



EMPLOYMENT TRIBUNALS

Claimant: Nathan Horner

Respondent: Octane Draincare Ltd

Heard: by CVP

On: 28 May 2026

Before: Employment Judge Ayre

Representation

Claimant: represented himself

Respondent: Richard Sykes, director

JUDGMENT

1. The name of the respondent is amended to Octane Draincare Ltd.
2. The claim for wrongful dismissal fails and is dismissed.
3. The claim for unfair dismissal succeeds. The claimant was unfairly dismissed by the respondent.
4. The claimant contributed to his dismissal by 75% and the basic and compensatory awards are reduced by 75% to reflect his conduct.
5. The respondent is ordered to pay the sum of **£1,759.14** to the claimant.

REASONS

Background

1. The claimant presented his claim to the Employment Tribunal on 11 November 2025 following a period of ACAS early conciliation that started on 2 October 2025 and ended on 10 November 2025.
2. By letter dated 21 November 2025 the claim was served on the respondent, the case was listed for final hearing today and Case Management Orders were made to prepare the case for today's hearing.
3. The respondent filed a response to the claim indicating that it intended to defend the claim. It did not, however, comply with the Case Management Orders that were made.
4. On 27 February a letter was sent to the parties on the instruction of Employment Judge Singh s issuing amended directions and reminding the parties that *"It is imperative that the parties comply with the directions so that a fair hearing can take place"* and *"If either party fails to comply with these orders and it means that a fair hearing may not be possible, then the tribunal may impose sanctions on that party"*.
5. The same day the respondent sent an email to the Tribunal *"Please find attached witness statements, index and corresponding information"*. The email was not copied to the claimant.
6. On 21 May a letter was sent to the parties on the instruction of Employment Judge James. The letter stated that the hearing would proceed on 28 May and that the respondent would need the permission of the Tribunal to rely upon any documents or witness statements which had not been provided to the claimant in line with the Case Management Orders.

The hearing

7. At the start of the hearing there was a discussion about the documents that each side wished to rely upon. The claimant had prepared a witness statement and a paginated, indexed bundle and an updated Schedule of Loss. He had sent those documents to the respondent but not to the Tribunal. The respondent had also sent some documents and very brief witness statements to the Tribunal on 27 February. The claimant said he had seen and read those documents because he had 'stumbled across' them on the portal.
8. I explained to the parties that, in accordance with the direction of Employment Judge James, set out in the Tribunal's letter of 21 May, the respondent would need the permission of the Tribunal to rely on any documents or witness statements which had not been provided to the claimant in line with the Case Management Orders. I explained that I would hear evidence from the claimant, and that the respondent could put questions to him, and make submissions. The respondent did not seek to give any oral evidence to the Tribunal.

9. The claimant sent his statement, bundle and Schedule of Loss to the Tribunal. The respondent also sent some documents to the Tribunal by email. I adjourned the hearing to read the documents.
10. Mr Sykes told the Tribunal that he did not have a copy of the claimant's witness statement or bundle. The claimant had sent these documents to Kate Bower of the respondent by email on 13 February 2026. It appears that Ms Bower had not passed them on to Mr Sykes, who told the Tribunal that Ms Bower was off work. The claimant sent his witness statement and bundle direct to Mr Sykes during the hearing, and we adjourned to give Mr Sykes time to read them.
11. The Tribunal heard oral evidence from the claimant, who was cross examined by Mr Sykes. Both sides made oral submissions.

The issues

12. We spent some time at the start of the hearing discussing the claims that the claimant is bringing. I asked him whether he was claiming constructive dismissal (i.e. that he resigned because of the respondent's conduct) or alleging that he was actually dismissed by the respondent. The claimant said that he is not claiming constructive dismissal, but rather that he was dismissed in a letter sent to him by Jason Unsworth saying that it was inappropriate for him to return to work due to his conduct. The claimant accepted that he had already given four weeks' notice of resignation by that time, but complains that he was not allowed to work his notice and that he was dismissed without any process.
13. The respondent denies that the claimant was dismissed. It says that he resigned.
14. The issues that fell to be decided during today's hearing were the following:
 - 1.1 Did the claimant resign or was he dismissed?
 - 1.2 If the claimant was dismissed, what was the reason or principal reason for dismissal?
 - 1.3 Was it a potentially fair reason?
 - 1.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?
 - 1.5 What was the claimant's notice period?
 - 1.6 Was the claimant paid for that notice period?
 - 1.7 If not, was the claimant guilty of gross misconduct or did he do something so serious that the respondent was entitled to dismiss him without notice?

Findings of fact

15. The claimant was employed by the respondent as Operations Manager from 8 March 2021 until 2 October 2025. He was provided with a written contract of employment which contained the following relevant provisions:

"21 Termination of Employment

....

21.2 After you have been continuously employed for one month and after the end of the Probationary Period, you may end your employment at any time by giving us not less than one week's prior written notice and we may end your employment at any time by giving you one week's written notice during the first two years' continuous employment and after that, one additional week's notice for each year of service, up to a maximum of twelve weeks' notice..

21.3 We reserve the right in our absolute discretion to pay you salary in lieu of notice.

21.4 Nothing in this Contract prevents us from terminating your employment summarily or otherwise in the event of any serious breach by you of the terms of your employment or in the event of any act or acts of gross misconduct by you."

16. In September 2023 the claimant asked to reduce his working hours from five days a week to three or four days a week, and to be allowed to leave work at 4pm each day. He was invited to a meeting to discuss this. On 30 September 2025 the claimant attended a meeting with three company directors: Richard Sykes, Jason Unsworth and David Flower. During the meeting the claimant complained about the respondent company and said that 'all the staff want to leave'. The claimant was asked a question to the effect of *"If the company is so bad why are you still here?"* The claimant became angry and emotional. He replied, *"Fuck this, I'm off"* and left the meeting abruptly.
17. The claimant then walked out of the office, leaving behind his work telephone, laptop, keys and the company vehicle that he normally took home with him. After leaving the office he threw his high visibility vest over a fence in frustration.
18. At 13.35 on 30 September, shortly after leaving the meeting, the claimant posted a message in the respondent's WhatsApp group, *"Pleasure working with you boys"*.
19. At 16.45 on 30 September the claimant sent a message to David Flower:
- "Hi David, I'll have to Send my notice by message as I don't have any email addresses. After the meeting earlier I feel I have no other option than to put my 4 week notice in. This will make my last working day the 28th of October. Please advise what work I am to undertake while I'm in my notice period. Kind Regards Nathan."*

20. At 17.27 on 30 September the claimant sent the following messages to Richard Sykes:

"Hi Richard, what work am I to Do while I work my notice? I have messaged David but had no Reply!"

*"I could really doing with knowing what I am doing tomorrow?
Very disappointing to not get a reply from anyone especially after all I have done for this company over the last 4 and a half years!"*

21. Mr Sykes did not reply to these messages and the next morning the claimant sent the following message at 7.33, *"Just to clarify Richard, I walked out of a meeting due to the stress from said meeting and put my notice in after, as mentioned in said meeting. I also messaged yesterday notifying you that I intended to work my notice. I will contact acas this morning and see where I stand in this"*. He received no response and sent a further message at 10.27 am:

"Hi Richard, I have been advised by acas that I can either:

- 1) Work my notice as I said I would.*
- 2) Be placed on gardening leave*
- 3) Or PILON (paid in lieu of notice)*

If my contract states 1 weeks notice then I am to work the next 3 weeks as normal and then my notice will come into effect to leave on the 28th of October.

Please can you advise how you wish to move forward with this as it is effecting me financially and mentally due to the stress of not knowing.

Thank you. "

22. The claimant sent a further text message to Richard Sykes in which he wrote, *"Am I to attend work tomorrow? I don't want to make this awkward Richard. If you didn't want me as a manager I'd of been more than happy back on the cctv van!"*. Later the same day he sent a further message, *"Richard can we meet and have a civilised chat at some point."*

23. The claimant did not receive a reply to either text message and the following day sent another message *"Are you available around dinner time?"* to which he did receive a reply.

24. On 2nd October Jason Unsworth sent a letter to the claimant in which he wrote:

"I am writing to formally acknowledge receipt of your resignation on 30 September 2025, which you subsequently confirmed by text message to Richard Sykes on the same date.

This follows your emails to me on 29 September 2025, in which you requested to reduce your working hours to three to four days per week and to work shifts of nine hours only, in order, as you put it, to help with "the current situation with the wages." In response, I asked you to confirm you availability for a discussion so that I could better understand your request. As per my reply, it appeared you had misunderstood the company's requirements. You then attended a meeting with me, David, and

Richard on 30 September 2025.

During this informal discussion, we covered a number of matters....

Throughout the discussion, you became irate and argumentative, repeatedly expressing dissatisfaction with the company. This culminated in you stating, "this company is shit" and "the staff all want to leave." At that point, Richard Sykes explained that he had recently conducted one-to-one staff appraisals, during which the majority of staff gave very positive feedback about the company and expressed that they were settled in their roles. Richard questioned if you were so unhappy, why you continued to work for the company. You responded by saying "fuck it, I'm, off," and left the room.

After leaving the meeting, you went to the main office, handed your phone and keys to Louise, and advised that your laptop, PPE, and vehicle keys were in the company van. You requested that the gates be opened and then departed the premises, throwing your high-visibility vest over the railings as you left.

You subsequently posted in the Octane Drincare Ltd WhatsApp group, stating "Pleasure working with you boys", and sent a text message to Richard confirming you had handed in your notice.

As per clause 21.2 of your employment contract, you are required to provide not less than one week's prior written notice to terminate your employment.

Your conduct on 30 September 2025 demonstrated that you had resigned with immediate effect, without providing the required contractual notice. While I note that you later offered to work your notice period, given your conduct as described above, we do not consider it appropriate for you to return to work.

Accordingly, you will not receive payment in lieu of notice. You will, however, received your salary up to and including 30 September 2025, together with payment in lieu of 3.5 days' accrued but unused annual leave...."

25. The claimant was not permitted to return to work or to work his notice period. He was paid up until 30 September, but not beyond that.
26. Whilst employed by the respondent the claimant's weekly pay was £1,286 gross and £951.14 net.
27. The claimant was aged 37 at the date his employment terminated.

The Law

Unfair dismissal

28. 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.

29. 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.”*

30. 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**).

31. 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. “*

32. Where a Tribunal finds that a claimant has been unfairly dismissed, the respondent can be ordered to pay a basic award and a compensatory award to the claimant. Sections 119 to 122 of the ERA contain the rules governing the calculation of a basic award and include, at section 122(2) the power to reduce a basic award to take account of contributory conduct on the part of a claimant:-

“Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly. “

33. The rules on compensatory awards are set out in sections 123 and 124 of the ERA and include, at section 123(6) the following:-

“Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.”

34. The leading case on contributory conduct is ***Nelson v BBC (No.2) 1980 ICR 110*** in which the Court of Appeal held that, for a Tribunal to make a finding of contributory conduct, three factors must be present:-
- 35.
1. There must be conduct which is culpable or blameworthy;
 2. The conduct in question must have caused or contributed to the dismissal; and
 3. It must be just and equitable to reduce the award by the proportion specified.
36. 'Culpable or blameworthy' conduct can include conduct which is 'perverse or foolish', 'bloody-minded' or merely 'unreasonable in all the circumstances' (Nelson v BBC (No.2)).
37. In ***Hollier v Plysu Ltd [1983] IRLR 260*** the EAT said that contribution should be assessed broadly and should generally fall within the following categories: employee wholly to blame (100%); employee largely to blame (75%); employer and employee equally to blame (50%) and employee slightly to blame (25%).

Wrongful dismissal

38. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 gives Tribunals the power to hear claims for breach of a contract of employment or other contract connected with employment where the claim arises or is outstanding on the termination of the claimant's employment.
39. In a wrongful dismissal claim, where it is admitted that the claimant was not given or paid for his notice period, the question is whether the claimant was in repudiatory breach of his contract of employment such that the employer was entitled to dismiss him without notice.
40. In a wrongful dismissal case questions of reasonableness do not arise, and the issue is whether the employee was guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract (***Enable Care and Home Support Ltd v Pearson EAT 0366/09***).

Conclusions

41. The first question I have had to decide is whether the claimant resigned with immediate effect on 30 September or was dismissed by the respondent's letter of 2 October.
42. I find that the claimant, through his conduct in swearing during the meeting, walking out of the meeting and off site, sending the message to the WhatsApp group and leaving all company property behind, demonstrated an intention to resign from his employment. He did not however inform the respondent that he was resigning, merely that he was leaving work that day.

43. Just a few hours later however, he put his resignation in writing and indicated that he was giving four weeks' notice. From then on he took repeated steps to try and work his notice period but was not allowed to by the respondent.
44. I accept that a resignation need not be expressed in a formal way and can be inferred from an employee's conduct. However, where an employee acts in the heat of the moment in anger, as the claimant did here, and then quickly acts to retract from and clarify the position, the situation has to be looked at in the round.
45. I find on the evidence before me that the claimant resigned on the afternoon of the 30 September 2025 in the text message that he sent giving four weeks' notice.
46. During the claimant's notice period, the respondent then, through its letter of 2 October, dismissed the claimant without notice or payment in lieu of notice. Where an employee gives notice of termination and is then not permitted to work his notice period, the resignation becomes a dismissal.
47. I find that the effective cause of the termination of the claimant's employment was the letter of 2 October 2025 and that the claimant was dismissed on that date.
48. The claimant is therefore entitled to pursue a complaint of unfair dismissal and the burden falls on the respondent to prove a potentially fair reason for dismissal.
49. The respondent has not asserted a fair reason for dismissal. It has failed to discharge the burden of establishing a potentially fair reason for dismissing the claimant. Accordingly the claim for unfair dismissal succeeds. Moreover, the respondent took no steps prior to dismissing the claimant to follow a fair procedure.
50. I therefore find that the claimant was unfairly dismissed by the respondent.
51. I turn next to the wrongful dismissal claim. I find that, in light of the provisions in the claimant's contract of employment, his notice period given his length of service was four weeks. I also find that the respondent did not pay the claimant his four weeks' notice or allow him to work his notice period.
52. However, the conduct of the claimant on 30 September, in swearing during a meeting with the respondent's directors and walking off site in the way he did, amounted to a repudiatory breach of contract, which the respondent accepted when it dismissed him. The claim for wrongful dismissal therefore fails and is dismissed.
53. I have gone on to consider compensation for unfair dismissal. This comprises two parts, a basic award and a compensatory award.
54. The claimant was 37 years old at the date of dismissal. He had four years' continuous service and earned £1,286 gross a week. The statutory cap on a

week's pay at the time was £719. The claimant's basic award for unfair dismissal is therefore £2,876 (four weeks x £719 a week).

55. The claimant is also entitled to a compensatory award. His loss of earnings is limited to salary during his four week notice period because if he had not been dismissed his employment would have terminated then due to his resignation. Four weeks' pay at £915.14 net a week gives a total of £3,660.56. To that I add £500 for loss of statutory rights, giving a total compensatory award of £4,160.56.
56. I have then considered whether to make any uplift to take account of the fact that the respondent did not follow the ACAS Code of Practice. It would not, in my view, be just and equitable to do so in light of the circumstances of the case and my conclusions below that the claimant caused or contributed to his dismissal to a significant degree.
57. I find that the claimant's conduct on 30 September was culpable and blameworthy. He should not have spoken to the directors of the business in the way that he did. He should not have walked off site in the way that he did.
58. I also find that it was his conduct that day that caused his dismissal on 2 October, that much is clear from the contents of Mr Unsworth's letter.
59. I find it would be just and equitable to reduce both the basic and compensatory awards by 75% to reflect the claimant's conduct on 30 September.
60. The basic award is reduced from £2,876 to **£719**. The compensatory award is reduced from £4,160.56 to **£1,040.14**
61. The respondent is ordered to pay to the claimant the total sum of **£1,759.14**

Approved by:
Employment Judge Ayre
Date: 28 May 2026

Notes

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