EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 4103831/2025

Held in Glasgow on 5, 6 & 7 May 2026

Employment Judge O'Donnell

Mr S Cohen	**Claimant** **In Person**
Ross & Liddell Limited	**Respondent** **Represented by** **Mr Watt,** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:-

1. The claimant's application to amend is refused. This decision was given orally at the hearing.
2. The claimant was unfairly dismissed and the Tribunal awards the claimant the sum of £36,743.42 (Thirty six thousand, seven hundred and forty three pounds and forty two pence).
3. The claim of discrimination arising from disability under s15 of the Equality Act 2010 is not well-founded and is hereby dismissed.
4. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £12,585.68 (Twelve thousand, five hundred and eighty five pounds and sixty eight pence).
5. The respondent has failed to pay the claimant's holiday entitlement and is ordered to pay the claimant the sum of £1,890 (One thousand, eight hundred and ninety pounds).
6. The claimant's right to be accompanied at a disciplinary meeting under s10 of the Employment Relations Act 1999 was breached and the Tribunal awards the claimant compensation in respect of this in the sum of £1,663.20 (One thousand, six hundred and sixty three pounds and twenty pence).

7. The Tribunal makes an additional award under s38 of the Employment Act 2002 in the sum of £1,663.20 (One thousand, six hundred and sixty three pounds and twenty pence).

REASONS

Introduction

1. The claimant has brought the following complaints against the respondent:-

    a. Unfair dismissal under s103A (making a protected disclosure) or s104 (asserting a statutory right) of the Employment Rights Act 1996. The protected disclosure and the assertion of statutory right is the same thing, that is, the claimant raising his entitlement to annual leave.
    b. Discrimination arising from disability under s15 of the Equality Act 2010. The claimant relies on his dyslexia and dyspraxia. The unfavourable treatment is the claimant's dismissal.
    c. A claim for wages in relation to underpayment of overtime, pay during his notice period and sick pay.
    d. A claim for pay in lieu of untaken holidays at the termination of his employment.
    e. A claim that his right to be accompanied to a disciplinary hearing (s10 of the Employment Relations Act 1999) was breached.
    f. A failure to provide him with a statement of terms and conditions of employment within the time specified in s1 of the Employment Rights Act 1996.

2. The respondent denies that the claimant was unfairly dismissed or that his dismissal amounts to discrimination. They also dispute that his right to be accompanied was breached and that they failed to comply with s1 of the 1996 Act.

3. The respondent accepts that the claim is entitled to payments in respect of overtime, sick pay, holiday pay and for his notice period but dispute the amounts due.

Amendment

4. At the outset of the hearing, the Tribunal dealt with an application to amend his claim made by the claimant on 24 February 2026 (with supplementary submissions lodged on 9 April 2026). An oral judgment in the terms below was given at the hearing.

5. 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.

6. 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. The case identifies three particular factors that the Tribunal should bear in mind when exercising this discretion; the nature of the amendment; the applicability of any time limits; the timing and manner of the amendment.

7. The Tribunal considers that it is appropriate to address each of the specific factors highlighted in ***Selkent***, consider any other relevant factors and then take all of those into account in balancing the injustice and hardship to all sides.

8. First, there is the nature of the amendment itself which is to add a new cause of action, that is, a claim that the respondent failed to comply with the duty to make reasonable adjustments in terms of ss20 & 21 of the Equality Act 2010.

9. The claimant accepts, in his email of 9 April 2026, that he is seeking to add this claim but says that this claim arises from the same facts as his existing claim for discrimination arising from disability under s15 of the Equality Act.

10. However, even taking into account of the fact that the claimant is a party litigant and giving the most generous reading of the ET1 and paper apart, the Tribunal does not consider that the ET1 sets out any facts from which a claim of reasonable adjustments could be identified. For example, the ET1 does not set out anything from which it can be inferred which of the three requirements for the duty to exist (s20(3)-(5)of the Equality Act) are said to apply, how the relevant requirement placed the claimant at a substantial disadvantage and what adjustments it is said would have avoided any such disadvantage.

11. The Tribunal notes that the only claim under the Equality Act identified at the case management hearing on 4 February 2026 was the claim under s15 and this was based on what was set out in the ET1. It was not suggested, at that stage, that there was a claim under ss20 & 21 of the Act pled in the ET1 which needed specification but, rather, the only claim identified was the claim under s15.

12. It may be that the claimant considers that any claim relating to reasonable adjustments arises from the same factual matrix but he has not pled such a

claim nor has he, in his ET1 and paper apart, offered to prove facts which form the basis of such a claim.

13. In these circumstances, the Tribunal considers that the amendment seeks to add a wholly new claim which would require further specification before the respondent had fair notice of the case it had to answer and the Tribunal would know what issue it had to determine.

14. Second, there is the issue of the applicability of time limits. A new claim being raised now is clearly out of time; the last date on which any breach of the duty to make reasonable adjustments could have occurred was 18 July 2025 when he was dismissed and so the claim is clearly out of time.

15. There are, however, a number of caveats or qualifications in relation to the issue of time bar that is relevant to the Tribunal's consideration.

    a. The first caveat or qualification is that the Tribunal does have a broad discretion to hear a claim out of time under s123(1)(b) EqA.

    b. The second caveat and qualification is that the fact that a claim lodged now would be out of time is not fatal to the application to amend (***Transport and General Workers Union v Safeway Stores Ltd*** UKEAT/0092/07).

    c. The third and final caveat in respect of time limits is that, if the amendment is allowed, the respondent is not deprived of the opportunity to raise the time bar defence and this defence (along with the issue of the Tribunal's discretion to hear any claim out of time) can be determined subsequently (***Galilee v Commissioner of Police of the Metropolis*** [2018] ICR 634 and the more recent decision of ***Douglas v North Lanarkshire Council*** [2024] EAT 194).

16. Third, there is the factor as to the timing and manner of the application. The claimant made a first application on 24 February 2026 seeking to add the claim under ss20 & 21 of the Equality Act. However, he set out no additional facts or basis for that claim at the time. In their reply of 12 March 2026, the respondent makes the point that this prejudices them given that the claimant simply makes unsupported references to sections of the Act. The claimant expands upon his application in an email of 9 April 2026 stating that the facts on which the amendment relies are those facts which were already part of his case.

17. In these circumstances, the complete application which the Tribunal is deciding at the final hearing was not provided until 9 April 2026, two months after the case management hearing where the need to amend was first identified and only a few weeks before the final hearing.

18. Turning to the balance of injustice and hardship between the parties, the Tribunal considered that there would be only a limited prejudice to the claimant if the application was refused. He would not be precluded from pursuing his existing claims of unfair dismissal, discrimination arising from disability, failure to allow him to be accompanied, payments due on termination and failure to provide a written statement of terms and conditions of employment. He would simply be prevented from pursuing this one claim.

19. The Tribunal does accept that the respondent would be prejudiced if the application was allowed. As the application stands, they would not have sufficient specification to know the case they have to answer. Although that could be remedied by requiring the claimant to provide specification, this would delay the Tribunal process and put the final hearing at risk.

20. Combined with the fact that the respondent's agent would need to be allowed to take instructions in relation to the new claim and the respondent would likely need to amend its ET3 in reply (in order that the claimant had fair notice of any defence to the new claim) then it is likely that, if the amendment was allowed, the final hearing would need to be discharged and relisted at a later date. This is clearly a prejudice to the respondent (and, indeed, the claimant).

21. In these circumstances, taking account of all the matters set out above, the Tribunal refuses the claimant's application to amend his claim.

Evidence

22. The Tribunal heard evidence from the following witnesses:-

    a. The claimant.
    b. Jennifer Harkins (JH) – the respondent's director of operations who made the decision to dismiss the claimant.
    c. Jasmine McKenna (JM) – an associate director of the respondent.

23. There was an agreed file of documents prepared by the parties. It was not paginated but rather each document was numbered split between the claimant's documents and the respondent's documents. There were then internal page numbers for each document. Where the Tribunal makes a

reference to a document below then it will use C to identify one of the claimant's documents and R for the respondent's documents. The number of the document will then appear followed by the internal page number.

24. The factual matrix in this case was relatively narrow, focussed on a meeting on 18 July 2025 which resulted in the claimant's dismissal. The broad sequence of events and what occurred at that meeting is not in dispute but some of the detail is disputed.

25. The claimant made a covert recording of the meeting and produced a transcript which appears at C1. The respondent accepted that the transcript was an accurate reflection of the recording but did not accept that the recording accurately reflected what was said at the meeting.

26. The respondent produced their own minute of the meeting at R3. This was not a verbatim record of the meeting and was clearly a summary prepared after the meeting based on notes made at the meeting. There was no evidence given as to when it was prepared and it was framed in what might be called "sanitised" wording, summarising what was said rather than recording what was actually said.

27. The two documents are broadly similar but there are some differences. For example, R3 starts with JM telling the claimant what the meeting was about whereas C1 shows that the claimant was not told this at the outset and he had to ask several questions before being told the purpose of the meeting.

28. The respondent's position was that the claimant had edited the recording and that parts of the meeting was missing but nothing was put to the claimant in cross-examination as to what had been edited or what was missing. In their evidence, the respondent's witnesses only referred to the claimant repeatedly saying that he was going to take the respondent to a Tribunal. Given that any such assertions would support the claimant's case that he was asserting a statutory right, it would not make sense for him to remove such statements.

29. The Tribunal considers that the respondent's witnesses were not reliable in relation to this matter and had misremembered what had happened at the meeting. This is entirely understandable given the passage of time since the meeting.

30. In these circumstances, the Tribunal prefers the claimant's transcript at C1 as being the accurate reflection of what was said at the meeting on 18 July 2025.

Findings in fact

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

32. The claimant was employed as a lift attendant by the respondent from 22 June 2024 until his employment terminated on 15 August 2025.

33. The claimant was employed to work 6 hours a week covering a Saturday shift. However, he regularly worked more hours than that and it was agreed between the parties that the claimant worked a total of 1450 hours overtime during his employment.

34. The claimant was paid £12 an hour up to 22 October 2024 and £12.60 an hour after that date. Under the terms of his contract (R1.2) overtime was to be paid at time and a half. It was not in dispute that the claimant was not paid at time and a half for any of the 1450 hours overtime which he worked and was only paid his basic hourly rate.

35. The respondent's holiday year was 1 January to 31 December (R1.1). The claimant did not apply for any holidays in the year 2024. He took one day's holiday in 2025.

36. The claimant had one day off sick in 2025 and was not paid for this day.

37. The claimant was provided with a statement of terms and conditions of employment (R1) in March 2025. On 3 March 2025, the claimant had an exchange of text messages with Stephanie Bruce (SB), a manager at the respondent, in which he queried his holiday entitlement (C4.5-6). SB asked if the claimant had received his contract and he asked if one had been sent. SB said one would have been sent and she could resend it.

38. The claimant subsequently received the document at R1 at some point in March 2025. This has a logo for the respondent at R1.1 which had recently been introduced and a different logo had been in use when the claimant started his employment.

39. On 18 July 2025, the claimant was telephoned by JM and asked to attend a meeting at the respondent's offices. He was not told the reason for the meeting or its purpose. He was concerned about this and sought advice from a friend who was an employment lawyer. The claimant decided to record the meeting on his phone.

40. A transcript of the recording is at C1 and the Tribunal makes the following relevant findings in fact from that transcript as to what was discussed at the meeting:-

a. Both JM and SB are present at the outset of the meeting along with the claimant.
b. JM opens the meeting by saying to the claimant that he probably knows why he was in the meeting. The claimant replies that he does not and JM makes reference to *"what just happened on site"* with SB but gives no more detail.
c. The claimant asks if the meeting is a disciplinary meeting. JM does not reply to this question and, instead, asks him what happened on site. The claimant replies that he needs to know what the meeting is because he may be entitled to have someone accompany him. JM replies that he is not entitled to have someone accompany him and they are just having a chat about what happened on site.
d. The claimant states that JM will not tell him what the meeting is and asks if it is an investigatory meeting. JM replies yes and the claimant then asks what she thinks happened on site. JM replies that the claimant swore in front of a member of her staff (this is a reference to SB) and also in front of one of the occupiers of the building. The claimant states that he could not recall swearing. He is asked again if he recalled swearing and he replies no.
e. JM then asks the claimant about comments he made to SB that he was entitled to a shift because he was covering for another employee who was absent. The claimant replies that he could not recall this.
f. JM states that it is not acceptable to swear in front of other staff and the claimant agrees with this.
g. JM then states that this was not *"the reason"* and that the reason he was in the meeting was that this was not the first time and there were other instances where he had *"snapped"*. She gives no detail of this even when the claimant asks for examples and states that he has no idea what she is talking about.
h. JM asks if the claimant is calling SB a liar and he says that he said he did not recall. JM then asserts that the claimant swore in front of a staff member. The claimant replies that he feels this is a leading question and that he is being asked to imagine that he has done something and to take the punishment for that.
i. Again, JM states that swearing is unacceptable and the claimant agrees. JM asked why it then happened and the claimant repeats that he could not recall it happening. He goes on to say that SB never said anything at the time.
j. JM returns to the question of whether the claimant is saying that SB is lying and he replies that he does not know what the politics are and that JM is putting words in his mouth.

k. JM then states that they formalise matters. It is not said at the time what this means other than that they will write to him to let him know it is not acceptable and cannot happen again. In response to a question from the Tribunal, JM clarified that she had intended to start a formal disciplinary process at this stage.

l. JM goes on to state that they would have to address the issue with the owners of the site.

m. She then states that they would not be considering the claimant for *"them shifts as well"* because of his attitude.

n. There is then an exchange between the claimant and JM about what is meant by his attitude with the claimant asserting that because he would not be "*railroaded like this"* they were refusing to give him shifts. JM asks him what he means and he replies that this is what she has just said. JM states that he made a comment to SB about his entitlement and the respondent has a policy. The claimant replies that he thinks he said to SB that he was entitled by law and then said to her to forget it and he should not have said anything.

o. At this stage, JM asks the claimant to not point at her and the claimant says he is not pointing at her. He asks whether she is telling him how he should move his body around and asks if she knows whether he is dyslexic and dyspraxic. JM replies that he does not have to point and the claimant replies that she does not understand his point. JM states that they are trying to have a conversation and the claimant asks her to address what he has said not how he looks. He goes on to say he will put his hands under his legs.

p. The claimant states that he thinks he said to SB that he might be entitled by law to the hours as he has been doing them regularly. JM asks what law. The claimant replies that he thinks he has been brought into the meeting because they do not like that he might know about the law and that he might be entitled to things they say he is not entitled to. He gives the example of his holiday entitlement; he states that he has been working 6 days a week since November and is being told that he is only entitled to 3 days holiday. He states that this is not only laughable but illegal and they do not know what they are doing.

q. JM repeats the assertion that the respondent does not know what it is doing and asks why the claimant has not done anything. The claimant states that he should and that he should take them to a Tribunal.

r. In response to this, JM asks the claimant to hold on and leaves the room. She returns with JH. Whilst she is out of the room, the claimant asks SB why she told JM about the comments he made about his entitlements and SB replies that she cannot talk to him.

s. JM returns with JH who introduces herself to the claimant. She asks what the problem is and the claimant replies he does not really know.

t. JH then says *"Right so you you're making accusations and stuff so talk me through your thoughts on tribunals and everything else you are talking about"*. The claimant replies that he thinks he is entitled to more holidays than he is being offered. JH replies that they can stop the whole thing there as the meeting is not about holidays but about him swearing in front of clients.

u. The claimant repeated that he could not recall swearing and that he had had a stressful day having had a row with his family. JH replied that they all have stressful days.

v. The claimant goes on to state that he agrees that you should not swear and JH asks what the problem is. The claimant states that he hopes she is there to try to solve this and not take sides. He goes on to state that he believes he has been called in because he said he believes he is entitled to something.

w. JH responds by stating that the claimant has been brought in because of his attitude in front of clients. She states that because the claimant is saying that he has not done it then they will need to speak to those present and get their witness statements. She states that when those confirm that he did swear then he has lied to his employer and that is a more serious offence. The claimant asks how he has lied by simply saying that he could not recall swearing.

x. JH asks the claimant not to *"sit back and swing with your chest out"* and the claimant asks why they keep telling him how he is supposed to but is cut off by JH who states that he is in with his employer, that he works for them and it is their job to speak to him about his attitude and performance. The claimant questions the reference to performance to which JH states that based on his attitude now, chewing gum, swinging on the chair and trying to get off on technicalities he has been brought in because of his attitude and the fact that he swore in front of a client.

y. The claimant goes to question what is meant about his attitude and JH states they are trying to establish facts. JH states that the claimant was swearing at SB in front of clients. The claimant asks whether it is now being said that he swore at SB and JM asks SB to repeat what was said.

z. SB stated that she was speaking to the claimant about other staff who wanted the same shift and that the claimant told her to *"tell them to go fuck themselves"*. SB stated that she told the claimant that that was not nice and JM added this was in front of clients.

aa. The claimant then stated that they should go get their witnesses to which JH replied *"You know what forget it. Just go, OK. What we'll do we'll just terminate your contract. If you are not interested in engaging with us in a formal way that's fine."*

bb. The claimant attempts to respond to this but JH says *"If you don't want to engage properly and go into this legal that you need to do then go.*

You're not gonna work for us if you're gonna have that attitude". The claimant asks if he is being sacked and JH states that they are not going to continue to employ him with the attitude that he has taken.

cc. The claimant asks if one slip of the tongue has lost him his job and JH replies *"no, not based on your attitude today"*. The claimant replies that his attitude was that he was being railroaded and JH responds that she is asking him to leave. She states that he was asked to come in and discuss things with his employer.

dd. The meeting concludes by the claimant stating that JM went out to get JH because he said he was entitled to more holiday and that she was exploiting him. JH asks the claimant to leave.

41. The claimant's dismissal was confirmed by letter dated 18 July 2025 (R2) which makes reference to the meeting that day and confirming that he is entitled to four weeks' notice. It is stated that his last day of employment will be 14 August 2025 and that he is not required to work during his notice period. No reason for dismissal is given. The letter concludes by setting out the claimant's right of appeal.

42. The claimant did not appeal his dismissal.

43. The claimant was not paid for his notice period. The claimant did not receive any pay in lieu of untaken holidays at the end of his employment.

44. Since his dismissal, the claimant has been looking for alternative jobs similar to his job with the respondent. He is studying for a Ph.D. and was looking for a job where he could fit his studies around work. He has not found an alternative job. He has not claimed state benefits.

Submissions

45. Both parties made 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

46. Section 103A of the Employment Rights Act 1996 (ERA) deems any dismissal to be unfair where the reason for the dismissal is that the employee made a "protected disclosure".

47. A disclosure is a protected disclosure if it meets the definition set out in s43A ERA read with ss43B-H.

48. Section 104 ERA deems a dismissal to be unfair where the reason for dismissal was that the employee assert a statutory right. There are a list of the relevant rights in s104(4) and this includes any rights under the Working Time Regulations 1998.

49. It was held in ***Maund v Penwith District Council*** [1984] IRLR 24 that the burden of proof regarding the reason for dismissal lies with the employer unless the employee does not have the requisite length of service to pursue a claim of "ordinary" unfair dismissal. If that is the case then the onus is on the employee.

50. The question of how the Tribunal should approach the burden of proof in relation to the reason for dismissal in cases involving claims of both "ordinary" and automatically unfair dismissal (in particular, whether the Tribunal should find the automatically unfair reason proven if the employer does not discharge the burden of showing a potentially fair reason) was addressed in ***Kuzel v Roche Products Ltd*** [2008] IRLR 530 by Mummery, LJ:-

"The ET must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the ET that the reason was what he asserted it was, it is open to the ET to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the ET must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced led by the employee on the basis of an automatically unfair dismissal on the basis of a different reason."

51. 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.

52. 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."

53. 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***
An employer (A) must not discriminate against an employee of A's (B)—
by dismissing B"

54. 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.

55. Any unfavourable treatment does not have to be *solely* by reason of the something arising from disability; if the something has a 'significant influence' on the treatment of a claimant then direct 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 ***Igen 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.

56. 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.

57. 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.

58. 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.

59. Section 27 of the ERA defines "wages" which include any fee, bonus, commission, holiday pay or other emolument referable to a worker's employment whether payable under the contract or otherwise. Section 27(2)(b) excludes the payment of expenses from the definition of "wages".

60. Regulations 13 and 13A of the Working Time Regulations (WTR) make provision for workers to receive 5.6 weeks' paid holidays each year.

61. Regulation 13(9) WTR states that leave must be taken in the year in which it is due. However, this is now subject to Regulations 13(14), (15) and (17) which allows an employee to carry over their leave if they are unable to take some or all of it because they have taken some other statutory leave (such as maternity leave), have been off sick or been prevented from taking leave by their employer.

62. Where a worker is an irregular hours worker as defined in Regulation 15F WTR then their entitlement to annual leave is calculated according to the criteria set out in Regulation 15B:-

"(2) The amount of annual leave to which an irregular hours worker, or a part-year worker, is entitled at any time during a leave year is the amount of annual leave that they have accrued in that year, plus the amount of annual leave (if any) that they have carried forward into that leave year, less the amount of annual leave (if any) that they have taken during that leave year.

(3) In each leave year, an irregular hours worker, or a part-year worker, accrues annual leave—

(a) during any period of sick leave or statutory leave, in accordance with regulation 15C, and

(b) otherwise, on the last day of each pay period at the rate of 12.07% of the number of hours that they have worked during that pay period.

(4) But a worker cannot, in any leave year, accrue more than 28 days of annual leave under this regulation.

(5) Where the amount of annual leave that has accrued in a particular case includes a fraction of an hour, the fraction is to be treated as zero if it is less than 30 minutes and one hour if it is 30 minutes or more than 30 minutes."

63. Where an irregular hours worker leaves employment part way through the leave year then Regulation 15E WTR for compensation to be paid to the worker in respect of untaken holidays in the following terms:-

"(1) This regulation applies to a worker to whom regulation 15B applies, in respect of any leave years beginning on or after 1st April 2024.

(2) Where—

(a) the worker's employment is terminated during the course of their leave year, and
(b) at the date on which the termination takes effect, the worker has not taken all the annual leave to which they are entitled under regulation 15B(2),
the worker's employer must make the worker a payment in lieu of that untaken leave.

(3) The payment due under paragraph (2) is—

(a) such sum as may be provided for in a relevant agreement for the purposes of this regulation, or
(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due under regulation 16 in respect of the untaken leave.

(4)…

(5) Paragraph(2) does not apply if the worker has in respect of the untaken leave mentioned in that paragraph been paid in the way described in regulation 16A."

64. Section 38 of the Employment Act 2002 provides that where the Tribunal finds in favour of a claimant in respect of proceedings listed in Schedule 5 of the Act and the Tribunal finds that the employer was in breach of its duties under section 1(1) or 4(1) of the Employment Rights Act 1996 then the Tribunal must increase the award to the claimant by a sum equivalent to two weeks' wages and can increase the award by a sum equivalent to four weeks' wages.

65. Section 1 of the 1996 Act states that an employer must give an employee a written statement setting out specific information about their terms and conditions of employment. The statement must be provided within two months of the employee commencing employment.

66. Section 10 of the Employment Relations Act 1999 gives an employee the right to be accompanied to any disciplinary hearing. A disciplinary hearing is defined in s13 of the Act as being any hearing which could result in:-

"

a) the administration of a formal warning to a worker by his employer,
b) the taking of some other action in respect of a worker by his employer, or
c) the confirmation of a warning issued or some other action taken."

67. Where a Tribunal finds that the right to be accompanied has been breached then it can order the employer to pay the employee an amount of compensation not exceeding two weeks' pay.

Decision – unfair dismissal

68. The Tribunal bears in mind that the claim for unfair dismissal is not one of "ordinary" unfair dismissal given that the claimant did not have two years' service at the termination of his employment. The consequence of this is that the Tribunal is not concerned with matters of procedural fairness and is only concerned with whether the reason for dismissal was one which fell within either s103A or s104 ERA.

69. The Tribunal is satisfied that the claimant did assert a statutory right at the meeting of 18 July 2025. He raised the fact that he was being given a lower holiday entitlement than he should have received given the hours he had been working and that he considered that he should take the respondent to a Tribunal. This is clearly an assertion of a statutory right which falls within s104 ERA (that is, he is asserting a right under the Working Time Regulations 1998 even if he did not specifically refer to that legislation).

70. The Tribunal is also satisfied that this assertion of his rights was one of the reasons for the claimant's dismissal. In her evidence-in-chief, when asked why she dismissed the claimant, JH stated that there was a breakdown in the relationship citing three reasons; the claimant's aggression to JM; the incident on site that day; the claimant threatening to take the respondent to Tribunal.

71. It is, therefore, clear that the claimant's assertion of his rights was one of the reasons for his dismissal. The question is whether this was the sole or principal reason for the claimant's dismissal.

72. It was clearly not the sole reason for dismissal given JH's evidence that other matters had been in her mind and so the question is whether it was the principal reason for dismissal.

73. The Tribunal does consider that the principal reason for the claimant's dismissal was that he had asserted a statutory right. In coming to that view, the Tribunal has taken into account the following matters:-

    a. Towards the start of the meeting and continuing throughout the meeting, JM raised issues about comments made by the claimant to SB about his entitlement to shifts. There was clearly an issue for the respondent about the claimant raising issues with what he perceived to be his legal entitlements (although not all of these related to the specific statutory right relied on by the claimant) in addition to any alleged misconduct that had occurred around the same time.
    b. Related to this, there is a degree of inconsistency in why the claimant was called into the meeting. Initially, JM states that it is about the incident that day but then makes reference to other, unspecified instances of the claimant *"snapping"* after she had asked him about what he said about being entitled to shifts. There is then a further change to talking about the claimant's attitude, again with no specification.
    c. The immediate reaction of JM to the claimant asserting his statutory rights was to leave the room and summon JH. The respondent has sought to argue that JM left the room because of the claimant's alleged aggressive behaviour but this is not borne out by the transcript; JM asks the claimant not to point at her but continues to engage with him and does not leave the room until the claimant raises the issue of holiday entitlement and says he should take the respondent to the Tribunal.
    d. Almost the very first question JH asks the claimant is about his *"thoughts on Tribunal"*. It is quite clear from this that this is the matter at the forefront of her mind when she comes into the meeting. It also shows that JM had told her about the claimant raising this issue as she could not know about it any other way. This stands at odds with her evidence that JM only asked her to attend the meeting because of the claimant's alleged aggressive behaviour.
    e. The Tribunal does not consider that the respondent's case in relation to the claimant's alleged aggressive behaviour at the meeting being one of the reasons for dismissal is credible or reliable for the following reasons:-
        i. As stated above, JM does not leave the meeting because of the claimant's behaviour as both she and JH sought to suggest in evidence. Rather, she left almost as soon as the claimant talked about going to a Tribunal.

ii. JH makes absolutely no mention of any alleged behaviour in the meeting by the claimant during the meeting; if it was something so serious that the respondent now describes it as gross misconduct then the Tribunal considers that this would have been discussed with the claimant.

iii. Indeed, if this was the reason why JM had asked JH to attend and why JH chose to join the meeting, the Tribunal would have expected JH to have said this to the claimant. The reason why someone had come into a meeting partway through would be almost the first thing that most managers would be expected to say. As noted above, almost the first thing that JH talks about is the claimant's reference to taking the respondent to a Tribunal.

iv. The alleged behaviour was not mentioned in the transcript and the Tribunal finds it very unusual that something which the respondent says was so serious and upsetting to JM was not raised by anyone with the claimant.

v. In fact, it was not even mentioned in the respondent's own minute of the meeting (R3), in the letter of dismissal at R2 (which gives no reason for dismissal at all) or in the ET3 as a reason for dismissal.

vi. If the claimant was behaving aggressively then it is somewhat odd that JM left SB in the room alone with him whilst she left to speak to JH, especially given that SB had raised the complaint about the claimant's alleged misconduct.

vii. The Tribunal considers that the respondent has, after the fact, sought to place a greater emphasis on the claimant's behaviour in the meeting than they gave it at the time. It has become a reason for dismissal when it was not at the time the claimant was dismissed.

f. In relation to the assertion of gross misconduct, this is not mentioned in the transcript, the letter of dismissal or the respondent's ET3. It is only mentioned in the minute at R3. It also stands at odds with the fact that the claimant was dismissed with notice. Again, the Tribunal considers that the assertion of gross misconduct is being made after the fact.

g. The only other reason given in evidence for the claimant's dismissal was the incident in which he was alleged to have sworn to SB in front of a client. However, JM had dealt with that earlier in the meeting and it was to proceed to a formal disciplinary process. It was not seen as something which would lead to the claimant being dismissed that day until the claimant had asserted his statutory right for holiday pay and that he should take the respondent to a Tribunal. The Tribunal considers that if he had not made this assertion he would not have been dismissed at that meeting.

h. The Tribunal does note that, in the transcript, JH talks about the claimant being unwilling to engage with the respondent when she tells him that he

is being dismissed. This was not given as a reason for dismissal in her evidence and the Tribunal notes that, in the transcript, she goes on to say that if the claimant does not want to engage with them and *"you want to go into this legal that you need to do then go. You're not gonna work for us if your* (sic) *gonna have that attitude"*. The reference to "legal" can only be a reference to the claimant's assertion of his statutory rights and taking the respondent to a Tribunal. There is a clear link between the assertion of his rights and his dismissal in this statement by JH.

i. Similarly, the claimant's attitude is talked about in the transcript in the context of his dismissal. The Tribunal is conscious that the term "attitude" can be a cover or smokescreen for someone asserting their legal rights. In the present case, there is no particular explanation of what it was about the claimant's attitude that merited dismissal and the quote above links attitude to the claimant's assertion of his rights.

74. In these circumstances, the Tribunal is satisfied that the claimant has discharged the burden of proof in showing that the principal reason for his dismissal was that he had asserted a statutory right. The claimant was therefore unfairly dismissed in terms of s104 of the Employment Rights Act.

75. Given this finding, the Tribunal does not consider that it is necessary to deal with the issues relating to the claim under s103A of the Act. Whether the assertion of his statutory rights also amounted to a protected disclosure makes no difference to the outcome of the unfair dismissal claim.

Decision – disability discrimination

76. The claim for disability discrimination can be dealt with in relatively short terms.

77. The "something" arising from disability relied on by the claimant is how he presented at the meeting of 18 July 2025; he alleges that any pointing of his hands or similar conduct was a manifestation of his dyspraxia and that he was dismissed by the respondent because this was being described as aggressive behaviour.

78. The Tribunal has found above that the claimant was not dismissed because of his alleged behaviour and that this has been advanced as a reason for dismissal after the fact.

79. In these circumstances, the "something" arising from disability was not the reason for dismissal or a significant influence on that decision. The claim for discrimination arising from disability is not well-founded and is hereby dismissed.

Decision – unfair dismissal remedies

80. There were a number of issues that the Tribunal required to determine in considering what compensation it would be just and equitable to award in respect of the claim for unfair dismissal.

81. First, the respondent has not made any submissions that the claimant contributed to his dismissal and the Tribunal does not consider that there is any evidential basis to make a deduction for contribution.

82. Second, given that the Tribunal has found that the claimant's dismissal was automatically unfair, there is no issue of procedural fairness for which a "***Polkey***" deduction would apply.

83. Third, there is no question of a failure to mitigate the claimant's loss. The burden of proving this lies on the respondent who has advanced no evidence or argument to discharge this burden. The claimant gave evidence that he had been looking for work that he could do whilst working on his doctoral thesis although he produced no supporting evidence. In the absence of any evidence from the respondent that there were suitable jobs for which the claimant could have applied but did not, the Tribunal accepts the claimant's evidence and finds that there has been no failure to mitigate loss.

84. Fourth, and finally, the claimant sought an uplift to his compensation in relation to a failure by the respondent to follow the ACAS Code of Practice. The Tribunal considers that the respondent wholly failed to comply with the ACAS Code given that the respondent did not comply with the Code at all. They simply moved to dismiss the claimant at what they described as a "chat" or at most an investigatory meeting. There was no notification to the claimant that he could be dismissed and he had no opportunity to discuss the issues that led to his dismissal.

85. This failure was wholly unreasonable; the respondent gave the claimant no opportunity to save his job by failing to follow any form of procedure. An uplift is, therefore, appropriate.

86. In terms of the amount of any uplift, the Tribunal considers that the wholesale failure by the respondent to act in accordance with the Code means that it is appropriate to award a 25% uplift. In coming to that view, the Tribunal has taken into account the actual amount represented by that percentage as well the size and resources of the respondent. In particular, the Tribunal considers that there are no mitigating factors that would lead it to award a lower amount.

87. However, there is the fact that the claimant also failed to comply with the Code; he was given the opportunity to appeal and did not do so. He gave no explanation why he did not appeal. Equally, the respondent led no evidence from which the Tribunal could conclude what may have happened if the claimant had appealed.

88. In these circumstances, the Tribunal considers that a reduction in the award is also appropriate. Taking account of all the circumstances, the Tribunal considers that a reduction of 10% is an appropriate amount.

89. This results in a net uplift of 15% to the award for unfair dismissal.

90. Turning now to the calculation of the award to be made. The claimant had less than two years' service and so there is no entitlement to basic award.

91. Turning to the compensatory award, there are a number of heads of damages; loss of past wages and loss of statutory rights. The Tribunal will address each of these in turn before considering whether the statutory cap applies.

92. In respect of the loss of past wages, the Tribunal considers it appropriate to award this from the date of termination (that is, 15 August 2025 when the claimant's notice expired) to the date of the Tribunal hearing (7 May 2026). This amounts to 38 weeks.

93. The claimant's pay fluctuated and the claimant has calculated an average over the last 12 weeks of his employment of £831.60. The respondent has not disputed this calculation and so the Tribunal has used this figure for the weekly wage.

94. The total loss of wages to the date of the Tribunal amounts to 38 x £831.60 = £31600.80.

95. The Tribunal, therefore, awards £31600.80 in respect of loss of past wages.

96. The claimant has not sought compensation for future loss.

97. The claimant has not claimed benefits and so the award will not be subject to recoupment provisions.

98. The claimant has sought £500 in respect of loss of statutory rights. However, the Tribunal considered that a more appropriate sum to award in respect of this head of compensation would be £350 given the period of employment and the statutory employment rights which the claimant had built up as a result.

99. The total unadjusted compensatory award is, therefore, £31950.80 This is less than the claimant's annual earnings and so the statutory cap does not apply.

100. The Tribunal awards a 15% uplift to the compensatory award as set out above which amounts to £4792.62. This brings the total compensatory award to £36743.42.

101. In these circumstances, the Tribunal makes a total award for unfair dismissal of £36,743.42 (Thirty six thousand, seven hundred and forty three pounds and forty two pence).

102. The Tribunal has used the claimant's gross pay to calculate this award and so there is no need for the figure to be grossed up to take account of the fact that it is above the £30000 threshold for tax in respect of damages for loss of office.

Decision – wages

103. It was agreed between parties that the claimant worked 1450 hours overtime over the whole of his employment. It was also agreed that he was entitled to be paid time and half for overtime but had only been paid his basic hourly rate.

104. The claimant was paid £12 an hour up to 22 October 2024 when his hourly rate increased to £12.60. This means that there was a deduction of £6 an hour for overtime up to 22 October 2024 and a deduction of £6.30 an hour for overtime worked after that date.

105. The claimant gave evidence that he worked 96.05 hours overtime prior to 22 October and 1354.25 hours after that date. The respondent did not dispute this split.

106. On this basis, there was a deduction of wages in respect of overtime of (96.05 x £6) + (1354.25 x £6.30) = £9108.08.

107. The respondent provided a different figure in their counter-schedule but this was based on a table of overtime hours (R4.4) which had a lower number of hours than that which was subsequently agreed to be correct by the respondent. The Tribunal, therefore, prefers the claimant's calculation.

108. The claimant was given 4 weeks' notice of his dismissal (as required by his contract) and was not required to attend work during this period. It was common ground that he was not paid for these weeks and so there had been a deduction of wages.

109. There was a dispute as to the rate of pay for these weeks. The respondent asserted that the claimant's contractual hours should be used whereas the claimant sought to use the average pay over his last 12 weeks of employment.

110. The contract is silent as to how pay over notice period should be calculated. The Tribunal considers that had the claimant been at work during his notice period he would have been working overtime at a level similar to the rest of his employment. The Tribunal therefore prefers the claimant's calculation of 4 weeks at £831.60 = £3326.40.

111. Finally, there was an agreed sum of £151.20 for sick pay due to the claimant for a sick day on 19 May 2025.

112. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of £12,585.68 (Twelve thousand, five hundred and eighty five pounds and sixty eight pence).

113. This sum has been calculated using gross figures and so will be subject to tax and National Insurance deductions. This will be a matter for parties.

Decision – holiday pay

114. Again, it is not in dispute that the claimant is due pay in lieu of untaken holidays at the end of his employment. Both parties agree that the claimant was an irregular hours worker in terms of Regulation 15F WTR and so his entitlement to holiday pay is calculated according to Regulations 15B and 15E WTR.

115. The claimant has sought to include his holidays from 2024 in the calculation; the respondent's holiday year is the calendar year and so any holidays in 2024 should have been taken by no later than 31 December 2024. The claimant did not take any holidays in 2024 but the Tribunal is not persuaded that he was prevented from doing so by the respondent; he did not lead any evidence that he sought to take holidays and was refused. Rather, the claimant simply did not ask for any holidays.

116. The claimant sought to argue that because he did not have his statement of terms and conditions he did not know how to take holidays but the Tribunal is not persuaded that this prevented him from taking holidays. The claimant could easily have asked for holidays.

117. For these reasons, the Tribunal has only awarded a sum for pay in lieu of untaken holidays based on the claimant's 2025 entitlement.

118. It was agreed between parties that the claimant worked 1121.5 hours overtime in 2025. The claimant's contractual hours of 6 hours a week must be added to this. There were 28 Saturdays in 2025 prior to the claimant's dismissal and so this amounts to 168 hours. Applying the figure of 12.07% to this produces a leave entitlement at the termination of employment of 156 hours (rounding up as required by the formula in WTR). The claimant took one day's holiday in 2025 so 6 hours has to be deducted to give an untaken amount of holidays of 150 hours.

119. The claimant's hourly rate at the time was £12.60 which gives a total pay in lieu of untaken holidays of £1,890 (One thousand, eight hundred and ninety pounds).

120. This sum has been calculated using gross figures and so will be subject to tax and National Insurance deductions. This will be a matter for parties.

Decision – right to be accompanied

121. The Tribunal considers that the meeting of 18 July 2025 was not a meeting which, at the outset, met the definition of a disciplinary meeting in s13 of the 1999 Act. It is quite clear from the transcript that there was no intention for the meeting to have any of the relevant outcomes and that a separate process would be initiated after the 18 July meeting. JM describes there being a formal process to be started and that the claimant would be written to about this. The Tribunal considers that, had matters been left at that, the meeting would only have been, at most, an investigatory meeting and not a disciplinary meeting. The claimant was not, therefore, entitled to be accompanied at that stage.

122. However, the position changed after JH entered the meeting. During the course of the part of the meeting which she conducted, the meeting became a disciplinary meeting. Once JH decided that dismissal of the claimant was going to be a potential outcome then the meeting became a disciplinary meeting and the claimant was entitled to be accompanied. He was not given this opportunity and so his right under s10 of the Employment Relations Act 1999 was breached.

123. The best practice (which would have accorded with the ACAS Code of Practice discussed above) would have been for JH to pause the meeting once she considered that the claimant was to have been dismissed and convened a proper disciplinary meeting in accordance with the respondent's disciplinary process. This would have avoided the respondent's failure to comply with the ACAS Code and ensured that the claimant's right to be accompanied was met.

124. In light of the finding above that the claimant's right to be accompanied was breached, the Tribunal makes an award of compensation to the claimant equal to two weeks' wages. The Tribunal uses the weekly wage used above to calculate the compensation for unfair dismissal (that is, £831.60). The amount awarded is, therefore, £1,663.20 (One thousand, six hundred and sixty three pounds and twenty pence).

Decision – additional award

125. The Tribunal is satisfied that the claimant was provided with a statement of terms and conditions of employment in accordance with s1 ERA in March 2025 and not at any earlier date. The respondent produced no evidence of the statement being provided to the claimant at any earlier date.

126. This is outside the time limit in s1 ERA for the respondent to have provided the claimant with the statement. They have, therefore, breached his rights in this respect. Having upheld claims which fall in Schedule 2 of the Employment Act 2002, the Tribunal makes an additional award under s38 of the 2002 Act in respect of this breach.

127. Such an award is sum equivalent to either two or four weeks' wages. The Tribunal considers an award equivalent to two weeks' wages is appropriate; the failure by the respondent appears to have been an oversight and the statement was provided as soon as the claimant said he had not received it; the claimant suffered no detriment or disadvantage as a result of the failure. In these circumstances, an award of four weeks' wages would be excessive.

128. The Tribunal, therefore, makes an additional award of £1,663.20 (One thousand, six hundred and sixty three pounds and twenty pence).

Date sent to Parties **15 May 2026**