EMPLOYMENT TRIBUNALS

Claimant: Craig Pinder

Respondent: Amazon UK Services Ltd

Heard: in Sheffield on 29 and 30 June and 1 and 2 July 2026

Before: Employment Judge Ayre
Ms M Cairns
Ms S Robinson

<u>Representation</u>

Claimant: represented himself

Respondent: Gareth Graham, counsel

JUDGMENT

The unanimous decision of the Tribunal is that:

1. The claimant was not disabled within the meaning of section 6 of the Equality Act 2010.

2. The claimant did not make a protected disclosure on 20 March 2025.

3. The claimant did not do a protected act within the meaning of section 27 of the Equality Act 2010.

4. The claim for unfair dismissal is not well founded. It fails and is dismissed.

5. The claim for failure to make reasonable adjustments is not well founded. It fails and is dismissed.

6. The claim for victimisation is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant presented his claim to the Employment Tribunal on 5 August 2025 following a period of ACAS early conciliation that started on 1 July 2025 and ended on 7 July 2025. The respondent defends the claim.

2. A Preliminary Hearing took place on 5 December 2025. At that hearing a draft list of issues was produced, the case was listed for final hearing and Case Management Orders were made.

The hearing

3. There was an agreed bundle of documents running to 603 pages. At the start of the hearing the claimant applied to introduce into evidence an additional seven pages of evidence. No objection was raised by the respondent, and the documents were admitted into evidence by consent.

4. The claimant also applied for specific disclosure of 3 categories of documents:

    1. Additional occupational health reports which he believes the respondent has;

    2. A list of his duties and time on task for the 12 months prior to 1 September 2024; and

    3. Investigation and disciplinary records relating to Greg Bird and John Mallows.

5. Having heard submissions from both parties on the application for specific disclosure it was the unanimous decision of the Tribunal that:

    1. The respondent should disclose the additional occupational health reports if it has any. Mr Graham told the Tribunal that the respondent does not have any further occupational health reports other than those already in the bundle. We accept his submission on that point;

    2. There should be no order for disclosure of duties / time on task. There was no dispute that the claimant spent his time working on the ‘Dock’ section of the warehouse prior to his sickness absence and dismissal; and

    3. The respondent should disclose the investigation reports for Mr Bird and Mr Mallows, and the outcome letter for Mr Mallows (the outcome letter for Mr Bird was already in the bundle).

6. The additional documents were produced by the respondent at the start of the second day of the hearing and admitted into evidence by consent.

7. The Tribunal heard evidence from the claimant and, on his behalf, from Darren Hackett, former Nightshift Supervisor. The claimant also produced a witness statement for John Godley, who accompanied the claimant to disciplinary meetings. Mr Godley did not attend the Tribunal hearing. The Tribunal read his statement but has placed no weight on it.

8. For the respondent the Tribunal heard evidence from:

    1. Nathan Hall, Shift Manager;

    2. Valerie Birks, Operations Manager;

    3. Spencer Cadman, Interim Operations Manager; and

    4. Gavin Shiel, Senior Delivery Station Manager.

9. At the start of the hearing the claimant told the Tribunal that he wished to apply for a witness order for Asim Gul, a member of the respondent's HR team, who he says was involved in 'everything' and could answer the questions that 'the respondent has refused to answer'. It was the unanimous decision of the Tribunal not to issue a witness order for Mr Gul. A witness cannot be ordered to attend just to be subjected to cross examination by a party and the witnesses who were present for the respondent appeared to cover all relevant issues in their witness statements. It was explained to the claimant that it is open to him to make submissions on the respondent's decision not to call Mr Gul as a witness.

The issues

10. The issues that fell to be decided during the hearing were identified at the Preliminary Hearing on 5 December 2025 and confirmed at the start of the hearing as being the following:

    1. <u>Time limits</u>

        1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 2 April 2025 may not have been brought in time.

        2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? In particular:

            1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

            2. If not, was there conduct extending over a period?

            3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? In particular:

    a. Why were the complaints not made to the Tribunal in time?
    b. Is it just and equitable in all the circumstances to extend time?

2. Protected disclosure

    1. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The claimant relies on the following disclosures:

        1. At a meeting on 20 March 2025, the claimant said to the manager(s) present that the respondent had failed to make reasonable adjustments; and that he had taken legal advice about his loss of wages and was thinking of pursuing a personal injury claim for his elbow.

    2. Did the claimant disclose information?

    3. Did the claimant believe the disclosure of information was made in the public interest?

    4. Was that belief reasonable?

    5. Did the claimant believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation; namely a duty of care towards him and the duty to make reasonable adjustments?

    6. Was that belief reasonable?

    7. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

3. Unfair dismissal

    1. What was the reason or principal reason for dismissal? The respondent says the reason was conduct. The Tribunal will need to decide whether the respondent genuinely believed the claimant had committed misconduct.

    2. The claimant says that the real reason or principal reason for his dismissal was that he made a protected disclosure.

3. If the reason for dismissal was conduct, in the circumstances, including the size and administrative resources of the respondent, did the respondent act reasonably or unreasonably in treating that as a sufficient reason to dismiss the claimant? In particular:

    1. Were there reasonable grounds for that belief?
    2. At the time the belief was formed, had the respondent carried out a reasonable investigation?
    3. Did the respondent act in a procedurally fair manner?
    4. Was dismissal within the range of reasonable responses?

4. <u>Disability</u>

    1. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? In particular:

        1. Did he have a physical impairment caused by an injury to his left elbow?

        2. Did the impairment have a substantial adverse effect on his ability to carry out day-to-day activities?

        3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

        4. Would the impairment have had a substantial adverse effect on the claimant's ability to carry out day-to-day activities without the treatment or other measures?

        5. Were the substantial adverse effects of the impairment long-term? In particular:

            a. Did they last at least 12 months, or were they likely to last at least 12 months?
            b. If not, were they likely to recur?

5. <u>Reasonable adjustments</u>

    1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

    2. Did the respondent have the following PCP: a requirement to be flexible, for example, by changing work location / duties?

    3. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that his impairment meant he was not able to, or restricted in lifting with his left arm, or twisting his left arm, meaning that it was not possible for him to carry

out the duties he was allocated to, leading to sickness absence and sick pay?

4. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage

5. What steps could have been taken to avoid the disadvantage? The claimant suggests:

    1. Allowing him to continue to work on ‘dock’ or other light duties or amended duties, not requiring him to lift with his left arm or make twisting movements with that arm.

6. Was it reasonable for the respondent to have to take those steps and if so when?

7. Did the respondent fail to take those steps?

6. Victimisation

    1. Did the claimant do a protected act by alleging, on 20 March 2025, that there was a failure to make reasonable adjustments for him; and/or

    2. Did the respondent believe that the claimant might do a protected act by taking an Employment Tribunal claim about that?

    3. Did the respondent dismiss the claimant because the claimant did a protected act or because the respondent believed the claimant might do a protected act?

7. Remedy

    1. In light of our conclusions on the substantive issues, it has not been necessary for us to consider questions of remedy.

Findings of fact

11. The following findings of fact are made on a unanimous basis.

Background

12. The claimant was employed by the respondent as a Sortation Associate at its DXS1 site in Sheffield from 5 July 2020 until 12 May 2025.

13. The claimant initially started work for the respondent as an agency worker. In July 2020 he was taken on as a permanent employee. He was provided with a statement of terms and conditions which he signed on 1 July 2020 and which contained the following relevant provisions:

"***Date of Commencement***

1.1 Your employment with the Company will begin on 5 July 2020.
1.2 This employment is not continuous with a previous period of employment.
1.3 Any previous work carried out on behalf of the Company through a third party provider is not considered as continuous service.

Duties

2.1 You will be employed in the position of Sortation Associate….
….
2.3 You should recognize that during the course of your employment, as the business of the Company changes, it may be necessary to change your duties. The Company therefore reserves the right to change your responsibilities and duties and job title from time to time….
….
Disciplinary Rules and Procedure

12.1 The Company expects high standards of conduct and performance from its employees. Details of the Company's disciplinary procedures are contained in the Companies Policies and Procedures, which are available on the intranet or from HR. The Disciplinary policy does not form part of your terms and conditions of employment….
….
Drugs and Alcohol Testing

16.1 The Company has a Drugs and Alcohol policy which applies to all employees. By signing this Statement, you agree that the Company may test you for drugs and/or alcohol as part of its pre-employment screening and random Drug and Alcohol Testing policy….
….
Termination of Employment
….
20.2 The Company reserves the right to terminate your employment without notice or payment in lieu of notice if:
20.2.1 it has reasonable grounds to believe you are guilty of gross misconduct…."

14. The respondent has a Drugs and Alcohol policy which contains the following statements:

"Any breach of this Policy will result in disciplinary proceedings and may lead to your dismissal…

Amazon's FC's are safety critical operations and Amazon cannot therefore tolerate the attendance at work of any employee who is impaired whether this be by any drugs…or alcohol….

Random Testing

It is important to protect the health and safety of everyone who works or attends Amazon's premises. If you were found to be impaired, you could endanger the health and safety of others. Accordingly, Amazon undertakes random testing to ensure that this policy is strictly adhered to.

From time to time various groups of employees and/or workers will therefore be randomly selected by computer and called for screening at Amazon's discretion. There will be no advance notification of random selection, rather, you will be advised that you have been selected and then immediately tested.

….

If your test result is positive….for drugs….Amazon will suspend you on full pay whilst instigating disciplinary proceedings against you. Amazon will treat this breach of policy as gross misconduct and will take action against you, up to and including termination of employment.

….

Re Testing

If you receive a positive test result on a urine sample, you may request within 7 days of being informed of the result, a re-test of the original urine sample at a laboratory of your choice, which will be at your expense….

….

Breaching this Policy

Breach of this policy will be regarded as an act of gross misconduct and may lead to the termination of your employment…."

15. The respondent also has a disciplinary policy which contains a list of examples of the types of behaviour that may be considered to be gross misconduct. The list includes "*Possessing drugs, or selling or using illegal drugs inside or outside of work*".

16. The respondent conducts regular random testing of employees for drugs and alcohol within the DXS1 site at Sheffield. Testing is carried out by an external company, Eurofins. The respondent has a zero tolerance policy to anyone found to have tested positive for unlawful drugs and a positive drugs test results in the employee being dismissed. There was no evidence before the Tribunal to suggest any inconsistency in the respondent's approach to positive drug tests. Rather the evidence overwhelming suggested that anyone found to test positive would be dismissed. The evidence also indicated that this policy was well known by staff.

17. The claimant worked nights and over a period of years he usually worked on 'Dock'. The work on Dock involved checking trailers in and out, unloading trailers, moving cages, and interacting with packages and carts. The carts are on wheels and can weigh several hundred kilograms if fully loaded. During a night shift someone working on Dock can typically expect to move approximately 135 carts.

18. The role on Dock is a physical one which involves the use of 2 hands for some jobs, and the use of considerable force. It also involves pushing and pulling carts and loading them on and off pallet or pump trucks. It is considered to be one of the most physically demanding and safety-critical parts of the warehouse operation in

Sheffield.

19. When drivers arrive at the site they are required to check in and a member of Dock staff will check them in at a computer based on a table within the Dock section. The drivers will then be checked out again when they leave. The checking in and out is a quick process which does not require a full time employee to perform.

Accident and impact on the claimant

20. On 13 May 2024 the claimant was involved in an accident at work when a trolley hit him on the left elbow. The claimant suffered pain and swelling of the elbow, and the bone in his elbow joint became visible. The claimant did not have any time off work in the immediate aftermath of the accident and remained at work fulfilling his normal duties on Dock for a period of approximately 3 and a half months.

21. The impact of the injury on the claimant was that he suffered pain and swelling especially when lifting or twisting his arm. He was still able to carry things using his right arm and was assessed by Occupational Health as being independent with all of his daily activities.

22. In his disability impact statement, he referred to the injury affecting his daily life including tying shoelaces, general house cleaning, driving, gardening and shopping. There was no suggestion that he could not do any of these things, however. The claimant continued to drive a manual car after the accident (which would have involved changing gear with his left hand) and to perform normal day-to-day activities. He could lift and carry shopping using his right arm, and told the Tribunal he could carry out cleaning with his right arm. He also gave evidence that he was able to help paint a room using his right arm. He was however unable to lift heavy objects using his left arm.

23. In his disability impact statement, the claimant wrote that :

"*….when the accident happened I did carry on working…. I could do the above jobs in which I was doing as it didn't have an impact on my elbow I wasn't using my left arm at the time I was given a note for light amended duties from the doctor but for my job I carried on working and didn't really need any adjustments….*"

24. The respondent referred the claimant to occupational health who carried out an assessment of him on 1 July. Following the assessment, they produced a report in which they assessed that the claimant was fit for work and that no workplace adjustments were likely to be required. The report stated that the claimant was "*independent with all his daily activities with difficulties using the left arm*", that lifting and bending the elbow triggered pain, and that "*There is no clinical reason why Craig cannot continue to fulfil his contractual duties on his role. Craig is currently fit for his full contractual duties*". Occupational health also assessed that it was unlikely that any adjustments were needed, and that the symptoms were unlikely to last for 12 months.

25. On 8 July 2024, as part of the respondent's normal drug testing, the claimant was asked to provide samples for a drug test. Workers within the Dock section are often selected for drugs tests, partly because of their availability. Two samples were taken from the claimant, and one was tested by Eurofins, the external supplier. The other was retained but not tested. Eurofins produced a report indicating that the claimant had tested positive for cocaine and for benzoylecgonine, which is a chemical compound produced when cocaine is metabolised in the body.

26. Although the test was carried out in July 2024, the respondent did not become aware of the result until 28 February 2025. The reason for this was a change in the process for notifying the respondent of results. Whereas previously test results were notified to the respondent by email, in 2024 the process changed and results were uploaded to a portal. The respondent did not access this portal until 28 February 2025.

27. Sortation Associates are normally required to rotate or move between different types of work. This is to avoid repetitive strain injuries which may occur when employees make the same movements over and over again. In practice Sortation Associates who work on the Dock are not normally required to rotate because the work requires special training and some of them have a different start time.

28. The respondent has a staff forum which the claimant attended. The minutes of that forum on 24 April 2024, 22 May 2024 and 26 June 2024 record that concerns were repeatedly raised that the staff rotation system was unfair and not working properly. Management, including Valerie Birks, agreed to look into a new rotation plan to improve the situation.

29. The respondent was also receiving complaints that the same people were working on the Dock all of the time, and others wanted to have the chance to work there.

30. A decision was made that the claimant and a colleague, John Godley, who also worked on Dock, should be moved to different duties. Valerie Birks asked Spencer Cadman to take the claimant and John Godley off Dock duties on 1 September 2024 and rotate them onto other duties.

31. On 1 September 2024 Mr Cadman told the claimant that he would not be working on Dock that night. At the time of the discussion, Spencer Cadman was aware of the Occupational Health report from July 2024 which indicated that no workplace adjustments were required and that the claimant was fit to carry out his full contractual duties. Mr Cadman therefore believed that the claimant was fit to undertake any duties.

32. When instructed to come off Dock the claimant told Mr Cadman about his elbow problems and showed him something on his mobile telephone. The claimant said that he was attending physiotherapy for his elbow and that there were tasks he felt unable to do because of his elbow, including heavy lifting.

33. Mr Cadman suggested that the claimant move to a role on the Divert section which was considered to be a light duties role, as it involved processing smaller parcels on a roller assisted system. It is a role commonly used for employees needing light duties.

34. The claimant told Mr Cadman that he could not perform this role because he had difficulty with his eyesight and with reading labels.

35. Mr Cadman then suggested another role, also considered to be light duties, on the automated sorting section or 'ASL'. That process involved parcels moving on a belt system and being directed based on coloured lights. The claimant said that this would make him dizzy but he agreed to try it out.

36. The claimant performed the role on ASL for between 40 and 60 minutes and then came to see Mr Cadman to say he could not continue. There was a dispute as to whether the claimant was told to go home or said to Mr Cadman that he was going home. Nothing turns on that for the purposes of the issues that we have had to decide.

37. On 2 September 2024 the claimant began a period of sickness absence. Other than one day, 13 October 2024, he did not return to work for the respondent until he was dismissed on 12 May 2025.

38. On 2 September he sent a message to Valerie Birks asking why he had been taken off Dock the previous day. Mrs Birks replied that it was because of job rotation, and that it had been noticed by others that he and John Godley were always on Dock. The claimant then told Mrs Birks that he was "*on restricted duties but it was ignored*" and Mrs Birks replied that they would need to review his occupational health report.

39. The claimant was then referred again to occupational health and assessed on 9 September. The occupational health report produced following that assessment assessed the claimant as being temporarily unfit for work. Occupational health concluded that "*No adjustments likely to be required*" and that "*Based on the information provided today, in my opinion, Craig is temporarily unfit to meet his contractual duties*". The physiotherapist who assessed the claimant commented that "*Craig presented with restrictions in movements, in all directions with his left elbow. Craig explained that due to the unknown severity of his injury, he has been advised against engaging in strenuous manual handling tasks such as heavy lifting, pulling and pushing until his MRI scan results*".

40. Occupational health remained of the view that the condition was unlikely to last more than 12 months. At the time the claimant had been referred for an MRI scan and occupational health arranged for a further assessment to take place after that scan.

41. On 8 October 2024 a third occupational health assessment took place. The claimant was assessed as fit for work with adjustments. The report stated that :

"*Craig can return to his full contractual hours with no issue.*

I have suggested that Craig can pull and push with one hand if it is safe to do so at work. It is unsure how heavy Craig can manage at present. I have recommended him to have a risk assessment before return to his physical role to understand his lifting limit. He will be classified as unfit for work if he is not able to lift the minimum 5kg weight at work….

Craig had an MRI on 26/09/2024 which shows muscles and ligament injuries….He reported that his has full range of movement, however, he lost a lot of strength in his arm and shoulder….He stated that he can push and pull with one hand, but he is unable to lift and carry items with his left hand….

Craig reported that he is independent with daily activities. "

42. Occupational health described the claimant as having "*No significant physical impairment*" and stated that the condition was unlikely to last for 12 months.

43. During the period that he was off sick the claimant submitted fit notes. The fit notes dated 16 September 2024 and 7 October 2024 stated that the claimant was not fit for work at all. The other fit notes stated that the claimant was fit for work with amended duties and/or workplace adaptations.

44. The claimant was keen to return to work and did so on 13 October 2024. Before returning he sent a message to Nathan Walker about having a risk assessment carried out. In a message sent on 11 October he wrote "*Morning Nathan I meant to be back Sunday night, Iv had occupational health report and says I need a risk assessment before I go to work, it also says on it if I can't lift 5kg I'm not fit for work… don't know why it says that. But I can't…*" The claimant also told the respondent on other occasions that he could not carry 5 kilograms. A risk assessment was not carried out prior to the claimant returning to work.

45. When Spencer Cadman arrived at work on 13 October he told the claimant to go home because he considered it was not safe for him to be at work until a risk assessment was carried out.

46. On 22 October a risk assessment was conducted by Nathan Walker. The risk assessment concluded that the claimant should not move fully loaded cages, use pallet trucks or OB carts or carry large or heavy parcels. It also stated that the claimant was unable to work on Divert and was not able to lift or move parcels weighing more than 1 kilogram.

47. In October 2024 the claimant consulted a solicitor with a view to bringing a personal injury claim against the respondent in respect of the elbow injury he suffered at work.

48. The claimant remained off work on sickness absence until he was dismissed in May 2025. The claimant continued to experience pain and restrictions using his left

elbow. In March 2026 he had an operation which is expected to give him 90% of normal movement and ability in the left elbow.

49. On 27 January 2025 a Stage 1 review meeting was held under the respondent's absence management policy. The meeting was chaired by Spencer Cadma, supported by Asim Gul from HR. The claimant attended accompanied by a colleague, Lee Jenkinson.

50. During the meeting there was a long discussion about the claimant's condition and what he could and could not do at work. The claimant told Mr Cadman that he'd had an MRI scan, seen the consultant again and had physiotherapy. He said he was keen to return to work and thought he could return to light duties "*such as his previous job role*". Mr Gul pointed out that the claimant was not fit to work because he could not lift 5kg.

51. The respondent then spent some time discussing with the claimant alternative duties that he may be able to do. In summary, the claimant said that he could not:

    1. Work as a Yard Marshall because he could not do the hours, did not want to move to the day shift because there would be a reduction in pay, and was not trained;
    2. Work on Divert or ASL because of a disease in his eyes;
    3. Work on 'Water Spider';
    4. Work on induct pushing and loading;
    5. Work on induct scanning, or picking; or
    6. Do 'straightener', 'unblock' or moving oversized parcels.

52. Towards the end of the meeting the claimant told Mr Cadman that there were no roles that he was able to do.

53. After the meeting Mr Cadman wrote to the claimant to confirm what had been discussed, and the outcome, which was that there would be an ongoing review of the claimant's absence with a second stage absence review scheduled in a few weeks' time, and that the claimant would inform the respondent about his treatment and get in touch should he feel fit enough to return to work.

54. A stage 2 absence review meeting took place on 20 March 2025. During the meeting the claimant said that his elbow was the same as at the last meeting, and that the position was the same in relation to jobs. He said it was not possible for him to do yard marshalling and that twisting his arm was painful.

55. Towards the end of the meeting the claimant said that he had spoken to a solicitor who had told him he could get money from the respondent. There was a discussion about this and about an email that the claimant had sent to the respondent on 10th March 2025 in which the claimant referred to a claim against the respondent. The claimant told Mr Cadman during the meeting that the respondent had accepted liability for his claim and given him £1,000.

56. The claimant alleged that the meeting ended abruptly following the discussion about the accident claim, and that the minutes of the meeting were not accurate and did not contain everything that was said. The minutes before us did not indicate that the meeting ended abruptly or that there was any adverse reaction to the claimant mentioning his personal injury claim.

57. In his claim the claimant asserts that he made a protected disclosure and did a protected act during the meeting on 20 March by complaining that the respondent had failed to make reasonable adjustments, and that he had taken legal advice and was thinking of pursing a personal injury claim.

58. The claimant's witness statement made no mention of any discussion about reasonable adjustments during the meeting. The minutes of the meeting do not record any mention of reasonable adjustments.

59. The claimant told the Tribunal that he believed the minutes were inaccurate. On 8 April 2025 he sent an email to HR in which he wrote "*meeting minutes being incorrect and missing information*". He did not however set out how they were incorrect, or what information was missing. Nor did he make any mention in that email of reasonable adjustments.

60. We find on balance that the claimant did not complain during the meeting on 20 March that the respondent had failed to make reasonable adjustments.

61. The claimant was asked on more than one occasion during his evidence to the Tribunal whether he believed that the information he provided to the respondent during that meeting about the claim he was bringing was in the public interest. His witness statement did not address the issue of the public interest at all. When asked during the hearing the claimant did not identify any public interest in his disclosure, or who the public were. It appeared to the Tribunal that his mention of the personal injury claim was made in his own personal interest, without any thought to the public.

62. After the meeting on 20 March Mr Cadman wrote to the claimant confirming the outcome, which was for there to be an ongoing review of the claimant's absence and that the claimant would notify the respondent if he felt fit enough to return to work. Mr Cadman also wrote in the letter that "*During the meeting we reviewed a number of areas to understand how we could support you to return to work. These included : Looking into the possibility of a return on lighter duties. We discussed all roles within the warehouse to which you agreed that you were unfit to do all of them at this current time.*"

63. On 28 February 2025 the respondent became aware that the claimant had failed a drugs test on 8 July 2024. On 26th March the claimant was invited to an investigation meeting to discuss the failed test. Asim Gul from the respondent's HR team called the claimant and asked him to attend a meeting on 28th March. The claimant said that he was going away on holiday and could not do a meeting on either 27th or 28th March. He agreed to come in straight away for the meeting.

64. An investigation meeting took place on the afternoon of 26th March. It was chaired by Nathan Hall, Shift Manager, who was accompanied by Asim Gul from HR. During the meeting the claimant was asked if he was aware of the respondent's zero tolerance policy on drugs and alcohol and said that he was. He was told that he had tested positive for cocaine and benzoylecgonine. He said that at the time he was on "*about 5 or 6 different things*" and that the only explanation he could think of was that it was the painkillers he was taking for his elbow injury. He was asked if there was any chance he could have consumed cocaine and he denied snorting anything. He did however say that a friend had given him pain killers once around the time of the test.

65. The claimant gave Nathan Hall the names of the medication he had been prescribed, as his explanation for the positive test result was that it must be the medication he'd taken for his elbow. He asked if the sample could be re-tested and Asim Gul said that he would find out.

66. At the end of the meeting the claimant was informed that there would a disciplinary hearing as there had been a breach of the drug and alcohol policy. He was also informed that there was no need for him to be suspended as he was off sick so was not considered to be a risk.

67. After the meeting Asim Gul contacted Eurofins to ask if a re-test could be done. He was informed that it could be.

68. Nathan Hall produced an investigation report which included a copy of the test result, and which recommended that the case should proceed to a disciplinary hearing. Valerie Birks was appointed to chair the disciplinary hearing and on 14 April she wrote to the claimant inviting him to a hearing on 21 April. In the email she set out the allegation against him, enclosed a copy of the investigation report and the disciplinary policy, and invited him to send her any documents or statements that he wanted her to consider. She warned the claimant that a potential outcome of the meeting was dismissal for gross misconduct and advised him of his right to be accompanied at the meeting.

69. The disciplinary hearing took place over two days: 21 April and 12 May 2025. The claimant was not accompanied on 21 April but was accompanied by a colleague John Mallows on 12 May. During the disciplinary hearing the claimant told the respondent that he did not do drugs, and that he had realised that the tablet he had been given by a friend was actually given to him in September (two months after the drug test). The claimant suggested that he could have been spiked.

70. Mrs Birks told the claimant that the cost of re-testing was approximately £217 and the claimant said he could not afford that because he was not getting paid. Mrs Birks asked him about the medication and adjourned the hearing.

71. The respondent checked with Eurofins whether the medication that the claimant was taking for his elbow could have caused the positive cocaine test result. Eurofins

advised that it could not have.

72. The hearing reconvened on 12 May and after some discussion the claimant was dismissed.

73. Mrs Birks wrote to the claimant after the meeting on 12 May to confirm the decision to dismiss him. The letter is detailed, running to just over four pages, and includes the following:

"*At the investigation meeting you explained that 'I was on about 5 or 6 different things for pain in your elbow….the hearing manager queried with you whether you were taking anything else around the time and you stated that your friend had given you some pain killers once….the manager queried whether there was any chance you could have consumed cocaine when you were at the pub and you said that all you could think of was the capsule.*

Subsequently at the disciplinary hearing on 21st April 2025, you explained that you don't do drugs and that you had previously said that the only thing that could have happened was somebody gave you a tablet for the pain in your arm but that 'I found out afterwards that it wasn't until September'. As such, whilst at the investigation meeting you explained that it was your belief that the only thing that could have caused the positive fail result was the tablet given by your friend, you confirmed to me that such tablet was given to you in September which was two months after the test was conducted.

At the hearing, you were not able to provide an explanation for the positive result except for saying you got spiked or it was because you were on five different tablets at the time for the pain and inflammation on your arm….

….You did not provide any reason for why you thought the test result may have been inaccurate, and I have no reason to question the validity of the results….

During the course of the disciplinary hearing, you did not provide any mitigation to explain why you tested positive for cocaine at 70ng/ml and Benzoylecgonine at 95ng/ml. As such, on the balance of probability, I believe that you took Cocaine around the time of 8th July 2024, and this was supported by the positive fail result. A positive fail is a clear breach of Amazon's Drug and Alcohol Policy….

I took into account the following: your clean disciplinary record, your length of service….

Having considered the matter carefully, I have decided to summarily dismiss you effective from Monday 12th May 2025…."

74. At the time she took the decision to dismiss the claimant Mrs Birks did not know that the claimant was suing the respondent in respect of the injury to his arm, and had not seen the minutes of the attendance review meeting on 20 March.

75. The claimant appealed against the decision to dismiss him. The grounds of his

appeal, in summary, were that:

1. The respondent's policy was not followed correctly;
2. He was being victimised because of an ongoing issue he highlighted on 20 March;
3. He was being unfairly treated as previously he was chairperson of the associate forum and on the safety committee and had raised issued about management, safety and the working environment;
4. The drug test result could be due to cross contamination, wrong labelling, a false positive or a mixture of the drugs he was taking at the time;
5. There was a delay in notifying him of the test result.

76. The claimant asked that his appeal be heard by a manager from another station.

77. Gavin Shiel, recently appointed Senior Delivery Station Manager, was appointed to hear the appeal, supported by Abdullah Atif from HR. On 11 June Mr Shiel wrote to the claimant inviting him to an appeal hearing on 13 June.

78. The appeal hearing took place over two days: 13 and 26 June 2025. The claimant attended the hearing on 13 June accompanied by a colleague John Godley. At the start of the hearing Mr Shiel acknowledged that the claimant had asked for someone from another station to hear his appeal and explained that he and Mr Atif were both new to the station. Mr Shiel asked if the claimant wanted someone from another site to hear the appeal and said he would be happy to arrange for that to happen if the claimant wanted. On two occasions the claimant said that he was happy for Mr Shiel to hear the appeal.

79. During the appeal hearing there was a detailed discussion about the appeal. At one point the claimant suggested that some people had 'got away' with taking drugs. Mr Shiel asked him whether he had any evidence of that and the claimant said that he could not prove it. Mr Shiel also asked the claimant if he had any proof of anyone interfering with his drug test, and he said that he didn't but "*I just don't think everything was done correctly*". The claimant did however disclose the names of additional prescription medication that he had been taking at the time of the drug test.

80. At the end of the hearing on 13 June Mr Shiel told the claimant that he was going to go back to the Eurofins team and check with them whether there was any correlation between the new medication disclosed by the claimant during the appeal hearing and the positive test. Mr Atif contacted Eurofins after the hearing and they confirmed there was no link between the medication and the positive cocaine result.

81. The hearing reconvened on 26 June. The claimant attended the reconvened hearing alone. Mr Shiel told the claimant that he had contacted Eurofins and they had confirmed that the two additional medications disclosed by the claimant could not cause a positive cocaine test. He then informed the claimant that the appeal was not being upheld.

82. On 30 June Mr Shiel wrote to the claimant confirming the outcome of the appeal

process. In the letter he commented that:

"*The key fact remains that you tested positive for cocaine while at work, which constitutes a clear breach of Amazon's policies. This positive drug test result is the sole and sufficient reason for your dismissal. Regarding the other issues you raised, such as potential victimization for raising safety concerns and questions about the drug testing process. I understand your points raised. However, you have not been able to provide evidence directly linking these matters to the positive drug test that led to your termination….*

In summary, the decision to summarily dismiss you, as communicated following the disciplinary hearing on May 12, 2025, has been upheld. This outcome is based solely on the positive cocaine test result, which is a clear violation of company policy…."

The Law

Burden of proof

83. Section 136(2) of the Equality Act 2010 sets out the burden of proof in discrimination claims, with the key provision being the following:

> "*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision…"*

84. There is, in discrimination cases, a two stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205***) which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

85. Unreasonable behaviour is not, in itself, evidence of discrimination (***Bahl v The Law Society [2004] IRLR 799***) although, in the absence of an alternative explanation, could support an inference of discrimination (***Anya v University of Oxford & anor [2001] ICR 84*** *).*

Disability

86. The relevant statutory provisions are contained in Section 6 of the Equality Act 2010 which provides that:

"(1) A person (P) has a disability if -

a) they have a physical or mental impairment, and
b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to- day activities".

87. Schedule 1 Part 1 Para 2 of the Equality Act defines long-term as:

"an impairment which has lasted for a least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person effected".

88. Paragraph 12 of Schedule 1 of the Equality Act provides that:

"When determining whether a person is disabled the Tribunal must take account of such guidance as it thinks is relevant".

89. In ***Goodwin v Patent Office [1999] ICR 302*** the then President of the Employment Appeal Tribunal gave guidance on the approach for Tribunals to adopt when deciding whether a claimant is disabled. He suggested that the following 4 questions should be answered in order-

1. Did the Claimant have a mental or physical impairment?
2. Did the impairment affect the Claimant's ability to carry out normal day-to-day activities?
3. Was the adverse condition substantial?
4. Was the adverse condition long-term?

90. Mr Justice Underhill, in ***J v DLA Piper UK LLP [2010] ICR 1052*** suggested that, although it is still good practice to the Tribunal to set out separately its conclusions on the question of impairment, there is generally no need to consider the impairment question of detail, as:

"*In many or most cases it will be easier (and is entirely legitimate) for the tribunal to ask first whether the claimant's ability to carry out normal day-to-day activities has been adversely affected on a long-term basis. If it finds that it has been, it will in many or most cases follow as a matter of common-sense inference that the claimant is suffering from an impairment which has produced that adverse effect. If that inference can be drawn, it will be unnecessary for the tribunal to try to resolve the difficult medical issues."*

91. When considering whether a Claimant has an impairment the guidance of ***Rugamer v Sony Music Entertainment UK Ltd [2011] IRLR 664*** is helpful. In that case the EAT defined impairment as 'some damage, defect, disorder or disease compared with a person having a full set of physical and mental equipment in normal condition' and the phrase "physical or mental impairment" as referring to a person' having in everyday language something wrong with them physically or something wrong with them mentally'. The statutory Guidance states at paragraph

A5 that a disability can arise from a range of impairments and sets out some examples of what those impairments can be.

92. The Tribunal has to decide whether the impact on the Claimant's ability to carry out normal day to day activities is substantial. Section 21(1) of the Equality Act defines substantial as meaning "more than minor or trivial".

93. When deciding whether the adverse impact is substantial or not the Tribunal must take account of the cumulative effects of the impairment. The Guidance provides examples of factors which it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. Paragraph B2 states that "*The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial*". Paragraph B7 provides that: "*Account should be taken of how far a person can reasonably be expected to modify his or her behaviour. For example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities*". Account should also be taken of where a person avoids doing things example because they cause pain, fatigue or social embarrassment or because of the loss of energy or motivation.

94. It is for a Tribunal to decide whether an impairment has a substantial effect and when making that decision the Tribunal must take account of the impact on day-to-day activities were the individual not receiving the medical and other treatment to support their condition.

95. Day-to-day activities are given a wide interpretation and in general will be things that people do on a regular or daily basis. They can include general work-related activities but will not include activities which are only normal for a small group of people. In ***Adremi v London and South Eastern Railway Ltd [2013] ICR 5912***, the EAT held that a Tribunal has to consider the adverse effect not upon the claimant's carrying out of normal day-to-day activities, but upon his ability to do so. The Tribunal's focus should be on what the claimant says he cannot do as a result of his impairment.

96. The burden of proving that he is disabled within the meaning of section 6 of the Equality Act 2010 falls on the claimant, ***Kapadia v London Borough of Lambeth [2000] IRLR 699***.

97. The Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability ("the Guidance") was issued by the Secretary of State pursuant to section 65 of the Equality Act in May 2011.

Protected disclosure

98. The relevant statutory provisions are sections 43A, 43B and 43C of the Employment Rights Act 1996 which provide as follows:

"***43A Meaning of "protected disclosure"***

In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H

43B Disclosures qualifying for protection

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following –

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

(2) For the purposes of subsection (1) it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).

43C Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure –

(2) (a) to his employer…"

99. In ***Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325***, the EAT held that the ordinary meaning of giving information is 'conveying facts', which is distinct from the mere making of an allegation. A disclosure does not have to be in writing to fall within section 43B of the ERA. Oral communications which convey facts and which meet the other requirements of the section may be covered (***Eiger Securities LLP v Korshunova [2017] ICR 561***).

100. In order for a disclosure to be a qualifying disclosure, the employee must reasonably believe that it tends to show one of the relevant matters. He must also reasonably believe that the disclosure is in the public interest.

101. The test for 'reasonable belief' is both objective and subjective. The Tribunal must focus on what the claimant believed (rather than what a hypothetical reasonable worker may believe) but there must also be some objective basis for the claimant's belief (***Korashi v Abertawe Bro Morgannwy University Local Health Board [2012] IRLR 4***). In ***Phoenix House Ltd v Stockman [2017] ICR 84***, the EAT, endorsing the approach taken in ***Korashi***, held that, on the facts that the claimant believed to exist, a judgment must be made firstly as to whether the belief was reasonable and secondly whether looking at matters objectively, there was a reasonable belief that the facts tend to show one of the relevant matters.

102. The leading case when considering the question of public interest is ***Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening) [2018] ICR 731***. In that case the Court of Appeal held that when considering whether a disclosure is in the public interest, factors that may be relevant include:

1. The number of people whose interests the disclosure served;
2. The nature of the interests affected and the extent to which they are affected by the wrongdoing that is being disclosed;
3. The nature of the wrongdoing disclosed; and
4. The identity of the alleged wrongdoer.

<u>Victimisation</u>

103. Section 27 of the Equality Act states as follows:

> "*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*

(2) Each of the following is a protected act –

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act."

(

Unfair dismissal

104. Where an employee with more than two years' service has been dismissed, the respondent must establish that the reason for the dismissal was one of the potentially fair reasons set out in section 98(1) or (2) of the Employment Rights Act 1996.

105. Section 98(1) provides that: "*In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show – (a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*"

106. Section 98(2) states that:

"*A reason falls within this subsection if it –*
….
(b) relates to the conduct of the employee…."

107. The burden of establishing a fair reason for dismissal lies with the respondent. The reason for dismissal has been held to be the factor or factors operating on the mind of the decision maker which causes them to make the decision to dismiss (***Croydon Health Services NHS Trust v Beatt [2017] ICR 420***.

108. Conduct does not have to be culpable, blameworthy or reprehensible in order to amount to a fair reason for dismissal, although this can be a factor when deciding the fairness of the dismissal (***Jury v ECC Quarries Ltd [1980] WLUK 116*** and ***JP Morgan Securities Plc v Ktorza [2017] 5 WLUK 237***). In the latter case the EAT held that the Tribunal was wrong to find that in order for an employee to be fairly dismissed for conduct that conduct had to be culpable, and that sections 98(1) and (2) of the ERA did not require that an employee was aware that their employer would not approve of their behaviour.

109. Section 98(4) states as follows:

"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and

(b) Shall be determined in accordance with equity and the substantial merits of the case. "

110 Where conduct is established as the reason for dismissal, the starting point for the Tribunal when considering whether the dismissal was fair is the test in ***British Home Stores Ltd v Burchell [1980] ICR 303***, namely:

a. Did the respondent have a genuine belief that the claimant was guilty of the misconduct?
b. Did the respondent have reasonable grounds for holding that belief; and
c. At the time it formed that belief, had it carried out as much investigation as was reasonable?

111 One of the considerations under section 98(4) is whether dismissal was within the range of reasonable responses, ie was it an option that a reasonable employer could have adopted in all the circumstances. The Tribunal must not substitute its view of the appropriate disciplinary sanction for that of the employer (***Iceland Frozen Foods v Jones [1983] ICR 17***). The range of reasonable responses test is not a perversity test, and it applies also to the procedure followed by the respondent including the investigation (***Sainsbury's Stores Ltd v Hitt [2003] IRLR 23***).

110. The Tribunal must also consider the procedure followed by the respondent, taking account of the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures.

Conclusions

111. The following conclusions are reached unanimously, having considered carefully the evidence before the Tribunal, the submissions of the parties and the legal principles above. The fact that a particular piece of evidence or submission has not been mentioned does not mean it has not been considered.

<u>Disability</u>

112. The claimant asserts that he is disabled due to a physical impairment caused by an injury to his left elbow. The first question we have had to consider is whether the claimant does have a physical impairment. We have no hesitation in

finding that he does. The claimant has since May 2024 had a physical impairment caused by an injury to his left elbow.

113. The next consideration for the Tribunal is whether the impairment had a substantial adverse effect on the claimant's ability to carry out day-to-day activities.

114. We accept that the impairment had some impact on the claimant's ability to carry out some day-to-day activities, in particular lifting and carrying things with his left arm. There was also some minor difficulty experienced when tying shoelaces or fastening buttons, but the claimant was still able to do these things. He was also able to adapt by using his right arm to do things that he could not do with his left arm. His adaptability was such that for three and a half months after the accident, from 14 May to 1 September 2024, he was able to work full time on Dock performing a manual role which was physically demanding. The claimant was therefore able to significantly reduce the impact of the impairment through the coping strategy of using his right arm.

115. The claimant told the Tribunal that there was no change in his elbow before and after the 1 September 2024. Rather, it appears to have been the medical advice and occupational health assessment that changed following that date.

116. The Guidance on the definition of disability contains illustrative and non-exhaustive lists of factors which it would and would not be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. It includes, as an example of something which it would be reasonable to regard as having a substantial adverse effect "*Difficulty picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand*". An example of something which it would not be reasonable to regard as having a substantial adverse effect is "*Inability to move heavy objects without assistance or a mechanical aid, such as moving a large suitcase or heavy piece of furniture without a trolley*".

117. We find on the evidence before us that the claimant was able to carry shopping and conduct normal day to day activities using his right hand. He was also able to move heavy cages using his right arm.

118. For the above reasons we find that the injury to the claimant's left elbow did not have a substantial adverse effect on his ability to carry out normal day-to-day activities.

119. We have also considered whether it can be said that the impact of the effects on the claimant's ability to carry out day-to-day activities was long term, as at the date of the alleged discrimination. We have taken the date of the alleged discrimination as being in September 2024 when the claimant was moved off Dock, and October 2024 when the claimant attempted to return to work but was sent home.

120. At that time the claimant had been experiencing the effects of the elbow injury for less than six months. No less than three separate occupational health reports had assessed the impact of the injury as unlikely to last for 12 months or more. In ***Boyle v SCA Packaging Ltd (Equality and Human Rights Commission intervening) 2009 ICR 1056**,* the House of Lords held that 'likely' meant that something is a real possibility in the sense that it 'could well happen'. We find that in September and October 2024 it was not likely that the affects of the injury would last more than 12 months.

121. For the above reasons we find that the claimant did not meet the legal definition of disability due to the injury to his left elbow.

Reasonable adjustments

122. Claims for failure to make reasonable adjustments can only be pursued by those who satisfy the definition of disability set out in section 6 of the Equality Act 2010. The claimant does not satisfy that definition. The claim for failure to make reasonable adjustments therefore fails and is dismissed.

Protected disclosure

123. The claimant says he made a protected disclosure during a meeting on 20 March 2025 when he told the manager(s) present that the respondent had failed to make reasonable adjustments and that he had taken legal advice about his loss of wages and was thinking of pursuing a personal injury claim for his elbow.

124. We find that the claimant did say during that meeting that he had taken legal advice and was pursuing a legal claim in respect of the injury to his arm. He did not however make any mention of reasonable adjustments, nor did he allege that the respondent had failed to make reasonable adjustments.

125. We accept that during the meeting the claimant disclosed information about his legal action against the respondent. We do not however accept that the disclosure of information was made in the public interest. The claimant was unable to identify during his evidence (despite being specifically asked about this) the public in whose interest the disclosure of information was allegedly made. Nor did he adduce any evidence as to what the public interest is, or that the public interest was in his mind during the meeting.

126. We find on the evidence before us that the public interest was not even in the claimant's mind at the time of the meeting on 20 March 2025, and that the disclosure was made entirely in his own interest. The burden of proving that a protected disclosure was made lies with the claimant. He has not discharged that burden.

127. We therefore find that the claimant did not make a protected disclosure.

Victimisation

128. We also find that the claimant did not do a protected act within the meaning of section 27 of the Equality Act 2010 during the meeting on 20 March 2025. We accept that a complaint about a failure to make reasonable adjustments is capable of amounting to a protected act, however we find on the evidence before us that the claimant did not allege during the meeting that there had been a failure to make reasonable adjustments. The disclosure that he did make on 20 March, about his personal injury claim, did not amount to a protected act as it was not linked in any way to the Equality Act 2010.

129. The claim for victimisation therefore fails because the claimant did not do a protected act, and also because, at the time she dismissed the claimant, Valerie Birks had no knowledge of what was discussed during the meeting on 20 March 2025.

Unfair dismissal

130. The respondent admits that the claimant was an employee with more than two years' continuous service and that it dismissed him.

131. The first question we have had to decide therefore is what was the reason or principal reason for dismissal? It is for the respondent to prove a potentially fair reason falling within section 98 of the Employment Rights Act 1996.

132. All of the evidence before the Tribunal indicates that the reason for the claimant's dismissal was the fact that he failed a drugs test by testing positive for cocaine and benzoylecgonine. The notes of the investigation, disciplinary and appeal meetings, the investigation report, the letter of dismissal and appeal outcome, plus the oral evidence of Valerie Birks, the dismissing manager, and Gavin Shiel, the appeal hearer, are all consistent with the failed drugs test being the reason for dismissal. It is also clear from the evidence before us that a positive drugs test is treated by the respondent as gross misconduct.

133. We have no hesitation in finding that the claimant was dismissed because he failed a drugs test, which the respondent considered to be gross misconduct. The claimant was therefore dismissed for a reason relating to his conduct, falling within section 98(2)(b) of the Employment Rights Act 1996. The respondent has proved a potentially fair reason for dismissal.

134. We do not accept that the issues raised by the claimant on 20 March 2025 about his personal injury claim had any influence on Mrs Birks' decision. We accept her evidence that, at the time she made her decision to dismiss him, she was not aware of the claimant's personal injury claim or the discussions during the 20 March meeting.

135. We have gone on to consider whether in the circumstances, including the size and administrative resources of the respondent, the respondent acted reasonably

or unreasonably in treating the claimant’s conduct as a sufficient reason to dismiss the claimant, taking account of equity and the substantial merits of the case.

136. As part of this consideration, we have asked ourselves whether it can be said that the respondent had a genuine belief in the claimant’s guilt. We found Mrs Birks and Mr Shiel to be credible witnesses and accept their evidence that they believed the claimant had taken cocaine.

137. We have also considered whether the respondent had reasonable grounds for its belief that the claimant was guilty of gross misconduct. At the time of the dismissal, Mrs Birks had before her a positive test result from the external company regularly used by the respondent to conduct drug and alcohol testing. Mrs Birks’ evidence, which we accept, was that she had no reason to doubt that the test result was accurate. Although the claimant denied taking cocaine, he did not produce any evidence to disprove the test result which was before the respondent at the time. We therefore conclude that the respondent did have reasonable grounds to believe that the claimant had taken cocaine.

138. We also find that the respondent had, at the time it made its decision to dismiss the claimant, carried out as much investigation as was reasonable, including going back to Eurofins to seek clarification as to whether the prescribed medication that the claimant was taking could have caused the positive test result. Further enquiries were also made of Eurofins at the appeal stage, after the claimant disclosed additional medication that he had been prescribed.

139. During the disciplinary process the claimant raised the issue of re-testing, as it was clear that he disagreed with the test result. The respondent chose not to re-test, but rather insisted that if a re-testing were to take place the claimant would have to pay for it. The claimant was, understandably, not able to do so at the time as he had been on SSP for some months and, by the time of the disciplinary investigation, his SSP had run out.

140. We find that it was harsh of the respondent to insist that the claimant pay for a re-testing in the circumstances, particularly since had there not been the delay in accessing the test results (which was entirely due to the respondent and not the claimant’s fault) the claimant would, in July 2024, have been able to afford to pay for the re-testing. We accept that the respondent’s normal policy is to insist that employees pay for re-testing. This is a policy which the respondent may wish to review, as another Tribunal may reach a different conclusion on the issue.

141. We have reminded ourselves that the range of reasonable responses test applies also to the investigation carried out by the respondent and we find, on balance, that the failure of the respondent to arrange a re-testing was not outside the range of reasonable responses and did not in itself render the dismissal unfair. The respondent had no reason to doubt the validity of the original test.

142. We turn next to the procedure followed by the respondent. The claimant was invited to an investigation meeting, a disciplinary hearing and an appeal hearing,

which were all conducted by different managers. He was offered the right to be accompanied at the disciplinary and appeal hearings. He was informed of the case against him, sent a copy of the investigation report (including the drug test result) in advance of the disciplinary hearing and had the opportunity to state his case. He was informed in writing of the outcome of the disciplinary hearing and the appeal. He had the opportunity to appeal against the decision to dismiss him.

143. The claimant complained about the delay between the respondent becoming aware of the test result on 28 February 2025 and the start of the investigation on 26 March 2025. No explanation has been provided by the respondent for that delay.

144. On balance we find that the delay between the respondent accessing the test result and the start of the investigation does not render the dismissal unfair. There was no prejudice to the claimant in the delay between 28 February and 26 March, which was a matter of weeks, and which resulted in his employment being prolonged.

145. There was however prejudice to the claimant in the lengthy delay between the drug test taking place in July 2024 and the start of the investigation the following March. The claimant's memory is highly likely to have faded and it will have been much harder for him to recall what happened in July some 8 months later. In addition, as a result of the delay, the claimant was no longer able to afford to pay for a re-test.

146. That being said, we do not think, on balance that the prejudice suffered by the claimant rendered the dismissal unfair. It is unfortunate that the respondent did not act more quickly after the drug test in July 2024, but we accept its explanation for the delay. The mere fact that there is delay in misconduct coming to light does not prevent an employer from taking action in response to that misconduct. We find that, taking all of the circumstances into account, the procedure followed by the respondent was a fair one.

147. We also find that dismissal was within the range of reasonable responses. The respondent had a zero tolerance approach to drugs and alcohol which it published to employees and which was well known by the claimant and others on site. The evidence before us suggested that the respondent consistently dismissed any employee found to have tested positive for illegal drugs. The claimant worked in a safety critical environment, and his length of service and clean disciplinary record were taken into account by Mrs Birks.

148. For the above reasons we find that the dismissal of the claimant was fair. The claim for unfair dismissal fails.

149. In light of our conclusions on the substantive issues above, it has not been necessary for us to consider questions of remedy. Nor has it been necessary to consider time limits, as the unfair dismissal claim is in time, and none of the allegations of discrimination have been upheld.

150. The claim fails and is dismissed.

Approved by:
Employment Judge Ayre
Date: 2 July 2026

JUDGMENT SENT TO THE PARTIES ON

………………………………………………..

……………………………………………….

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

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

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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: