



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001916/25

Final Hearing Held on 20-22 April 2026

Employment Judge O'Donnell

Mrs L Jeruseviciene

**Claimant
In Person**

Hollytree Childcare Limited

**Respondent
Represented by
Mr Ishaq
(litigation consultant)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is:-

1. The claim of unfair dismissal under the Employment Rights Act 1996 is dismissed for want of jurisdiction.
2. The claims of discrimination arising from disability and breach of the duty to make reasonable adjustments under the Equality Act 2010, the claim for notice pay, the claim for holiday pay and the claim for a breach of s8 of the Employment Rights Act 1996 are not well-founded and are hereby dismissed.

3. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £97.50 (Ninety seven pounds, fifty pence) subject to any deductions for tax and National Insurance.

REASONS

Introduction

1. The claimant has brought the following complaints against the respondent:-
 - a. Unfair dismissal under s94 of the Employment Rights Act 1996.
 - b. Discrimination arising from disability under s15 of the Equality Act 2010.
 - c. Breach of the duty to make reasonable adjustments under ss20 & 21 of the Equality Act 2010.
 - d. Notice pay.
 - e. Holiday pay
 - f. Unlawful deduction of wages in respect of her pay for 4 June 2025.
 - g. A breach of s8 of the Employment Rights Act in respect of the duty to provide itemised pay statements.
2. At a case management hearing held on 7 November 2025, the claims under the Equality Act were clarified as follows:
 - a. The detriments said to amount to discrimination arising from disability are:-
 - i. refusal of the claimant's request for phased return;
 - ii. refusal of the claimant's request for essential medical leave;
 - iii. a failure to respect confidentiality;
 - iv. the claimant being put in a position where she had no option but to resign (that is, a constructive dismissal).
 - b. The alleged failures to make reasonable adjustments are said to be:-
 - i. Refusing to allow a phased return to work coming back three days a week on a temporary basis – working only on Wednesday, Thursday and Friday (this was allegedly refused at a meeting on or about 29 May 2025);
 - ii. Refusing to allow time off to go to Lithuania for treatment - which would have required a changed work pattern to work Monday,

Tuesday and Wednesday with Thursday and Friday off (this was allegedly refused at a meeting on 4 June 2025).

3. In relation to the claims under the Equality Act, the claimant relies on ADHD as amounting to a disability in terms of s6 of the Act. She also has PTSD but this is not relied upon; the matters set out above in terms of the alleged acts of discrimination and failures to make reasonable adjustments are all concerned with the claimant's ADHD and not her PTSD.
4. The respondent resists all the claims. In relation to the discrimination claims, in addition to denying there was any discrimination, the respondent does not concede that the claimant is disabled.
5. In relation to the issue of knowledge, the respondent's position in their ET3 was contradicted by the evidence of their witnesses; in the ET3, it is pled that the claimant informed the respondent that she had ADHD and PTSD on 4 June 2025 but, in evidence, the relevant witnesses gave evidence that only PTSD was mentioned. The Tribunal will address this further below.

Evidence

6. The Tribunal heard evidence from the following witnesses:-
 - a. The claimant.
 - b. Amber Stibbs – a senior childcare practitioner with the respondent.
 - c. Elizabeth Elmes (EE) – the respondent's nursery manager.
 - d. Elaine Hodgson (EH) – the respondent's accounts and admin manager.
 - e. Mary McEwan (MM) – the owner and director of the respondent.
7. There was an agreed file of documents prepared by the parties. A reference to a page number below is a reference to a page in that file. There was a supplementary bundle prepared by the respondent and a reference to a page in that file will be preceded by the letters "SB" below. The claimant also produced a supplementary bundle and a reference to a page in that file will be preceded by the letters "C" below.
8. The facts of the case were not significantly in dispute between the parties and the events leading to the claimant's resignation were broadly agreed.
9. There were, however, some relevant matters which were in dispute between the parties.
10. First, there was dispute about whether the claimant told the respondent (specifically EE and MM) that she had ADHD. The claimant alleges that she

informed EE during a conversation on 5 or 6 May 2025 and again at a meeting on 29 May 2025. EE denies this and the respondent's minutes of the 29 May meeting (pp94-97) do not show any mention of ADHD. The claimant alleges that she informed EE and MM of her ADHD at a meeting on 4 June 2025. Again, EE and MM deny this and the respondent's minutes of that meeting (SB2-3) do not mention ADHD. The claimant produced handwritten notes she prepared after the meeting on 4 June (C1-3) but these do not mention ADHD.

11. Ultimately, the issue of the respondent's knowledge is not as fundamental to the Tribunal's decision as parties may have perceived it to be. For reasons which will be set out below, even assuming the respondent had the requisite knowledge, the claims under the Equality Act fail on their merits.
12. However, on this issue, in relation to what was said at the meetings of 29 May and 4 June, the Tribunal prefers the evidence of the respondent which is supported by contemporaneous notes (including the claimant's note) which do not show any mention of ADHD.
13. Second, there is a dispute as to whether the respondent, at the meeting of 4 June 2025, refused to accommodate the claimant's request for a phased return, reducing her days to 3 days from 4 days. Both the evidence of the relevant witnesses (that is, the claimant, MM and EE) as well as the contemporaneous notes from each party (at SB2-3 and C1-3) contradict each other; the claimant and her note state that there was a refusal whereas the respondent's evidence was that the request could be accommodated.
14. The Tribunal takes account of the fact that the evidence from both parties about what happened on 4 June 2025 is, otherwise, broadly similar. There is no dispute that the respondent refused to give the claimant time off on 12 and 13 June 2025 and that the claimant resigned at the meeting. The detail of what was said by each party differs in the contemporaneous notes but the events are agreed.
15. The Tribunal prefers the evidence of the respondent in relation to this issue. The claimant describes herself as being overwhelmed at the meeting, being upset and in a daze. This would undoubtedly impact on her recollection of events (both at the time when she prepared her note and when giving evidence at the hearing). The Tribunal does not consider that the claimant has, in any way, sought to mislead the Tribunal but simply that her recollection of events is not reliable in all the circumstances of the case.

Findings in fact

16. The Tribunal made the following relevant findings in fact.

17. The respondent operates a nursery providing childcare facilities for pre-school children. It is open 51 weeks of the year and is especially busy around times of school holidays.
18. The respondent operates in a regulated industry with a number of legal requirements placed on them. Relevant to the present case is the requirement to maintain certain staff to child ratios; for children under 2 there must be 1 adult for every three children; for ages 2-3 there must 1 adult for every five children; for ages 3-5 there must be 1 adult for every 8 children.
19. In order to ensure ratios are met, the respondent tries to operate with 2 more staff working than is required in case of staff illness or anything else which might mean a member of staff is not at work. In addition, EE and EH are qualified to work with the children and so can be redeployed from their managerial and admin duties if required.
20. The claimant commenced employment with the respondent on 3 March 2025 as a childcare practitioner. She was employed to work 38 hours a week over Monday, Wednesday, Thursday and Friday. She worked 8am to 6pm each day with a half hour lunch break. She was paid monthly and was paid £13 an hour.
21. In April and May 2025, for reasons which, for the most part, it is not necessary to set out the claimant suffered a crisis in her mental health. She was signed off work by her doctor from 7 to 28 May 2025 with the reason given on her fit note (p86) being depression.
22. One of the things which had impacted on the claimant was her husband's extended absence from the country. He is originally from Lithuania and had to go to that country when his father took seriously ill. The claimant had booked holidays in May 2025 to join him in Lithuania and travelled there on or around 14 May. The claimant had explained her health issues to her husband and asked him to arrange for her to see a doctor in Lithuania.
23. The claimant was in Lithuania from 14 to 19 May 2025. She attended a private clinic when she was there and saw a doctor. She was diagnosed with post-traumatic stress disorder (PTSD) from a childhood trauma and attention deficit hyperactivity disorder (ADHD). She was prescribed medication and well as other therapies.
24. This diagnosis greatly assisted the claimant in understanding a number of things in her past and present life. The medication and other therapies led to the claimant making a number of changes to her life and behaviour which saw a beneficial change in her physical and mental health which continues to this day.

25. When she returned to the UK, the claimant saw her GP again and they recommended that, when she went back to work, she should have a phased return.
26. The claimant and EE had been in contact by email (SB16-23) during the claimant's absence. They arranged to meet on 29 May 2025 to discuss the claimant's return to work.
27. The claimant and EE met on 29 May 2025. EH was also present to take notes. Minutes of the meeting are at pp94-97 and record the following relevant matters:-
 - a. There was a discussion about the claimant's health and she disclosed that she was pre-diabetic and that she had been diagnosed with PTSD.
 - b. In terms of a phased return to work, EE suggested that the claimant could come in for lunch cover over 5 days working 11.30am to 2pm. The claimant expressed a preference to reduce her days to three days from four but work her existing hours on those three days. EE agreed to this for the next week and an arrangement was made for the claimant to work Wednesday to Friday. EE was going to check to see if this arrangement could continue in future weeks.
 - c. The claimant stated that she had a further appointment with the clinic in Lithuania in August but she had arranged this for a weekend.
28. By email dated 2 June 2025 (p98), the claimant informed EE that she now had further dates for going to Lithuania and that she was going there on 12 June for 3 days. This was for a further appointment at the same clinic which had been arranged for Saturday 14 June.
29. The claimant attended work on 4 June 2025 and worked that day. In the late afternoon (there was a dispute about the precise time but nothing turns on this), the claimant was asked to meet with MM. EE was also present at the meeting and took notes which appear at SB2-3.
30. At the meeting, there was a discussion about the claimant's phased return. MM confirmed with the claimant that she preferred to reduce her days to 3 days (that is, Wednesday to Friday) rather than working shorter hours each day. MM went on to say that this could be accommodated because Monday was the claimant's day off anyway and they had enough cover on Tuesdays.
31. In relation to the claimant's request for time off on 12 and 13 June 2025, MM explained that this could not be accommodated; she stated that they had asked other staff whether they could swap shifts but they could not and that the respondent was struggling to meet the required ratios on those days if the claimant was absent.

32. MM asked the claimant when her appointment at the clinic was and the claimant explained that it was the Saturday (14 June). MM asked if the claimant could travel later; she explained that she might be able to let the claimant leave early on the Friday afternoon if she could get a flight later on Friday. The claimant stated that the flights had been booked and she needed to go.
33. The claimant became upset at this point in the meeting. She describes feeling her heart racing, that she was feeling overwhelmed and she was crying. She informed MM that she needed to go to get her medication and that if the time off was not given then she would leave and go anyway.
34. The claimant then stood up and said she was leaving. It was not in dispute between the parties that the claimant was referring to leaving her job rather than just leaving the meeting.
35. The claimant collected her belongings and left the building. She did not return to the premises. She submitted a written grievance to the respondent dated 16 June 2025 (pp100-102) in which she states that she had no choice to resign at the meeting and alleging constructive dismissal.
36. During her employment, the claimant took 6 days' as holiday (28 March, 31 March, 14 April, 16 April, 17 April and 18 April 2025).
37. It is not in dispute between parties that the claimant has not been paid for the hours worked on 4 June 2025.
38. The respondent's practice with payslips was for these to be printed off by MM when she ran the payroll. EH would then put them in envelopes with the employee's name on the front and take them round the nursery to hand to staff. If someone was not in that day then the envelope would be placed in the locked cabinet in the relevant playroom from which the employee could retrieve the payslip. During her employment, the claimant raised no issue with the respondent about not receiving payslips.

Submissions

39. The claimant produced written submissions and the respondent's agent gave oral submissions. For the sake of brevity, the Tribunal does not intend to set out the submissions in details. These have been noted and the Tribunal will refer to any point raised that requires to be specifically addressed in its decision below.

Relevant Law

40. Disability is one of the protected characteristics covered by the Equality Act 2010 and section 6 of the Act defines disability as a physical or mental condition which has long-term, substantial adverse effects on a person's day-to-day living activities.

41. The definition of discrimination arising from disability in the 2010 Act is as follows:-

15 Discrimination arising from disability

(1) *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.*

(2) *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.*

42. In order for there to be unfavourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

43. Guidance as to how to apply the test under s15 was given in *Pnaiser v NHS England* [2016] IRLR 170, EAT:-

- a. Was there unfavourable treatment and by whom?
- b. What caused the treatment, or what was the reason for it?
- c. Was the cause/reason 'something' arising in consequence of the claimant's disability?
- d. This stage of the test involves an objective question and does not depend on the thought processes of the alleged discriminator.
- e. The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.

44. In terms of justification, the EAT in *MacCulloch v ICI* [2008] IRLR 846 set out four principles to be applied by the Tribunal. These have since been approved by the Court of Appeal in *Lockwood v DWP* [2013] IRLR 941:-

*"(1) The burden of proof is on the respondent to establish justification: see *Starmer v British Airways* [2005] IRLR 862 at [31].*

*(2) The classic test was set out in *Bilka-Kaufhaus GmbH v Weber Von Hartz* (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need ... are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see *Rainey v Greater Glasgow Health Board* (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.*

*(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: *Hardys & Hansons plc v Lax* [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].*

*(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable response" test in this context: *Hardys & Hansons plc v Lax* [2005] IRLR 726, CA."*

45. The duty to make reasonable adjustments is set out in s20 of the Equality Act with s21 making a breach of the duty an unlawful act. The relevant provisions of s20 are:-

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

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

(4) ...

(5) ...

(6) *Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.*

(7) *A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.*

46. In relation to the duty to make adjustments, the degree to which any adjustment would overcome the disadvantage to the claimant is relevant to whether the adjustment is reasonable (*HM Prison Service v Johnson* [2007] IRLR 951).
47. These provisions do not stand on their own and any discrimination must be in the context of the provisions of the Act which makes it unlawful to discriminate in particular circumstances. The relevant provision in this case is:-

39 *Employees and applicants*

(1)...

(2) *An employer (A) must not discriminate against an employee of A's (B)—*

(a) ...

(b) ...

(c) *by dismissing B;*

(d) *by subjecting B to any other detriment.*

48. A dismissal in terms of s39 can include a situation where the employee has terminated their employment in circumstances where they were entitled to do so as a result of the employer's conduct. This is commonly referred to as a "constructive dismissal".
49. The circumstances in which an employee is entitled to terminate their contract by reason of the employer's conduct is set out in the case of *Western Excavating v Sharp* [1978] ICR 221. The Court of Appeal held that there required to be more than simply unreasonable conduct by the employer and that had to be a repudiation of the contract by the employer. They laid down a three stage test:-
- a. There must be a fundamental breach of contract by the employer
 - b. The employer's breach caused the employee to resign
 - c. The employee did not delay too long before resigning thus affirming the contract

50. A breach of contract can arise from an express term of the contract or an implied term. For the purposes of this case, the relevant term was the implied term of mutual trust and confidence.
51. The test for a breach of the duty of trust and confidence has been set in a number of cases but the authoritative definition was given by the House of Lords in *Malik v Bank of Credit and Commerce International SA* [1997] IRLR 462 that an employer would not, without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
52. Where it is said that any constructive dismissal amounts to discrimination arising from disability, the conduct said to give rise to the fundamental breach of contract does not have to be *solely* by reason of “something” arising from disability; if “the something” has a ‘significant influence’ on the treatment of a claimant then discrimination is made out. (*Nagarajan v London Regional Transport* [1999] ICR 877, HL; *Villalba v Merrill Lynch and Co Inc and ors* 2007 ICR 469, EAT. In *I lgen v Wong* [2005] ICR 931, Lord Justice Peter Gibson clarified that for an influence to be ‘significant’ it does not have to be of great importance and is something more than trivial.
53. In order to pursue a claim of unfair dismissal under the Employment Rights Act 1996, an employee requires to have two years’ service in terms section 108(1) of the Act. The fact that any dismissal is said to amount to unlawful discrimination under the Equality Act does not disapply this requirement; a claim that any dismissal is said to be discriminatory is pursued under the Equality Act and not the Employment Rights Act.
54. An employee is entitled to notice of the termination of their employment. The amount of any such notice can be found in the contract of employment or by way of the minimum statutory notice to be found in section 86 of the Employment Rights Act 1996 which is based on length of service. However, where the employee terminates the contract without notice then the employer has no obligation to pay any notice pay.
55. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker’s wages unless this is authorised by statute, a provision in the worker’s contract or by the previous written consent of the worker.
56. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.
57. Section 14 provides that s13 does not applied to deductions made for the purpose of reimbursing the employer for an overpayment of wages.

58. Regulations 13 and 13A of the Working Time Regulations (WTR) make provision for workers to receive 5.6 weeks' paid holidays each year.
59. Where a worker leaves employment part way through the leave year then Regulation 14 of the 1998 Regulations provides for compensation to be paid to the worker in respect of untaken holidays in the following terms:-

(1) This regulation applies where—

(a) a worker's employment is terminated during the course of his leave year, and

(b) on the date on which the termination takes effect ('the termination date'), the proportion he has taken of the leave to which he is entitled in the leave year under [regulation 13] [and regulation 13A] differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

(AxB)-C

where—

- | | |
|----------|---|
| <i>A</i> | <i>is the period of leave to which the worker is entitled under [regulation 13] [and regulation 13A];</i> |
| <i>B</i> | <i>is the proportion of the worker's leave year which expired before the termination date, and</i> |
| <i>C</i> | <i>is the period of leave taken by the worker between the start of the leave year and the termination date.</i> |

Decision – discrimination arising from disability

60. The Tribunal will address the claim in respect of the three detriments that are not dismissal first before turning to the question of whether there was a dismissal and, if so, whether it amounted to unlawful discrimination. The Tribunal considers this is most sensible way to deal with this given that the question of whether the respondent discriminated against the claimant in respect of the other matters will be of significant importance in determining whether any dismissal amounted to discrimination arising from disability.
61. The first detriment raised by the claimant is that the respondent refused the claimant's request for a phased return.
62. The Tribunal finds that the respondent did not refuse this request. It was agreed at the meeting on 29 May 2025 that the claimant could return to work in the next week on 3 days a week as requested by her. Contrary to the claimant's case, the respondent granted rather than refused the request.
63. In respect of what was said at the meeting on 4 June 2025, the Tribunal, for the reasons set out above, prefers the respondent's version of events that they had indicated to the claimant that they would be able to accommodate the three day week in the coming weeks.
64. Again, the respondent did not refuse the claimant's request for a phased return and, rather, granted it. There was no detriment to the claimant in such circumstances.
65. In respect of the second detriment, it is not in dispute that the respondent refused to grant the claimant's request for time off on 12 and 13 June 2025. However, there is no evidence that the reason why the respondent refused the claimant's request was "something" arising from her disability.
66. The claimant may well have been requesting this time off to attend a medical appointment but that does not mean that the refusal was because of "something" arising from disability. The "something" is the reason why the request was refused. The clear and unchallenged evidence from MM was that she refused the request because the respondent would not have sufficient staff to meet the legally required staff to child ratios on those days if the time off was granted. This is not "something" arising from the claimant's disability.
67. Even if the reason why the respondent refused the claimant's request for this time off was because of "something" arising from disability, the Tribunal considers that the respondent's decision was objectively justified. The respondent clearly had a legitimate aim, that is, meeting their legal obligations to maintain the staff to child ratio.

68. The evidence from the respondent's witnesses was that they had looked to see whether they could make arrangements which would allow the claimant to take time off. However, they were unable to make such arrangements. The claimant did not advance any alternative means by which this aim could be met, either in her own evidence or in cross-examination. There is, therefore, no evidence from which the Tribunal could conclude that there was some other means by which the aim could have been met. In these circumstances, the Tribunal is satisfied that the decision to refuse the claimant's request for time off was a proportionate means of achieving their aim.
69. The third detriment relates to an alleged breach of confidentiality. This is a wholly speculative claim on the part of the claimant and she led no evidence of what confidentiality was breached, who breached it or when it was breached. The Tribunal specifically asked if she had evidence of this and she replied no.
70. This part of the case is based solely on the claimant's assertion that, on 4 June, MM informed her about another member of staff complaining about the time off the claimant had had in the past. From this, the claimant, without any evidence, has assumed that her medical conditions were being discussed.
71. There was simply no evidence to support this assumption and so the Tribunal has no basis to conclude that there had been any breach of confidentiality.
72. Turning now to the fourth detriment, the claimant alleges that there was a constructive dismissal. The Tribunal does not consider that there was any basis on which it could conclude that there had been a fundamental breach of contract by the respondent.
73. The claimant has not set out what term of the contract she says was breached and, based on what it heard in evidence, the Tribunal has proceeded on the basis that what is alleged is a breach of the duty of trust and confidence. The Tribunal, therefore, has to apply the *Malik* test (above).
74. The Tribunal considers that the respondent has not acted in a manner calculated or likely to destroy or seriously undermine the employment relationship. There was certainly no evidence that the respondent had set out to destroy the employment relationship. With one exception, the respondent accommodated the claimant's needs, agreeing a phased return. It cannot be said that, when looked at broadly, the respondent's actions were likely to destroy or damage the relationship; if anything, the respondent was seeking to ensure that the relationship would continue.
75. The only matter in which the respondent did not accommodate the claimant (and which prompted her resignation) was the request for time off on 12 and 13 June. However, the Tribunal does not consider that, on its own, this is sufficient to meet the *Malik* test; the respondent was not obliged to grant this request (see below)

and they had reasonable and proper cause for refusing it (that is, the fact that the claimant's absence would mean that they would not meet the required staff to child ratio on those days).

76. For these reasons, the Tribunal does not consider that the claimant was constructively dismissed.
77. Even if there had been a constructive dismissal, the Tribunal finds that this did not amount to unlawful discrimination. As set out in this decision, the Tribunal finds that none of the other alleged acts of discrimination are well-founded and that there was no breach of the duty to make reasonable adjustments. The claimant's dismissal, if there was one, was not, therefore, influenced by any unlawful discrimination.
78. For these reasons, the claims of discrimination arising from disability are not well-founded and are hereby dismissed.

Decision – reasonable adjustments

79. The first issue relating to reasonable adjustments is concerned with the claimant's request for a phased return to work. This can be dealt with in relatively short terms. Even assuming that the duty to make reasonable adjustments was engaged (that is, that the PCP of working her contractual days placed the claimant at a disadvantage as a disabled person), the respondent complied with the duty and made the adjustment sought by the claimant. They reduced the claimant's working days to three days as requested in the week she returned to work and were prepared to do so in the following weeks if the claimant had not resigned.
80. In these circumstances, there was no breach of the duty to make reasonable adjustments in respect of the phased return.
81. The second issue is the claimant's request for time off on 12 and 13 June 2025 to attend a medical appointment. The PCP being applied by the respondent was that the claimant must work her contracted days which included 12 and 13 June 2025.
82. The question is then whether the claimant was placed at a disadvantage by this PCP. The disadvantage relied on by the claimant was that it would prevent her attending her medical appointment at the clinic in Lithuania. The difficulty for the claimant is that the appointment was not on either of these days but, rather, on Saturday 14 June. Having to work on 12 and 13 June 2025 does not, on the face of it, prevent the claimant from attending the appointment on 14 June 2025.
83. It could be said that it was not possible for the claimant to travel to Lithuania later than she had planned to be there on time for her appointment. However, no evidence was led by the claimant about this.

84. The burden of proving that the PCP placed the claimant at a disadvantage lies with her and she has not discharged this burden. The Tribunal cannot, therefore, conclude that the duty to make reasonable adjustments was engaged in respect of this matter.
85. In any event, the Tribunal does not consider that the adjustment sought by the claimant was reasonable. As set out above, if the claimant was absent on those days then the respondent could not meet their legal obligations in respect of staff to child ratios. It cannot be reasonable for a respondent to make an adjustment which would effectively mean that they would either be unable to operate on the days in question (with the effect on both the business and their service users) or that they would operate unlawfully with the potential consequences of that.
86. In these circumstances, there was no breach of the duty to make reasonable adjustments in respect of the request for time off to attend a medical appointment.
87. In light of the fact that the claims under the Equality Act fail on their merits, the Tribunal has not considered it necessary to determine whether the claimant was disabled as defined in s6 of the Act or whether the respondent had the requisite knowledge in terms of s15(2) and Paragraph 20 of Schedule 8 of the Act. Even if those issues were resolved in the claimant's favour, this would not change the decision above that there had been no discrimination arising from disability or a failure to comply with the duty to make reasonable adjustments.

Decision – unfair dismissal

88. At the case management hearing in this case, it was explained to the claimant that the Tribunal did not have jurisdiction to hear the case of unfair dismissal under the Employment Rights Act 1996 and it was confirmed that any claim in respect of her constructive dismissal would be pursued as a claim of discrimination.
89. However, the unfair dismissal claim was not withdrawn by the claimant nor has it been dismissed by the Tribunal. Technically speaking, it remains live and requires to be determined.
90. On the basis that the claimant does not have the two years' continuous service with the respondent required by s108 of the Employment Rights Act 1996, the Tribunal dismisses the claim of unfair dismissal for want of jurisdiction.

Decision – notice pay

91. The claim for notice pay can be disposed of fairly quickly. The claimant terminated her employment and so there is no obligation on the respondent to give any notice or make a payment in lieu of notice. The claimant did not give any

notice and so there is no obligation on the respondent to pay the claimant for any period of notice.

92. The claim for notice pay is, therefore, not well founded and is hereby dismissed.

Decision – holiday pay

93. Again, the claim for holiday pay can be dealt with fairly quickly. The claimant worked four days a week and so her annual holiday entitlement under the Working Time Regulations would have been 23 days (5.6 weeks x 4 days, rounded up to a whole day).
94. The claimant had worked 3 full months and so her pro-rated entitlement at the end of her employment was 6 days (25% of 23 days, rounded up to a whole day).
95. The claimant agreed that she had taken 6 days holiday during her employment and so she had received her full entitlement. She was not due any pay in lieu of untaken holidays.
96. The claim for holiday pay is, therefore, not well-founded and is hereby dismissed.

Decision – wages

97. It is not in dispute that the claimant worked on 4 June 2025 and was entitled to be paid for that day but was not paid. The claimant worked 7.5 hours that day and so would be entitled to be paid £97.50 (7.5 x £13 per hour).
98. The reason given by the respondent for why no payment was made to the claimant is that the claimant was overpaid earlier in her employment and the wages due for 4 June 2025 were offset against this overpayment.
99. A deduction to reimburse an employer for any overpayment of wages is excluded from the general principle in s13 of the 1996 Act by s14 of the Act. However, it is not enough for the respondent to assert this reason and there must be some evidence that there was an overpayment in order that the Tribunal can be satisfied that the exemption under s14 exists.
100. The respondent led no evidence whatsoever about the overpayment. They have simply asserted an overpayment of £164.60 with no explanation of how this sum is calculated and how the overpayment occurred. In these circumstances, there is no evidential basis on which the Tribunal can conclude that the exemption under s14 applies.
101. The Tribunal, therefore, finds that the respondent that the respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the

claimant the sum of £97.50 (Ninety seven pounds, fifty pence) subject to any deductions for tax and National Insurance.

Decision - payslips

102. The claimant alleges that the respondent failed to comply with the obligation under s8 of the Employment Rights Act.
103. This was raised as an amendment to the claim and the respondent made no objection to this. However, the Tribunal could not find any determination of the application to amend and, absent such a decision, this claim is not technically part of the case.
104. The Tribunal has a general power to make case management orders which includes the power to allow amendments to a claim or response in terms of Rule 30.
105. The case of *Selkent Bus Co Ltd v Moore* [1996] ICR 836 confirms the Tribunal's power to amend is a matter of judicial discretion taking into account all relevant factors and balancing the injustice and hardship to both parties in either allowing or refusing the amendment.
106. In this case, there is no hardship to the respondent. They have proceeded to defend this claim at the hearing and had no difficulty in presenting evidence to support their position that the claimant was provided with itemised pay statements.
107. The Tribunal, therefore, grants the amendment application and will now proceed to determine this claim.
108. Section 8 of the 1996 Act requires an employer to provide an itemised pay statement but does not stipulate the method by which that is delivered to the employee. The Tribunal accepts the evidence of the respondent's witnesses (which was unchallenged by the claimant) that pay statements were printed off and either handed to employees or left in the locked cabinet in the relevant playroom.
109. This is sufficient to discharge the statutory obligation on the respondent. The claimant led no evidence that, for example, she had checked the relevant cabinet and never found any payslip in her name. In her submissions, she stated that she was not aware of the fact that her payslips were in the cabinet but she did not put this to the respondent's witnesses in evidence when they stated that all staff were informed of this practice at induction.

110. In these circumstances, the Tribunal cannot conclude that the respondent failed to comply with the requirements of s8 of the Employment Rights Act 1996. This claim is, therefore, not well-founded and is hereby dismissed.

Date sent to parties

29 April 2026