The claimant did not object to those documents being in the bundle and being considered by the Tribunal. I therefore took them into account.
14. I heard oral evidence from the claimant and Mr Oliver Eaton, Managing Director. They all swore an oath, were asked questions by the Tribunal, and were cross-examined.
15. Both parties then summed up their respective cases.

16. The respondent made detailed submissions. I take them all into account. The following is a brief summary of those submissions.

16.1. The issue is whether the claimant can discharge the burden of proof on him that from the 22 June to 1 September 2020 he was ready, willing and able to return to work.

16.2. Perhaps the key words are ready and willing.

16.3. The tribunal is not invited to go behind previous findings of fact and should approach this with an open mind.

16.4. The question is not whether the respondent did or should have asked him to come back. The question is whether the claimant can show that he was ready and willing during this period.

16.5. Adopting the proper approach the claimant cannot prove that he was ready, willing and able to return to work.

16.6. It is important to assess the evidence in light of the fact that these events happened six years ago during the height of the pandemic. People's memories can be moulded by a desire to put forward a position in support of their case. The claimant knows what he needs to say. The tribunal has to critically analyse what he says.

16.7. The tribunal should look at the credibility of the claimant. Can he be relied upon? This is a crucial point.

16.8. There are many factors to consider when looking at credibility. Consistency is important. This is not just about whether someone is saying the same things on different occasions. It is about whether or not they are consistent with contemporaneous documents and whether they are consistent with events proven and found as a fact to have happened.

16.9. The documents at the time and the events which have been found to have happened do not corroborate the claimant's version that he was ready willing and able to return to work.

- 16.10. The evidence of Mr Eaton and his impression as to why the mediation failed may not be helpful for the tribunal. All he can do is say what he was told which is unlikely to be a crucial point.
- 16.11. When the claimant withdrew from mediation the parties agreed to carry on without it and planned to return to work.
- 16.12. This is not about assessing Mr Eaton's credibility it is about assessing the claimant's credibility.
- 16.13. The claimant had been absent for 10.5 weeks and he did not ask to come back in that entire period. He didn't attend work and there were no other forms of communication in which he engaged. In his emails it is clear that he is not backwards in coming forward and he emails extensively about his complaints and his contract of employment. At no point in those emails does he say he will return to work and neither does he ask to return to work. The tribunal can infer from that that he was content to remain away on layoff pay.
- 16.14. Employment Appeal Tribunal in paragraph 10 highlighted appointment troubled them. This is in relation to offensive emails. The claimant told the Employment Appeal Tribunal that Mr Eaton and himself were emailing each other late at night. The Employment Appeal Tribunal state in paragraph 10 "I did not find this point easy to fit into the findings made by the Tribunal and this also leads me to the conclusion that this matter should be remitted for a further hearing." (152)
- 16.15. When the claimant was suspended he didn't say he was sorry and that he wanted to return to work. He doubled down on it saying he did not trust Mr Starkey's management style.
- 16.16. He was saying he had no confidence in management and had been abusive to a director. This makes it difficult to find that he was willing to work for them.
- 16.17. In relation to mediation the emails suggest that this appears to be an obstacle for the claimants return to work. His e-mail suggest mediation needs to be done before he comes back.
- 16.18. All the facts show he wasn't willing and able to come back to work.

- 16.19. At the end of the process in he was not responding to Mr Eaton either before or after he pulled out of mediation. Even when Mr Eaton says that he should return to work he doesn't respond to say that he will do so. He continues to criticise Mr Starkey.
- 16.20. When we get to the proposed return to work he doesn't return and certifies himself as sick. The claimant clearly returns to work on his own terms when he is ready.
- 16.21. An outsider looking at the emails would conclude but they are consistent with someone who is not ready willing and able to return to work.
- 16.22. The tribunal should reject his evidence on the basis that it is not reliable. His evidence now is not consistent with the documents of the time.
- 16.23. The claimant cannot discharge the burden of proof, his evidence does not outweigh the documentary evidence. The documentary evidence contradicts him entirely. To suggest that the claimant was ready willing and able to return to work given what he said about Mr Starkey and Mr Eaton is fanciful.
- 16.24. The tribunal should not prefer the claimant evidence which he is giving six years after the event compared to the contemporaneous documents.
- 16.25. It would be dangerous for the Tribunal to take into account events that occurred after the relevant period.
17. The claimant made brief submissions. He stated that whilst he was suspended, the respondent did not set out the terms and conditions of his suspension and any requirement for him to contact his employer. He submitted that he was waiting for his employer to tell him he could return to work. He claimed that he had raised some serious allegations and that the respondent should have kept in contact with him about the investigation, which never took place. He stated that Mr Eaton's emails showed that he believed the claimant did want to return to work.
18. I reserved my judgment.

Previous fact findings

19. As stated above, I am bound by my previous findings of fact. The key elements related to the issue in question are as follows:

“The respondent is a concrete manufacturer and is a family run business employing 90 staff in a single location. They also own and run their own vehicles, which is distinctive in the sector in which they operate.” (§10)

“The claimant’s role was unique in the business. He was described as an office worker, but his tasks involved controlling the materials going in and out of the business. One of his tasks was to enquire regarding the lorry drivers and inform management if there was no work for them to do, but also whether they were available for any work.” (§11)

“On the 3rd of April at 11:15 at night the claimant sent an email to Mr Eaton. During this email the claimant makes various allegations against Mr Eaton, his father, Mr Starkey, and the business as a whole. He states, “maybe I would be more highly thought of if I questioned why you “Oliver Eaton” was driving around trying to make a name for yourself?” He alleges abuse of position. He alleges further that Mr Eaton has been hoodwinked by Mr Starkey.

On the 28th of April 2020 Mr Eaton responded to the claimant’s email explaining that he’d given him some time to cool off. He said that there needed to be a meeting by zoom to discuss and investigate.

The zoom meeting takes place at some point after that email and prior to the 6th of May 2020. The parties cannot agree on a precise date, but nothing turns on that. On the 6th of May 2020 Mr Eaton sends an email to the claimant thanking him for his time on the zoom call. But he expressed that he was troubled by what the claimant said and described the claimant as having a complete lack of regard for his manager Mr Starkey. He also expressed his disappointment because he alleges the claimant called him a Cunt. He suspended the claimant in this email and explained that his pay for the period of suspension will be the SLOP pay.

The claimant sent a reply on the 11th of May 2020 and continued to make his assertions in a similar tone. He also said that he has no trust in Mr Starkey’s management style.

The respondent eventually decided that the best way forward would be to conduct a mediation between the parties. And on the 7th of July 2020 Mr Eaton makes that

suggestion to the claimant. The respondent obtained an independent professional mediator to conduct the mediation. On the 27th of August 2020 the claimant withdrew from the mediation process.

On the 28th of August the claimant emailed Mr Eaton, and expressed the question “how can I have any confidence in returning to work?” He explained that he did not go ahead with the mediation because he believed confidentiality had been broken and Mr Starkey had had chance to read the accusations made against him and collaborate with others over the allegations. In his evidence before the tribunal, the claimant said that he had chosen not to go ahead with the mediation because it had been arranged to take place in a pub and he did not want to meet Mr Starkey in a pub.

The claimant was invited to return to work on the 1st of September 2020. He did not return to work on that date as he was off sick, and he received statutory sick pay. But he did eventually return back to work.” (§§28 to 34)

20. Those findings of fact, and the others within that Judgment, stand.

Fact finding in this remitted hearing

21. Due to the availability of new documents and evidence, I was able to make the following additional findings of fact.

22. On 9 July 2020, Mr Eaton emailed the claimant stating that he had taken advice which is described as “a difficult one of course that you’ve created”. He states that he is trying to “find a sensible way of diffusing it for” the claimant. He states that a “professional mediator might be able to douse some of those flames of accusation”. He confirms he is waiting to hear from a mediator. (115)

23. The claimant responds that same day saying that he was “Very much looking forward to the professional mediator and hopeful a return to work”. He asks for a copy of his contract of employment. (115)

24. Mr Eaton responds on 13 July 2020 confirming that a mediator will be in contact with the claimant that week. The claimant responds on the same day asking again about his contract of employment. (114)

25. Mr Eaton responds on the next day saying they could deal with the contract matter at a later time. He states that “My focus and has been ever since you called me a “c*nt” and walked out, has been to manage to keep you in your role and well employed, the mediator will hopefully be able to provide us with some professional guidance to help you and perhaps with managing your anger too”. (114)
26. The claimant responded on the 24 July 2020 saying that he was disappointed that he'd received no contact from the appointed mediator. He highlights that he has now been suspended for 11 weeks and he was hoping that investigations would be close to a conclusion. He asks for an update in relation to that investigation. He again asks for a copy of his employment contract. (113)
27. Mr Eaton accepted in evidence that the claimant had been chasing the outcome of the investigation in this email. He further explained that due to the small size of the respondent, and that complaints had been made against him, a relative who was in hospital at the time, and the claimant's manager, there was no possibility of running an investigation process. He accepted that he had not communicated any of that to the claimant.
28. Mr Eaton responds on the same day and explains that “of course nothing has been asked of you during the period of having needed to be suspended whilst things have been put in place and you'll have been receiving pay equivalent to the special layoff pay.” He goes on to say, “I'm keen that you dont have any distractions and can concentrate on being able to potentially build some bridges after all that you've alleged and help in a benign way come back to the Works and make a contribution again.” He goes on to explain that he will chase up the mediator and anticipates contact would be made soon. He does not address the investigation that the claimant had asked about. (113)
29. Mr Eaton sent another e-mail on that day where he explains that he has pushed for the mediation process to start as soon as practically possible and let it would be likely to be the next week. The claimant responds on the same day asking about the names of company for the mediator so he can verify the person selected. (117)
30. On the 31 July the claimant confirms to Mr Eaton that he had spoken to the mediator that day and says “so hopefully, we're progressing to ensure a return to work soon.” He again asks for his contract of employment. The claimant sends another e-mail to Mr Eaton on the 3 August chasing a response to his e-mail. (120)

31. Mr Eaton responds on the 5 August. In his lengthy e-mail he expresses that he was pleased to hear about the mediation process beginning. He highlights various behaviours over recent years without providing specifics. In relation to the claimant's contract of employment he says it hasn't been located and explains that "rather than trawling through dusty filing cabinets, in the limited time I have, really need to ensure the business can be viable for the staff and you, am keen the mediation process can be a success so that you and Shaun can with professional guidance, find an accommodation to enable you to work with each other in a sensible way, with trust and acceptancy." He goes on to state in this e-mail "would very much hope that by the start of September, you can be back at the office making a contribution, so we don't have to be paying you some for you and you not be around, which is very poor value indeed." He then thanks the claimant for his cooperation. (119)
32. On the 5 August the claimant response and is upset about his contract of employment not being located. He explains that he wishes to raise a formal grievance about various matters including the suspension and the pending investigation. (122)
33. Mr Eaton responds on the 10 August. He expressed his unhappiness with the claimant's email's content and tone. He explains that he's always tried to support him "even in the face of shouted insults". He expresses that he hopes the mediation has been a useful process for him and states that "with mediation also going along/side for Shaun Starkey, you can come back to work, which I know has been your clear desire". (121-122)
34. The claimant responds on the 11 August asking again about his contract of employment and asks about the grievance procedure. (121)
35. Mr Eaton responds on 11 August stating "just really keen for you to be able to get back to work and have been assuming that's something you're keen to be do. If you complete the mediation that's been set up to assist you, then you should be able to come back and really make a contribution very soon. I'm looking forward to that and I'm sure you are too." (121)
36. On 17 August Mr Eaton sends an e-mail to the claimant explaining that he's having to do certain work which "really not my thing but having to try and patch things together whilst you haven't been around, looking forward to being back and doing the Materials Controlling." He explains us he has located the contractual engagement letter and that when he is in the office next he will send it to the claimant. (126)

37. Mr Eaton sends another e-mail to the claimant on the 27 August highlighting that the claimant has not responded to his email. He also explained that he had heard that day that the claimant had told the mediator that he wanted to disconnect from the mediation process that was just about to get properly underway. Mr Easton explained that it was a pity as mediation was designed to build bridges going forward but he respects the claimant's decision even if he is disappointed by it. He then states, "there appears to be no decision but to return to work now and I suggest you do so right after the Bank Holiday weekend, I look forward to being back from Materials Control at the office but 0800hrs on Tuesday September 1st." (125)
38. This is the first time during the relevant period that the respondent had informed the claimant of a return to work date.
39. Mr Eaton stated in evidence that the mediator had informed him via his solicitor that the claimant wasn't engaging with the process "barely at all". I do not have any documentary evidence in relation to the mediation or the conduct of either side within that process. I was told by the respondent that documents are often not produced in these types of cases as there may be contracts with the mediation provider about confidentiality.
40. The claimant responds to that email the next day again chasing his contract of employment. He quotes Mr Eaton's previous email stating that he would conduct a full internal investigation. He states, "it's now nearly four months since my suspension started, yet there appears to have been no investigation?" He goes on to state that because Shaun was aware of the allegations that he had made "how can I have any confidence in returning to work?" He explains that the mediator had told him that Shaun had seen his accusations and he said that was his confidentiality that had been broken and that Shaun had had time to collaborate which is why he could not continue with the mediation. He also reminds Mr Eaton that he said he wanted to raise a grievance regarding his suspension. He does not confirm in express terms that he will be returning to work on 1st September. (124-125)
41. The claimant sends an email on the 1 September stating that he had been struggling to sleep and he was extremely tired and exhausted. He said he would not be attending work all that week because of tiredness, stress and anxiety. He confirmed that he would be speaking to his doctor. (128)
42. A document titled Statutory Sick Pay (SSP): Employee's Statement of Sickness was provided to the respondent dated the 1 September 2020. (130-131)

43. The claimant then returned to work on the 7 September. (132)
44. Mr Eaton states in his witness statement that the claimant didn't contact him during this relevant period to inquire about or discuss his return to work. I accept the claimant did not do so. The claimant stated under cross-examination that he did not do so because he was suspended.
45. Mr Eaton also states in his witness statement that the claimant's absence caused him difficulty and inconvenience as he was having to cover for him. I accept that evidence as well.
46. In his evidence, Mr Eaton stated that it was his feeling that the claimant did not really want to return to work. He described the claimant's emails as "window dressing" and that the claimant was "flirting" with the idea of returning to work.
47. When Mr Eaton was asked in judicial questioning whether he had considered writing to the claimant to lift his suspension, Mr Eaton stated that he was probably hoping to do that had the claimant been sensible with the mediation.

Conclusions

48. The claimant has the burden of proving that he was ready, willing and able to return to work between 22 June 2020 and 1 September 2020.
49. In terms of reliability or credibility, I conclude that the most helpful evidence for me is the contemporaneous documents. The emails at the time provide the most reliable and clear picture as to what was in the mind of the claimant at the relevant time in comparison to recollections several years after the events. I was asked by the respondent to take into account that there has been a long passage of time and memories can fade. Further, that the claimant "knows what to say" and that should be weighed in the balance.
50. I concluded that the claimant gave evidence to assist the Tribunal and did not give evidence to simply support his case no matter the evidence.
51. However, as can be seen below, my findings rest entirely on the documentary evidence in the bundle.

52. Mr Eaton had suspended the claimant in response to the claimant's complaints and conduct (6 May 2020: 61). The word suspend was used, and there is no doubt that both parties understood this to mean that the claimant should not attend work.
53. There was no specific time limit placed on that period of suspension. Mr Eaton's email states that it will be "whilst the investigation is explored".
54. Mr Eaton accepted in evidence that this investigation was to be about the content of the allegations the claimant had made, but for any outlandish things that had been said about Mr Eaton's family.
55. There also appears to have been a second aspect to this, which is the claimant's conduct and relationship with his manager (61).
56. The mediation was first canvassed by Mr Eaton on 9 July 2020, over a month after the claimant was first suspended.
57. The claimant's emails also show that he believed there were two strings: the investigation into his allegations, and the mediation which was set up to resolve the relationship issues. He mentions the investigation in his email of 24 July (113), 5 August (122) and 28 August (124). Mr Eaton does not respond directly to this point in any of the emails.
58. I find that Mr Eaton knew there would be no investigation into the claimant's serious allegations, very soon after he suspended the claimant for the reasons he gave in evidence and set out above. He chose to focus instead on the mediation. However, he chose to not tell the claimant this, despite the claimant's chasing him on this and despite knowing the claimant was awaiting a conclusion to an investigation.
59. I also find that Mr Eaton's responses to the claimant asking for his contract of employment, a very reasonable request, to be unhelpful and obstructive. This led to the emails becoming focused upon arguments about the claimant's contract of employment, and the investigation/allegations. The emails are therefore considered in that light.
60. The claimant did not state in express terms that he was ready, willing and able to return to work in any of the emails. But neither did he say he was not willing to attend work in express terms.

61. The respondent had suspended their employee. Any employee would be entitled to wait until they were told their suspension had been lifted before returning to work. I conclude that the claimant not turning up at the work premises is therefore not an indication that he was not ready, willing and able to return to work.
62. Further, having been told he was suspended, and not having been told that suspension was lifted, the claimant was reasonably waiting for the respondent to take the next steps in relation to his return to work. The failure of the claimant to not state in emails or telephone the respondent to inform them he was ready, willing and able to return to work, does not imply that he was not so.
63. I also take into account that Mr Eaton emailed the claimant on 27 August once the mediation had failed, to ask him to return to work: "there appears to be no decision by to return to work now...". The respondent therefore knew it held the power at the time to lift the claimant's suspension, and I conclude that the claimant also knew this to be the case.
64. I further take into account that Mr Eaton stated in evidence that he had intended to lift the suspension once the mediation had been completed. Whilst the question for me is whether the claimant was ready, willing and able to return to work at the relevant time, I find that it is necessary to understand the respondent's intentions and how they communicated them to the claimant in order to fully and critically assess the claimant's responses at the relevant time.
65. The claimant did not return to work on 1 September 2020, and signed off sick for one week, returning the week after. The respondent argued that it would be dangerous for me to take into account events after the relevant period as part of my decision as to whether the claimant was ready, willing and able to return to work. However, I was then referred later by the respondent to the fact that the claimant did not return to work on 1 September as evidence pointing away from the claimant being ready, willing and able to return to work within the relevant period.
66. I conclude that the actions of the claimant on 1 September and his later return to work are relevant to my conclusions. Firstly, had the claimant simply refused to return to work after 1 September once asked with no good reason, that conduct is likely to assist me in determining whether he was likely to be ready, willing and able to return to work just prior to that.
67. I consider that in signing himself off sick from 1 September 2020 and then returning to work thereafter, when there was no change to the situation relation to mediation or the investigation, this supports the claimant's case that he was ready, willing and able to

return to work during the period shortly beforehand. I apply a small amount of weight to that, acknowledging that these events occurred right after the relevant period, but still consider them to assist me in weighing all matters up in the balance. Particularly when considering that nothing further had happened between the parties.

68. In terms of inferences, the claimant was taken in cross examination to various emails he sent during this period, and it was put to him that someone reading them would infer that he was not ready, willing and able to return to work. I deal with those in turn below.
69. The claimant had made serious complaints against the director of the company and his manager stating that he had no trust in Mr Starkey's management style (62) and questioning how he could have any trust in returning to work (124).
70. The first email contains the allegations made against Mr Starkey. They are serious allegations and contain facts from which an investigation could commence. Despite accepting they were serious allegations, no investigation took place and the claimant was not informed of that.
71. The second email is dated 28 August and is in reply to Mr Eaton asking the claimant to return to work on 1 September. Again, this is in the context of the claimant not being informed of the progress of any investigation, and being concerned that his allegations had been given to Mr Starkey. There is no response to the claimant's email by Mr Eaton.
72. Whilst it is clear the claimant had stated that he had no trust in Mr Starkey's management style, it is clear from the email that this is something that had been going on for some time. Further, the respondent suspended the claimant, he did not refuse to attend work.
73. Further, the claimant highlighting his concerns that Mr Starkey had seen his allegations has to be considered in light of the fact that no investigation had taken place.
74. In light of the above, I do not infer from the claimant's references to trust in those two emails, that he was not ready, willing and able to return to work.
75. It was also argued by the respondent that I should infer from the claimant's comments on the mediation, that it was a condition of his before he would return to work rendering him not ready, willing and able to return to work. The claimant was taken in cross-

examination to his email on 31 July 2020 to Mr Eaton in which he says, “Spoken with the mediator again today, so hopefully, we’re progressing to ensure a return to work soon” (120).

76. As I have found above, the claimant believed there were two strings to this period of suspension. The mediation and the investigation. Further, the claimant states in this email that matters are progressing toward that, not that the mediation is required before he will return to work. Finally, the respondent had suspended the claimant. I infer that the claimant was stating that they were progressing toward the respondent lifting the suspension. Indeed, Mr Eaton’s evidence was that he would have been the one to lift the suspension once the mediation had been completed.
77. The claimant was also taken to an email Mr Eaton sent to the claimant on 17 August (126). In this email Mr Eaton references having to do work that was not really “his thing” and that he was looking forward to the claimant returning to work. The claimant does not reply to this email. It was put to him that he failed to reply and say he was ready, willing and able to return to work.
78. I note that there is nothing in the email which presents as a question to which the claimant should respond. Further, the key context of this whole situation is that the respondent suspended the claimant. I do not therefore infer that, because he failed to respond to Mr Eaton’s email saying he wanted to come back to work, he was not ready, willing and able to do so.
79. It was also put to the claimant that he didn’t respond to his employer. I find that the claimant did not respond directly to a couple of emails from his employer. However, during the relevant period I can only find one email, out of many, that the claimant did not respond to straight away, but then did respond after being chased (125). As stated above, I do not consider the email from Mr Eaton required a reply from the claimant. Further, this is one instance out of many where the claimant does respond promptly to Mr Eaton. I do not therefore infer from this one occasion that the claimant was not ready, willing and able to work.
80. I am also asked to consider the fact that the claimant withdrew from the mediation which had been arranged and infer from that act that he was not ready, willing and able to return to work.
81. The claimant explained in his contemporaneous email that the reason for his withdrawal from the process was that he was concerned that confidentiality had been

broken as Shaun had seen his allegations and that he was concerned that Shaun may have been able to collaborate with others over the allegations (124).

82. The Employment Appeal Tribunal Judgment states that the claimant had, in September 2025, informed them that the reason for withdrawing from the mediation was that “the suggested meeting point was a pub (and he did not think such a location was appropriate) and he found out that there was no investigation (§10). This was put to the claimant in cross examination and he accepted it.
83. A contemporaneous email supports the first two reasons. His evidence to the Employment Appeal Tribunal and his unchallenged evidence to this Tribunal supports the last two reasons. I therefore conclude that the claimant withdrew from the mediation process for all the reasons stated.
84. In light of the fact that the claimant had made serious allegations which the respondent had led him to believe they were going to investigate. And as no investigation conclusion had been communicated to him. And as the respondent had not lifted the suspension by this point, I do not infer from the claimant’s withdrawal that he was not ready, willing and able to return to work.
85. In relation the Employment Appeal Tribunal’s Judgment in paragraph 10, whereby they state:
- “When I asked him about the offensive emails he said that they were both emailing each other late at night. I did not find this point easy to fit into the findings made by the Tribunal...”.
86. It is unclear from the Judgment what emails are being referred to as “offensive” by the Employment Appeal Tribunal. I have not been pointed to any emails that either the claimant or the respondent consider to be offensive during the relevant period. It is accepted by the claimant that he used an offensive term to refer to Mr Eaton, but that was made orally. Having considered all the emails in detail, I do not find that either party sent any offensive emails during the relevant period.
87. Taking all of the above into account, I conclude that the claimant has proven on the balance of probabilities that he was ready, willing and able to return to work during the relevant period.
88. Therefore, the previous financial Judgment of this Tribunal stands.

Employment Judge A Smith

21 May 2026