



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr P Smith

**Respondent:** British Gas Services Limited

**Heard at:** Reading **On: 14, 15 and 17 April 2026**

**Before:** Employment Judge Gumbiti-Zimuto  
Mr K Rose and Mr M Bhatti, MBE

## Appearances

For the claimant: In person

For the respondent: Mr H Dhorajiwala, counsel

# RESERVED JUDGMENT

The claimant's complaints of unfair dismissal, breach of contract and disability discrimination are not well founded and are dismissed.

## REASONS

1. In a claim form presented on 19 June 2024 the claimant made complaints of unfair dismissal, disability discrimination and wrongful dismissal. The respondent denies the complaints.
2. The claimant's complaint of disability discrimination is based on section 20 and 21 Equality Act 2010. The case summary provides that: *"The claimant also believes he suffered discrimination on the grounds of his disability (relating to multiple sclerosis). His disability means that the claimant generally needs more time to complete tasks. He says that the tight deadline given by the Respondent to return the items taken from the skip meant that he suffered a substantial disadvantage when compared to colleagues who were not disabled. Those colleagues would have been able to complete their work tasks and return any items taken during the course of the working day. The claimant was not able to do so because of his disability. The claimant contends that it would have been reasonable to allow him additional time to return the items and that a failure to do so amounts to disability discrimination contrary to section 20 of the Equality Act 2010."*

3. The respondent prepared a draft list of issues which required further consideration at the start of proceedings. The list of issues was discussed with the parties and after setting out the unfair dismissal claim it was agreed that the issues in respect of the reasonable adjustments claim were as follows:
  - “3.2.1 Did the respondent apply a provision, criterion or practice (“PCP”)?”*
  - 3.2.2 The claimant relies upon the following PCPs:*
    - (a) Setting of a 1-day deadline of 12 January 2024 for the Amnesty.*
  - 3.2.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant’s disability? The claimant relies on the following:*
    - (a) The claimant could not return the items within the day, he could not do all his work tasks and return the items by the end of the day whereas his non disabled colleagues could.*
  - 3.2.4 Did the respondent know, or could it have reasonably been expected to know, that the claimant was likely to be placed at any such disadvantage?*
  - 3.2.5 If so, what steps could have been taken to avoid any such disadvantage?*
    - (a) To be given more time.*
  - 3.2.6 If so, would it have been reasonable for the respondent to have taken those steps and when?*
  - 3.2.7 Did the respondent fail to take those steps?”*
4. Additionally, during this hearing, the claimant has stated that his case was that the tight deadline given by the respondent to return the items taken from the skip meant that the claimant suffered a substantial disadvantage when compared to colleagues who were not disabled. Those colleagues would have been more easily able to complete their work tasks and return any items taken during the working day. It was more difficult for the claimant to do so because of his disability. The adjustment that the claimant required was to be given more time to return the items. The claimant says that he received a message that he “would be good until Monday” (15 January 2024). Which the claimant thought was an extension given by Brian Attfield.
5. The claimant’s complaint did not contain a claim based on section 15 Equality Act 2010.

6. The claimant gave evidence in support of his own case. The respondent relied on the evidence of Stephen Lawes (Engineer), Brian Attfield (Customer Delivery Manager) Keith Cook (Customer Delivery Manager), and Thomas Crockett (Area Customer Delivery Manager). All the witnesses produced a written statement as their evidence in chief. The Tribunal was also provided with a Trial Bundle of documents containing, 266 pages of documents.
7. The respondent employed the claimant as a Technical Repair Engineer from 3 May 2004 until the claimant's employment was terminated on 26 February 2024 when he was summarily dismissed for gross misconduct.
8. On 9 January 2024 the claimant attended a team briefing at Vaillant's<sup>1</sup> premises. On arrival, he observed an open skip containing mixed waste, including boilers and controllers. The claimant removed two controllers from the skip. After the team briefing meeting, the claimant and a colleague, Stephen Lawes, returned to the skip where the claimant took three boilers and placed them in his van. Stephen Lawes also took an item, a control panel, from the skip. According to Stephen Lawes, the claimant later told him that he intended to break down the boilers for parts to sell on eBay; this is disputed by the claimant.
9. On 11 January 2024 Brian Attfield sent a WhatsApp message to the team stating that some individuals had been seen on camera removing items from the skip. He asked anyone involved to call him urgently and then wrote, "You are not in trouble, I just need a word, but I need you to call me as it may mean we cannot use the venue anymore." No disciplinary warning or deadline was mentioned.
10. On 12 January 2024 Brian Attfield during a Teams call at 8:00 a.m. announced that an amnesty had been agreed and required that all items taken from the skip to be returned that day. The claimant says he joined the Teams call part-way through and missed key information, including any deadline for the return of items that day. Brian Attfield states that the amnesty deadline of 12 January was clear.
11. At 11:04 am, the claimant phoned Brian Attfield and informed him that he had taken items from the skip, the claimant states that no deadline was mentioned, and he was simply told to keep the items in his van. Brian Attfield cannot precisely recall what was said but contends that it would have been words to the effect of "if you bring everything back you will not be in trouble." Later messages requested the items but did not specify a deadline. The claimant says that he called Despatch to ask for time, the claimant however did not tell despatch the reason for the request; Despatch refused the claimant's request due to workload.
12. Despatch also relayed a message from Brian Attfield to the claimant stating that he was "good until Monday morning", which the claimant interpreted as an extension of the amnesty. The respondent disputes that interpretation. Brian Attfield states that the claimant had told Despatch he needed to go to Halfords to replace a number plate light, and that it was in response to this request that the message was sent indicating he was "good until Monday morning". It was not

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<sup>1</sup> One of the respondent's suppliers

intended to convey that the claimant had been granted an extension of the amnesty.

13. Stephen Lawes informed Brian Attfield that he had taken an item, and he returned it on day of the amnesty.
14. On 15 January 2024, the supplier contacted Brian Attfield and informed him that a British Gas engineer had been seen loading a boiler into a van. The registration number of the van matched that of the claimant's vehicle. Brian Attfield was told that the supplier considered this to be a serious matter involving theft. After taking advice, he decided that an investigation should be carried out and that the claimant should be suspended pending its outcome.
15. The claimant attempted to arrange the return of the items on 15 January 2024. He was instructed to attend a meeting at the Village Hotel in Farnborough, where he met with Brian Attfield, Chris Swan, and Paul Murphy (an experienced union representative acting as note-taker). The claimant was not a member of the union, and Paul Murphy was not present as his representative.
16. At the meeting, the claimant was suspended and issued with a suspension letter alleging that: "On Tuesday 9 January 2024, you removed items from a skip outside the Vaillant Building, Templer Avenue, Farnborough, without permission, which were the property of Vaillant." The claimant was instructed not to contact any members of his team. He was also told, and the letter stated, that he must not communicate with any of the respondent's "employees, contractors or customers unless authorised by Brian Attfield, CDM, or Chris Swan, ACDM."
17. The claimant states that before the meeting he had met up with Paul Murphy and had shown him the items that he had in his van that he was returning. Brian Attfield states that they found in the claimant's van additional items not previously disclosed by the claimant.
18. On 18 January 2024, Brian Attfield held a Teams meeting with the engineering team. The team was informed that the claimant had been suspended.
20. The claimant contends that, during that meeting, it was disclosed that he was under investigation for theft and fraud, and that colleagues were instructed not to contact him. This account is disputed by Brian Attfield, who denies giving further details beyond informing the team that the claimant had been suspended and that they were not to contact him. Brian Attfield states that the claimant was removed from the team's WhatsApp group to prevent communication with the team.
21. The claimant accepts that he telephoned Stephen Lawes and that he was contacted by another engineer, O. Brian Attfield states that, although he did not inform the team of the claimant's suspension in detail, the team was nevertheless aware that the claimant had been suspended.
22. The claimant states that his suspension and the surrounding circumstances caused him significant distress and exacerbated his MS symptoms. He contacted MyCare and his GP.

23. On 19 January 2024, the claimant received a letter from Phoebe Walton, a Fraud Investigator at British Gas, inviting him to attend an investigation interview on 25 January 2024 via Microsoft Teams. The investigation concerned allegations of theft and breach of the company's Code of Conduct. The claimant confirmed his attendance and requested rest breaks due to his MS diagnosis.
24. The investigation interview took place on 25 January 2024 and was attended by the claimant, Phoebe Walton (Investigator), Zowie Kaye (note-taker), and Ryan Cronin (colleague and representative). During the interview, the claimant stated that he was unaware that removing items from an open skip constituted a disciplinary offence. He also raised concerns about inconsistent treatment, noting that another engineer who had engaged in similar conduct remained in post.
25. The claimant was asked why he had not delivered the items to Brian Attfield's address. He responded that he did not know where Brian Attfield lived and denied receiving a call from him on 12 January regarding his whereabouts.
26. Following the interview, the claimant received a copy of the meeting notes. He subsequently contacted Paul Murphy, who appeared to have prior knowledge of the investigation and the identity of the investigator. The claimant inferred from this that confidential information about the investigation may have been improperly disclosed.
27. On 28 January 2024, the claimant wrote to Brian Attfield to raise a formal grievance. He stated that the treatment he had received throughout the process was personally targeted and unfair, and that he had not been treated in the same manner as Stephen Lawes, who was involved in the same situation.
28. The claimant said that he considered this to amount to victimisation and to be unreasonable. The claimant stated that it had a significant impact on his health.
29. The claimant was informed that he was required to attend a disciplinary hearing. He was advised that the allegations of theft and breach of the respondent's Code of Conduct could amount to gross misconduct. The claimant was provided with a summary of the investigation findings, along with relevant witness statements and supporting documents.
30. In relation to his grievance, the claimant was informed that the grievance procedure should not be used to raise complaints about disciplinary action. He was advised that, if he was unhappy with this, he should raise the matter during the disciplinary hearing.
31. The disciplinary hearing took place on 14 February 2024 and was attended by Keith Cook (chair), Jack Davis, Ash Chouhan (note-taker), the claimant, and his representative, Bryan Leigh.
32. At the outset, the purpose of the hearing was explained, and the claimant's grievance was considered alongside the disciplinary matters, as they were directly related.

33. During the hearing, the claimant reiterated the points raised in his grievance. These included concerns about communications to the team via WhatsApp, a lack of clarity regarding the amnesty arrangements, the fact that the items remained in his van and could have been returned, and the alleged inconsistency in treatment compared to a colleague. The claimant stated that he considered the process to be discriminatory and referred to the respondent's Code of Conduct, in particular its commitment to equal treatment.
34. The panel reviewed the investigation material, including statements from Stephen Lawes and Brian Attfield, as well as photographic evidence of items found in the claimant's van. The claimant denied describing the items as "stolen" and stated that he had intended to use them for training purposes.
35. The discussion addressed the amnesty process. The claimant accepted that he had attended a Teams call on the subject, although he stated that he had not been fully focused at the time. It was noted that he had informed Brian Attfield that he had taken items but had not provided full details. The claimant stated that based on communications involving the despatch team he believed he had additional time to return the items, he accepted that there had been no direct confirmation of an extension being obtained from Brian Attfield.
36. The circumstances surrounding the return of the items were explored. The claimant explained that he had attempted to arrange time during his working day but had not made direct contact with Brian Attfield and had continued with his duties. The panel considered whether sufficient steps had been taken to return the items.
37. The claimant admitted taking various items, including control panels, boilers, and pipework, but maintained that he did not believe it was wrong to remove items from a skip. He also stated that he had displayed some of the items openly during a team meeting without being challenged.
38. The claimant denied an allegation that he intended to sell the items. It was also acknowledged that the claimant had contacted a colleague following his suspension, contrary to the stated terms.
39. The claimant raised concerns about the treatment of another employee (Stephen Lawes), who had returned items under the amnesty and had not been suspended. This point was noted for further consideration.
40. The claimant highlighted his long service, good performance record, and lack of prior disciplinary issues. The hearing was then adjourned for a decision.
41. The respondent considered and rejected the claimant's grievance that he had been singled out or treated unfairly. It was determined that the claimant's circumstances differed from those of Stephen Lawes as the claimant had not returned the items within the amnesty period and had not been fully forthcoming about what he had taken. The respondent considered that the claimant had been aware, or ought to have been aware, of the seriousness of the situation based on communications issued to the team.

42. The respondent relied on its disciplinary policy, which categorises theft or unauthorised removal of property as gross misconduct, and on the company's Code of Conduct, which requires employees to act responsibly and avoid bringing the company into disrepute. It was considered relevant that the claimant had taken items from a skip at a supplier's premises while representing the company.
43. The respondent concluded that the claimant had not made sufficient efforts to return the items promptly or to communicate directly with his manager about doing so. It was also considered that the claimant had not demonstrated remorse or sufficient understanding of the seriousness of his actions, and that he had not been transparent about the full extent of the items taken.
44. The respondent also took into account that the claimant had contacted a colleague despite being instructed not to do so during his suspension. In relation to the claimant's health condition (multiple sclerosis), the respondent considered that appropriate adjustments had been made for the hearing and that it had not affected the handling of the matter.
45. Overall, the respondent concluded that the claimant's conduct amounted to gross misconduct, that trust and confidence had been undermined, and that dismissal without notice was an appropriate outcome notwithstanding the claimant's length of service and prior disciplinary record. The decision was communicated in writing on 26 February 2024, and the claimant was given a right of appeal.
46. Keith Cook and Brian Andrews hand-delivered a dismissal letter to the claimant's home without notice.
47. The claimant appealed, citing procedural unfairness, discrimination, and failure to make reasonable adjustments. The appeal was heard by Thomas Crockett on 21 March.
48. The appeal manager reviewed the investigation materials, disciplinary documents, and the claimant's appeal letter, and initially found no concerns with the investigation or the decision-making process. The appeal letter was considered to largely repeat points previously raised rather than introduce new evidence.
49. An appeal hearing took place on 21 March 2024. The claimant attended without representation and expanded on the grounds of appeal. His long service and clean disciplinary record were acknowledged and taken into account.
50. The appeal manager considered concerns raised by the claimant, including the method of delivery of the dismissal letter, which was accepted as not ideal but not affecting the fairness of the dismissal decision. The claimant's allegations of unfair treatment and discrimination were also considered; however, it was concluded that the difference in treatment between the claimant and a colleague arose from their respective conduct, particularly in relation to returning items and engaging with the amnesty process.
51. The claimant's understanding of the amnesty and the timing for returning items was discussed in detail. The appeal manager concluded that the claimant was aware, or ought reasonably to have been aware, of the need to return the items

promptly. It was noted that the claimant had not directly communicated with his manager when difficulties allegedly arose and that his account of events involving the despatch team was not fully supported by the available evidence.

52. Alleged inaccuracies in meeting notes were considered but were not regarded as material to the outcome, given that certain key facts—namely the taking of items and the failure to return them—were not in dispute. It was also accepted that information about the claimant's suspension should not have been shared with colleagues, although this was not considered to undermine the fairness of the dismissal.
53. The claimant's explanation for taking the items for training purposes, and his concerns about insufficient training, were considered but not accepted as justification. His explanation that his health condition affected his ability to comply with the amnesty was also considered; however, it was concluded that no adjustment to the amnesty timeframe had been requested or shown to be necessary.
54. Following the appeal hearing, the appeal manager concluded that the claimant had been given sufficient opportunity to return the items and had not done so, and that his conduct and lack of engagement in resolving the issue justified dismissal. The original decision to dismiss was therefore upheld, with the conclusion that trust and confidence had been irreparably damaged.
55. The claimant started ACAS early conciliation on 8 April, the certificate was issued on 20 May and the claimant presented his complaint to the Tribunal on 19 June 2024.

### Law

56. Section 98 of the Employment Rights Act 1996 ("ERA") provides that in determining whether the dismissal of an employee was fair or unfair, it shall be for the employer to show- (a) the reason (or, if there was more than one, the principal reason) for the dismissal, and (b) that it is a reason falling within subsection (2). The conduct of an employee is a reason falling within the subsection.
57. Where an employer has established a potentially fair reason, the determination of whether the dismissal is fair or unfair (having regard to the reason shown by the employer): (a) depends on whether, in all the circumstances (including the size and administrative resources of the employer's undertaking), the employer acted reasonably or unreasonably in treating that reason as sufficient to justify dismissing the employee; and (b) must be determined in accordance with equity and the substantial merits of the case.
58. The respondent must show that: (a) it believed the claimant was guilty of misconduct; (b) it had reasonable grounds for that belief; and (c) at the time it formed that belief, it had carried out as much investigation into the matter as was reasonable in the circumstances.

59. It is not necessary for the Tribunal itself to have reached the same conclusion on those facts.<sup>2</sup>
60. After considering the investigatory and disciplinary process, the Tribunal has to consider the reasonableness of the employer's decision to dismiss and (not substituting its own decision as to what was the right course to adopt for that of the employer) must decide whether the claimant's dismissal "fell within a band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair"<sup>3</sup>. The burden is neutral at this stage: the Tribunal has to make its decision based upon the evidence of the claimant and respondent with neither having the burden of proving reasonableness.
61. The duty to make reasonable adjustments is contained in sections 20 and 21 Equality Act 2010. Section 20 provides that: "(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 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." Section 21 (1) provides: "A failure to comply with the first requirement is a failure to comply with a duty to make reasonable adjustments". Section 21(2) provides: "A discriminates against a disabled person if A fails to comply with the duty in relation to that person".
62. A PCP is not defined in the Act but should be construed widely, including: Policies, Rules, Practices, Arrangements, Qualifications, One-off decision or actions (in some cases).
63. However, it must not be an artificial construct derived from isolated acts against a particular employee.
64. We have been referred to the following passage from Ishola v Transport for London [2020] EWCA Civ 112:

37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other

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<sup>2</sup> British Home Stores Limited v Burchell [1978] IRLR 379

<sup>3</sup> Iceland Frozen Foods v Jones [1982] IRLR 439

relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

38. In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one.

65. It is essential to identify clearly the nature and extent of the substantial disadvantage suffered by the claimant. "Substantial" means more than minor or trivial. There must be causative nexus between disability relied on and the substantial disadvantage the Tribunal should look at the overall picture when considering the effects of any disabilities.

66. Whether an adjustment is reasonable is to be assessed objectively.

67. An employer is not under a duty to make reasonable adjustments if it did not know, and could not reasonably have been expected to know that the employee had a disability, and/or was likely to be placed at the relevant disadvantage. Knowledge of a disability alone is insufficient; The employer must also have knowledge of the specific disadvantage relied upon.

#### Claimant's submissions

68. The claimant stated that he had worked for the respondent for 20 years providing consistent and exemplary service.

69. The claimant says that he took items under a genuine belief that they were discarded waste. The skip was open, unsecured and located in a car park, the claimant says he had no dishonest intent.

70. When he learned from Brian's Team WhatsApp group on 11 January 2024 from Brian Attfield and Paul Murphy that taking items was not permitted, he immediately accepted this and was willing to return items.

71. The Microsoft Teams call at 8 am on 12 January 2024 for Brian Attfield's team was before the claimant's start time of 8.30 am. The claimant states that this placed him at a disadvantage, compared to Stephen Lawes who also removed

items and whose shift started at 8am and who therefore was able to follow, contribute to the discussion and had an earlier opportunity to respond.

72. When the claimant was able to contact Brian Attfield to report that he had removed items the claimant says that he was told words to the effect that “if I bring everything back, I would not be in trouble”. The claimant states that no deadline was imposed, and he relied on this.
73. After receiving a further message from Brian Attfield to get the items to him the claimant contacted Despatch and asked to have a job taken of him, but this was refused.
74. The claimant says that after Brian Attfield’s message at 1.21pm he was not contacted again to check on his progress or to be told that Brian Attfield was waiting for him at Valliant.
75. The claimant stated that he has multiple sclerosis, a fluctuating neurological condition that means he requires additional time to process information and respond appropriately, it affects his energy levels and cognitive processing, particularly when under pressure. The claimant was not given any extra time to return the items.
76. The claimant says that anticipatory reasonable adjustments could have included allowing the claimant additional time to return the items, reducing his workload on the day, providing clear direct follow up communication. No such adjustments were made. This failure placed the claimant at a substantial disadvantage.<sup>4</sup>
77. The claimant says that the respondent is under a duty to make reasonable adjustments, the failure to do so placed him at a substantial disadvantage. This breached the respondent’s duty under the Equality Act 2010, sections 20 and 21. The respondent had a duty to make reasonable adjustments, including anticipatory adjustments, to avoid substantial disadvantage.
78. The failure to make adjustments placed the claimant at substantial disadvantage because he was expected to respond quickly without additional time; the claimant was required to manage a full workload while also trying to address the issue of returning the items.
79. The claimant states that he returned the items at the earliest opportunity on Monday 15 January.
80. In his closing submissions the claimant says that he relies on section 15 Equality Act 2010, discrimination arising from disability.
81. The claimant says that his summary dismissal was unfavourable treatment. The something arising in consequence of disability was his slower processing and need for additional time to respond under pressure, and the claimant’s inability to

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<sup>4</sup> In employment cases the employer owes a duty to a known individual with a known disability and a known substantial disadvantage. The anticipatory duty applies in cases involving service providers, educational institutions, and associations.

act within the same time frame as others. The disadvantage contributed to the timing and handling of returning the item.

82. The claimant says that the respondent cannot show that the treatment was proportionate means of achieving a legitimate aim because less discriminatory alternatives were available, warnings, adjustments or lesser actions.
83. Stephen Lawes who also took items was not dismissed. The claimant's dismissal was disproportionate.
84. The claimant says that the way that the summary dismissal was carried out was unreasonable and exacerbated the impact. Keith Cook and Brian Andrews had attended at the claimant's house unannounced to deliver the summary dismissal and collect company property causing distress to the claimant's family. The claimant says that this was in breach of the respondent's code.
85. The claimant says that the decision to give a summary dismissal was outside the range of reasonable responses and therefore unfair.

#### Respondent's Submissions

##### Unfair Dismissal

86. The respondent submits that the claimant accepted removing items from a skip at a key supplier's premises and intended to dismantle and sell them. On 11 January 2024, Brian Attfield warned via WhatsApp that the conduct was serious, describing it as theft and stressing the need to return the items. The claimant accepted that the seriousness would have been clear and despite statements to the contrary must have understood that the amnesty expired on 12 January. His request for an extension indicates awareness of this deadline. Despite this, he did not attempt to return the items until 15 January.
87. The respondent contends that a reasonable investigation was carried out and a genuine belief in misconduct was formed. Following a fair disciplinary process, the decision-maker concluded that the claimant had committed theft, brought the respondent into disrepute, and breached the Code of Conduct, justifying summary dismissal on 26 February 2024.
88. On appeal, the claimant argued for the first time that reasonable adjustments were required, suggesting he needed additional time due to MS symptoms. However, he did not explain how these prevented compliance with the amnesty. The appeal officer upheld the dismissal, finding that the claimant had sufficient opportunity to return the items and that trust and confidence had been irreparably damaged.
89. The respondent submits that the Burchell test is satisfied. A procedural complaint about alleged disclosure of the claimant's suspension and the reasons for the suspension during a Teams call is denied and, in any event, is said to be immaterial. Dismissal was within the range of reasonable responses, and there was no inconsistency with a comparator who complied with the amnesty.

##### Reasonable Adjustments

90. The respondent submits that there was no failure to make reasonable adjustments. First, it argues that no relevant provision, criterion or practice (PCP) existed, as the alleged PCP—the amnesty—was a one-off instruction rather than an ongoing policy or practice.
91. Secondly, the claimant did not suffer any substantial disadvantage. He failed to identify or evidence any specific disadvantage arising from the alleged PCP. While he suggested he required additional time during the investigation, he did not explain how this created a substantial disadvantage. Occupational health evidence indicated no functional impairment affecting his role or ability to meet deadlines.
92. Thirdly, the claimant did not explain how any adjustment would have alleviated the alleged disadvantage. Fourthly, the respondent contends it had no knowledge of any disability giving rise to a duty to make adjustments.
93. Finally, the respondent submits that extending the amnesty would not have been reasonable, given its commercial context and the claimant's admitted conduct.

### Conclusions

#### Wrongful dismissal

94. The claimant committed an act of gross misconduct and is therefore not entitled to any notice pay.
95. The claimant removed items from a skip located on the premises of one of the respondent's key suppliers. The taking of these items was unauthorised, the claimant made no effort to check whether the taking of the items was permissible. The claimant's intention in taking the items as informed to Stephen Lawes was to break down the boilers and sell the parts on eBay. The claimant was not transparent about all the items that he had taken.

#### Unfair dismissal

96. The evidence clearly supports the conclusions the claimant removed items from a skip located on the premises of one of the respondent's key suppliers. The claimant informed Stephen Lawes that he intended to break down the boilers and sell the parts on eBay.
97. On 11 January 2024, Brian Attfield sent a message via a WhatsApp group chat involving the claimant, making clear the seriousness of the situation, characterising the conduct as theft, and emphasising the importance of returning the items. The claimant accepted in evidence that the severity of the situation would have been clear to any reasonable person reading those messages.
98. The claimant must also have understood that the amnesty expired on 12 January 2024. On his own case, he sought an extension of time through Despatch; such a request would only have been necessary if he understood a deadline existed and was imminent. Despite this, the claimant took no steps to return any items until 15 January 2024, after the expiry of the amnesty.

99. The respondent conducted a reasonable investigation into the claimant's conduct and formed a genuine belief in his misconduct. The disciplinary process conducted by Keith Cook was fair and enabled him to reach that belief on reasonable grounds. Keith Cook was entitled to conclude that the claimant had committed theft from Valliant, had thereby brought the respondent into disrepute, and had breached the respondent's Code of Conduct.
100. These matters justified summary dismissal, which took place on 26 February 2024.
101. The claimant's appeal was considered by Thomas Crockett. During the appeal, the claimant raised, for the first time, a suggestion that he required reasonable adjustments. Thomas Crockett understood the claimant's complaint to be that reasonable adjustments had not been made in relation to the "sequence of events leading up to [his] suspension." The claimant stated at the appeal meeting that Brian Attfield "should have anticipated [he] would need extra time to hand back items." Mr Crockett interpreted this as a complaint that the claimant should have been afforded more time to comply with the amnesty. The claimant explained that he suffered from fatigue, tiredness, poor balance, and memory fog. However, he did not explain why those conditions prevented him from complying with the amnesty within the relevant timeframe.
102. Thomas Crockett upheld the decision to dismiss. Thomas Crockett concluded that the claimant had ample opportunity to return the items and had failed to cooperate in doing so. He further concluded that trust and confidence had been irreparably damaged and that the claimant could not continue in his role.
103. The reasons for the dismissal have not been substantively challenged by the claimant. The respondent had: a genuine belief in the claimant's misconduct; reasonable grounds for that belief; and reached that conclusion following a reasonable investigation. The test set out in Burchell is satisfied.
104. The claimant alleged that Brian Attfield during a Teams call on 18 January 2024 disclosed that the claimant had been suspended for theft and fraud. The claimant alleges that Brian Attfield informed colleagues that the claimant was under investigation for theft and fraud. While Brian Attfield denies this and states he merely indicated that the claimant had been suspended. There is a clash of evidence between the claimant and Brian Attfield on this issue, the claimant's account is based on hearsay.
105. Accepting the claimant's account, this issue has no bearing on the fairness of the dismissal. The allegations against the claimant arise from an act of theft from a third-party supplier and a failure to return items within a clearly communicated timeframe.
106. The dismissal need not be a sanction of last resort and in any event the claimant accepted in evidence that a final written warning would have been a reasonable sanction; in those circumstances, dismissal cannot be said to fall outside the band of reasonable responses.

107. The claimant's situation is materially distinguishable from that of Stephen Lawes, who complied with the amnesty. This is therefore not a case of inconsistent treatment.

108. The claimant's complaint of unfair dismissal is not well founded and is dismissed.

#### Disability discrimination

109. The claimant, in his closing submissions, sought to rely on section 15 of the Equality Act 2010. However, no claim under section 15 was pleaded (see paragraph 5 above). The claimant did not make any explicit application to amend his claim to include a complaint of unfavourable treatment arising from disability.

110. The claimant contends that his dismissal amounted to unfavourable treatment. He further submits that the "something" arising in consequence of his disability was his slower processing speed and his need for additional time to respond under pressure. He suggests that his inability to act within the same timeframe as others contributed to the timing and manner in which the items were returned.

111. However, this contention is not supported by the evidence given by the claimant. It is not addressed in his witness statement, which instead refers to the following matters: "Brian Attfield was aware of my MS diagnosis and the need for additional time due to fatigue," and "Since October 2021, my working hours were formally reduced to 32 hours per week due to MS fatigue." These points were made in the context of the claimant's case concerning the respondent's alleged failure to make reasonable adjustments.

112. To the extent that the claimant seeks to rely on section 15, no such claim forms part of the case as set out in the claim form or as articulated by the claimant at the Case Management Preliminary Hearing. Nor is the matter addressed in his evidence-in-chief. The claimant has not made any explicit application to amend his claim to rely on such a cause of action.

113. If such an application been made, the Tribunal would have considered the guidance in Selkent Bus Co Ltd v Moore [1996] ICR 836. Applying that guidance, this would not be a minor clarification or correction but rather an attempt to introduce a new cause of action, or to alter substantially the basis of the claim. The application would have been made at a very late stage and the issue was not raised at the Case Management Preliminary Hearing. The respondent would suffer significant prejudice, as the point arises only after the evidence has been heard and would require further evidence to be adduced. In particular, the claimant's existing evidence does not address the section 15 case, and further evidence would be required to support it. In those circumstances, had an application been made, it would have been refused.

114. In respect of the alleged failure to make reasonable adjustments, the Tribunal concludes that there was no provision, criterion or practice (PCP) applied to the claimant in the form of the amnesty. The alleged PCP is an artificial construct, arising from an attempt to characterise a one off instruction or requirement as a PCP.

115. Secondly, the claimant did not suffer any substantial disadvantage arising from the alleged PCP. The claimant has not identified any specific disadvantage, nor provided evidence demonstrating such disadvantage. While the claimant suggested that he required extra time to respond to questions during the investigation, he did not explain why this amounted to a substantial disadvantage, either in his appeal or otherwise. The occupational health reports indicate that the claimant had no functional difficulties in performing his role and that his condition did not materially affect his normal day to day activities. The recommended adjustments do not include any suggestion that the claimant was unable to comply with deadlines.
116. Thirdly, the claimant has failed to explain how any proposed adjustment would have alleviated any alleged disadvantage.
117. Fourthly, the respondent had no knowledge of any disability that would give rise to a duty to make reasonable adjustments.
118. Finally, the adjustment sought—namely an extension of time to comply with the amnesty— would not have been reasonable in any event. The terms of the amnesty were agreed in conjunction with a third-party supplier and had implications for that commercial relationship. Extending the amnesty in the context of admitted removal of items from the supplier's premises would not have been a reasonable step for the respondent to take.
119. The claimant's complaint of failing to make reasonable adjustments is not well founded and is dismissed.

Approved by:

Employment Judge Gumbiti-Zimuto

2 June 2026

JUDGMENT SENT TO THE PARTIES ON

4 June 2026

FOR THE TRIBUNAL OFFICE

## Notes

All judgments (apart from judgments under Rule 51) and any full written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a

transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)