



EMPLOYMENT TRIBUNALS

Claimant**Respondent**

Mr J Jones

v

Zorba Delicacies Ltd

Heard at: Cardiff

On: 18 and 19 May 2026

Before: Regional Employment Judge S Davies (sitting alone)

Representation

For the Claimant: in person

For the Respondent: Mr F Mortin, counsel

JUDGMENT was sent to the parties on 8 June 2026 and full written reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following reasons are therefore provided.

WRITTEN REASONS

1. Judgment with summary reasons was delivered orally to the parties on 19 May 2026. The Claimant requested full written reasons on 20 May 2026 via a communication on the HMCTS portal. This application was not referred to me by HMCTS until 8 June 2026, shortly before 2 weeks of annual leave. The parties were informed on 9 June 2026 of the consequent delay. Written reasons are provided at the first opportunity following my return to work.

Witnesses and bundle

2. I heard live evidence from the Claimant and from Mrs Wendy Cook, Hygiene Manager for the Respondent.
3. Mrs Cook amended her witness statement at paragraph 12 to provide the timings of Mr Alun Morgan's shift on 23 January 2025.
4. The Claimant produced a witness statement from Robyn Thomas, a health care professional involved in the Claimant's care. It was not necessary for

this witness to give live evidence as it was not relevant to the issue of liability.

5. I was referred to an agreed bundle of 270 pages (including additional documents referred to below).

Adjustments

6. Reasonable adjustments for the Claimant were directed by Judge S Moore at a preliminary hearing on 2 July 2025. The Claimant was offered breaks in proceedings, including immediately after his evidence when the Tribunal adjourned early on day 1. This allowed the Claimant a break from proceedings overnight before he questioned Mrs Cook on day 2.
7. The Claimant was given additional time as required to process questions and find documents.
8. The Claimant was permitted to have a notepad and pen at the witness table when giving evidence.
9. Mr Mortin submitted detailed written representations on 15 May 2026 to the Claimant, in furtherance of the direction that he should have regard to the Advocate's Gateway guidance on interactions with neurodiverse parties in proceedings. Mr Mortin also provided a list of issues which was agreed, following discussion and reference to Judge S Jenkins' previous list of issues of 30 January 2026.
10. In addition to the above and in consultation with the parties evidence was heard on liability only. This was to reduce possible overwhelm for the Claimant as a result of addressing liability and remedy simultaneously. In light of the judgment on liability, evidence on remedy was not required.
11. The hearing room was cold but heaters were provided by HMCTS. All participants confirmed their willingness to proceed with the hearing despite the temperature issues.

Applications

12. By consent, the Grounds of Resistance were amended to include the Respondent's reasons for not offering further shifts to the Claimant (para 18) and information about Mr Francis as a possible comparator (para 22).
13. Mr Mortin conceded that the amended Grounds of Resistance were inaccurate in respect of paras 9 -11 (jurisdiction) due to typographical errors. A revised and accurate version of the document was produced during the course of the hearing.
14. In the absence of objection, additional documents adduced by the Respondent were permitted to be included in the bundle.

15. An application by the Claimant to use a version of a witness statement with different coloured highlighter pen on it was refused and a clean version provided for use on the witness stand.

Issues

16. This claim is about the reason why the Respondent ('Zorba') stopped offering shifts to the Claimant. It is brought as a complaint of direct disability discrimination under section 13 Equality Act 2010 (EA).
17. The Respondent accepts that the complaint was properly made under section 41 EA as the Claimant was a contract worker.
18. The Respondent concedes that the Claimant is a disabled person within the meaning of section 6 EA but disputes actual or constructive knowledge of disability.
19. The Respondent accepts that on 29 January 2025 it informed the Claimant's employing agency, Thomas Recruitment, that the Claimant was not to be offered further shifts. The Respondent accepts that this act constitutes detrimental treatment. Mrs Cook communicated the instruction to Thomas Recruitment on 23 January 2025. The Claimant became aware of that instruction on 29 January 2025 when informed by Thomas Recruitment. The date of the act complained of was determined by Judge S Jenkins at a preliminary hearing on 30 January 2026.
20. The Claimant relies on a real comparator, Mr Jason Francis (with whom he was involved in an altercation on 23 January 2025 following which Mr Francis was not dismissed). Alternatively the Claimant relies upon a hypothetical comparator.
21. The Respondent asserts that Mr Francis is not an actual comparator as his circumstances were materially different to the Claimant's (s 23 EA).
22. The issues are therefore:
 - a. Was the instruction not to offer shifts to the Claimant communicated on 29 January 2025 an act of less favourable treatment?
 - i. Was Mr Francis an actual comparator, in that circumstances were not materially different to that of the Claimant's?
 - ii. If so, was the Claimant treated less favourably than Mr Francis?
 - iii. If not, was the Claimant treated less favourably than a hypothetical comparator whose circumstances and abilities were not materially different to that of the Claimant's?
 - b. If treated less favourably, was that because of the Claimant's disability (autism)? This question requires consideration of whether

the Respondent knew or ought reasonably to have known of the Claimant's autism.

Law

23. I held in mind sections 13 and 23 EA and the EHRC Employment Statutory Code of Practice (2015).
24. I incorporate by reference, the Respondent's statement of the law on liability in the Written Representations.
25. It was unnecessary for me to make much reference to the law as this case was largely decided on the basis of factual findings.

Factual Findings

26. These facts are agreed or not challenged by the parties unless specified otherwise.
27. The Claimant was engaged as an agency worker by Thomas Recruitment and placed to work for Zorba. As such his working relationship was with Thomas Recruitment, not Zorba. Thomas Recruitment had an office base at Zorba's workplace and their representatives dealt with the Claimant's holidays and shift allocation. Their interactions were through a mixture of face to face discussions and text messaging.
28. The Claimant did not disclose his autism to Thomas Recruitment before starting work with Zorba. That is an understandable decision to take in the light of the Claimant's history of difficult experiences at work, which he ascribed to disclosure of his autism.
29. The Claimant worked initially for Zorba from November 2024 in packaging and mixing of food products. Then on 6 January 2025 he moved to another part of the business known as the yard, where he worked in a team under Mrs Wendy Cook.
30. Prior to the move to the yard, the Claimant told two colleagues, Jordan and Ryan, about his autism. These colleagues worked in different departments to the yard, save that Ryan did a couple of shifts in the yard. These were the only people that the Claimant told directly about his autism. The Claimant believes that other colleagues learned of his autism as they all live and work in a tight-knit valleys community. There is a key dispute about whether the Claimant told Mrs Cook about his autism and I deal with that below.
31. The Claimant and Mrs Cook had a pleasant working relationship, albeit they did not have much direct contact with each other during the brief period the Claimant worked in the yard.

32. Work at Zorba was generally going well but the Claimant's issues at work started when he moved to the yard. The PPE boots he was provided with by Zorba were too small. I find that the Claimant's feet were in a bad condition, as evidenced by the photographs adduced in evidence. Although this is not conceded by Zorba, it seems likely that this was because the boots he was given were too small. The Claimant spoke with Mrs Cook about the boots and she gave him plasters and referred him to a colleague to obtain a more suitable pair of boots.
33. Issues about the Claimant's performance at work were raised with Mrs Cook from mid-January 2025 onwards. These issues were about him not doing tasks he was asked to do but focussing on other tasks and taking breaks. There is a dispute about this but it was not necessary for me to resolve this matter; it is the fact that such allegations were made that is relevant. On 19 January 2025 the Claimant sent a text to Thomas Recruitment and referred to a colleague who had 'had a go' at him for having a five minute sit down [page 149].
34. On 20 January 2025 the Claimant did not go to work. He went to see his GP because he had a problem with his eye and his feet; both issues he attributes to his work at Zorba.
35. On 21 January 2025 the Claimant returned to work and there is no further mention in the documents of his boots.
36. On 23 January 2025 the team leader in the yard, Mr Alun Morgan, worked a 6.00am to 2.00 pm shift. Before he left for the day, Mr Morgan told Mrs Cook about some alleged performance issues regarding the Claimant. Issues raised by colleagues were also noted by the Claimant in his text to Thomas Recruitment mentioned above. Later that day, there was an altercation between another colleague, Mr Jason Francis and the Claimant. The reason for the incident was said to be because of the performance issues highlighted by Mr Morgan earlier. It is clear from the witness accounts of the incident that matters became heated verbally with raised voices. Mr Francis showed some aggression towards the Claimant by removing his coat. No physical violence occurred.
37. Mrs Cook investigated the incident along with Ashley Preece, her line manager. Mrs Cook spoke with the Claimant and to Mr Francis on the same day, 23 January 2025. The investigation into what had happened continued the next week with Mrs Cook taking witness statements from other colleagues in the vicinity at the time.
38. Mrs Cook sent an email to Thomas Recruitment asking for a replacement for the Claimant in the yard at around 5.00 pm on 23 January 2025. This was after she had spoken with both the Claimant and Mr Francis and come to the view that they could not safely continue working together.
39. Mr Francis was an employee of Zorba and Mrs Cook found his aggressive behaviour on that day to be uncharacteristic. It appears that Mr Francis

retained his employment and it is not clear whether any disciplinary action was taken against him.

- 40. On 29 January 2025 the Claimant was informed by Thomas Recruitment that he would not be offered more shifts at Zorba.
- 41. In early February 2025 Mrs Cook followed up with the HR team at Zorba regarding the investigation but did not receive any response to her email. She believed HR were dealing with actions subsequent to the investigation. She now understands that the lack of response was because the HR Advisor in question had left the company.

Conclusions

Comparator

- 42. Not offering further shifts amounts to detrimental treatment but the question for me is whether that amounts to less favourable treatment.
- 43. Turning first to the question of whether Mr Francis was an actual comparator. I find that his circumstances were materially different to that of the Claimant (s23 EA). The circumstances relevant to the Claimant's treatment were not the same or nearly the same (EHRC Code of Practice para 3.23)
- 44. Mr Francis was in a different position to the Claimant as he is an employee of Zorba with longer, although unspecified, length of service than the Claimant. The Claimant was an agency worker who had been with Zorba for less than 10 weeks. I have accepted the unchallenged evidence that Mrs Cook found the behaviour of Mr Francis on 23 January 2025 to be uncharacteristic. I also accept the unchallenged evidence that Mrs Cook had not experienced poor performance or conduct by Mr Francis previously.
- 45. I also accept the unchallenged evidence that Mrs Cook was concerned that a further altercation might occur if the two men continued to work together. I accept Mrs Cook's evidence that she believed the investigation process regarding the altercation in so far as it related to Mr Francis was ongoing with Zorba. Mrs Cook carried out the investigation and passed the statements to HR to continue with next steps. Mrs Cook's email to HR in February 2025 to follow up on the investigation supports her evidence that she held that belief. She understood it would be for Zorba's HR to determine any next steps with Mr Francis.
- 46. I accept Mrs Cook's evidence that she believed Thomas Recruitment would investigate the Claimant and there appears to be a miscommunication between the two companies about this. This was a reasonable view for her to take. All other work related matters between the Claimant in respect of Zorba were dealt with by Thomas Recruitment, as

agreed and the texts between the Claimant and Thomas Recruitment demonstrate.

47. Even treating Mr Francis as an evidential comparator does not lead me to conclude that the Claimant was treated less favourably than a hypothetical agency worker comparator. The appropriate hypothetical comparator is an agency worker who was not autistic but who was involved in the same altercation and whose work history gave rise to the same concerns. The allegations of performance issues against the Claimant were absent for Mr Francis.
48. I accept what Mrs Cook says at the end of her statement (paragraph 33) that she would have treated any non-autistic agency worker in these circumstances in the same way as the Claimant for the reasons explained above.
49. As such I conclude that there was no act of less favourable treatment with a real or hypothetical comparator. Any agency worker with allegations of performance issues against them who had an altercation with an employee of usually good character would have been treated the same way where Mrs Cook held concerns that they could not safely continue to work together. There is a non-discriminatory explanation for the treatment complained of.

Knowledge

50. Although not strictly required because of my conclusions above, I turn now to the key disputed issue which is the Respondent's knowledge of the Claimant's autism. I have to consider the credibility and reliability of the evidence that I have heard. As there is a dispute I have to make a decision about which version of events to prefer. The test that I have to apply is the balance of probabilities. In making a decision, this does not necessarily mean that I consider a witness has lied. Witnesses can genuinely, but mistakenly, believe something happened when in fact it did not. Witnesses can also become muddled in their recall of the order in which things have happened.
51. My view is that Mrs Cook and the Claimant both gave their genuine account of what they believe happened. On balance I prefer Mrs Cook's account that she was not told about the Claimant's autism. I have taken into account that the Claimant conceded that he did not disclose his autism when he started his job to Thomas Recruitment. There is no written evidence referring to a disclosure of autism by the Claimant to Thomas Recruitment or anybody else at the relevant time. There is no record of the Claimant disclosing his autism in the investigation witness statement of 23 January 2025. A disclosure of autism is important information and it would be surprising if it was omitted from the investigation notes. I am satisfied that Mrs Cook would have appreciated the possible need for adjustments for an autistic agency worker based on her previous job

working with autistic people and her description of the usual company procedure and policy. I also take into account the short period of time that the Claimant worked in Mrs Cook's team, just over 2 weeks, and the fact that they had only irregular contact with each other. On balance I think it more likely that the Claimant did not tell Mrs Cook about his autism, particularly in light of his previous poor experiences in other workplaces once his autism was known about.

52. The evidence about Mrs Cook's niece's son being autistic was not of assistance to me, as I accept her evidence that this fact was only discovered by Mrs Cook at Christmas 2025. Christmas 2025 is long after the events involving the Claimant. I accept Mrs Cook's account of when this diagnosis was given as inherently more plausible because the child is only three years old now.

53. Finally I note Mrs Cook's evidence about another autistic colleague who works on a night shift in the yard and the grandchildren of colleagues being autistic. However I do not place weight on this evidence because it was not included in her witness statement.

54. As for constructive knowledge and whether the Respondent ought reasonably to have known of the Claimant's autism. The Respondent need only have constructive knowledge of conditions satisfying the constituent parts of the section 6 EA test for disability. Where no disability is disclosed, as in this case, a Respondent should do all they reasonably can be expected to, to find out if a worker has a disability. However there is a limit to such enquiries bounded by issues of a worker's dignity and privacy. It is not incumbent on a Respondent to make every enquiry when there is little or no basis to do so.

55. I have found that the Claimant did not disclose his autism to Thomas Recruitment before starting work with Zorba. Understandably the Claimant was circumspect about disclosing his diagnosis due to a history of unfortunate experiences at work.

56. Mrs Cook worked with the Claimant for a brief period of time with limited contact between them. The only issue of absence by the Claimant in that period was to visit his GP due to physical injuries unrelated to autism. The performance concerns raised were such that I do not consider they would reasonably have put Mrs Cook on notice of the need to make enquiry with the Claimant about possible disability.

Motivation

57. An alternative approach when considering complaints of direct discrimination is to look to the 'reason why' an act occurred. That requires me to consider the motivation of Mrs Cook when she decided not to offer a further shift to the Claimant on 23 January 2025. I take into account that Mrs Cook previously worked with autistic people and had a generally positive relationship with the Claimant. I accept that Mrs Cook sent the

Claimant home on 23 January 2025, as she wished to avoid a further incident arising between the Claimant and Mr Francis. Whether the allegations of poor performance were true is not material. What matters is that Mrs Cook had received those reports and they formed part of the information upon which she acted. I conclude that the decision not to offer the Claimant further shifts was in no way because of autism. I am satisfied that the reason for the treatment was the workplace altercation, the reports received regarding the Claimant's performance and Mrs Cook's genuine concern that the Claimant and Mr Francis could not safely continue working together.

58. Finally, I conclude that even if I had found that Mrs Cook knew of the Claimant's autism, I am satisfied that she would have treated any agency worker who did not have autism in the same way as the Claimant in this particular set of circumstances. There is a non-discriminatory explanation for the act complained of.

59. The claim of direct disability discrimination is not well founded and is dismissed.

Authorised for issue by:

Regional Employment Judge S Davies
On 7 July 2026

Sent to the parties on:
08 July 2026

Kacey O'Brien
For the Tribunal Office.