



EMPLOYMENT TRIBUNALS

Claimant: Mr J Weaven

Respondent: Serco limited

Heard at: Reading **On:** 18, 19, 20, 21 and 22 May 2026

Before: Employment Judge Gumbiti-Zimuto
Members: Mrs A Brown and Ms C Whitehouse

Representation

Claimant: In person

Respondent: Miss K Barry, counsel

REASONS

[For judgment dated 22 May 2026 provided at the request of the claimant.]

1. Following early conciliation that started on 3 September 2024 and ended on the same date, in a claim form presented on 4 September 2024, the claimant made complaints of unfair dismissal, discrimination arising from disability and failing to make reasonable adjustments.
2. The claimant gave evidence in support of his own case and also relied on the evidence from David Woods. The respondent relied on the evidence of Thomas Mitchell, David Bower, Trevor Winchcombe, Kevin Cull and Mark Cridland. The parties provided the Tribunal with a trial bundle that contained 846 pages of documents and a supplementary bundle of 68 pages of documents.
3. The issues that the Tribunal have to consider are:
 - a. Whether any complaint about something that happened before 4 June 2024 has been brought in time, if not whether it is just and equitable to extend time for the presentation of complaints.

Unfair dismissal
 - b. Whether the claimant's dismissal was for the potentially fair reasons of ill-health capability, or alternatively some other substantial reason, limited to matters arising from the claimant's ill health.

- c. If so, whether the respondent acted reasonably or unreasonably in treating that reason as sufficient to dismiss the claimant.
- d. Whether the dismissal was fair or unfair in accordance with equity and the substantial merits of the case.

Disability

- e. The respondent concedes that the claimant had a disability, namely Hand Arm Vibration Syndrome (HAVS), as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about.
- f. The respondent concedes it had knowledge of the claimant's disability, being HAVS, at the material time.

Discrimination arising from disability (Equality Act 2010 section 15)

- g. Did the respondent treat the claimant unfavourably by:
 - i. Offering the claimant a driving role while his grievance was resolved?
 - ii. Proposing to reduce the claimants pay in alternative roles?
 - iii. Dismissing the claimant?
- h. Did the following things arise in consequence of the claimant's disability:
 - i. Disability related sickness absence.
 - ii. Being limited to using 50 HSE points in a day as opposed to a person without HAVS who can use circa 400 HSE points.
 - iii. Prohibition on using vibration related tools.
- i. Was the unfavourable treatment because of any of those things?
- j. Was the treatment a proportionate means of achieving a legitimate aim?

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

- k. Did the respondent have the following provision criterion or practice (PCP):
 - i. Not providing alternative tools (specifically a CNC Router commonly known as an XYZ) due to the cost and/or because the tools were provided by the MOD.

- ii. Not offering the claimant a permanent suitable alternative role in that the claimant should have been offered an alternative role that was similar to his skill set.
 - iii. Not redeploying the claimant to an alternative role in another area within RAF Brize Norton site.
 - iv. Not offering the claimant a role at the same rate of pay as a carpenter technician.
 - v. Not following the advice of Dr Younger (who was a specialist in HAVS) provided in the last OHA report from December 2023.
 - vi. Not offering training to the claimant to assist with providing a suitable alternative role.
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- l. Did the PCP's put the claimant at a substantial disadvantage compared to someone without the claimant's disability?
 - m. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
 - n. What steps could have been taken to avoid the disadvantage?
 - o. Was it reasonable for the respondent to have to take those steps and when?
 - p. Did the respondent fail to take those steps?

Background

- 4. The claimant was employed by Serco Limited as a carpenter from 15 March 2017 until his dismissal on 17 July 2024.
- 5. Serco has provided support services to the Ministry of Defence (MoD) at RAF Brize Norton since 1997. The current Brize Norton Support Contract began on 1 December 2021 and includes operation of the carpentry workshops, which produce wooden items for RAF use.
- 6. Under the contract, all buildings, machinery and equipment are owned and controlled by the MoD. Serco employs staff to deliver the services but relies on the MoD to procure equipment and determine the location of machinery. Serco may request equipment, but decisions rest with the MoD.
- 7. The claimant's work required regular use of handheld power tools and, where available, fixed workshop machinery. For a prolonged period, fixed equipment could not be used effectively, and handheld tool use continued.

Serco employees could only use MoD-procured equipment and were not permitted to operate their own machinery.

8. Vibrating tools were routinely used in carpentry work. A routing machine (XYZ router), which reduced the need for vibrating tools, had been removed by the MoD in 2016 before the claimant's employment began.
9. The claimant began experiencing symptoms in late 2018. Occupational Health initially suggested Carpal Tunnel Syndrome, but NHS investigations later confirmed HAVS. From 2019, his use of vibrating power tools was restricted to 100 HAVS points per shift.
10. As the claimant's symptoms persisted further tests and Occupational Health assessments were carried out in 2020 as symptoms persisted. The claimant was referred for a Tier 4 HAVS assessment in July 2021 and a Tier 5 assessment in August 2022.
11. Following the August 2022 Tier 5 assessment, the claimant was restricted to 50 HAVS points per shift.
12. The claimant continued working within the 50 HAVS-points limit until May 2023, when a further Occupational Health assessment recommended that he stop using vibrating tools entirely due to continued progression of symptoms. The claimant was temporarily assigned office-based support tasks.
13. The claimant was absent from work due to anxiety and stress from 15–23 June 2023, linked to concerns about his ability to continue in carpentry work following the HAVS diagnosis. After briefly returning, he went off sick again on 4 July 2023, and this absence was to continue until January 2024.
14. Following discussions, Serco decided that no carpenters, including the claimant, would use vibrating tools.
15. A welfare meeting took place on 5 September 2023, attended by Carl Thompson (Engineering Manager) and noted by Kevin Cull (Business Support Manager). Prior to the welfare meeting the claimant sent to the Carl Thompson an email, dated 1 September 2023, setting out question that he would be asking in the welfare meeting. At the start of the meeting Carl Thompson told the claimant that on advice from SERCO HR his questions "*need to be dealt with separately*" that they "*are being looked into and will be responded to in due course*". It is admitted that there has never been a written response to the email of the 1 September 2023.
16. In the meeting the claimant reported depression linked to concerns about his future employment and confirmed he was receiving NHS support. He was signposted to Serco's Employee Assistance Programme and the THRIVE app. The meeting concluded with a commitment to seek HR advice and update him on potential return-to-work options.

17. In October 2023, Kevin Cull took over management of the claimant's sickness absence. As the claimant remained absent, Kevin Cull initiated the ill-health capability process under the CSOP Absence and Leave policy. He arranged the first capability meeting for 8 November 2023, with Thomas Mitchell (QHSE Manager) attending to address issues relating to the claimant's restrictions in the carpentry workshop.
18. At the first capability meeting (8 November 2023), a temporary redeployment of the claimant as a security escort/driver was proposed. Other redeployment options required relocation, which the claimant rejected. He insisted on remaining in carpentry or similar workshop roles, which were unsuitable due to vibration exposure. He also refused roles with lower pay.
19. Following the capability meeting, Kevin Cull emailed the claimant to confirm the interim arrangements for his anticipated return to work on 15 November. He explained that, in line with the May 2023 Occupational Health advice, any further exposure to vibrating tools posed a risk of worsening the claimant's HAVS, and it was therefore not safe for him to return to carpentry duties. The business was not prepared to expose him to that risk.
20. Kevin Cull confirmed that as a temporary adjustment the claimant could return to an escort-driver role while longer-term options continued to be explored through the capability process. He also confirmed that the claimant's pay would remain unchanged in this interim role.
21. A further Occupational Health report was requested following the meeting.
22. Also following the 8 November 2023 meeting, the claimant was regularly sent the internal vacancy bulletin and was placed on the central redeployment register so he could be contacted if suitable roles became available.
23. On 13 November 2023, the claimant suggested roles such as team leader or trainer and proposed reinstating the XYZ router. The response from Serco was that no such roles were available and that reinstating the router was an MoD decision. The claimant later asserted that he had been constructively dismissed but confirmed he was not resigning.
24. A second ill-health capability meeting was arranged for 6 December 2023 to confirm whether the claimant wished to take up the proposed escort/driver role. Around this time, the claimant reported that his IT account had been suspended due to inactivity; arrangements were made for it to be reactivated so he could access vacancy information. A Tier 4 HAVS assessment was scheduled for 12 December 2023. A further OH Report was commissioned.

25. At the second ill-health capability meeting on 6 December, the purpose was stated as to review the claimant's current situation and options for returning to work. The escort/driver role was discussed, and it was agreed that it would not be considered as an interim option while he remained signed off sick. The claimant again raised the possibility of reinstating the XYZ router, and it was confirmed that this was not possible as the MoD had sole authority over its location.
26. The updated OH report and Tier 4 assessment, received in mid-December, showed progression of the claimant's condition, including blanching of the fingers and a new diagnosis of stage 1 vascular HAVS alongside early stage 2 sensory HAVS. This deterioration was concerning given that his vibration exposure had been restricted since 2019 and he had not worked since July 2023. The report suggested he *could* work below 50 HAVS points per shift, this was stated to be at his own risk and subject to management approval. This apparent conflict with the earlier OH Report (May 2023) led Thomas Mitchell to seek clarification of the claimant's position from the OH Physician, Dr Gonzalez.
27. On 23 January 2024, Dr Gonzalez confirmed that the claimant's vascular symptoms had worsened and advised avoidance or significant reduction of vibration exposure to prevent further progression. He also confirmed the claimant was medically fit for the escort/driver role. Following this advice, Thomas Mitchell updated the HAVS risk assessment, concluding that eliminating vibration exposure was the most appropriate control measure. After discussion between Kevin Cull, Thomas Mitchell and Trevor Winchcombe, management decided that notwithstanding the December OH report the claimant would not be permitted to work with vibrating tools due to the risk of further deterioration and the associated liability for the respondent.
28. At the third capability meeting (28 February 2024), the claimant accepted the concern for his welfare. Redeployment was discussed again, the claimant rejected roles due to lower pay. The meeting was adjourned and a further meeting was set for 28 March 2024.
29. The claimant was sent additional vacancy bulletins and an invitation to the resumed third-stage capability meeting on 28 March, with a warning that dismissal was a possible outcome due to the lack of progress in identifying a safe return-to-work option for him.
30. At the meeting on 28 March, the medical and risk assessment position was restated confirming that a return to carpentry was unsafe. Redeployment options were reviewed, but the only role the claimant expressed interest in was a Surface Finish Paint Sprayer position, which was unsuitable because it involved vibrating tools. Other roles were rejected by the claimant due to lower pay.
31. The claimant raised a grievance on 2 April 2024.

32. David Bower (Airfield Manager) was asked to deal with the grievance that had been raised by the claimant. The grievance raised issues of reasonable adjustments being implemented to allow him to work as a carpenter or to be moved to a role that was similar to a tradesman's role on the same terms and conditions.
33. On 8 May the claimant attended the grievance meeting accompanied by his trade union representative.
34. At the meeting they discussed the history of the claimant's work in the carpentry workshop and the decision to remove him from work with vibrating tools that had been made by his managers.
35. They also discussed the claimant's view that the power tools he had to use were not fit for purpose after being tested for vibration.
36. To investigate the grievance David Bower interviewed Kevin Cull, Thomas Mitchell and Carl Thompson.
37. On 27 May 2024, while his grievance was still being considered, the claimant returned to work to undertake the previously offered security driver role. He completed one day in the role before telling Kevin Cull that he was bored and then left the site. The claimant went off sick again on 29 May 2024 with work-related stress, later certified as stress from 28 June.
38. David Bower completed the grievance investigation report on the 28 June 2024. On 2 July 2024, the claimant was informed that the grievance outcome had been issued. David Bower did not uphold the grievance complaints.
39. Also on 2 July 2024, the claimant was told that a further capability meeting was arranged for 11 July, later rescheduled to 17 July. The invitation again stated that dismissal was a possible outcome.
40. The claimant submitted his grievance appeal on 8 July 2024, raising concerns about health and safety management in the carpentry workshop and the development of his HAVS condition.
41. The final capability meeting took place on 17 July 2024. The claimant's continued absence since 28 May was reviewed, along with the lack of any alternative role he could safely perform. Redeployment was discussed again, but although the claimant said the issue was lower pay, he had not identified any suitable role since November 2023 and continued to seek a return to carpentry, which was not medically possible. He suggested obtaining another OH report, but he provided no evidence of improvement, remained covered by a Fit Note for HAVS, and there were no reasonable adjustments that would allow a safe return to carpentry or any other suitable duties. Thomas Mitchell advised that HAVS symptoms were unlikely to have improved and that any return to vibrating tools would risk further deterioration, which management could not accept.

42. Given the medical evidence, the lack of any viable redeployment over eight months, and the impossibility of a safe return to carpentry, Kevin Cull concluded there was no reasonable prospect of the claimant returning to work. The XYZ router could not be reinstated because it was MoD property and Serco was contractually required to use MoD equipment.
43. Kevin Cull informed the claimant that his employment was terminated on ill-health capability grounds with immediate effect, with notice paid in lieu and outstanding holiday paid.
44. The claimant was dismissed for ill-health capability on 17 July 2024. The claimant appealed the decision to dismiss him.
45. Trevor Winchcombe (Contract Manager) was the appeal manager. The appeal meeting proceeded on 29 August 2024, when the claimant attended with his trade union representative. The claimant's appeal points were identified as: (a) The company had not gone far enough with reasonable adjustments to allow him to remain in employment (b) Being asked to apply for jobs with a lower salary was unacceptable (c) Some jobs that were offered were not suitable due to the HAVS condition.
46. The claimant explained that that he believed that being required to use vibrating power tools caused his HAVS, and that occupational health monitoring and risk assessments had been inadequate. The OH reports from 2022 and 2023 showed a deterioration in his symptoms despite reduced vibration exposure, creating for SERCO an unacceptable health risk if tool use continued.
47. It was noted that numerous alternative roles had been provided to him, but he had not applied for any of them. The claimant was not willing to take on roles at lower salary. Some roles, such as Paint Sprayer, were unsuitable due to vibration exposure or cold working conditions.
48. The claimant described the impact of the situation on his mental health and financial position. The respondent's position was it had attempted to support him over an extended period and that the decision to remove vibrating tool work was based on protecting his health and safety.
49. Trevor Winchcombe then took time to consider the claimant's appeal alongside the evidence from the ill-health capability process.
50. Mark Cridland (Airfield Services Manager) was appointed to hear to the claimant's grievance appeal. A grievance appeal hearing that had been originally arranged for 1 August 2024, later rescheduled to 6 August, ultimately took place also on 29 August 2024 when the claimant attended with his union representative.
51. During the grievance appeal, the claimant raised issues including delay in diagnosing HAVS, the timing of his Tier 5 HAVS referral, his view that OH

reports supported continued work up to 50 HAVS points, and criticism of the decision to remove him from vibrating tool work. The claimant also raised concerns about risk assessments, COSHH documentation, workshop conditions, the removal of the AXYZ router, and the alternative roles offered during the ill-health capability process.

52. After the hearing, Mark Cridland met with Dave Bower, who had conducted the original grievance investigation, and reviewed the evidence and process followed.

53. On 5 September 2024, Trevor Winchcombe wrote to the claimant confirming his decision to uphold the dismissal. His key reasons were:

- (a) The claimant's HAVS had been identified through routine health monitoring, and Occupational Health advice had been followed in restricting his exposure to vibrating tools.
- (b) The August 2022 Tier 5 assessment recommended reducing exposure to 50 HAVS points, warning that any further deterioration should result in long-term removal from vibration.
- (c) The claimant's symptoms did worsen, as confirmed in the May 2023 OH report, and concerns for his health were the primary reason for removing him from vibrating tool work.
- (d) Over approximately 14 months, reasonable efforts were made to identify alternative roles the claimant could safely perform, but none were suitable. The claimant's refusal to consider roles with lower pay further limited options. Serco had protected his pay from May 2024 to support redeployment, but permanent pay protection was not considered reasonable or feasible.
- (e) Dismissal was deemed reasonable because the claimant could not return to his carpentry role and no suitable alternative employment had been found.

54. On 16 September 2024, Mark Cridland wrote to the claimant confirming the outcome of the appeal. Mark Cridland concluded that the grievance investigation had been thorough and that the conclusions reached were reasonable and supported by the evidence. He was satisfied that the investigation had been thorough and that the conclusions reached were reasonable and supported by the evidence. The letter set out the reasons why the grievance appeal was not upheld.

Law

Reasonable adjustments

55. The duty to make reasonable adjustments arises under sections 20 and 21 of the Equality Act 2010. The duty comprises three requirements. In this case, the first requirement is relevant. It applies where a provision, criterion, or practice (PCP) places a disabled person at a substantial disadvantage compared to a non-disabled person. The employer must take such steps as are reasonable to avoid the disadvantage. A failure to comply with this requirement constitutes a failure to comply with the duty. Such failures amount to discrimination against a disabled person.

56. A PCP is not defined in the Act but should be construed widely, including: Policies, Rules, Practices, Arrangements, Qualifications, One-off decisions or actions (in some cases). However, it must not be an artificial construct derived from isolated acts against a particular employee.
57. In *Ishola v Transport for London* [2020] EWCA Civ 112, it was stated as follows:
37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.
38. In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one.
58. There must be a substantial disadvantage. It is essential to identify clearly the nature and extent of the substantial disadvantage suffered by the claimant. "Substantial" means more than minor or trivial (s.212 EqA 2010).
59. In a claim for failing to make reasonable adjustments the Tribunal must identify: The PCP, Non-disabled comparators (if applicable), The disadvantage suffered; How a proposed adjustment would alleviate it. The Tribunal must explain why the proposed adjustment would reduce the disadvantage.
60. The issues whether a disabled person has been put at a substantial disadvantage by a PCP and what steps are required to be taken by virtue of the duty to make reasonable adjustments must be objectively assessed by the tribunal. The subjective motivation of the parties is irrelevant, and any procedure followed (or not followed) by the employer or requests made (or not made) by the employee may be of some evidential value but are in no way determinative of the issues. The Tribunal should identify the nature and extent of the "substantial disadvantage" caused by

a PCP before considering whether any proposed step was a reasonable one to have to take. There must obviously be some causative nexus between disabilities relied on and the “substantial disadvantage”; the tribunal should look at the “overall picture” when considering the effects of any disabilities. There must be evidence of some apparently reasonable adjustment which could be made before the tribunal can consider it. In determining the reasonableness of any step regard should be had to its likely efficacy, practicability and cost, and the extent of the employer’s resources, the nature of its activities and the size of its undertaking. So far as the efficacy of any proposed step is concerned it is only necessary to establish that there was a real prospect of the step avoiding or reducing the relevant disadvantage. A holistic approach should be adopted when considering the reasonableness of a number of proposed steps.¹

61. Whether an adjustment is reasonable is assessed objectively, with relevant considerations including: practicability, financial cost, disruption and the employer’s resources.²

Conclusions

Unfair dismissal

62. The respondent accepts that it dismissed the claimant. It contends that the reason for dismissal was a potentially fair reason, namely ill-health capability or, alternatively, some other substantial reason limited to matters arising from his ill health. The claimant does not dispute that ill health formed part of the respondent’s rationale. His position is that his HAVS condition was caused or materially contributed to by the working conditions in which he was required to use handheld vibrating tools for prolonged periods without adequate controls prior to October 2018.

63. He further asserts that the respondent failed to take appropriate steps to protect his health, failed to manage his condition properly once identified, and failed to make reasonable adjustments to support him in remaining in employment. The claimant also contends that the respondent did not properly consider alternatives to dismissal, including suitable redeployment, appropriate adjustments, and potential support under the Long-Term Disability / Income Protection Scheme.

“Whether in all the circumstances any reasonable employer would have waited longer before dismissing the claimant”

64. The Tribunal concluded that sufficient time had passed for the claimant to seek and secure an alternative role. The claimant had effectively been absent from work from 4 July 2023 until his dismissal, save for a brief and unsuccessful return. During this period, discussions took place regarding the tools required for his role, and the respondent determined that the AXYZ Router—which might have enabled the claimant to continue working as a carpenter—was not a viable option.

¹ *Thompson v Vale of Glamorgan Council* UKEAT/0065/20/RN

² EHRC Code, para 6.28

65. The claimant showed little interest in most of the roles available during this time. The roles he did express interest in were either unsuitable or, in one instance, had already been filled by the time he expressed an interest. He trialled one temporary role, which lasted a single day and was immediately followed by a further period of sickness absence.

66. Although the claimant indicated he was willing to work with tools generating up to 50 HAVS points, the respondent considered this unsafe and was not prepared to allow him to do so. By July 2024, the claimant had been absent for almost the entire preceding year, and there was no realistic prospect of a sustained return to work in a way that was safe. In these circumstances, the Tribunal considered that the respondent was entitled to conclude that the situation had run its course.

“Did the respondent reasonably consult the claimant on his ability to return to work and take account of his views”

67. The May 2023 OH report recommended that the claimant stop using vibrating tools entirely due to the continued progression of symptoms. The December 2023 OH report indicated that the claimant could return to work where the claimant was working with tools up to 50 HAVS points, however this was expressed as being a risk to the claimant’s health and the claimant had stated that it was a risk he was willing to take. The respondent had sought clarification in respect of what appeared to be two conflicting OH reports. The clarification left the respondent to make a judgment in the circumstances outlined where there was risk but where the claimant was indicating a willingness to take the risk.

68. The respondent was required to reach a judgment, and in our view it was entitled to conclude that allowing the claimant to work at that level of vibration exposure represented a risk too great, even if the claimant was willing to accept it. That was a position a reasonable employer could take. It was a permissible conclusion on a reasonable assessment of the evidence available. While a different conclusion could also have been reached, it cannot be said that the respondent’s decision was impermissible. In reaching its judgment, the respondent was entitled to take into account not only the claimant’s own view of his health condition but also the respondent’s potential liability should the claimant’s condition deteriorate through further use of vibrating tools.

“Did the respondent take reasonable steps to discover the claimant’s medical position and likely prognosis.”

69. The respondent consulted with OH they obtained assessments on the claimant’s HAVS and sought clarification of apparently conflicting reports. The respondent throughout the ill-health capability procedure acted on the basis of the advice that was obtained relating to the claimant’s medical condition. There was no prognosis that suggested a recovery or a way of

working that could be accommodated without risk of further deterioration in the claimant's condition.

"Was dismissal within range of reasonable responses"

70. The claimant had been unable to work for a significant time. The only way he could work was not safe and the respondent thought there was no adjustment that could be made. This was a rational and permissible conclusion having regard to (a) the limitation on the respondent's ability to provide safe tools for the claimant to use and (b) the apparent risks to the claimant's health bearing in mind the tools available. The claimant was unwilling to perform the temporary role offered by the respondent. The claimant had not been able to identify roles that he would have like to apply for that were available at the relevant time or suitable having regard to his health. The claimant accepted that there is no duty for the respondent to slot the claimant into a role that is a promoted role or a constructed role. There was nothing in his medical prognosis to suggest that the situation was going to change rather if he continued to work there was a risk of further deterioration.
71. Procedural failing: The claimant contends that the respondent failed to address the contents of his email of 1 September 2023, sent prior to the welfare meeting on 5 September 2023, in which he set out a list of questions and issues to be addressed. In our view, the claimant is correct that those matters were never expressly answered by the respondent. However, when considering the way in which the respondent assessed the claimant's situation overall, the failure—despite an earlier assurance—to reply to that email does not render the dismissal unfair. Assessed fairly, the respondent acted reasonably overall, and dismissal was a permissible option at the point it was taken, even taking into account the email and the points raised within it.
72. The dismissal was not unfair. The claim of unfair dismissal is not well founded and is dismissed.

Disability

73. The respondent concedes that the claimant had a disability, HAVS, as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about. The respondent concedes it had knowledge of the claimant's disability at the material time.

Section 15 Equality Act 2010 claim

74. In our view the offer of alternative employment was not unfavourable treatment, it was a positive stance to offer the claimant another role at a time when the claimant could not carry out his contractual role. The role was offered to the claimant in November 2023 before the claimant's grievance which was not commenced until 2 April 2024. The claimant in

fact only worked in the role for a day at a time when the grievance outstanding.

75. The claimant was told that if he applied for other roles he would have to be paid the rate for the job. This in respect of many of the roles notified to the claimant meant that he was required to be paid at a lower level of pay. In our view to offer someone the rate for the job is not unfavourable treatment, merely because the person is disabled and is unable to fulfil their contractual role. The Tribunal note that in respect of the temporary role offered to the claimant he was told that this was offered on the basis of his contractual pay being protected. The Tribunal therefore do not consider that the claimant has shown unfavourable treatment in respect of those two matters.
76. The dismissal of the claimant is unfavourable treatment.
77. Did the claimant's disability related sickness absence, being limited to using 50 HAVS points in a day, and the prohibition on using vibration tools arise in consequence of the claimant's disability? In our view, the answer is yes in each one of the three cases.
78. There is a direct link between the claimant's HAVS and his depression which is responsible for much of his absence, this is a disability related sickness absence.
79. Being limited to 50 HAVS points in a day as opposed a person without HAVS who can use circa 400 HAVS points, is a direct consequence of the disability. The claimant's disability HAVS is caused by the use of vibrating tools and the only way to prevent a progression of the condition is to cease all use of the vibrating tools or reduce use to safe levels.
80. The prohibition on using vibration related tools arose because the cause of his disability is the use of the vibrating tools. The claimant has been able to show that those matters were things arising in consequence of the disability.
81. Was the unfavourable treatment because of any of those things? Yes, it was because of all of those things.
82. Was the treatment a proportionate means of achieving a legitimate aim? To answer that we have to decide whether the treatment was an appropriate and reasonably necessary way to achieve those aims; Could something less discriminatory have been done instead; How should the needs of the claimant and the respondent be balanced?
83. The respondent says that its aims were: Safeguarding the claimant's health and safety at work and seeking to apply a fair and consistent policy for ill-health capability to maintain a workforce who can meet operational requirements.

84. The Tribunal accept that it was the case that the respondent was seeking to safeguard the claimant's health and safety at work. The claimant in the course of his third ill-health capability meeting appeared to accept that was the case also. The OH reports indicate that there was a risk of deterioration of the claimant's condition if he worked with vibrating tools. In fact there appeared to be evidence of deterioration during a period when the claimant was not working with vibrating tools. In the view of the Tribunal the position adopted by the respondent was a proportionate means of achieving a legitimate aim.
85. We also accept that the respondent was seeking to apply a fair and consistent policy for ill-health capability to maintain a workforce who can meet operational requirements. The respondent's witnesses evidence supports this conclusion and there is nothing in the claimant's evidence to gainsay it. To the extent that the evidence of Mr Woods was relevant to this case it can be seen that he was in a position which was bearing some similarity to the claimant's position and he was treated in a way which appeared on a superficial consideration to be similar to the claimant.
86. The claim of discrimination arising from disability is not well founded and is dismissed.

Reasonable adjustments

87. We have applied the guidance set out above and taken from the case of *Ishola v Transport for London* [2020] EWCA Civ 112 in respect of identifying a PCP.
88. Applying that guidance when we consider the PCP's relied on by the claimant we do not consider that the PCP's relied on by the claimant at 1, 2, 3, and 5 are PCP's at all.
89. *"Not providing alternative tools (specifically a CNC Router commonly known as an XYZ) due to the cost and/or because the tools were provided by the MOD"* is the first alleged PCP. This is the complaint that the claimant makes against the respondent. It is a feature of the case that the respondent maintains it is contractually bound to use the tools provided by the MOD. That has not been disproved by the claimant. As the respondent contends, this alleged PCP is essentially a statement of the claimant's personal complaint, but it is also indicative of a position that would be adopted were the same circumstances to arise again. In *Ishola* it is stated that not every act of unfair treatment of a particular employee is a PCP. In this case we do not consider that there was unfair treatment of the claimant in respect of the XYZ router. The respondent's position was fixed, and it was not in a position to change it without breaching its contract with the MOD.
90. If we are wrong and the respondent's position in this respect is a PCP we do not consider that it was a reasonable adjustment to act in breach of the contract to provide the claimant with an XYZ router.

91. The other alleged PCP's are (1) *"Not offering the claimant a permanent suitable alternative role in that the claimant should have been offered an alternative role that was similar to his skill set."* (2) *"Not redeploying the claimant to an alternative role in another area within RAF Brize Norton site."* (3) *"Not following the advice of Dr Younger (who was a specialist in HAVS) provided in the last OHA report from December 2023."* All of these are a list of individual complaints personal to the claimant which are not indicative of a practice that would be repeated if the same circumstances arose again.
92. We are however satisfied that the matters alleged at 4 and 6 are capable of being PCP's within the meaning of section 20 and 21 Equality Act 2010.
93. *PCP 4: Not offering the claimant another role at the same rate of pay as a carpenter technician.* Did this PCP put the claimant to a substantial disadvantage compared to someone without the claimant's disability?. There is no obligation on the part of the respondent to pay the claimant at a higher rate of pay for a job that has a lower rate of pay. The claimant in any event was unwilling to take on a role on a lower rate of pay. The claimant would be paid for the work he was doing. There is therefore, in our view, no substantial disadvantage to the claimant in not being paid a higher rate for lower-rated work.
94. Whether such an adjustment would be reasonable requires an objective assessment of all the circumstances. As a general proposition, offering to pay the claimant in another role at the same rate of pay as a carpenter technician is not a reasonable adjustment. The test of reasonableness is objective. Relevant considerations include practicability, financial cost, disruption, and the employer's resources. Where an employer has determined rates of pay for different roles, in our view the need to maintain fairness between employees is, in our view, a legitimate and reasonable consideration.
95. The claimant's case does not provide a factual basis on which such an analysis can be carried out so that it can be established that there is a justification for the respondent to step out side of the correct rates of pay in this specific case. No relevant situation or alternative role existed to which those considerations could be applied. In short, the PCP was never applied in the claimant's case in any event.
96. *PCP 6: Not offering training to assist the claimant into a suitable alternative role.* Similarly, the alleged failure to offer training does not amount to a PCP applied to the claimant. There was no suitable alternative role identified for which training would have been required, and therefore there was no context in which the alleged PCP could have operated. There is no basis for concluding that the respondent would not have offered appropriate training in respect of a suitable role.

97. The claimant's complaints of disability discrimination are not well founded and are dismissed.

98. This is a matter which causes the Tribunal some anxiety, bearing in mind that it appeared at times that the claimant sought to rely on the fact that the situation he is now in may have arisen as a result of his employment with the respondent. However, the issues we are required to determine concern the respondent's decision to dismiss was fair, and whether acts done or not done by the respondent amount to discrimination. This hearing is not about establishing liability in respect of the claimant's injury; those matters appear to have been the subject of proceedings elsewhere and have already been determined in another forum. They were not matters for us.

Approved by:
Employment Judge Gumbiti-Zimuto
15 June 2026

SENT TO THE PARTIES ON

24 June 2026

FOR THE TRIBUNAL OFFICE

Notes

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

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/