



EMPLOYMENT TRIBUNALS

Claimant: Ms Janet Bostic

Respondent: Mitie Limited

Heard at: London East Hearing Centre

On: 18, 19, 20 & 23 (pm only) March 2026
[Late PM 20 March & Early PM 23 March 2026
in Chambers]

Before: Employment Judge B Beyzade

Representation

For the Claimant: In person
(supported by Ms Sarina Woodroffe, Claimant's Daughter)

For the Respondent: Ms Aparajita Arya, Counsel (18-20 March 2026)
Ms Diana Lesanska, Paralegal (23 March 2026)

Written reasons pursuant to Rule 60(4A)(b)(i) and (4B)(b) of The Employment Tribunal Procedure Rules 2024 (as amended)

REASONS

Introduction

1. These are the Tribunal's summary reasons for its judgment given pursuant to Rule 60 of the Employment Tribunal Procedure Rules 2024 (as amended). They explain, in broad terms, why the Tribunal has reached its decision on each of the complaints before it. They are not a substitute for full written reasons and do not address every finding of fact, every item of evidence or every argument advanced by the parties. They are, however,

intended to provide the parties with a clear understanding of the Tribunal's conclusions on the issues identified for determination at the Final Hearing.

The Complaints Before the Tribunal

2. The claimant brings complaints of unfair dismissal under section 98 of the Employment Rights Act 1996 ("ERA 1996"), wrongful dismissal/breach of contract in respect of notice pay, discrimination arising from disability contrary to section 15 of the Equality Act 2010 ("EqA"), failure to make reasonable adjustments contrary to sections 20 and 21 of the EqA, and victimisation contrary to section 27 of the EqA. Those complaints are identified at paragraph 66 of the Case Management Orders dated 12 November 2025 and were considered by reference to the agreed List of Issues discussed with the parties at the commencement of the Final Hearing. The Tribunal's conclusions on those issues are set out below.

Preliminary Matters

1. Employment Status

3. The Tribunal finds that the claimant was employed by the respondent throughout the relevant period and was an employee within the meaning of section 230 of the ERA 1996 and was in employment with the respondent under section 83 of the EqA. The parties were agreed on this issue and no further findings are required.

2. Time Limits

4. The respondent's representative did not pursue any argument that the claimant's complaints were presented outside the applicable statutory time limits. Having considered the dates set out in the agreed chronology, the pleadings and the ACAS Early Conciliation process, the Tribunal is satisfied that the claimant's complaints were presented within the relevant statutory time limits. Accordingly, all complaints were determined by the Tribunal on their merits.

3. Unfair dismissal

3.1 Dismissal

5. The respondent conceded that the claimant had been dismissed. The sole reason relied upon was conduct, and specifically allegations arising out of events on 7 October 2024.

3.2 Reason or principal reason for dismissal

6. The Tribunal finds that the reason, or principal reason, for dismissal was conduct. In particular, the respondent relied upon allegations arising from the incident on 7 October 2024, namely alleged failures to follow the

ASCONE and SAFER procedures, aggressive behaviour towards a suspected offender and conduct said to have occurred during the subsequent investigation.

7. The Tribunal is satisfied that the respondent dismissed the claimant for a potentially fair reason within the meaning of section 98(2)(b) of the ERA 1996.

3.3.1 Genuine belief in misconduct

8. The Tribunal is satisfied that both Miss Saunders, who conducted the disciplinary hearing, and Mr Hart, who conducted the appeal, genuinely believed that the claimant had committed misconduct.
9. Miss Saunders explained that, before reaching her decision, she considered the investigation material, including the claimant's investigation meeting notes, the accounts provided by Mr Shah Ahmed, the independent Starbucks witness account, the investigation summary and CCTV footage. Mr Hart reviewed the same core materials when considering the claimant's appeal.
10. Both witnesses gave clear and consistent evidence that they considered the claimant had acted in breach of important safety procedures and that her conduct amounted to gross misconduct. The Tribunal accepted their evidence. Having considered the evidence as a whole, there is no basis upon which the Tribunal could properly conclude that either decision-maker lacked a genuine belief in the claimant's misconduct.

3.3.2 Reasonable grounds for that belief

11. The Tribunal is also satisfied that there were reasonable grounds for the respondent's belief.
12. The claimant strongly disputes the allegations against her and maintained throughout these proceedings that she had not committed misconduct. However, the Tribunal's task in relation to the unfair dismissal complaint is not to determine whether the misconduct actually occurred, but whether the respondent had reasonable grounds for believing that it had occurred.
13. The respondent had before it evidence from more than one source. This included the account provided by Mr Shah Ahmed, the independent Starbucks witness account describing a "tussle" between the claimant and the customer, the CCTV footage viewed by the respondent, the claimant's own investigation meeting notes (25 and 28 October 2024) and the investigation summary. The Tribunal is satisfied that this material was capable of providing reasonable grounds for the respondent's belief.

3.3.3 Reasonable investigation

14. The Tribunal finds that, at the time the relevant beliefs were formed, the respondent had carried out a reasonable investigation.
15. The investigation included interviews with the claimant on 25 October and 28 October 2024, consideration of the evidence obtained from Mr Shah Ahmed, consideration of an independent witness account from a Starbucks employee, review of CCTV footage and the preparation of an investigation report.
16. The claimant was given an opportunity to provide her account during the investigation process, on 25 October and 28 October 2024. Whilst the Tribunal accepts that the claimant became distressed during the second investigation meeting and brought that meeting to an end, she was nevertheless afforded an opportunity to explain her version of events.
17. Taking account of the nature of the allegations and the respondent's size and administrative resources, the Tribunal is satisfied that the investigation fell within the range of investigations which a reasonable employer could have undertaken in the circumstances.

3.3.4 Procedural fairness

18. The claimant advanced a number of criticisms of the disciplinary procedure. The Tribunal has considered each of those matters carefully.
19. First, the claimant submits that she was not expressly informed that she was under investigation before she was suspended. Whilst it may have been preferable, and indeed good practice, for the respondent to make that position explicit at an earlier stage, the Tribunal does not consider that this rendered the overall procedure unfair. The claimant attended investigation meetings before her suspension and was provided with a suspension letter shortly thereafter explaining the matters being investigated.
20. Secondly, the claimant says that she did not receive all of the documents relied upon by the respondent. Miss Saunders' evidence was that she instructed HR to send the documentation identified in the disciplinary invitation letter to the claimant. She further explained that CCTV footage could not be sent to the claimant directly because of data protection concerns but could have been viewed during a disciplinary meeting. The Tribunal also accepts Miss Saunders' evidence that, had the claimant attended a disciplinary hearing, whether in person, remotely or through a representative, arrangements could have been made for the CCTV footage to be viewed during that process.
21. The letter at pages 121-122 of the Hearing Bundle inviting the claimant to attend a disciplinary hearing on 13 December 2024 lists the enclosed documentation which the respondent intended to rely on at the disciplinary hearing. The Tribunal were advised that the HR team were responsible for sending the letter along with the enclosures. No HR witness was called and therefore the Tribunal cannot make definitive findings regarding precisely

which documents were sent. Moreover, the contemporaneous correspondence does not show the claimant informing Miss Saunders during December 2024 or January 2025 that documents were missing or requesting that they be re-sent. The claimant's communications during that period were confined largely to informing the respondent that she remained unwell.

22. Thirdly, the claimant criticises the respondent's decision not to postpone the disciplinary hearing for a further period. The Tribunal accepts that the claimant was absent from work due to depression and that the hearing scheduled for 13 December 2024 was postponed. However, the claimant did not indicate when she might be fit to participate in a disciplinary hearing. The respondent rescheduled the hearing as a Microsoft Teams hearing and specifically invited the claimant to identify any reasonable adjustments she required. The claimant was also informed that, if she could not attend, alternative arrangements could be considered so that the hearing could proceed. Those alternatives included the provision of a written statement, sending a representative to act on her behalf, or holding the hearing by telephone or at a neutral venue. In addition, the claimant was entitled to be accompanied by a trade union representative or work colleague. The claimant did not request any reasonable adjustments in response to that invitation.
23. The claimant did not avail herself of any of those options. The Tribunal also took into account that disciplinary matters ought ordinarily to be progressed without unreasonable delay and that the respondent was entitled to consider the impact of further delay on the disciplinary process. The Tribunal is not persuaded that obtaining a further occupational health report or GP evidence would have been likely to provide materially different information. There was no medical evidence before Miss Saunders indicating that a further postponement to a defined future date would enable the claimant to participate, or identifying any adjustment not already offered by the respondent which would have enabled her to do so. Nor was there any medical evidence indicating that participation at a hearing would have been clinically inappropriate or impracticable. In those circumstances, the Tribunal finds that the respondent's decision to proceed with the disciplinary hearing rather than postpone it again fell within the range of reasonable responses open to a reasonable employer.
24. The Tribunal does, however, identify a procedural defect in relation to the appeal process. During the appeal the claimant requested documents which she understood had been relied upon during the disciplinary process. Rather than providing those documents, Mr Hart directed the claimant towards a subject access request process. The Tribunal found this aspect of the appeal procedure unsatisfactory.
25. As the appeal officer, Mr Hart should have taken reasonable steps to provide the claimant with material arguably relevant to her appeal. When questioned about this decision, Mr Hart was unable adequately to explain why he considered a separate GDPR process appropriate. The Tribunal

accepts that this failure was likely the result of incorrect HR advice rather than any deliberate attempt to disadvantage the claimant. Nevertheless, the Tribunal finds that this aspect of the appeal procedure was procedurally unfair and fell outside the range of reasonable responses open to a reasonable employer conducting an appeal in the circumstances of this case.

3.3.5 Range of reasonable responses

26. The Tribunal has considered the dismissal process as a whole, taking account of equity and the substantial merits of the case together with the respondent's size and administrative resources.
27. The Tribunal accepts that the respondent had a genuine belief in the claimant's misconduct, that the belief was based upon reasonable grounds and that a reasonable investigation had been carried out. The Tribunal also accepts that the majority of the disciplinary procedure fell within the range of reasonable responses open to a reasonable employer.
28. However, having stood back and considered the procedure in its entirety, the Tribunal is not satisfied that the process as a whole satisfied the requirements of section 98(4) of the ERA 1996. The appeal-stage failure to provide documents requested by the claimant, coupled with Mr Hart's decision to direct the claimant towards a subject access request process instead, rendered the appeal procedurally unfair.
29. Although that defect was limited in scope, the appeal formed part of the overall disciplinary process. In those circumstances the Tribunal finds that the respondent did not act in a procedurally fair manner throughout. Having considered the process as a whole, the Tribunal is not satisfied that the respondent acted fairly for the purposes of section 98(4) of the ERA 1996.
30. The complaint of unfair dismissal therefore succeeds.

Issue 4 Remedy for unfair dismissal

31. The claimant confirmed during the hearing that she does not seek either reinstatement or re-engagement. The Tribunal therefore makes no order for reinstatement or re-engagement.
32. The respondent submits that any award should be reduced by 100% on *Polkey* grounds. The Tribunal accepts that submission.
33. The procedural unfairness identified by the Tribunal was limited to the appeal stage and arose from the respondent's failure to provide documents requested by the claimant during the appeal process. The Tribunal has considered what would have happened had a fair appeal process been followed.

34. The Tribunal is satisfied that the claimant would have been dismissed in any event. In reaching that conclusion, the Tribunal has taken into account that the claimant did not attend the disciplinary hearing; the claimant did not indicate when she would be sufficiently well to participate in either a disciplinary hearing or an appeal hearing; the claimant chose not to avail herself of the alternative arrangements offered by the respondent; the claimant did not fully engage with the investigation process and brought the second investigation meeting to an end before its conclusion; and the claimant's witness statement and oral evidence before this Tribunal demonstrate that the substance of her defence remained materially the same throughout.
35. The Tribunal accepted Mr Hart's evidence that he considered the claimant's conduct warranted dismissal and that providing the claimant with the documents she requested during the appeal process would not have altered the outcome of the appeal. Having considered all of the evidence before it, including the claimant's witness statement, oral evidence and explanations provided during the investigation process, the Tribunal independently reached the same conclusion.
36. The burden of establishing a *Polkey* reduction rests upon the respondent. The Tribunal is satisfied that the respondent has discharged that burden.
37. Having regard to all of the evidence, the Tribunal finds that the claimant's dismissal was inevitable and is satisfied that it would have occurred in any event and at or substantially the same time if the procedural defect had been cured. The Tribunal assesses the likelihood of dismissal following a fair procedure at 100%. Accordingly, pursuant to the principles in *Polkey v AE Dayton Services Ltd [1987] UKHL 8, [1988] ICR 142* any compensatory award is reduced by 100%.
38. As the claimant does not seek reinstatement or re-engagement and any compensatory award is reduced by 100% pursuant to *Polkey*, no compensatory award is payable in respect of the unfair dismissal claim.
39. In the alternative, if the Tribunal is wrong to make a 100% *Polkey* reduction in respect of the compensatory award, the Tribunal has considered whether the claimant to any extent caused or contributed to her dismissal by blameworthy conduct for the purposes of section 123(6) of the ERA 1996.
40. The burden rests upon the respondent to establish facts justifying a reduction in the compensatory award. The Tribunal is satisfied that the respondent has discharged that burden.
41. The Tribunal is satisfied that the conduct relied upon by the respondent materially contributed to the claimant's dismissal. The Tribunal has already found, on the balance of probabilities, that the claimant had committed gross misconduct arising from the events of 7 October 2024. That conduct involved important departures from the respondent's safety procedures,

namely the ASCONE and SAFER procedures, which the Tribunal accepts were central to the claimant's role and to the respondent's business.

42. The Tribunal is further satisfied that the claimant's misconduct was blameworthy conduct and was the sole and effective cause of her dismissal. Had it been necessary to do so, the Tribunal would have considered it just and equitable to reduce any compensatory award by 100% pursuant to section 123(6) of the ERA 1996.
43. The Tribunal has also considered section 122(2) of the ERA 1996. The burden rests upon the respondent to establish facts justifying a reduction in the basic award. The Tribunal is satisfied that the respondent has discharged that burden.
44. The Tribunal considers that the claimant's conduct before her dismissal was such as to warrant a reduction of any basic award to nil. For substantially the same reasons already identified, the claimant's misconduct was serious, blameworthy and directly led to her dismissal.
45. The Tribunal considers it to be just and equitable to reduce any basic award by 100% pursuant to section 122(2) of the ERA 1996.
46. The effect of the Tribunal's findings is that no compensatory award is payable. The compensatory award is reduced by 100% on Polkey grounds. Alternatively, it would have been reduced by 100% on account of the claimant's contributory conduct. No basic award is payable pursuant to section 122(2) of the Employment Rights Act 1996 on account of the claimant's conduct before the dismissal.
47. In light of those conclusions, it is unnecessary for the Tribunal to determine issues relating to mitigation of loss, the statutory cap on compensation or any adjustment under the ACAS Code of Practice on Disciplinary and Grievance Procedures, because those matters could not affect the outcome of the remedy proceedings.

Issue 5 Wrongful dismissal/Breach of contract (notice pay)

48. The parties agreed that the claimant was entitled to seven weeks' notice. It is also agreed that the claimant neither worked her notice period nor received a payment in lieu of notice. The issue for the Tribunal is whether the respondent was entitled to dismiss the claimant summarily by reason of gross misconduct.
49. Unlike the unfair dismissal claim, the Tribunal must determine for itself whether the claimant committed conduct amounting to a repudiatory breach of contract. The question is not whether the respondent reasonably believed the claimant was guilty of misconduct, but whether the misconduct occurred on the balance of probabilities.

50. Having considered all of the evidence before it, including but not limited to the claimant's oral evidence and all the other evidence and circumstances, the Tribunal is satisfied that the claimant committed gross misconduct.
51. The Tribunal accepts that the claimant attended the incident after receiving a call from Mr Shah Ahmed. However, the claimant accepted that she had not personally witnessed the ASCONE criteria and was acting on information provided by Mr Shah Ahmed. Notwithstanding that fact, she became involved in an interaction with the suspected offender outside the store.
52. The Tribunal finds that the claimant acted contrary to the ASCONE and SAFER procedures. The Tribunal accepted the respondent's evidence that these were important safety procedures central to the claimant's role.
53. The Tribunal further finds that the incident escalated beyond a verbal exchange. In reaching that conclusion, the Tribunal has considered the account provided by Mr Shah Ahmed, the independent Starbucks witness account describing a "tussle", and the claimant's own evidence concerning her interaction with the suspected offender.
54. The Tribunal is satisfied on the balance of probabilities that the claimant became involved in a physical confrontation which created a foreseeable risk to herself and others. The Tribunal further finds that the escalation of the incident, including the tussle described by the independent witness, was attributable in significant part to the claimant's actions.
55. The Tribunal accepted the respondent's evidence that compliance with the ASCONE and SAFER procedures was fundamental to the claimant's role and to the respondent's business. The claimant's conduct represented a serious departure from those procedures and from the standards reasonably expected of her.
56. In all the circumstances, the Tribunal is satisfied that the claimant's conduct amounted to gross misconduct and constituted a repudiatory breach of contract. The respondent was therefore entitled to terminate the claimant's employment without notice.
57. The Tribunal is satisfied that the respondent has discharged the burden resting upon it of establishing gross misconduct on the balance of probabilities.
58. The wrongful dismissal/breach of contract (notice pay) complaints therefore fail and no notice pay is payable.

S 6 EqA Disability

59. The respondent conceded that the claimant was a disabled person within the meaning of section 6 of the EqA by reason of her depression. The Tribunal accepts that concession and finds that, at all material times, the claimant was disabled for the purposes of section 6 of the EqA.

60. In light of that concession, it was unnecessary for the Tribunal to make detailed findings in respect of Issues 6.1.1 to 6.1.5 concerning the existence of an impairment, substantial adverse effect, long-term effect and the impact of any treatment or medication. Those issues were agreed between the parties and were not in dispute at the Final Hearing.

S 15 Discrimination arising from disability

Issue 7.1

61. The Tribunal first considered whether the respondent treated the claimant unfavourably in any of the respects identified at paragraph 7.1 of the agreed List of Issues.
62. In relation to paragraph 7.1(a), the Tribunal accepts that the disciplinary hearing was conducted in the claimant's absence. However, the Tribunal does not accept that the respondent proceeded in the claimant's absence without allowing her an opportunity to make representations. The claimant was informed that the disciplinary process would continue and was offered a number of ways in which she could participate or provide representations. These included participation by Microsoft Teams, the provision of a written statement, sending a representative to act on her behalf, participation by telephone and attendance at a neutral venue. The claimant was also invited to identify any reasonable adjustments she required. The claimant did not avail herself of those opportunities. In those circumstances, the Tribunal does not find that the respondent's conduct amounted to unfavourable treatment for the purposes of section 15 of the EqA.
63. In relation to paragraph 7.1(b), the Tribunal accepts that the CCTV footage was not provided to the claimant before the disciplinary hearing. The Tribunal accepted Miss Saunders' evidence that the respondent did not provide CCTV footage directly because of data protection concerns and that arrangements could have been made for the footage to be viewed during the disciplinary process. Whilst the claimant contends that certain witness statements were also not provided, the Tribunal has already found that there was insufficient evidence to determine precisely which documents were sent by HR before the disciplinary hearing. The Tribunal further found that the claimant did not raise any complaint with Miss Saunders during December 2024 or January 2025 that documents were missing. Although the Tribunal found a procedural defect during the appeal process when requested documents were not provided by Mr Hart, that issue has already been addressed under the unfair dismissal claim and is not relied upon by the Tribunal as unfavourable treatment for the purposes of section 15. In those circumstances, the Tribunal does not find that the matters alleged at paragraph 7.1(b) constitute unfavourable treatment for the purposes of section 15 of the EqA.
64. In relation to paragraph 7.1(c), the Tribunal does not accept that the claimant was dismissed without consideration being given to reasonable

adjustments. The evidence demonstrated that the respondent expressly invited the claimant to identify any reasonable adjustments she required and considered alternative methods by which she could participate in the disciplinary process. The claimant was offered a number of ways in which she could participate or provide representations, including participation by Microsoft Teams, the provision of a written statement, sending a representative to act on her behalf, participation by telephone and attendance at a neutral venue. The claimant did not suggest any further reasonable adjustments she required. The Tribunal therefore finds that the matters alleged at paragraph 7.1(c) are not made out and do not amount to unfavourable treatment for the purposes of section 15 of the EqA.

Issue 7.2

65. In relation to Issue 7.2(a), the Tribunal accepts that at the material time the claimant was absent from work and certified unfit for work due to depression. However, the evidence does not satisfy the Tribunal that the claimant's inability to attend the disciplinary hearing arose from being on sick leave for depression. The claimant's communications with the respondent stated only that she remained sick. They did not explain why she was unable to participate in the disciplinary process either by attending the scheduled disciplinary hearing or by any of the alternative means proposed by the respondent, including written representations, representation by another person, participation by telephone or attendance at a neutral venue. Nor was the Tribunal referred to medical evidence demonstrating that the claimant was unable to participate in the disciplinary process by any such means. The Tribunal therefore finds that the evidence does not establish the necessary causal link between the claimant's alleged inability to attend the disciplinary hearing and her being on sick leave for depression. Further, the Tribunal finds that the respondent did not simply proceed with the hearing in her absence without considering adjustments. The hearing was postponed once and a number of alternative arrangements were offered, none of which were taken up by the claimant and no alternative adjustment was proposed by her.

Issue 7.3

66. In relation to Issue 7.1(a), and assuming in the claimant's favour that Issue 7.2(a) is established (contrary to the Tribunal's finding above), the Tribunal does not find that the respondent conducted the disciplinary hearing in the claimant's absence without allowing her to make representations because of that matter. The claimant was expressly offered the opportunity to attend the hearing, to participate by telephone, to provide written representations or to have a representative attend on her behalf. The respondent's decision to proceed was taken after the claimant did not utilise any of those opportunities and did not identify a date by which she would be able to participate. The Tribunal therefore finds that the respondent's decision to proceed with the hearing arose from the claimant's non-participation in the process despite the adjustments and alternatives offered by the respondent rather than because of the matter relied upon at Issue 7.2(a).

67. In relation to Issue 7.1(b), and again assuming in the claimant's favour that Issue 7.2(a) is established (contrary to the Tribunal's finding above), the Tribunal does not find that the respondent relied upon evidence that was not shared with the claimant because of that matter. The respondent's evidence was that the CCTV footage was not provided because of its understanding of data protection requirements and that witness statements and other investigation materials were intended to be provided through the respondent's usual HR processes. During the appeal process, the claimant was directed to make a subject access request for further documentation. Whether those approaches were correct or not, the Tribunal is satisfied that they were adopted because of the respondent's understanding of its disclosure and data protection obligations and not because of the matter relied upon by the claimant at Issue 7.2(a).
68. In relation to Issue 7.1(c), and assuming in the claimant's favour that Issue 7.2(a) is established (contrary to the Tribunal's finding above), the Tribunal does not find that the claimant was dismissed without consideration of reasonable adjustments because of that matter. The respondent postponed the disciplinary hearing, invited the claimant to identify any reasonable adjustments she required and offered alternative means of participation. The claimant did not take up those alternatives and did not propose any other adjustment. The Tribunal therefore finds that the respondent's actions were not because of the matter relied upon at Issue 7.2(a) but were taken following the claimant's failure to participate in the disciplinary process despite the opportunities that had been made available to her.

Issue 7.4

69. The burden of proof in relation to Issue 7.4 rests on the respondent. Accordingly, if the Tribunal is wrong about Issues 7.2 and 7.3, it is for the respondent to establish that the alleged unfavourable treatment constituted a proportionate means of achieving a legitimate aim. The Tribunal is satisfied that the aims relied upon by the respondent, namely maintaining standards of conduct, promoting health and safety, maintaining its reputation and protecting its commercial relationship with its client, were legitimate aims.

Issue 7.5

70. In relation to Issue 7.1(a), and again assuming in the claimant's favour that Issues 7.2(a) and 7.3 are established (contrary to the Tribunal's findings above), the Tribunal finds that proceeding with the disciplinary hearing in the claimant's absence was a proportionate means of achieving the respondent's legitimate aims of maintaining standards of conduct, promoting health and safety, maintaining its reputation and protecting its commercial relationship with its client. The respondent postponed the hearing once, offered the claimant a number of alternative means of participation and invited her to identify any reasonable adjustments she required. The claimant did not take up those alternatives and did not identify a date by which she would be able to participate. In those circumstances,

the Tribunal finds that proceeding with the disciplinary process was an appropriate and reasonably necessary means of achieving the respondent's legitimate aims and that no less discriminatory measure was reasonably available. The respondent was entitled to seek to ensure that the disciplinary process concluded within a reasonable timeframe.

71. In relation to Issue 7.1(b), and again assuming in the claimant's favour that Issues 7.2(a) and 7.3 are established (contrary to the Tribunal's findings above), the Tribunal finds that the respondent's approach to disclosure was a proportionate means of achieving its legitimate aims. The respondent proceeded on the basis of its understanding of its data protection obligations in relation to CCTV footage and its usual HR processes concerning the provision of documentation, including witness statements and other investigation materials. Whether those approaches were correct or not, the Tribunal is satisfied that they reflected an attempt to balance the conduct of the disciplinary process with the respondent's obligations concerning confidential information and its wider operational responsibilities. The Tribunal notes that the claimant did not raise any complaint with Miss Saunders during the disciplinary process that witness statements or other documents had not been provided and that, during the appeal process, she was directed towards a subject access request in order to obtain further documentation. Whilst the Tribunal has separately concluded, in the context of the unfair dismissal claim, that aspects of the appeal process were procedurally flawed, including the respondent's handling of the claimant's request for documentation, the Tribunal is satisfied that the respondent's actions were taken in pursuit of its stated legitimate aims and represented an attempt to balance those aims against the requirements of the disciplinary process. The Tribunal is not satisfied that there was any less discriminatory measure which would have achieved those aims with materially less impact upon the claimant.
72. In relation to Issue 7.1(c), and again assuming in the claimant's favour that Issues 7.2(a) and 7.3 are established (contrary to the Tribunal's findings above), the Tribunal finds that any failure to postpone the disciplinary process further or obtain additional medical evidence was a proportionate means of achieving the respondent's legitimate aims of maintaining workplace standards, promoting health and safety, protecting its reputation and preserving its commercial relationship with its client. The respondent was aware that the claimant was absent on sick leave, postponed the hearing once, offered alternative means of participation and invited the claimant to identify adjustments she required. The claimant did not propose any adjustment beyond not participating whilst she remained unwell. The Tribunal is not satisfied that obtaining occupational health or further medical evidence or postponing the hearing indefinitely or until an unspecified future date, would have represented a reasonably practicable and less discriminatory means of achieving the respondent's legitimate aims. The Tribunal therefore finds that the balance between the claimant's needs and the respondent's legitimate operational needs was struck proportionately.

Issue 7.6

73. The respondent accepted at the hearing that the claimant was disabled within the meaning of section 6 of the EqA and did not dispute that it knew, or could reasonably have been expected to know, of that disability at all material times. The Tribunal finds that the respondent knew, or could reasonably have been expected to know, that the claimant was disabled at all material times. In particular, the respondent had available to it the occupational health report dated 9 July 2024 which identified the claimant's PTSD, anxiety and depression, advised that her conditions were likely to amount to a disability within the meaning of the EqA and recommended that long-term adjustments be considered. In addition, Miss Saunders was informed by HR before the disciplinary process concluded that the claimant was absent from work due to depression.
74. The claimant's complaints made pursuant to s 15 of the EqA therefore fail.

S 20 and 21 EqA Reasonable adjustments

Issue 8.1

75. This issue was not in dispute. The respondent accepted at the hearing that the claimant was disabled within the meaning of section 6 of the EqA. The Tribunal finds that the respondent knew, or could reasonably have been expected to know, of the claimant's disability at all material times relevant to the reasonable adjustments complaints.

Issue 8.2

76. In relation to Issue 8.2(a), the Tribunal does not find that the respondent operated a provision, criterion or practice requiring employees to attend disciplinary hearings in person. The evidence demonstrated that employees could participate by alternative means and, in the claimant's case, the respondent expressly offered the opportunity to participate by telephone, to provide written representations, to have a representative attend on her behalf or to attend at a neutral venue. The Tribunal therefore finds that no such PCP existed and that it was not applied to the claimant.
77. In relation to Issue 8.2(b), the Tribunal does not find that the respondent operated a provision, criterion or practice requiring employees to present their case orally at a disciplinary hearing rather than in writing. The respondent expressly informed the claimant that she could provide written representations for consideration as part of the disciplinary process. The Tribunal therefore finds that no such PCP existed and that it was not applied to the claimant.
78. In relation to Issue 8.2(c), the Tribunal does not find that the respondent operated the PCP alleged by the claimant. The evidence establishes only that, in the claimant's case, Miss Saunders and Mr Hart proceeded without obtaining further occupational health or medical evidence. The Tribunal is not satisfied that this reflected a provision, criterion or practice applied by

the respondent rather than decisions taken in the particular circumstances of the claimant's case.

Issue 8.3

79. In relation to Issue 8.3(a), the Tribunal does not find that the claimant was placed at a substantial disadvantage by any PCP relied upon. For the reasons set out in relation to Issue 7.2(a), the Tribunal is not satisfied that the claimant was unable to attend or participate in the disciplinary process because of ill-health arising from her depression. The respondent offered a number of alternative means of participation and the evidence does not establish that the claimant was unable to engage with the process by any of those means.
80. In relation to Issue 8.3(b), the Tribunal does not find that the claimant was placed at a substantial disadvantage by any PCP relied upon. The respondent did not require the claimant to present her case orally and expressly offered her the opportunity to provide written representations or to have a representative participate on her behalf. The evidence does not establish that the claimant's depression or anxiety prevented her from communicating effectively orally or by those alternative means.
81. In relation to Issue 8.3(c), the Tribunal does not find that the claimant was placed at a substantial disadvantage in the manner alleged. Whilst the respondent did not obtain occupational health or other medical advice before proceeding with the disciplinary process, the Tribunal is not satisfied that this resulted in the claimant's disability-related needs not being identified or accommodated. The respondent was aware that the claimant was absent from work due to depression, postponed the disciplinary hearing once, invited her to identify any adjustments she required and offered a number of alternative means of participation. Further, there was no medical evidence before the Tribunal establishing that occupational health input would have identified any additional adjustment or would have recommended postponement of the disciplinary process for any specified or particular period.

Issue 8.4

82. If the Tribunal is wrong in its findings in relation to Issue 8.3, the Tribunal does not find that the respondent knew, or could reasonably have been expected to know, that the claimant was likely to be placed at the disadvantages alleged. Whilst the respondent knew that the claimant was disabled and absent from work due to depression, the claimant's communications stated only that she remained unwell and was unable to attend the disciplinary hearing. The claimant did not explain why she could not participate in the disciplinary hearing or why she could not participate by any of the alternative means offered by the respondent, did not identify any particular disability-related disadvantage arising from those alternatives and did not provide medical evidence addressing her ability to participate in the disciplinary process. Further, the occupational health evidence available

to the respondent did not identify any limitation affecting the claimant's ability to participate in disciplinary proceedings or recommend adjustments of the type now relied upon. In those circumstances, the Tribunal is not satisfied that the respondent knew, or could reasonably have been expected to know, that the claimant was likely to be placed at the disadvantages alleged at Issue 8.3.

Issues 8.5 – 8.7

83. If the Tribunal is wrong in its findings in relation to Issues 8.3 and 8.4, the Tribunal nevertheless finds that the respondent did not fail to take the step identified at Issue 8.5(a). The respondent offered the claimant a number of alternatives to attending the disciplinary hearing in person, including holding the meeting by Microsoft Teams, the opportunity to provide written representations, to participate by telephone, to have a representative attend on her behalf and to attend at a neutral venue. Those alternatives addressed the difficulties relied upon by the claimant in relation to participation in the disciplinary process. In those circumstances, the Tribunal finds that it was reasonable for the respondent to offer those alternatives and that the respondent did so. The respondent therefore did not fail to take the steps identified at Issue 8.5(a).
84. If the Tribunal is wrong in its findings in relation to Issues 8.3 and 8.4, the Tribunal further finds that it was not established that it was reasonable for the respondent to obtain occupational health advice and postpone the disciplinary process for a further period as suggested at Issue 8.5(b). The claimant did not provide medical evidence indicating that she was unable to participate in the disciplinary process by any means or identifying any adjustment that would enable her to do so. Whilst the respondent did not obtain occupational health advice before proceeding, there was no evidence before the Tribunal that an occupational health report would or could have recommended postponement of the disciplinary hearing, nor was there evidence identifying the period for which any postponement should have lasted. The respondent had already postponed the hearing once and offered a range of alternative means of participation. The respondent was entitled to seek to conclude the disciplinary process within a reasonable timeframe and was not required to postpone it indefinitely. In those circumstances, the Tribunal is not satisfied that a further postponement following receipt of occupational health advice was a reasonable step which the respondent was required to take.
85. The failure to make reasonable adjustments complaints therefore fail.

S 27 EqA Victimisation

Issue 9.1

86. It is common ground that the claimant presented Employment Tribunal proceedings against the respondent on 15 December 2022 (Claim Number

2211434/2022) which was heard by the London East Employment Tribunal on 07 February 2025. The respondent accepts, and the Tribunal finds, that the presentation of those proceedings amounted to a protected act for the purposes of section 27 of the EqA.

Issue 9.2 (a)

87. The claimant confirmed at the start of the hearing that the only individual upon whom she relied for the purposes of Issue 9.2(a) was Shah Ahmed. The Tribunal finds that the claimant was treated differently from Shah Ahmed in that she was dismissed whereas he received a lesser disciplinary sanction. However, the Tribunal does not find that this amounted to excessive severity as alleged by the claimant. The Tribunal finds that the circumstances of the two cases were materially different. The allegations against the claimant and Shah Ahmed were not the same, the disciplinary decisions were taken by different decision-makers and, unlike the claimant, Shah Ahmed participated in the disciplinary process and accepted wrongdoing. The claimant did not attend the disciplinary hearing and did not provide written representations for consideration by the disciplinary decision-maker. The claimant herself accepted in evidence that the circumstances were different because she became involved after being called by Shah Ahmed to assist with the incident. The claimant also accepted that she had not personally witnessed the matters required by the respondent's ASCONE procedure before becoming involved. Further, the independent Starbucks witness referred to a tussle involving the claimant and the customer, whereas no equivalent evidence was relied upon by the respondent in relation to Shah Ahmed. In those circumstances, the Tribunal finds that the two cases were not truly comparable and that the difference in outcome does not establish excessive severity on the part of the respondent.

Issue 9.2(b)

88. In relation to Issue 9.2(b), the Tribunal finds that the respondent failed to follow fair procedures during the disciplinary process to the limited extent identified in the Tribunal's findings concerning the appeal process and, in particular, the respondent's handling of the claimant's request for documentation. Subject to that matter, the Tribunal finds that the respondent acted fairly in all the circumstances of the disciplinary and appeal processes.

Issue 9.2(c)

89. In relation to Issue 9.2(c), the Tribunal finds that the claimant was dismissed by the respondent on 17 January 2025. Accordingly, this alleged detriment is established as a matter of fact.

Issues 9.3 and 9.4

90. In relation to Issue 9.2(a), the Tribunal has found that the difference in treatment between the claimant and Shah Ahmed did not amount to excessive severity. It follows that no detriment has been established. If the Tribunal is wrong about that finding and the claimant was subjected to a detriment, the Tribunal does not find that it was because she carried out the protected act. The Tribunal is satisfied that any difference in treatment was explained by the material differences between the two cases. These included (but were not limited to) the involvement of two different decision-makers, the fact that Shah Ahmed participated in the disciplinary process and accepted wrongdoing, and the fact that the claimant did not participate in the disciplinary process or provide written representations for consideration by the decision-maker. The Tribunal is satisfied that the protected act played no part in the treatment complained of whatsoever.
91. In relation to Issue 9.2(b), the Tribunal accepts that the procedural shortcomings identified in the appeal process were capable of amounting to a detriment. However, the Tribunal does not find that those shortcomings occurred because the claimant carried out the protected act. Both Miss Saunders and Mr Hart gave evidence that they were unaware of the claimant's previous Employment Tribunal claim at the material time. The Tribunal accepts that evidence. Whilst the claimant contended that the earlier claim influenced the disciplinary and appeal processes, the Tribunal does not find that contention established on the evidence. There is no sufficient evidence to satisfy the Tribunal that the earlier claim influenced any aspect of those processes. The Tribunal finds that the procedural shortcomings arose from errors in the handling of the process, including the respondent's approach to the claimant's request for documentation, and not because the claimant had carried out the protected act. The Tribunal is satisfied that the protected act played no part in the treatment complained of whatsoever.
92. In relation to Issue 9.2(c), the claimant's dismissal plainly amounted to a detriment. However, the Tribunal does not find that the dismissal was because the claimant carried out the protected act. Both Miss Saunders and Mr Hart gave evidence, which the Tribunal accepts, that they were unaware of the claimant's previous Employment Tribunal claim when they made their respective decisions. The Tribunal is satisfied that the reason for the claimant's dismissal was the respondent's genuine belief that she had committed gross misconduct and that the appeal outcome was upheld for the same reason. The Tribunal is satisfied that the previous Employment Tribunal claim had no connection whatsoever with the claimant's dismissal.
93. The claimant's victimisation complaints therefore fail.

Conclusion

94. For the reasons set out above, the Tribunal concludes that the claimant was unfairly dismissed only to the limited extent that there was a procedural defect during the appeal process. However, the Tribunal finds that the claimant would inevitably have been dismissed even if that procedural

defect had not occurred and applies a 100% reduction to the compensatory award pursuant to *Polkey*. In the alternative, the Tribunal finds that the claimant's conduct contributed wholly to her dismissal and applies a 100% reduction in respect of the compensatory award. In addition, the basic award is reduced by 100% on account of the claimant's conduct prior to dismissal. No compensation is therefore payable in respect of the unfair dismissal claim. The wrongful dismissal and breach of contract (notice pay) complaints fail because the Tribunal finds that the claimant was dismissed for gross misconduct. The complaints of discrimination arising from disability, failure to make reasonable adjustments and victimisation are also dismissed.

Approved By:
Employment Judge B Beyzade
Dated: 08 July 2026