



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103401/2025

Held in Edinburgh on 23 and 24 April 2025

Employment Judge M Sutherland

Mr R Keddie

**Claimant
In Person**

House of Danu Limited

**Respondent
Represented by
G Thomson,
Lay representative**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that the complaint of discrimination arising from disability does not succeed and is therefore dismissed.

REASONS

Introduction

1. The claimant brought a complaint of discrimination arising from disability. In summary the claimant asserts that he was dismissed because he took a break which arose in consequence of his disability. It was accepted by the respondent that the claimant was disabled by reason of diabetes and they knew or could

reasonably be expected to know that but it was denied that his dismissal arose in consequence of his disability.

2. A complaint of holiday pay was resolved between the parties during the hearing dismissed upon withdrawal by the claimant.
3. The claimant appeared on his own behalf and the respondent had lay representation.
4. Parties lodged separate bundles of documents.
5. The claimant gave evidence on his own behalf. Neil McGarvie (Operations Manager) and Caitlin Thomson (Manager) gave evidence on behalf of the respondent.
6. Both parties made brief oral submissions.
7. The following initials are used in respect of the following individuals –

Initials	Name	Job Title
CT	Caitlin Thomson	Manager
GT	Gordon Thomson	[not known] (Lay Rep)
KT	Keanu Thomson	Manager
KLT	Kieran LLwellyn Thomas	Executive Manager
MB	Marius Bezuidenhout	Websmart Media
NM	Neil McGarvie	Operational Manager
RK	Ross Keddie	Marketing Manager (Claimant)
SF	Sean Fughey	Director

Findings in fact

8. The Tribunal makes the following findings in fact:
9. The respondent is a holiday rental business operating in Edinburgh and the Highlands. It has around 5 members of staff.
10. RK (the claimant) was employed by the respondent as Marketing Manager working 20 hours a week. He was paid £1,416.66 (gross) a month. He initially performed that work as a self-employed contractor. He was issued with a contract of employment on 1 November 2024. He normally worked 3 days a

week starting at 10am and taking a 30 minute break for lunch. He worked mostly from home. He also undertook self-employed work for other businesses particularly during the summer months at music festivals.

11. RK has type 1 diabetes. He requires to inject insulin about ¼ hour before eating and to eat every 3 to 4 hours a day in order to stabilize his blood sugar levels.
12. In March 2025 80 Days was appointed to undertake some marketing work and RK was to assist with the onboarding process. In March 2025 RK agreed to transfer the company website from Websmart Media (an external provider of website services) to Ionos (another provider).
13. On 1 April at around 5.30pm MB of Websmart sent an email to RK copied to CT, NM, GT and KT stating: "...you will need to physically transfer everything over files, database emails etc to IONOS server. If you transfer the domains and update the name servers away from our servers everything will stop working – unless you've..."
14. On 1 April 2025 RK was working from home. CT, RK, KLT and NM were in live written communication with each other regarding significant issues that had arisen with the company website around 4pm and email system around 6.30 pm. Around 6pm RK confirmed that the website had been transferred. At around 6.40 pm, CT advised that SF can help with the website if needed. By the end of the evening KLT had restored the emails. However, the website remained down. Some of the customer bookings are secured through the website.
15. On 2 April RK advised the respondent team that he was going to try to get the website onto IONOS that morning. RK worked with MB, Websmart to try to resolve the issue. On 3 April RK advised the respondent team that "it would appear that the website is all up and grand on IONOS".
16. On 15 April RK advised the respondent team that "the bad news is that Marius [MB] appears not to have transferred the website to IONOS' servers, seems unwilling to do so".
17. On 15 April MB of Websmart Media sent an email to RK copied to CT, NM, GT and KLT stating:

"Just to be clear, you are responsible to transfer to your new host/provider. This has always been made very clear from when our services was terminated. As per my email 2 weeks ago, when you/IONOS had implied that there was an issue with the website backup we supplied — we just restored it into your IONOS account to show there was no issue. The restored backup is on this sub domain in your IONOS account <https://test.houseofdanu.co.uk/> — you have to make it

live and link it to your main domain www.houseofdanu.co.uk — I am sure IONOS can help with that”.

18. On 15 April NG and CT took the decision to dismiss RK having consulted with KT regarding the handling of the transfer of the website. GT and KT were then advised of that decision. An in person meeting had previously been scheduled to take place to discuss strategy on 17 April. At that meeting RK was advised that he was being dismissed with notice. RK was upset by being dismissed. He felt he had disappointed his partner. He later started therapy partly because of the dismissal.
19. Around 17 April another external provider was engaged to transfer the website to IONOS at a cost £750.
20. Following his dismissal RK earned £3k from his self-employed work in the summer months. He would normally earn £3k to 4k from self-employed work in the summer months but he was unable make arrangements in January and February to secure that work because he anticipated still being employed by the respondent.

Observations on the evidence

21. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur. Facts may be proven by direct evidence (primary facts) or by reasonable inference drawn from primary facts (secondary facts).
22. RK (the claimant) stated in evidence that on 1 April he had not eaten lunch (and had missed two injections), and at around 7.45pm pm he took a break only in order to inject insulin and to eat his dinner at home and that he did not have plans to go out for dinner. That was not considered credible for the following reasons.
23. At around 3pm RK stated: “Feels like we’ve done all the steps here. Just eating lunch. No forward motion from Marius [MB] to transfer” and then 30 minutes later: “Cool, I’m going to finish eating lunch and then will call”. When this was put to RK in cross examination he said he just said this to make a point and he had not in fact eaten lunch. That was not considered credible given that he requires to eat every 3 to 4 hours in order to stabilise his blood sugar, he was working from home and he had stated he had eaten. It was considered likely that he had eaten lunch that day and had injected before doing so (given that he requires to inject 15 minutes before eating).

24. Around 6.30pm RK stated: "I'm going to try and fix this in the 20 minutes before my dinner plans." Around 7pm RK stated "Cool, I'm hitting a brick wall with this and I'm starting to go downhill a bit", and subsequently "I need to go eat and stop staring at this. I'll be back at 9pm." At around 7.15pm RK stated: "Going out, catch you in two hours or so". RK logged off around 7.45pm and logged on briefly around 9.30pm. When this was put to RK in cross examination he said this was just a turn of phrase and it did not mean he had plans to go out for dinner and he required a 2 hour break in order to inject insulin and eat with a view to stabilising his blood sugar. That was not considered credible because RK ordinarily took a lunch break of 30 minutes for this purpose and further he stated he had dinner plans and was going out for 2 hours or so. It was considered likely that he required a 2 hour break because he had plans to go out for dinner.
25. Both NG and CT stated in evidence that they reached the decision to dismiss RK in consultation with KLT and that the trigger for the decision to dismiss was finding out on 15 April that RK had not transferred the website despite having advised he had done so on 3 April and having previously declined offers of help. NG said that there were prior issues with his performance and 80 days had been appointed to undertake some marketing work. CT stated in evidence that she was not happy that the website had gone down but then RK said he had fixed it, however it then transpired that it hadn't been transferred to the new server. NG stated that he had been irritated when RK stated on 1 April that he had dinner plans and was going out for 2 hours or so when there was a crisis with the website and emails but it was not the reason for dismissal. It contributed to a feeling that he did not take work seriously but it was definitely a minor issue. CT said in evidence she was annoyed by this at the time because it appeared he didn't think the situation was serious but it didn't have any bearing because he said the website had been transferred. When she found on 15 April it hadn't been she lost faith in his ability to do the job. Having regard to their evidence and the chronology it was not considered likely that his statement that he had dinner plans and was going out for 2 hours or so was a factor in the decision to dismiss. In any event it was apparent that their irritation/annoyance was caused by him taking a 2 hour break to go out for dinner and not the taking of a dinner break itself as he regularly did when he took a 30 minute lunch break.
26. The dismissal meeting of 17 April 2025 took place over a year ago and there were no notes of that meeting. RK stated in evidence that he was told at his dismissal meeting by NM and CT that he was being dismissed because of how he had handled the transfer of the website and that he taken a dinner break during a crisis situation on 1 April. NM stated in evidence that he did most of the talking at the meeting, that he told him his performance was disappointing and that following the appointment of 80 days his role was redundant (NM said he

mentioned redundancy to save his feelings). NM said in evidence that when RK asked why there was then a discussion about his performance in relation to the migration/transfer of the websites – that he said he had completed the task but 2 weeks later it transpired it had not been done and he then said it was some else’s responsibility – and his lack of progress in other aspects of marketing including creating guest packages was also mentioned. When it was put to her in cross examination, CT said she did not think the dinner date comment was raised by anyone at that meeting. She said NM did most of the talking. She said RK was shocked and upset and didn’t say much. NM didn’t recall the dinner date comment being mentioned but accepted it may have been. On 17 April NK sent a message stating “I recognise that you feel let down and don’t have much confidence. I do still think I’ve got value to add to the team” and seeking a meeting with GT and KT. GT replied by email declining the offer to meet. Having regard to the chronology, witness testimony and subsequent correspondence, it is not considered likely that RK was told on 17 April that he was being dismissed for taking a dinner break.

27. During the hearing there was some discussion about the claimant (RK) playing a recording in evidence of a conversation with KLT after his dismissal whereby KLT purportedly agreed with the claimant’s description of what was said during the dismissal meeting. The respondent objected because the recording had been made without KLT’s consent but had nevertheless prepared an AI generated transcript and there was some dispute about whether it was accurate. The claimant decided not to lodge the transcript it is understood because it was unclear whether KLT was agreeing or merely acknowledging the claimant’s description. There was also some discussion about the claimant making an application for a witness order compelling KLT to attend but the claimant decided not to do so it is understood because KLT was likely to be a reluctant witness if he was successfully compelled to attend, and it was likely to require a postponement of the hearing which may not be granted given the late application.

Parties’ submissions

71. The claimant’s brief oral submissions were in summary as follows –
- a. There is uncertainty as to the reason for his dismissal but his decision to take a break was a factor in that decision.
77. The respondent’s brief oral submissions were in summary as follows –
- a. It was apparent from the chronology that the claimant was dismissed because of poor performance including his failure to transfer the website and that he was not dismissed for taking a break to eat his dinner. There was no expression of frustration or annoyance over the dinner date between 1 April and his dismissal on 17 April.

Discrimination arising from disability

28. Section 15 EA provides:

“(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”.

29. The tribunal must determine whether the claimant was treated unfavorably, what caused that treatment, and whether that reason was something which arose in consequence of his disability (***Pnaiser v NHS England and anor*** 2016 IRLR 170, EAT).

30. The initial burden of proof is upon the claimant to establish facts from which it could be inferred that he was treated unfavorably because of something arising. The burden is then upon the respondent to show that the treatment had nothing whatsoever to do with the claimant's disability or that it was objectively justified.

Unfavourable treatment

31. Unfavourable treatment requires the claimant to have been put to a disadvantage (a “relatively low threshold”), but, unlike less favourable treatment, it requires no comparison with how a comparator was or would be treated (***Williams v Trustees of Swansea University Pension and Assurance Scheme*** [2019] IRLR 306). This raises two questions of fact: what was the treatment and was it unfavourable to the claimant?

32. The claimant was dismissed and that amounted to unfavourable treatment of him.

Reason for the treatment

33. What caused that treatment involves an examination of the putative discriminator's state of mind to determine the conscious or subconscious reason. It is sufficient if the something relied upon was more than a trivial part of the reason.

34. The approach to the question as to the reason for the treatment follows the approach taken to direct discrimination (***Pnaiser v NHS England*** [2016] IRLR 170, EAT). It is for the claimant to prove facts from which the tribunal *could* conclude, in the absence of an adequate explanation, that the respondent has treated the claimant unfavorably because of the something arising ('Stage 1')

prima facie case). If the claimant satisfies Stage 1, it is then for the respondent to prove that the respondent has not treated the claimant unfavourably because of the something arising (Stage 2) (or that the treatment was objectively justified).

35. The reason for the claimant's dismissal was that he had not transferred the website despite having advised he had done so and there were prior issues with his performance particularly with marketing packages. There was no reasonable basis upon which it could be inferred that the taking of a break to eat his dinner played any part in the reason for his dismissal. Whilst his statement that he had dinner plans and was going out for 2 hours or so had irritated NM and annoyed CT on 1 April it was not accepted that this played a part in the decision to dismiss made on 15 April and intimated on 17 April. In any event that irritation/annoyance was directed at him going out for dinner for 2 hours during a work crisis and was not directed at him taking a break simply to eat his dinner.

Something arising in consequence of disability

36. The something must arise in consequence of the claimant's disability. There must be a connection between the reason for the unfavourable treatment and the claimant's disability.
37. The consequences of a disability include anything which is the result, effect or outcome of a person's disability (Para 5.9 EHRC Code).
38. There may be multiple causal links between the disability and the something that causes unfavourable treatment.
39. Whether the something arose in consequence is an issue of objective fact and may entail a looser connection and may involve more than one link in the chain of consequences (***Sheikholeslami v University of Edinburgh*** UKEATS/0014/17/JW, EAT).
40. Even if his statement that he had dinner plans and was going out for 2 hours or so played a part in reaching the decision to dismiss (which was not accepted), that did not arise in consequence of the claimant's disability. His need to have a 30 minute dinner break (to inject insulin and to eat) arose in consequence of his disability but his plans to go out for dinner for 2 hours or so did not.

41. In conclusion the claimant's dismissal did not amount to discrimination arising from disability and the claim is accordingly dismissed.

Date sent to parties:

18 May 2026