



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100177/2026

Held in Dundee on 6 May 2026

Employment Judge R Phillips

Mrs M Jedrzejewicz

**Claimant
In Person
[via Ms A Pikul -
Interpreter]**

Exellerate Services UK Ltd

**Respondent
Represented by:
Ms S Newland -
Representative**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claimant's claim of automatic unfair dismissal for asserting a statutory right is unsuccessful and the claim is dismissed.

SUMMARY REASONS

1. Having decided to give an oral judgment and summary reasons (covering a brief explanation of why the tribunal has reached its decision), they are as follows:
2. The claimant's claim of automatic unfair dismissal for asserting a statutory right is unsuccessful and the claim is dismissed.
3. The claimant contended that her dismissal was automatically unfair on the basis that she had asserted a statutory right. The claimant's case was that on 28 January 2026 she messaged her line manager to request information about her annual leave entitlement and when she could take holidays and she was dismissed later that day by her line manager for having done so.
4. In this case, the Tribunal needed to consider whether the sole or principal reason for the Claimant's dismissal was the fact that the Claimant had (a) brought proceedings to enforce a relevant statutory right, or (b) alleged that the employer had infringed a relevant statutory right, namely rights conferred by the Working Time Regulations 1998. As the claimant had been employed by the respondent for less than two years it was for her to prove, on the

balance of probabilities, the reason for her dismissal was the automatically unfair reason of asserting a statutory right.

Facts

5. The claimant was scheduled to attend a shift on Saturday 24 January 2026 commencing at 19.00 until 22.00 at the Glenrothes Marks & Spencer. While travelling to her workplace, the claimant had unexpected car trouble and she could not complete her journey to work. The claimant did not contact her line manager or anyone else at her employer to explain what had happened or to request permission to be absent from this shift. The claimant had opportunity to contact her line manager in advance of her shift start time or if not by then, very shortly thereafter and certainly before the end of her shift at 22.00 that evening. The Claimant gave no warning that she could not fulfil her shift. Monday 26 January 2026 at 15.31 was the first time the Claimant informed the Respondent that she had not attended for her shift on Saturday 24 January 2026 at 19.00.
6. Clause 9 of the Claimant's signed employment contract deals with unauthorised absences. It states that *"Any absences that have not been properly authorised in advance by the Company (or which have not been properly notified to the Company) will be regarded as unauthorised. The Company ... in appropriate circumstances may take disciplinary action against you which could result in your summary dismissal."*
7. On 26 January 2026, Sarah Newland, Director of People Services, was informed of the claimant's unauthorised absence on Saturday 24 January by the claimant's line manager. This arose because the claimant's line manager was checking and approving payroll. Ms Newland formed the view that the claimant's absence on 24 January 2026 was unauthorised. Ms Newland made the decision to dismiss the claimant on 26 January 2026. The decision was not confirmed to the Claimant until a telephone call on 28 January 2026 at 14.51 because the dismissal script and related correspondence had to be prepared and approved by Ms Newland. The dismissal script and internal email recording the approval of the decision were not lodged in the Bundle or produced to Tribunal. The Respondent relied solely on the dismissal letter dated 29 January 2026 issued to the claimant and Ms Newland's oral evidence about the timing of the decision.
8. In her evidence, Ms Newland focussed on the claimant's absence without permission or authorisation on 24 January 2026. In the dismissal letter, there was a reference to the claimant's "failure to report your absences" and "you have repeatedly failed to do so in the correct manner which in turn has resulted in challenges arranging appropriate cover and caused operational issued".

Analysis & deliberations

9. As the Claimant had brought no proceedings against the Respondent to enforce holiday pay rights (per section 104(1)(a), ERA), the relevant statute required the Claimant to make an allegation that the Respondent had infringed a relevant statutory right: section 104(1)(b), ERA).
10. The WhatsApp message sent by the Claimant to her line manager on 28 January 2026 at 08.40 was the only interaction with her line manager about her holiday entitlement. It said: “hi, please write to me how many days of holiday I have left and whether I need to use them within a certain time or whether they can normally be carried over to this year?”.
11. The Tribunal considered very carefully the WhatsApp message, the Claimant’s evidence about it and any relevant context. The Claimant’s case was focussed on the words of the message only. The message amounted to no more than a request or enquiry for information about her entitlements and was not framed, and could not reasonably have been understood, as an allegation of breach of statutory duty. The end of the holiday year was 31 March 2025 and it was not an unusual request from an employee to check how many holidays they had left to make plans to use their remaining holidays. Nothing in that message suggested, either expressly or by necessary implication, that the Respondent was not complying, or was intending not to comply, with its statutory obligations in relation to the claimant’s holiday entitlement.
12. The Tribunal is satisfied that the message did not engage section 104(1)(b) because it did not allege the claimant’s statutory right concerning holiday pay had been, was being, or would be infringed by the respondent. For that reason, the Claimant’s claim of automatically unfair dismissal must fail.
13. However, the Respondent nevertheless produced evidence about the reason Ms Newland took the decision to terminate the claimant’s contract. As the decision to dismiss was taken before the claimant sent her message about her holiday entitlement, this could not have been played any part in the reason for the claimant’s dismissal. The Tribunal was satisfied that the Respondent’s reason for dismissal was the claimant’s unauthorised absence on 24 January 2026. This was a conduct issue. The cleaning duties which the Respondent had a contractual duty to Marks & Spencer to complete between 19.00 and 22.00 on 24 January 2026 were not performed and no alternative cover was arranged. The Respondent regarded this as a serious operational failure.
14. The claimant argued that this was just one single instance of absence. It was clear from clause 9 of the employment contract that unauthorised absence was a serious matter for the Respondent and could lead to summary

dismissal. The claimant also stated that there was a local arrangement agreed with her line manager that she was not to contact her at weekends. There was no local arrangement that allowed the claimant to fail to attend work and delay reporting it on the claimant's next working day (i.e. the Monday). The claimant also argued that she had returned to work without on 26 and 27 January without her line manager telling the claimant that her unauthorised absence was an unresolved issue for the respondent. In effect, the claimant contended that this amounted to a waiver of the issue. The respondent made a decision on 26 January 2026 about the unauthorised absence on 24 January and communicated that decision verbally on 28 January and in writing on 29 January. This was not a delay that prevented the respondent from taking disciplinary action against the claimant.

Conclusion

15. The reason for the Claimant's dismissal was her conduct on 24 January 2026, not because of her message on 28 January 2026 requesting information about her holiday entitlement.
16. The claim fails and is accordingly dismissed.

Date sent to parties

19 May 2026
