



Claim No: 6008264/2024

EMPLOYMENT TRIBUNALS

Claimant: MS SOPHIA HASSAN

Respondent: WHITBREAD GROUP PLC

Heard at: Manchester Employment
Tribunal

On: 15th, 16th, 17th, 18th
June 2026

Before: Employment Judge Thompson
(sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Mr Green, Counsel

JUDGMENT

1. The complaint of unfair dismissal pursuant to section 95 of the Employment Rights Act 1996 is not well-founded and is dismissed.
2. The complaint of harassment related to sex pursuant to Section 26 of the Equality Act 2010 is not well founded and is dismissed.
3. The complaint of failure to provide statutory breaks pursuant to Regulation 12 of the Working Time Regulations 1998 is not well-founded and is dismissed.

REASONS

Claims and Issues

1. By way of a claim form received on 11th August 2024, the Claimant brings claims of constructive unfair dismissal, harassment related to sex and failure to provide statutory rest breaks. The Respondent denies all three claims.
2. I gave an oral judgment in this case at the conclusion of the four-day final hearing on 18th June 2026. The Claimant made a request at the end of the hearing for written reasons for my decision.
3. For the final hearing I was provided with a bundle of over 500 pages, that included the relevant documents in the case. I was taken to the important documents by the parties. Various documents have been added in the course of the hearing. Both parties informed me prior to making closing submissions that they were satisfied that I now had all of the documents that they wished me to take into account in making my decision.
4. I have heard live evidence from the Claimant. On behalf of the Respondent, I have heard from Kayleigh Ward, Jennifer Harte, Amanda Barfe, Kane Taylor, and Eleanor Royle. I also have a written statement from a further witness, Dawid Machowicz, but as he has not been called, I do not put any weight on that statement.
5. The Claimant's first language is Farsi. The Tribunal had arranged for a Farsi interpreter to assist her during the hearing. However, the interpreter did not attend on the first day. After a discussion with the Claimant and the Respondent's Counsel, I decided to start the hearing and see if we could proceed without an interpreter which was both parties' preference. The Claimant was able to give excellent evidence in English. I did not at any point consider that she did not understand the questions or what was being said during the course of

submissions or exchanges, other than the usual limitations for someone who was not a lawyer such as understanding the procedure which I was able to explain to her. I have however made allowances for English not being her first language in my findings of fact.

6. The issues for me to determine are recorded by Employment Judge Shotter in her Case Management Order, made at a Preliminary Hearing on 21 February 2025. The List of Issues is found in full at page 17 of the bundle and will not be repeated here. It was not clear from looking at the List of Issues why Employment Judge Shotter had not included a standalone claim for a failure to take statutory rest breaks. The case management order records that such a claim was not within the jurisdiction of the Employment Tribunal, but it does not say why. As the Respondent has been able to deal with all of the issues arising out of a standalone claim in respect of rest breaks, I am satisfied that there is no prejudice or disadvantage to the Respondent if I was to deal with such a claim as part of this final hearing notwithstanding that a claim for a failure to provide statutory rest breaks is not in the List of Issues.

Findings of Fact

7. The Claimant started working for the Respondent on 7 July 2022. She was a receptionist at the Premier Inn, working a 40 hour week in 8-hour shifts. Her typical shift was from 2pm to 10pm. It is not in dispute that she was entitled to a 20-minute break on that shift, and it is also not in dispute that she would not be paid for her break.
8. The Claimant appeared to accept in cross examination that her employer could decide when she had a break. I say "appeared", because there were times in her cross examination of the Respondent's witnesses, and in her submissions, when she was critical of being offered breaks at an inappropriate time, for example at a point when she considered that it was too early in the shift. I find that the Respondent would attempt to accommodate staff preferences where possible but there were times when there was not enough staff to cover the Claimant's preferred break times.

9. I accept the evidence of the Respondent's managers that the Claimant was difficult when it came to breaks. For example, even though the Claimant acknowledged that breaks were at her employer's discretion, she would sometimes say "no" to being told that she should take a break and/or when she should take a break.
10. The staff at the hotel were required to clock in and out so that the hours they worked were accurately recorded. There are copies of payroll adjustment forms in the bundle. These were used to manually amend the clock in and clock out cards. For example, if an employee failed to clock in or out, that should be recorded on the payroll adjustment form so that the relevant over or under payment could be made through payroll.
11. On 20 September 2022, the Claimant was issued with a letter of concern by Jennifer Harte (then Jennifer Brady), which is at p83 of the bundle. The letter told her that she had been failing to record her breaks properly. In addition, Ms Harte said the Claimant was not going on breaks when instructed by managers. She accepts that this latter issue is not expressly recorded in the letter of concern.
12. The Claimant says that Jennifer Harte asked her to sign "false forms". Her allegation is that she had not been allowed to take a break but was asked to sign a payroll adjustment form saying she had, with the consequences that the break time would be deducted from her wages even though she had not taken any such break.
13. In 2023 the Claimant was involved in a grievance process related to different issues, and in the context of that process submitted a letter dated 23 August 2023, entitled "subject demands". The last of the demands refers to compensation for break times not taken. This is broadly consistent with what she said about 20-minute break times being deducted from her pay, even if she had taken no break. It appears that, as part of that grievance, she was asked to provide specific examples of when she alleged she had not had breaks, but the break time had been deducted from her wages, so the Respondent could investigate. The document at p231 of the bundle indicates that the Claimant did

not supply that information. The finding of Sarah-Jane Hill, who decided the grievance, was that the Claimant had signed and agreed to those breaks being deducted.

14. There is a reference at p232 of the bundle to a "recommendation" that duty managers should ensure that the Claimant has a 20-minute uninterrupted break. This does not mean that there was a finding that she had not been permitted to take her breaks: the letter states that she had not been able to provide evidence of this happening in the past. The Claimant was not able to prove that she had been denied breaks when she was invited to in 2023. Insofar as the Claimant refers to this as a "recommendation", it is my finding that all Sarah-Jane Hill was doing was reiterating what managers already knew, which was if employees worked for more than 6 hours, they had to have a break.
15. The Claimant says that after this grievance, managers continued to refuse to allow her to take breaks, and that she started documenting this in payroll adjustment forms. She has given specific dates as when specific managers failed to allow her to take a break as follows: 26 November 2023, by Dawid Machowicz; 1 and 10 December 2023, by Dawid Machowicz; 16 December 2023, by Kayleigh Ward; 17 December 2023, by Dawid Machowicz; 14, 15 and 21 January 2024, by Kayleigh Ward; 24 January, 25 February and 15 March 2024, by Eleanor Royle.
16. There are other dates, which the Claimant says were in March and April 2024, when breaks were provided but at the end of the shift. The evidence she gave, albeit that this is not on List of Issues, is that she was not allowed the full 20 minutes on occasions in March and April 2024, i.e. the break may not have begun until 10 minutes before her shift ended and so she effectively only had those 10 minutes, rather than the full 20 minutes.
17. I turn then to the documents to see if there is any documented evidence to support the Claimant's allegation that she did not have breaks. The payroll adjustment forms in December 2023, that appear to be signed by Dawid, do refer to "no break". There is also a payroll adjustment form, signed by him, at p237 of

the bundle, which appears to have his handwritten words beneath his signature: "was busy". I have no other evidence about the circumstances in which the Claimant says that she was not able to take breaks on these dates. For the other dates, although there are payroll adjustment forms, they are not signed by the member of staff said by the Claimant to have refused the break. The evidence of the managers, Kayleigh Ward and Eleanor Royle, was that they were never asked to sign these forms. The Claimant says that they were and that they refused to do so. I note that the Claimant did not raise any written grievance or email in relation to these purported rest breaks which now form the subject of her employment tribunal complaint until 4 June 2024.

18. The Respondent's witnesses say that on occasion the Claimant would refuse to take breaks when asked. She gave different reasons, most commonly that it was too early in a shift, even though from the Respondent's point of view that might be when a break could best be accommodated. The Respondent's Counsel says that the duty is not that the employee must have their break: instead, it is that employees are entitled to a break, and if the Claimant would not take a break there is nothing more for the Respondent to do. The Respondent's witnesses seem to have viewed the breaks as a requirement and encouraged the Claimant to take them, and if she did not take them, they would often cover the Claimant themselves in order to give her a break at a different time no matter how inconvenient this was for the business.
19. The Claimant's managers did not push the Claimant when she refused breaks. For example, they seemed to accept her saying "no" and stepped in themselves to cover her, or on other occasions they let her leave early. The impression I had was that they were intimidated by the Claimant and did not want to confront her: they passed the problem up the management line, initially to Jennifer Harte, and then to Karl Ryan. The reason why they were reluctant to confront her was that she had brought a grievance in the past, meaning that potential disciplinary issues have gone up the management line.
20. I accept the evidence given by the Respondent's witnesses on this disputed issue. The managers did ask the Claimant to take a break at times which were

convenient to the business. The Claimant would sometimes say no, and when they did so they would try their best to accommodate her. I accept that the reasons her managers did not raise formal disciplinary action when she refused to take breaks was because she was difficult to manage and they did not want to confront her.

21. I now turn to the incident on 9 March 2024. It is not in dispute that on this date Ethan Dale (a member of staff) approached the Claimant and said that Niall Moore (another member of staff) wanted a kiss. The management were immediately aware that this had happened, because Niall Moore overheard Mr Dale's comment and told Eleanor Royle, the manager. Ms Royle in turn approached the Claimant. Ms Royle formed the impression that the Claimant was not particularly upset by the comment. The Claimant kept on working and did not ask to leave work early. She did leave later on, after an issue with a customer. Later that evening the Claimant sent a text message to Ioana Bute, saying that she was upset by Mr Dale's comment. On 11 March, the Claimant sent Ms Bute sent a further message in which she said that she wanted the incident pursued through HR.
22. Over the course of the next few days Ioana Bute interviewed Kayleigh Ward, the Claimant, and Mr Dale. By 14 March she had recommended disciplinary action against Mr Dale. A hearing was held on 23 March, and Mr Dale was dismissed for gross misconduct less than three weeks after the incident, on 28 March 2024.
23. There was no investigation into the involvement of Niall Moore. The Respondent's witnesses say there was no basis for suggesting Mr Moore had taken any part in the incident. Mr Moore had been the one who reported the incident to Ms Royle. Mr Dale confirmed in his investigation interview that Mr Moore had nothing to do with him making the comment. In her interview the Claimant made no positive averment that Mr Moore was involved: instead, what she said was confined to her hearing Mr Moore laugh. My finding is that there was not a prima facie case to suggest that Mr Moore had anything to do with Mr Dale making the comment and there would have been no basis to invite him to a disciplinary hearing.

24. The Claimant returned to work as normal after the 9 March incident. She worked for a number of weeks and then went off sick on 29 March 2024. She called in sick, and self-certified on that day. There are a number of individuals who say the Claimant was shouting and swearing on the phone when asked to give a reason for her absence. The phone was said to be on loudspeaker, and I have heard live evidence from two of those witnesses, Jennifer Harte and Kane Taylor. The Claimant returned to work the next day and attended a return-to-work interview. Again, she was alleged to be shouting and swearing. She was asked to go home by Jennifer Harte, because of how she behaved in that return-to-work interview. After she returned home, she sent an email making a formal complaint against Jennifer Harte, saying that Mrs Harte had been abusive to the Claimant in the return-to-work meeting earlier that day.
25. The Claimant returned to work for next shift as usual, and then attended an investigation meeting on 9 April. This was an investigation meeting in respect of what had happened on 29th and 30th March. She was then off sick for 2 days, and once again returned to work. After she returned, she had a meeting on 18 April to address her grievance against Jennifer Harte. On 21 April she was invited to attend a disciplinary hearing in relation to the allegations against her arising out of the 29th and 30th March incidents, but she called in sick the day after the invite was sent with a sore throat. As it turned out, the disciplinary hearing never took place as the Claimant never returned to work.
26. The Claimant remained off sick after and received the outcome of her grievance via email on 20 May 2024. Her grievance was not upheld. She appealed on 24 May, while off sick. In the meantime, the Respondent's HR were trying to get the ball moving on the disciplinary process against the Claimant. The Claimant replied, saying she was not going to attend a disciplinary until her grievance was concluded. Shortly afterwards, on 5 June, she started a new grievance, in which she raised concerns which mirror her Tribunal claim, concerning breaks and the harassment incident on 9 March. The Claimant had initiated ACAS Early Conciliation about a week earlier, and her email said that she would not be returning to work until these issues were resolved.

27. There were then various attempts to get the disciplinary against the Claimant moving as well as to get the Claimant's new grievance moving. On 20 June 2024, the Respondent inquired about the Claimant's ability to attend disciplinary, grievance and welfare meetings. The Claimant replied, saying she would not do so until the grievance was resolved. A week later, she was asked about whether she would be able to attend a meeting to discuss the grievance or whether she would instead prefer to make written submissions. There were then further emails on 11 July, where the Claimant was oddly requesting an update on her employment status. The Respondent replied to say that she was employed on a permanent contract and specifying certain of her terms. The Respondent again enquired about fitness to attend meetings and how it could go about investigating. The Claimant was encouraged to call on the phone to agree a way forward. The Claimant replied on 17 July. She seems in that email to suggest that the Respondent had sufficient information "from the meeting". It is not clear which meeting she meant, as there had not been a meeting in respect of the 4 June grievance. She also said that if additional information was needed, it would be provided via email, and she would then decide whether to appeal or not.
28. Before there could be any investigation into the Claimant's 4 June grievance, or her appeal against the dismissal of her Jennifer Harte Grievance, or any disciplinary hearing in respect of what the Claimant had allegedly done on 29 and 30 March, the Claimant sent her resignation on 29 July and filed the ET claim shortly after on 11 August 2024.

The law

Rest Breaks

29. The statutory right to a rest break is provided at Regulation 12 of the Working Time Regulations 1998 (WTR1998):

Rest Breaks

(1) Where a worker's daily working time is more than six hours, he is entitled to a rest break.

(2) The details of the rest break to which a worker is entitled under paragraph (1), including its duration and the terms on which it is granted, shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes, and the worker is entitled to spend it away from his workstation if he has one. [...]

30. The right is to a single rest break, of at least 20 minutes, for all workers whose daily working time exceeds six hours. The right is silent on when breaks may be taken. It is clear, however, that it is not a right for workers never to spend more than six unbroken hours working. The length of working time (six hours) triggers the right (to a 20-minute break) in general terms. It is also not a right to take a break at a time of the worker's choosing. There is nothing in the right which prevents the employer from specifying when breaks may be taken – either a specific time, or the appropriate circumstances (e.g. “when cover is available”). There is nothing in the plain wording of the right which prevents a rest break from being taken at the end of a shift, so long as the rest break does not overlap with a different kind of statutory rest entitlement such as daily or weekly rest.

31. Section 26 of the Equality Act 2010 defines harassment as follows:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) The conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*

(2) *A also harasses B if—*

(a) *A engages in unwanted conduct of a sexual nature, and*

(b) *the conduct has the purpose or effect referred to in subsection (1)(b).*

32. Section 109 of the Equality Act 2010 deals with liability of employers and principals and provides as follows:

(1) *Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.*

(2) *Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.*

(3) *It does not matter whether that thing is done with the employer's or principal's knowledge or approval.*

(4) *In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—*

(a) *from doing that thing, or*

(b) *from doing anything of that description.*

33. The statutory defence is framed in the past tense. It is concerned only with preventative steps taken by the Respondent before the contravention took place (**Mahood v Irish Centre Housing Ltd UKEAT/0228/10**, unreported, 22 March 2011, EAT, [53]). That said, the Tribunal can take account of the way that an incident was dealt with, as evidence of the effectiveness of the Respondent's

systems from which inferences could be drawn as to whether the Respondent in fact took “*all reasonable steps*” .

34. An employee can lawfully resign his or her employment with or without notice if the employer commits a repudiatory breach. This is known as constructive dismissal and is a species of statutory unfair dismissal by virtue of section 95(1)(c). It was described in **Western Excavating (ECC) Limited v Sharpe [1978]** by Lord Denning as follows: “*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer’s conduct. He is constructively dismissed*”.
35. An employee must act reasonably quickly in responding to a repudiatory breach of contract otherwise s/he may be taken to have accepted the continuation of the employment contract and affirmed the contract. However, mere acceptance of salary without the performance of any duties by the employee will not necessarily be regarded as an affirmation of the contract following an employer’s repudiation.
36. A claimant can rely on implied or express terms of the contract. Express terms can be written or oral. In **Wood v WM Car Services (Peterborough) Limited [1982]** the Court of Appeal approved the development of the implied term of trust and confidence. It was finally given House of Lords’ approval in **Malik v BCCI** in 1997 where Lord Stein stated that the question was whether the employer’s conduct so impacted on the employee that viewed objectively the employee could properly conclude the employer was repudiating the contract. It is not necessary to show that the employer intended to damage or destroy the relationship of trust and confidence. In **Malik** the formulation is that the employer “*must not conduct itself in a manner calculated and likely to destroy confidence and trust*” and it is relevant to consider whether the employer’s conduct in question was “*without reasonable and proper cause*”. This is not the same as the range of reasonable responses test.

37. The particular incident which causes the employee to leave may in itself be insufficient to justify resignation but may amount to constructive dismissal if it is the last straw in a deteriorating relationship. This means that the final episode itself need not be a repudiatory breach of contract although there remains the causative requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer.
38. Therefore the claimant has to show that the matters she relies on either individually or cumulatively amounted to a breach of the implied term of trust and confidence. She then has to establish that that breach played a part in her decision to resign where it is argued she has to show that he has not unduly delayed or affirmed the contract. A claimant can also rely on specific breaches without a continuing course of conduct.

Application of Law to the Facts

Rest Breaks

39. The Claimant says she was denied a statutory break on 20 September 2022 and believes she was not allowed to take over 20 breaks in 2022, the dates of which are unknown. The Claimant specifically says she was not to leave her desk and have the 20-minute statutory rest break on the following dates:
- 24 September 2022;
 - 16 February 2023 (manager did not allow the Claimant to take a break, Kayleigh Ward);
 - 26 November 2023 (David) manager told the Claimant she could not take a break;
 - 1 December 2023 (David - no break);
 - 10 December 2023 (David - no break because manager did not let the Claimant take her break);
 - 16 December 2023 (Kayleigh Ward did not allow the Claimant to take her break);
 - 17 December 2023 (David did not allow the Claimant to take a break);
 - 14 January 2024 (Kayleigh Ward said she could not cover for the Claimant and the Claimant worked longer than her shift, usually work 8 hours on that shift worked 8.5 hours with no break);

- 15 January 2024 (Kayleigh Ward no break, was not the Claimant could not be covered to take her 20-minute break)
- 21 January 2024 (Kayleigh Ward: "if you stay until 10:30 you will get your break", so Claimant had to stay 8.5 hours and take her break)
- 24 February 2024 (Eleanor Royle, no break)
- 25 February 2024 (Eleanor Royle was asked, and said no break, "I can't cover for you", but
- 21 January 2024 (Kayleigh Ward: "if you stay until 10:30 you will get your break", so Claimant had to stay 8.5 hours and take her break)
- 24 February 2024 (Eleanor Royle, no break)
- 25 February 2024 (Eleanor Royle was asked, and said no break, "I can't cover for you", but the Claimant left 10-15 minutes earlier)
- 15 March 2024 (last occasion on which the Claimant was not allowed to take her break)
- Statutory breaks taken at the end of the shift: very common, no dates can be provided. Happened in March 2024, on 12, 13, 15, 20 and 21 April 2024 with Eleanor Royle, Kayleigh Ward and Amanda (surname not known). 12 April is the last date when the Claimant took her statutory rest break at the end of her shift.

40. My finding is that the Claimant was not denied her right to a rest break on any of the dates she has identified. I prefer the evidence of the Respondent's witnesses when they say they never denied her a break. Their evidence was straightforward and convincing, that they were trying to make her take breaks when she did not want to. They managed her refusal either by allowing her preference to go early at the end of the shift, or by managers accommodating her break even if they had to cover the break themselves. They were doing their best to accommodate her when she said "no" to a break at a time determined by them.

41. The Claimant's account is not corroborated. The grievance dealt with by Sarah-Jane Hill in 2023 was not upheld because she was unable to provide the details to allow the Respondent to investigate. From that point she would have been on notice that she needed to be specific and complain if there were further issues concerning breaks. What she went on to do was to record matters in payroll adjustment forms. However apart from the ones signed by Dawid Machowicz, they are no more than the Claimant's own self-certification that she was not getting breaks. I accept the evidence of Jennifer Harte and Kayleigh Ward that they were not asked to sign these forms. I do not accept at all the Claimant's evidence that she asked them to sign these forms and they refused to do so.

42. The exception is the three payroll adjustments forms signed by Dawid Machowicz. Mr Machowicz has not given live evidence and his witness statement does not cover this specific issue. I cannot be confident as to what it was that he was signing, and in particular why the Claimant had not taken a break on any of those dates when he appears to have signed forms confirming that she did not take a break. My concern is that there is overwhelming evidence that the Claimant would often be offered a break but would not take it as the time did not suit her, forcing managers into a corner with an employee whom they found difficult. They would then have to cover her themselves or let her leave early. The duty is to offer a break, but if she does not accept it, there is no obligation on the Respondent to accommodate her at a different time even though in practice this is what they were doing. I accept that it is more likely than not that the Claimant was offered the opportunity to have a compliant break, and if there was not one, that was caused by her own conduct in refusing to take a break. For that reason, the fact that Dawid Machowicz has signed a form saying that no break was taken is not evidence that the break was not taken because one was not offered. It is more likely than not that on those 3 occasions, the Claimant chose not to take a break when one was offered.
43. For the above reasons, I reject the claim that the Respondent failed to provide the Claimant with statutory rest breaks.
44. I will deal briefly with the jurisdiction for the complaint about rest breaks. Any claims pre-dating 1 March are out of time. I do not find that it was not reasonably practicable to bring the claim in respect of rest breaks earlier than the Claimant did. The Claimant's only explanation for the delay was being off sick. But she was not off sick until April 2024, and even though she was off sick, she was still able to deal with grievances, to contact ACAS and to file her ET1 on 11 August.

Harassment

45. I turn next to the allegation of sexual harassment. The Claimant says that on 9 March 2024 Niall Moore and Ethan Dale sexually harassed her. She says that Ethan Dale repeated what Niall Moore was telling him: "*tell her I want a kiss*" in

public. She also says that Eleanor Royle overheard the sexual comments and came over to the Claimant in reception and said "*he fancies you*" instead of stopping them, smiling and laughing, encouraging the situation.

46. I do find that Ethan Dale made the comment "*tell her I want a kiss*" in public and he was dismissed for it. I also accept that this unwanted conduct of a sexual nature and that the conduct had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. These matters were not disputed by the Respondent.
47. I find there was no wrongdoing in relation to the harassment allegation by the other two people.
48. In respect of Eleanor Royle, I do not accept the Claimant's evidence that she was smiling, laughing, or encouraging the conduct. There is a direct dispute of fact between the witnesses on this point. I found Eleanor Royle to be a credible witness who was straightforward and did not exaggerate. She did not recall the exact detail of what was said but nevertheless it was clear that she did not accept that she had laughed, encouraged the comments, or said to the Claimant "*he fancies you*". By contrast, the Claimant was reluctant to answer straightforward questions, and her evidence was inconsistent. There were also times when she clearly did not want to accept basic and irrefutable points.
49. I also find that Niall Moore did not have anything to do with this incident. Ethan Dale said he had not been encouraged by Mr Moore to make the comment and Eleanor Royle said the incident was reported by Niall Moore to her. I find that this allegation was based on the Claimant's assumption, based on hearing Niall Moore laugh, and her inference that he therefore had something to do with it. The Claimant appears to have had previous issues with Mr Moore from 2023, and it is my finding that this has clouded her view of him and has led her to conclude that Mr Moore had something to do with Mr Dale making this comment when there is no evidence that this was the case.

50. In relation to the statutory defence, as the Claimant was discriminated against in relation to the comment made by Mr Dale, the issue for me is did the Respondent take all reasonable steps to prevent discrimination from occurring in the workplace? I am concerned with the Respondent's pre-incident conduct. In that regard, the Respondent has compulsory training and a zero-tolerance policy, referred to at p460 of the bundle. They also have a confidential phoneline to report wrongdoing. The Claimant did not challenge any of the Respondent's witnesses in cross examination about these preventative steps, nor did she at any stage put forward a basis for saying there were any other steps the Respondent, or a reasonable employer in the circumstances facing the Respondent, would have taken. No case was presented on what other steps could have been taken to stop Ethan Dale acting as he did. Ethan Dale was new to the job; there was no suggestion that he had a history of similar incidents; and he like all staff he had the induction training.
51. In relation to post-incident conduct, I remind myself of its limited relevance, but in my judgment, these matters show that the Respondent did not just pay lip service to its zero-tolerance policy. When the Claimant first reported the incident to Ioana Bute, and said she wanted to take it up with HR, she got an immediate response. Investigatory meetings started within a few days of that complaint. A report was produced on 14 March, within 5 days of the incident. There was a prompt disciplinary, and the individual was dismissed within three weeks of the incident.
52. For all of those reasons I am satisfied that the Respondent has made out the defence.

Constructive Unfair Dismissal

53. I have not accepted the factual basis for the constructive dismissal allegations as set out in the List of Issues, save for the one point that I accept that Mr Dale harassed the Claimant. I therefore have to consider whether that breach that I have identified in relation to Mr Dale's conduct amounts to a breach of the implied term of trust and confidence. That involves an assessment of whether the

Respondent had reasonable and proper cause for those actions or omissions I have identified and if not whether the Respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent.

54. It is my finding that as the statutory defence has been made out, I am effectively bound to accept that the Respondent is blameless. For this reason, the claim for constructive dismissal is not made out.
55. However, I will go on to consider the reasons for resignation and causation. The issues here is whether the alleged fundamental breach of contract was the reason for the Claimant's resignation. I will also consider whether the Claimant affirmed the contract before resigning, by delay or otherwise. I need to decide whether the Claimant's words or actions showed that she chose to keep the contract alive even after the breach.
56. The Claimant's resignation email says she resigned because of a failure to relocate her, to address her grievances, that she felt unsafe and that she was not treated fairly. Her grievances made on 4 June 2024 mirrors her tribunal claim, i.e. it included complaints about rest breaks and the harassment incident. But in terms of the chronology, the last occasion when she was denied a break, even a late break, was on 12 April 2024, three weeks before the start of her sickness absence, and three months pre-resignation. The last time she says she was unable to take a break at all was on 15 March. The incident of harassment was on 9 March, five months pre-resignation.
57. I also consider what happened before her resignation and after those incidents in respect of rest breaks and harassment. The Claimant was asked to attend a disciplinary meeting relating to her own conduct on 29 and 30 March 2024. Those allegations were not the subject of further investigation, as the Claimant did not return to work after getting an invite to a disciplinary hearing on 21 April.
58. The Claimant has to establish that the reasons for her resignation. She delayed and did not raise these matters that she now says caused her to resign until June

2024. Moreover, the Respondent was trying to resolve the grievance in relation to the rest breaks and the harassment, inviting her to attend a meeting or give submissions, and that was process was ongoing when she resigned.

59. My finding is that it was more likely that it was her concern over the disciplinary allegations against her that prompted her to resign. I do not accept the averment that she was calculated when it came to letting two years pass so that she could bring a claim for unfair dismissal in the Employment Tribunal: it is more likely than not that the reason for the timing is as she said, that her sick note had expired and so she had to return to work and face the disciplinary process, or resign. She resigned so that she did not have to face a potential dismissal.
60. I also find that she acted in a way that was consistent with affirmation, by continuing to work after the events of 9 March, and continuing to tolerate the break system.
61. In conclusion, all three claims are dismissed.

Employment Judge Thompson

Date 6th July 2026

JUDGMENT SENT TO
THE PARTIES ON
12 August 2026

FOR THE TRIBUNAL OFFICE

Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rules 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.

Public access to employment tribunal decisions

Judgments 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:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>