# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Kevin Croft

**Respondent:** Tesco Stores Limited

**Heard at:** Lincoln Magistrates' Court **On:** 3 to 5 June 2026

**Before:** Employment Judge Welch
Ms J Hallam
Mr J Purkis

**REPRESENTATION:**

**Claimant:** In person
**Respondent:** Ms Defriend, Counsel

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

## Detriment for making protected disclosure(s) section 47B ERA

1. The following complaints of being subjected to detriment for making a protected disclosure are not well-founded and are dismissed.

## Unlawful deductions from wages

1. The Tribunal does not have jurisdiction to consider the complaint of unlawful deductions from wages for sick pay on 8 August 2023, this having been presented out of time.

2. The remaining complaints of unlawful deductions from wages are not well-founded and are dismissed.

# RESERVED REASONS

**Background**

1. The claimant remains employed by the respondent. His employment commenced on 20 November 2014. The claimant presented his claim on 3 June 2024, following a period of ACAS early conciliation from 4 April to 8 May 2024.

2. The claim is for detriment for making protected disclosures, which he says were contained within his grievance dated 15 February 2024 relating to working through breaks and not being paid for them. The claimant also claims unlawful deductions from wages in respect of breaks worked which were not paid for and during what he views as his suspension.

**The proceedings**

3. The claimant brought the following complaints:

    a. Detriments under section 47B(1) Employment Rights Act 1996 (‘ERA’); and

    b. Unlawful deductions from wages.

4. There was a case management preliminary hearing on 1 October 2024 before REJ Clarke. The parties agreed on a list of issues as set out below.

<u>List of issues</u>

**“1) Protected disclosure**

a) Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

i) The alleged disclosures the claimant relies on is contained within his grievance letter submitted on 15 February 2024.are as follows:

b) In conveying those matters in that way….

i) Did the claimant disclose information?

*The claimant says the grievance relates to his treatment in the face of the previous breaches of his contractual rights and his managers approach to them which had had consequences to him and his mental health as well as others working at that store facing the same issues.*

ii) Did the claimant believe the disclosure of information was made in the public interest?

iii) If so, was that belief reasonable?

iv) Did the claimant believe it tended to show that:

1. a person had failed, was failing or was likely to fail to comply with any legal obligation;

2. the health or safety of any individual had been, was being or was likely to be endangered;

v) If so, was that belief reasonable?

c) There is no dispute that if the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

d) Did the respondent subject the claimant to any detriments, as set out below?

Included within this issue are the questions of what happened as a matter of fact and whether what happened was a detriment to the claimant as a matter of law.

e) The alleged detriments the claimant relies on are as follows:

i) His manager's aggressive response to him on or around 17 February 2024

ii) His manager raising his own grievance against the claimant.

iii) Being suspended from work on 17 February 2024

iv) Not having any invitation to explore his grievance over the next c.5 weeks.

v) When he was invited to a meeting, it was not to discuss his grievance but his manager's.

vi) The dismissive attitude of Lucy Blackwell, the investigating manager, towards his deteriorating mental health (see page 12 of F&BP "If his mental health is as bad as he says….."

vii) Having the threat of disciplinary action hanging over him.

viii) Being put under pressure to find a new role in the company and not being able to return to his store.

ix) Being offered a part time role only, or being told to find his own alternative work

f) To the extent that any of those acts or failures to act occurred if fact, has the respondent shown the ground on which they happened?

g) Were any of those acts or failures to act on the ground that he made a protected disclosure?

***Mr Croft will rely on the timing of the manager's grievance, that the issues were a continuation of the same or similar issues from the previous year in response to which his manager had not raised a grievance against him and the employer's response was focused on deflecting responsibility for things going wrong away***

***from it and its managers and towards the claimant***.

**Remedy for Protected Disclosure Detriment**

2) What financial losses has the detrimental treatment caused the claimant?

a) Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

b) If not, for what period of loss should the claimant be compensated?

3) What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

a) Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

4) Is it just and equitable to award the claimant other compensation?

5) Was the protected disclosure made in good faith?

a) If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

**Unauthorised deductions**

9) Did the respondent make unauthorised deductions from the claimant's wages in accordance with section 13 of the Employment Rights Act 1996 in the period starting in or around August 2023 and up to April 2024.

10) Insofar as any individual pay date said to have been subject to an unauthorised deduction falls before 5 January 2024, the tribunal will determine whether that earlier deduction forms part of the same series of deductions, part of which is in time."

5. The final hearing took place at Lincoln Magistrates' Court and all parties and the

witnesses attended in person. The Tribunal was provided with an agreed bundle of documents of approximately 550 pages. Any page references in this Judgment refers to pages within that bundle. The respondent had sent a supplementary bundle of 180 pages at 10pm on the evening before the hearing, although had provided no hard copies. The claimant also requested that additional meeting notes be adduced into evidence, but as neither party had copies of their additional documents, were told that if they wished to pursue their inclusion, they would need to print out sufficient copies to bring to the hearing and make an application for them to be included. The parties agreed for a further approximately 6 pages of documents to be added to the bundle but made no further applications to adduce documents.

6. At the start of the hearing, it was confirmed that the hearing would consider liability, and that remedy would be considered once a judgment on liability had been given, should the claimant succeed in any of his complaints.

7. For the claimant, we heard from the claimant himself. For the respondent we heard evidence from:

   a. Paul McGrath, Store Manager; and

   b. Lucy Blackwell, Store Manager and investigation officer for the claimant's grievance.

8. All witnesses had prepared written statements which stood as their evidence in chief and were subjected to questions from the other side and the panel. The claimant had also provided 2 signed character statements from other managers, but as they were not relevant to what we had to decide, and they did not attend to give evidence, we gave them such weight as we considered appropriate.

9. The evidence was completed at the end of day 2. Submissions were on day 3 and the panel reserved its decision and deliberated for the remainder of that day.

**Findings of fact**

10. The claimant was employed by the respondent from 20 November 2014. At all material times he was employed as a shift leader in the respondent's St Marks' Express store Lincoln ("the Store"). Paul McGrath became the store manager around June 2023. Before that, the Store had several different managers, followed by a period without a manager at all. There were 3 shift leaders within the Store: the claimant and 2 others. The shift leaders were also referred to as 'Duty Managers', meaning that they acted as senior decision makers when the store manager was not present.

11. The claimant's role included responsibility for managing other staff members during his shift, ensuring the store operated safely and effectively, managing customer service standards, coordinating replenishment and store presentation, responding to operational issues, and acting as the senior decision-maker on duty when the store manager was not present. It was clear that the claimant, as shift leader, was responsible for arranging the breaks for all staff members, including himself, when he was on duty. The claimant could only do so with the resources available to him on that particular shift, i.e. the colleagues working on that day.

12. The Store was a small, busy store and there were times when there would be only 2 members of staff on shift (referred to as 'one on one'). The respondent's evidence was that this rarely happened, and we accept that. Ideally, there would be at least 3 members of staff on shift.

13. It was a requirement to have a Duty Manager, namely either the store manager, a shift

leader or what was referred to as a “step up” colleague available within the Store during trading hours. Step up colleagues were customer assistants who had been trained up to be able to undertake Duty Manager roles in the absence of the store manager or the shift leader and for which they were paid a premium.

14. The claimant’s contract provided that he was contracted to work 36.5 hours a week. He would be rostered to work four 9 hour shifts and one 8 hour shift a week. Within his shifts, he was required to take 1.5 hours’ break, which was unpaid. The claimant was responsible for taking his breaks at an appropriate time during his shift.

15. The claimant gave evidence that he was often unable to take his breaks during his shifts as there was insufficient “Duty Manager” cover to do so, meaning that there were no step-ups, store managers, or other shift leaders available. The shift leaders were the ones affected by this.

16. Should there be insufficient cover in the Store to allow them to take their breaks and leave the Store, the shift leaders could still take a break from the shop floor, but had to remain on site and available to deal with Duty Manager responsibilities. This included wearing a headset and body cam during these times. If shift leaders were unable to take their 1.5 hours’ break away from the Store, they were paid for this.

17. The respondent had a Working Hours Policy (2024 version pages 386-404). This provided

    a. “…*our colleagues and managers are required to clock in and out for all shifts worked. This enables us to monitor your working hours and ensures that you are paid correctly*.” [paragraph 6 p 393]

    b. “*In exceptional circumstances there may be situations where a*

*colleague/Shift Leader is required to take their break while remaining on site to ensure that no one is left on their own or for other operational reasons. This may mean that their break time is disrupted. Where a colleague/Shift Leader is required to stay on site for their break, this time will be paid. …*
*Please note: regardless of the colleague or Shift Leader being paid, all colleagues including salary paid managers must ensure that they take a minimum 20 minute statutory break for every 6 hours worked and they cannot work through this time."* [399].

18. It appeared to us that clocking in and out was not strictly enforced within the Store, as there was evidence within the bundle of manual insertions in the clocking in records, which were done after the shift had been worked. This was referenced by "M" in the system.

19. A number of the claimant's records showed that he had not clocked out at the end of his shifts. Despite his evidence, it remained unclear why this was the case.

20. There was an emerging practice of banking hours and taking breaks at the end of the shift, when there may be additional staff present to act as Duty Manager. It appeared to us that the claimant preferred to take his breaks at the end of his shift so that he could leave early. Whilst this was sometimes allowed for particular appointments, it was not within the respondent's policy to do this and was discouraged. By exception, however, this was allowed, and there was evidence within the bundle of this being offered to the claimant. Before Mr McGrath's appointment as store manager, when no store manager was at the Store, it appears that this practice of leaving early happened more regularly.

21. We accept that the claimant and other shift leaders were, at times, unable to take their

breaks away from the Store due to the unavailability of other staff to take on the role of Duty Manager in their absence.

22. Following Mr McGrath's appointment, the claimant and Jamie Swallow, another shift leader, approached Mr McGrath to request payment for breaks where they had been unable to leave the Store so that they could be on call for Duty Manager responsibilities. Mr McGrath took this at face value and paid the shift leaders for these breaks with little supporting evidence provided. Payment was made for these untaken breaks in August 2023 and the claimant acknowledged that he had received payment at this time.

23. Subsequently, Paul McGrath made clear to the shift leaders that they were responsible for organising cover to take their breaks during the shift and that payment for breaks would only be made in exceptional circumstances, as set out in the policy when there was genuinely no cover within the building, or where the shift leader was on a one to one roster and they could not leave. When payments for breaks were made, they were not expressed as such on payslips, since there was no facility for doing so. Rather they were paid as "overtime".

24. The claimant contends that he was unable to take his breaks and should have been paid for them on multiple dates between Weeks 33 of the respondent's diary to week 43. In relation to the unlawful deductions relating to these alleged unpaid breaks, we were referred to pages 69 [response to the ET Order], 238 [email Friday 19 April 2024], 364 [schedule of loss] and 526 [handwritten note of weeks where breaks were alleged to have been not taken]. Unfortunately, some of the dates claimed, were not specifically identified by the claimant.

25. There was no evidence supporting the claimant's assertion that he had not been paid

for his breaks or, indeed, that he had not taken his breaks at that time. We would have expected to see some evidence, like the WhatsApp messages we were referred to about breaks not being taken on other dates, relating to the considerable number of dates on which the claimant says he was prevented from taking his breaks. There were no messages which we were taken to which referred to the approximately 30 days on which the claimant says he was unable to take his breaks, and had not been paid for this.

26. The failure to pay for breaks was disputed by the respondent's witnesses. The claimant has failed to prove that he was unable to take his breaks on the various dates he suggests, nor has he shown that he was not paid for these breaks in line with the exceptional circumstances in the working hours policy. Additionally, we were concerned by the number of days on which the claimant had not clocked out. We note that there was no disciplinary action taken concerning this, and it appeared that this was common practice. However, we cannot be satisfied, and the claimant has not sufficiently satisfied us, that he did not leave early on at least some of those dates for which he claims. The claimant said that he had been waiting for a face to face meeting with Mr McGrath to discuss his unpaid breaks, but we find it surprising that there were not other messages, references on Mypro (the respondent's recording system) or emails supporting this.

27. We find that the lack of specificity in the dates for which he is claiming that he was not given a break means that we cannot find as a fact that a break was not given on specific dates.

28. On 8 August 2023, the claimant left shift early due to illness and took 5 hours of sickness absence for which it is accepted by the respondent that he was not paid. Although the respondent contends that this complaint was brought out of time.

29. On 18 September 2023, the claimant raised a complaint through Protector Line, the respondent's independent and confidential helpline for colleagues to 'whistleblow' handled by an external third party [127-9]. The claimant's complaint was that his store manager, Paul McGrath displayed favouritism, that he had not been getting his breaks, had not been paid at the appropriate time for these breaks, and that he was not able to approach Paul, which had impacted upon his mental health. In the complaint he complains that he wanted to leave early on 15 September, instead of taking his break, but had been refused.

30. The details of the investigation of the complaint show that Emma Cooke, people partner, stated, "*I can see lots of examples of where break payments have been made, and where there is a middle manager on shift that allowed [shift leaders] to take breaks, so am confident that there is no evidence to suggest that breaks have been missed or not compensated*" [130]. An outcome was sent to the claimant and the concern was closed on 3 October 2023.

31. The relationship between the claimant and his store manager, Mr McGrath appeared to the panel, to have deteriorated in early 2024. The claimant's evidence was that his mental health was suffering during this period, as referenced by various contemporaneous documents within the bundle.

32. During this period, the claimant sent a number of WhatsApp messages to Mr McGrath, including 36 messages on 9 February 2024 alone. The nature and volume of the messages concerned Mr McGrath and formed one of the reasons for his subsequent grievance. One of the messages [535-7] sent on 10 February 2024 referred to "*how narrow mined and controlling*" Mr McGrath was and that he was an "*absolutely ridiculous*

*micromanaging control freak with zero compassion or understanding*." and that it was, "*all over a couple of hours. That's how much you want to bully someone. When you have allowed multiple other people to go early, swap shifts, finish early, drop days*."

33. Additionally, Mr McGrath became aware that the claimant had shared photographs from the respondent's CCTV system, which he considered to be a breach of the respondent's GDPR policy.

34. The claimant raised a grievance on 15 February 2026 [133] which he relies upon as his protected disclosure. This was sent to Emma Cooke, people partner in the respondent's HR team.

35. This grievance raised concerns about the claimant's ability to take his breaks, which he stated to be "*consistent omission of scheduled breaks in my work shifts*" and the delay in paying him for breaks he had worked through. Whilst the claimant asserted in the agreed list of issues that his protected disclosure, namely his grievance, related to "*his treatment … as well as others working at that store facing the same issues*", we do not accept that the grievance related to a significant number of people. We find that the grievance was a personal grievance relating to his inability to take breaks and/or be paid for them if he was unable to take them. At most, the disclosure related to the shift leaders within the Store in which he worked, namely 3 people including himself.

36. The claimant did provide suggestions of implementing automatic flags for when break entitlement had not been honoured, and to facilitate proactive adjustments to schedules when necessary. However, the grievance was about his concerns about his breaks, and his relationship with the store manager, Mr McGrath. He stated that "*my grievance particularly lies with the way my Store Manager has expressed controlling, aggressive*

*and manipulative behaviours when I have tried to resolve this issue internally*."

37. On 17 February 2024, the claimant was at work and was asked by Paul McGrath about what tasks he had completed during his shift. The claimant did not provide details of what happened on 17 February 2024 in his witness statement but merely stated that Mr McGrath had acted aggressively towards him. Nor did the claimant challenge Mr McGrath's evidence that the claimant was agitated, aggressive and behaved in a provocative manner, to which Mr McGrath responded calmly. The claimant called Mr McGrath a bully, to which he took great exception. We accept Mr McGrath's evidence, particularly as the claimant did not seek to challenge this, or provide alternative evidence about what had happened. Also, Mr McGrath's account was corroborated by Mr Ollier's and other witness accounts provided to Lucy Blackwell as part of her investigation into the grievances.

38. Mr McGrath told the claimant to go home so as to de-escalate the situation within the Store. After this, the claimant punched a flat top before leaving the Store.

39. The respondent did not class this as a suspension, since suspensions were usually a last resort, and handled in a formal manner during a meeting at which the person would be handed a suspension letter. This did not happen in the claimant's case. Rather, Mr McGrath told the claimant to go home and sought advice following this from HR.

40. Mr McGrath contacted the respondent's colleague relations helpline at 12.02pm on 17 February 2024 [439, 438] about what he called the claimant's poor behaviour. Mr McGrath stated that the claimant had become aggressive and verbally insulted him, calling him a bully. He stated he had sent him home and then had a number of phone calls from the claimant so had blocked his phone number. Mr McGrath asked for advice

on who should suspend on the next shift.

41. Mr McGrath was advised to remove himself from contacting the claimant at all and that he should contact his people partner and arrange for an impartial manager to hear an investigation and discussed if it would be appropriate for the claimant to work in another local store while it was resolved. It said, "*However, the accountability of the decision is yours as the manager*." We accept that he was sent home but this was not a formal suspension. He was expected to return to shift on his next working day.

42. Mr McGrath sent a grievance by email between 17 and 20 February 2024 about the claimant's behaviour. The grievance related to the claimant's behaviour on 17 February 2024, the nature and volume of the messages sent to him, and the breach of the respondent's GDPR policy.

43. There was no copy of his grievance in the bundle, and Mr McGrath had not retained a copy of it. We have accepted that it was presented between these dates from the oral evidence of Mr McGrath and the fact that the suspension letter had been prepared, as referred to below.

44. Mr McGrath's evidence, which was not challenged by the claimant, was that he did not know of the claimant's grievance when he submitted his own grievance on or around 17 February 2024. We accept that to be the case.

45. A suspension letter had been created dated 20 February 2024, although there was no evidence before us as to who had done this. It was in the name and with the telephone number of Lucy Blackwell, although her evidence was that she had not seen it before these proceedings. We accept that this had been prepared and would have been used, had the claimant not gone off sick on the date of his next shift. There was no evidence

from the claimant that he had received this suspension letter, this is supported by the fact that suspension was not discussed in any of the meetings held with the claimant after this date.

46. The claimant received sick pay only during the period of his sickness absence, which he considers should have been paid full pay as he was suspended. We accept that the claimant was off sick during this period from 20 February 2024 until a phased return was agreed for the claimant to return to another store on 6 May 2024 [124-5]. The claimant provided fit notes covering his absence on sick leave.

47. During this period of sickness absence, the claimant was not allowed to return to his usual place of work in the Store, as evidenced by the minutes of his welfare and return to work meeting discussed below [256]. Instead, he was provided with the possibility of working in alternative stores and was offered a support plan. The claimant appeared to accept this as evidenced in his meeting with Ms Blackwell on 15 April 2024 [234] and requested a move to Wragby Road store on 19 April 2024 [236]. Ultimately, the claimant worked at the Lincoln Extra store, sometimes referred to as the Wragby Road store, from 6 May 2024 initially on a phased return.

48. Lucy Blackwell was asked by Emma Cooke, people partner, to carry out a joint investigation into the grievances raised by the claimant and Mr McGrath due to the overlap in prospective witnesses and their subject matter. Her evidence was that she was asked to do both at the same time, although says she received the request to consider Mr McGrath's grievance first, which is why she contacted him first.

49. Ms Blackwell appears to have been appointed as the investigation manager despite the respondent's grievance policy saying that an investigating manager in a grievance

should be more senior to the persons involved.

50. Whilst off sick, the claimant was invited to a grievance investigation meeting to consider both his and Mr McGrath's grievances. The invitation letter dated 8 April 2024 [533-4] made this clear.

51. There had been a delay in inviting the claimant to a grievance meeting. Ms Blackwell's evidence was that this was because of holiday, the claimant's sickness absence and due to her carrying out what she termed a "*culture*" review by speaking with other staff members at the Store in light of the claimant's grievance. Ms Blackwell interviewed a number of staff between 28 February and 15 March 2024, as confirmed in the outcome. This included 8 customer assistants (4 or 5 of whom were trained to step up), 2 shift leaders and 3 express store managers (including Mr McGrath).

52. The claimant's grievance meeting was held on 15 April 2024 [minutes 211-235]. The claimant alleged that Ms Blackwell had said something like, "*if your mental health is as bad as you say it is*" during this meeting, however there was nothing in the minutes (which the claimant had amended and signed to say were correct) saying this. Ms Blackwell did not recall saying this, and strongly denied being dismissive of the claimant's mental health. The claimant suggested that this must have been in another meeting between himself and Ms Blackwell, but despite being given an opportunity to look for this, was unable to find it. We therefore do not find that this was said.

53. On 26 April 2024, the claimant attended a welfare and return to work meeting with Callum Jepson, store manager [minutes 253-274]. It should have been with Ms Blackwell, but she had taken ill the night before and was therefore undertaken by another store manager.

54. The claimant says that he was not paid for the meetings he attended in April 2024, namely his grievance meeting on 15 April and his welfare, return to work meeting on 26 April. However, his payslip for the period 31 March to 27 April 2024 [513] showed payment for 24 hours worked during this period, when the claimant was off sick throughout it. The claimant could not explain what this payment was for, and we therefore were not satisfied that he had not been paid for these meetings.

55. Following the grievance meeting with the claimant, there was a further delay until the outcome was given to the claimant in a meeting on 24 June 2024 [minutes 282-291]. The grievance outcome letter [275-281] was given to the claimant during the meeting. The claimant's grievance was not upheld.

56. The reason for the delay was said to be due to Ms Blackwell's sickness absence following an emergency operation.

57. During the grievance outcome meeting, the claimant was told his options regarding where he was to work following the grievance. The minutes (agreed by the claimant) show that his options were to either return to his job at the Store or apply for one of 2 vacant, part time roles at the Brayford Express store if the claimant was to decide that he did not wish to return to the Store. Additionally, the claimant was informed that Ms Blackwell was happy to email store managers in the local area to see about upcoming vacancies.

58. The claimant ultimately obtained a role at the Lincoln Extra store on reduced hours.

**Submissions**

59. The parties sent in written submissions; the claimant provided 2 different sets of submissions. I incorporate those submissions by reference here. In addition, both

parties addressed the Tribunal orally regarding the submissions they had made in writing. Those oral submissions were limited to 20 minutes each however, the parties were told that they would be stopped after 30 minutes. The panel carefully considered both sets of submissions before reaching its decision.

**Law**

60. Under section 43A of the Employment Rights Act 1996 (ERA) a protected disclosure is a qualifying disclosure (as defined by section 43B), which is made by a worker in accordance with any of sections 43C to 43H.

61. Section 43B(1) provides that a qualifying disclosure means any disclosure of information, which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

62. Under Section 43C(1) ERA, a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section, including where the worker makes the disclosure to his employer.

63. The EAT considered what amounts to a 'disclosure of information' in Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 and held that there is a

distinction between disclosing information, which means 'conveying facts' and making allegations or expressing dissatisfaction. It gave, as an example of disclosure of information, a hospital employee saying 'wards have not been cleaned for two weeks' or 'sharps were left lying around'. In contrast, the EAT held, a statement that 'you are not complying with health and safety obligations' is a mere allegation.

64. The Court of Appeal, in Kilraine v London Borough of Wandsworth [2018] ICR 1850, established that 'information' and 'allegation' are not mutually exclusive. There must be sufficient factual content tending to show one of the matters in subsection 43B(1) of the ERA 1996 in order for there to be a qualifying disclosure.

65. The information disclosed by the worker does not have to be true, but rather, the worker must reasonably believe that it tends to show one of the matters falling within section 43(B)(1) ERA. The employee must also reasonably believe that the disclosure is in the public interest. When deciding whether the worker had the relevant 'reasonable belief' the test to be applied is both subjective (i.e. did the individual worker have the reasonable belief) and objective (i.e. was it objectively reasonable for the worker to hold that belief).

66. Korashi v Abertawe Bro Morgannwg University Local Health Board [2012] IRLR 4, which was endorsed in Phoenix House Ltd v Stockman [2017] ICR 84, in which the EAT held that, on the facts believed to exist by an employee, a judgment must be made, first, as to whether the worker held the belief and, secondly, as to whether objectively, on the basis of the facts, there was a reasonable belief in the truth of the complaints.

67. When considering whether a disclosure is in the public interest, the Tribunal must decide what the worker considered to be in the public interest, whether the worker

believed that the disclosure served that interest and whether that belief was held reasonably.

68. In Chesterton Global Ltd (t/a Chestertons) and another v Nurmohamed [2018] ICR 731 the EAT held that it is not for the Tribunal to consider for itself whether a disclosure was in the public interest, but rather the questions are (1) whether the worker making the disclosure in fact believes it to be in the public interest and (2) whether that belief was reasonable. Tribunals should be careful not to substitute their views of whether disclosures are in the public interest for that of the worker.

Detriment for making Public Interest Disclosure

69. Section 47B ERA provides protection for workers who have made protected disclosures from being subjected to detriments. It provides:

"47B Protected disclosures

*(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure*."

70. The burden of proof in detriment claims is set out in section 48(2) of the ERA: "*On a complaint under subsection … (1A) … it is for the employer to show the ground on which any act, or deliberate failure to act, was done*."

71. The concept of 'detriment' is very wide, and a detriment can exist if a reasonable worker would or might take the view that the action of the employer was, in all the circumstances, to his detriment. 'Detriment' can include general unfavourable treatment and there is no test of severity that the Tribunal must apply.

72. However, there must be a causal link between the detriment and the fact that the worker

made a protected disclosure. The provisions of section 48(2) of the ERA mean that, once a claimant shows that there was a protected disclosure, and a detriment which the respondent subjected the claimant to, the burden shifts to the respondent to show that the worker was not subjected to the detriment on the ground that he made the protected disclosure. In order to succeed, we must be satisfied that the protected disclosure had more than a trivial influence on the acts complained of.

73. Tribunals can draw inferences as to the motivation of the person subjecting the worker to a detriment.

Unlawful deductions from wages

74. Section 13 ERA provides

"*13 Right not to suffer unauthorised deductions*

*(1) An employer shall not make a deduction from wages of a worker employed by him unless—*

*(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*

*(b) the worker has previously signified in writing his agreement or consent to the making of the deduction*."

75. The time limit to bring an unlawful deductions from wages complaint is set out in section 23 which provides:

> *"(2) Subject to subsection (4), an [employment tribunal] shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—*
>
> *(a) in the case of a complaint relating to a deduction by the employer, the*

*date of payment of the wages from which the deduction was made, or*

*(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

*(3) Where a complaint is brought under this section in respect of—*

*(a) a series of deductions or payments, or*

*(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

*[(3A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).*

*(4) Where the [employment tribunal] is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable*."

## Conclusion

76. The following conclusions were reached on a unanimous basis after carefully considering the evidence before the Tribunal, the legal principles summarised above, and the submissions of both parties.

77. We considered whether the grievance dated 15 February 2024 relied upon by the claimant for his public interest disclosure detriment complaint was a protected disclosure.

78. Firstly, we find that there was sufficient factual content to count as a disclosure of information. The claimant raised concerns over his ability to take breaks and the delay in being paid for such breaks.

79. However, secondly, we do not accept that the claimant genuinely believed that the disclosure was made in the public interest at the time it was made. This was a personal grievance, relating to his own inability to take breaks during his shift and the respondent's failure to pay promptly for any such breaks. We note that the claimant referred to having an automated flagging system to serve as a preventative measure to alert managers when individuals were unable to take their breaks, however, this was still a complaint relating to the claimant's own employment. At most, it related to the other shift leaders within the Store, and was not in respect of this being a company wide problem, or even a problem at express stores within the respondent's estate.

80. Therefore, even if the claimant did genuinely believe that the disclosure was made in the public interest, we do not find that this was a belief he reasonably held. The public interest is not engaged in circumstances such as these. The claimant accepted in evidence that the people affected by his disclosure at the Store were 2 or 3 individuals, namely the shift leaders. He attempted to later refer to this being an industry wide issue, but we find no evidence that he believed this at the time he made his disclosure.

81. Fourthly, we accept that the claimant believed that the disclosure tended to show that his own health and safety had been, was being, or was likely to be endangered by the failure to take breaks. He believed that his mental health had suffered as a result of the failure to provide breaks and the perceived delay in paying for these missed breaks. However, we do not consider that the disclosure showed a wider problem to the shift

leaders, or other duty managers. They were always able to take breaks, from the evidence we accepted from Mr McGrath, even if they could not leave the Store, and may have been interrupted during it. The respondent's policies state that all colleagues must take the minimum statutory break provided by the Working Time Regulations in any event. Therefore, we do not find this belief was reasonably held.

82. We accept that failing to provide breaks would give rise to a breach of a legal obligation., but for the same reasons do not accept that this was in the public interest.

83. Therefore, we do not find that the claimant's grievance dated 15 February 2024 was a qualifying disclosure. As such, even though it was made to the claimant's employer, this was not a protected disclosure.

84. Having found that there was no protected disclosure in this case, it is unnecessary to go on to consider whether the claimant was subjected to detriments as a result of the protected disclosure. However, for completeness, we went on to deliberate on whether the claimant had been subjected to detriments as a result of raising his grievance dated 15 February 2024.

<u>Detriments for making protected disclosures</u>

85. We considered each relied upon in turn:

<u>Detriment 1: His manager's aggressive response to him on or around 17 February 2024</u>

86. We do not find that Mr McGrath aggressively responded to the claimant on 17 February 2024. We accept that the claimant was agitated on this date, perhaps due to the fact that he knew that he had raised a grievance against his Store manager, Mr McGrath. Mr McGrath's evidence was clear that he was not aggressive towards the claimant, and this was not challenged by the claimant. Further, there was evidence within the bundle

showing that this was corroborated by other staff who witnessed the incident on 17 February 2024.

Detriment 2: The claimant's manager raising his own grievance against the claimant

87. Mr McGrath raised a grievance against the claimant on or around 17 February 2024. Mr McGrath's evidence, which we accept, was that this was because of the claimant's behaviour in the period leading up to the grievance, namely the incident on 17 February 2024, the nature and volume of the text messages received from the claimant and the GDPR breach alleged to have been committed by the claimant.

88. Raising a grievance is clearly a detriment, but this was not because of the claimant's own grievance dated 15 February 2024. We are satisfied that Mr McGrath did not know of the claimant's grievance at the time he contacted the support line or submitted his own grievance.

Detriment 3: Being suspended from work on 17 February 2024

89. We accept that being suspended from work is a detriment. We do not find that the claimant was formally suspended from work on or around 17 or 20 February 2024 for the reasons set out in our findings of fact. We find that the claimant was sent home on 17 February 2024 by Mr McGrath in an attempt to de-escalate the situation. That, in itself, is potentially a detriment. However, we do not accept that this was done because the claimant raised his grievance on 15 February 2024. As previously stated, we accept that this was because of the claimant's behaviour on that day and further we accept that Mr McGrath did not know of the claimant's grievance at the time that he sent the claimant home on 17 February 2024. Therefore, it cannot be because of the claimant's grievance.

<u>Detriment 4: Not having any invitation to explore his grievance over the next c.5 weeks</u>

90. The respondent failed to invite the claimant to a grievance hearing for a considerable amount of time. We accept that this is a detriment. However, we accept that there were reasons for this delay, namely the claimant's sickness absence, the investigation being undertaken by Ms Blackwell and her planned holiday.

91. We are satisfied that the respondent has shown the reason for the delay in inviting the claimant to a grievance hearing was as set out above and not because the claimant had submitted his grievance dated 15 February 2024.

92. In any event, the claimant refused to put to Ms Blackwell that this was because of his grievance, despite being told that he should if he wished to pursue this complaint, and being given a break to consider this. It appeared to us that the claimant did not really believe this to be the case, which is why he did not wish to question Ms Blackwell along these lines.

<u>Detriment 5: When he was invited to a meeting, it was not to discuss his grievance but his manager's</u>

93. This is patently wrong. The invitation letter to which both parties took us made clear that the meeting was to discuss the claimant's grievance as well as the grievance raised by his manager. The minutes of the meeting also show that they were both discussed.

<u>Detriment 6: The dismissive attitude of Lucy Blackwell, the investigating manager towards his deteriorating mental health (page 12 F&BP "If his mental health is as bad as he says……"</u>

94. The claimant was unable to confirm where the comment relied upon was to be found. From looking at the minutes of the meetings between the claimant and Ms Blackwell,

there is no evidence of a dismissive attitude towards the claimant's mental health. She signposted him towards the respondent's EAP programme to provide him with some support.

<u>Detriment 7: Having the threat of disciplinary action hanging over him;</u>

95. The claimant confirmed in evidence that this was due to his suspension, the delay in arranging the grievance hearing and the delay in confirming that his manager's grievance would move forward to a disciplinary hearing. He also confirmed that this was up until the submission of his claim form.

96. We accept that the threat of disciplinary action can amount to a detriment, when an investigation is left hanging over someone. However, we do not accept that the reason that any decision to move to a disciplinary hearing was delayed was due to the claimant's grievance dated 15 February 2024. Again, the claimant refused to put to Ms Blackwell that the threat of disciplinary action hanging over him was due to him raising a grievance.

<u>Detriment 8: Being put under pressure to find a new role in the company and not being able to return to his store.</u>

97. The claimant was unable to return to the Store whilst the grievances were being investigated. We accept that this was standard procedure for the respondent, but also that this amounts to a detriment.

98. However, again, this was not because the claimant submitted a grievance on 15 February 2024. Rather, it was due to the nature of Mr McGrath's grievance raised against the claimant on or around 17 February 2024, which it was accepted by the claimant's union representative, made it inappropriate to work at the Store whilst it was

being investigated.

99. The claimant was not put under pressure to find a new role. We saw evidence of support that Ms Blackwell made to assist the claimant in finding alternative work during this period.

Detriment 9: Being offered a part time role only, or being told to find his own alternative work.

100. The claimant was informed that when the grievance was concluded, he could return to his substantive post in the Store. He was also told that, should he not wish to do so, alternatives could be considered. Ms Blackwell offered to approach other store managers to see what vacancies there were available. Her evidence was that a role could not be created for him, should he choose not to return to the Store once the grievance was concluded.

101. The part time roles were offered to the claimant following the submission of his claim.

102. In any event, it was clear that this was not because the claimant had made a grievance on 15 February 2024, particularly as the claimant refused to put this to Ms Blackwell.

Unlawful deductions from wages

103. The claimant withdrew his complaint of unlawful deductions from wages for unpaid breaks in February 2024.

104. The claimant was unclear about what he was actually claiming, and failed to specify particular dates during weeks when he alleged to have been denied his breaks. There was no evidence supporting his mere assertion that he had been unable to take breaks and should have been paid for them. The total of £642.60 claimed did not appear to relate to particular days, and the documents provided did not clearly show what was

being claimed. The claimant had not provided any detail as to why he was unable to take breaks on particular days (eg one on one working) which was stated by Mr McGrath to rarely occur. The claimant has not provided the method with which he informed the respondent of his inability to take breaks on the dates he claims. There was no evidence showing him claiming payment for breaks on particular days, nor chasing payment for them. The only message relating to a break which was not taken, was on 12 August 2023, and for which had been paid.

105. In light of this and the fact that some of the days related to days when the claimant had not clocked out at the end of his shift, despite being required to do so, means that we cannot say on a balance of probabilities that the claimant has not been paid for these breaks. Therefore, the claimant has not discharged the burden of proof and the claim for unpaid breaks is therefore dismissed.

106. The claimant was not entitled to additional payment for 6 hours of meeting time in April 2024. He could not show that he had not been paid, as his payslip recorded 24 hours' pay for that period, even though he was off sick throughout.

107. In relation to his alleged suspension, we have found that he was not formally suspended from his role. He was sent home on 17 February 2024, but went off sick prior to his next scheduled shift, and was therefore entitled to sick pay, for which he has been paid.

108. In respect of the complaint for unlawful deductions from wages relating to sick pay on 8 August 2023, whilst not disputed by the respondent, was defended upon the grounds that the Tribunal did not have jurisdiction to consider the complaint as it was presented out of time. The claimant provided no evidence of why it was not practicable to present his complaint within time. He clearly knew of the failure to pay him at the time, he had

union advice and provided no grounds on which to consider that he was unable to bring a complaint sooner. Therefore, we accept that we do not have jurisdiction to consider this complaint as it was presented out of time and it was reasonably practicable for the claimant to have brought it within time.

109. Therefore, the complaint for unlawful deductions from wages is also dismissed.

110. The hearing listed for 14 August 2026 has been vacated since, in light of this judgment there is no need to consider remedy as the claimant's complaints have been dismissed.

**Approved by:**
**Employment Judge Welch**
**Dated: 12 June 2026**
Sent to the parties on
...20 June 2026....................
For the Employment Tribunal
............................................

**Note**

Public access to employment tribunal decisions Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.