



EMPLOYMENT TRIBUNALS

Claimant: Mr A Long

Respondent: XPO Bulk Limited

HELD at Leeds

ON: 9, 10, 11, 12, 13 and 16 March 2026

BEFORE: Employment Judge Miller

Members: Ms K Grace

Mr D Eales

REPRESENTATION:

Claimant: Ms G Grant, Counsel

Respondent: Mr Z Malik, Solicitor Advocate

JUDGMENT was sent to the parties on **17 March 2026** and written reasons were requested in accordance with Rule 60 of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

REASONS

Introduction

1. The claimant brings claims for constructive unfair dismissal, automatically unfair constructive dismissal on trade union grounds, Trade union detriment and unauthorised deduction from wages.
2. The list of issues to be determined are attached as an appendix to these reasons.
3. The judge apologises to the parties for the delay in producing these reasons. This was down to administrative issues further compounded by the judge's workload.
4. We had written and oral witness evidence from the following people:
5. For the claimant:
 - a. The claimant

- b. Mr Ian Horton
 - c. Mr Stephen Hutson
 - d. Mr Timothy Chapman
 - e. Mr Wayne Collier (written evidence only)
6. For the respondent:
- a. Mr John Cox
 - b. Mr Paul Murray
7. We also had an agreed bundle of 484 pages and additional documents that were admitted late.

Findings of fact

8. We have made such findings of fact as are necessary to determine the issues. Just because we have not referred to a particular piece of evidence does not mean we have not considered it.
9. The respondent is a logistics company contracted with a number of organisations but notably in this case Tesco for the delivery of fuel. It has two contracts, one that is called Core which the lorries are branded with the Tesco delivery and it operates on an open book basis so that Tesco know what they are paying for, and a second contract called Fuel Support which I will refer to as FS which is non-branded and is there to provide fixed price fuel deliveries for various companies.
10. In Immingham where the claimant ultimately worked the only customer was Tesco so there was no difference - FS and Core all delivered to Tesco from Immingham.
11. The Core drivers were usually recruited from the FS drivers. It was the respondent's practice that people were recruited as FS drivers then when a vacancy came up they were entitled to apply for or appointed as Core drivers.
12. There were different employment terms for Core and FS drivers and there were two separate bargaining units for trade union purposes. Unite were the recognised trade union for the purposes of bargaining with the respondent for Core drivers. Core drivers had different terms and conditions including being on a higher rate of pay. The Community Union was the recognised trade union for the purpose of bargaining on behalf of the bargaining unit comprising FS drivers.
13. The claimant started working for the respondent in March 2022 as a Fuel Support driver at Immingham. Although he could in principle be allocated to fuel delivery for any contractor but in practice that was Tesco because they were the only contractor that was operating out of Immingham at the time.
14. The claimant started a period of training with Graham Britton one of the trainers. This is the point at which the claimant first became aware of a split between the Core and FS drivers.
15. Mr Britton was a Core driver, a member of Unite and a health and safety representative. Soon after that the claimant met Mr Andy Parish who was a Core driver and a shop steward for Unite. Generally, but not exclusively, Unite represented Core drivers and the claimant's union Community represented FS drivers. This was not universal; some drivers had or have had at various points

dual membership of both Unite and Community. The claimant had previously been a member of Unite but when he approached Mr Parish for assistance with a matter Mr Parish said he could not help him because he was not a Core driver and the claimant joined Community.

16. Some Core drivers were members of Community but we did not hear if any FS drivers were members of Unite. There was at the time a recognition agreement between Unite and the respondent which included a term that FS drivers could not use Core vehicles unless their usual vehicle was off the road in unforeseen circumstances. FS drivers were not even permitted in accordance with this recognition agreement to use a Core vehicle in the event that their own vehicle was in for planned maintenance unless, somewhat surprisingly, the Unite representative agreed to it. The agreement says that in no circumstances could FS drivers use Core vehicles for overtime.
17. The provision in this document concludes that the failure to comply with this agreement may result in disciplinary action. Mr Cox could not explain who would be subject to disciplinary action. The historical basis for this unusual provision (which was only contained in the Unite recognition agreement) was that Core drivers wanted to protect themselves against FS drivers doing their work and diluting their terms.
18. However, it is not at all clear how this came about or how it worked in practice as FS drivers were paid an additional payment when they were working on Core vehicles in any event.
19. Work at Immingham was allocated from Thurrock, sometimes referred to as the control tower, and managers were not allowed to be based on site because the site was an oil refinery. Workers were restricted, as we understand, it to being on site for 45 minutes at a time due to the risk of an explosion or other serious incident at the refinery. Consequently, there were no managers from the respondent based permanently at Immingham.
20. As far as we can ascertain the problems for the claimant really started when in March 2022 he was told by someone at Thurrock to use a Core vehicle to do his work.
21. The claimant said that Brent Stewart, who was the claimant's manager at the time, although not based at Immingham, and who exclusively managed the FS drivers, not the Core drivers, changed the claimant's start times.
22. This, we find caused friction between the claimant and Mr Parrish and Mr Britton. The claimant says that Mr Britton challenged him about this and Mr Britton and Mr Parrish and someone from another company Ivan Decker reported the claimant to Mr Stewart and threatened to have him disciplined or other action taken against him.
23. The relevance of Ivan Decker is that it was the claimant's evidence, which we have no reason to doubt, that Mr Decker was spreading lies, misinformation and gossip about the claimant to Mr Britton and Mr Parrish. The claimant had previously worked with Mr Decker at another company and he had reported Mr Decker for stealing what the claimant described as thousands and thousands of pounds worth of fuel. Mr Decker potentially therefore had an axe to grind with the claimant. They all worked together at Immingham in or around the refinery so even though they worked for different companies they knew each other and

the outcome of all of this is that Mr Decker was, to be colloquial about it, badmouthing the claimant to Mr Parrish and Mr Britton.

24. The claimant makes some general allegations about Mr Britton's behaviour around this time as set out in his witness statement. He says that all three of them (Mr Britton, Mr Decker and Mr Parish) conspired against him and reported him to the company director David Heath for helping the company and doing his work as requested. He said their plan was to have him disciplined for not complying with the Core terms and conditions and the claimant referred in his oral evidence to threat of 'union action'. He said that he was subject to verbal violence and threatened with 'union action' and being reported to management for disciplinary action against him for using Core vehicles while on shift. He said Andy Parrish and Graham Britton would continually remove his private paperwork for evidence against him.
25. The claimant's allegations about this time are vague and we heard no direct evidence about them. We note of course the witnesses from the respondent were fairly limited so the amount of actual evidence we could hear about what actually happened at Immingham was limited to that which the claimant told us.
26. But in any event the claimant says that the conduct of these men at this time meant that by February 2023 he had no choice but to raise a grievance which he did at the end of January or possibly 2 February 2023.
27. In this grievance the claimant complained about three things.
28. Firstly, about uncertainty about his start time. The claimant had been given start times by Mr Stewart, and Mr Britton tried to change them. Mr Britton had no management responsibilities at Immingham but seems to have managed to establish himself as a de facto manager because there was no one else on site. Mr Britton was unhappy with the claimant's start times and said that he would take it up with Mr Stewart.
29. The second part of the claimant's grievance was that another driver, Andy Lowe, had said that Mr Decker had been speaking badly about the claimant for reasons we have already discussed but the claimant said the problem seemed to have stopped by then.
30. The third element of the grievance was that Mr Parrish and Mr Britton were out to get the claimant. This related partly to the time the claimant started his shift early to collect his vehicle from the workshop and to help the respondent and thereby getting an early start payment. The complaint appears to be that Mr Parrish and Mr Britton were again talking badly about the claimant about this issue and Mr Parrish was gossiping again and spreading rumours and saying to other drivers that the claimant ought not to be entitled to the early start payment.
31. The claimant's grievance was allocated to Neil Kane. Mr Kane met the claimant on 29 March 2023. The claimant was accompanied at that grievance meeting by his trade union representative, Mr Beeton, who attended the majority of the meetings. The claimant said that the issues were still ongoing, but he introduced some new issues not mentioned in the written grievance. He clarified that Mr Britton had altered the claimant's start time, Mr Stewart had told him that that was not right. As he said Mr Britton had no managerial authority but the claimant was of the view that as Mr Britton was the trainer he was effectively required to do what Mr Britton said. This dispute he said resulted in an incident of Mr Britton

swearing at him and having an argument about the claimant using the Core vehicles as a recurring theme.

32. There was another allegation that effectively John Lowe, who was another Core Unite driver and apparently part of Mr Britton and Mr Parrish's clique, had sworn at the claimant and implied he should not complete particular allocated jobs in the time allocated as it would make the rest of them look bad. This is a reference to an occasion when the claimant was able to deliver to both Skipton and Rotherham (or thought he would be able to) within his allocated shift but the claimant said he felt he had to drag the job out to avoid completing the job because he was intimidated by the other drivers.
33. There were also complaints of allegations by other drivers of the claimant being accused, wrongly in the claimant's view, of speeding and tipping on his break.
34. The claimant explained the issue about Ivan Decker but confirmed that that seemed to be okay now. The claimant expanded on the issue about the early start payment. He said that Mr Parrish had said he would contact Mr Heath and try to get the payment taken off the claimant. Again, in the meeting the claimant raised further allegations about Mr Britton challenging him about his hours and monitoring him, criticising him for creating a form he had been asked to make for Mr Nottage and the claimant also said that he doesn't know if or when he can use a Core vehicle having become very confused about what the rules were and who was implementing them. The claimant concluded in the meeting by saying that Mr Britton could be nasty, irritable and swearing.
35. Mr Kane, at the conclusion of that meeting, said he would take the issues forward and confirmed that he only heard good things about the claimant. The claimant says that he continued to be victimised and slandered by Mr Britton and other drivers after the grievance meeting.
36. There is certainly evidence to show that throughout May the use of Core vehicles continued to be a problem and part of that problem was that Mr Nottage was the fuel support manager. He had made the rules clear but only to the Fuel Support drivers. Nobody seemed to have taken it up with the Core drivers or told them about the rules.
37. The claimant received the outcome to his first grievance on 30 May 2023. This records the basis of the grievance which says
"This was a stage 1 grievance meeting, regarding the way, you feel are treated by A Parrish and G Brittain.
This includes the following
 - Being swore at on numerous occasions GB
 - Your work taken off the printer and reviewed by core drivers, before you arrive for work
 - Allegations of alleged tacho offences by GB
 - You feeling, that they UNITE members are out to get you
 - AP and GB interfering in Fuel Support issues, that are nothing to do with them"
38. Mr Kane then set out ten actions. What he doesn't set out is any finding about the treatment of the claimant by Mr Parrish and Mr Britton. There is just a set of proposed actions - he doesn't come to any conclusion whether the claimant had or had not been bullied at any point.

39. The claimant says only actions number 4 and number 7 were implemented: a replacement printer and refresher training about respect in the workplace. We have seen and heard no evidence to the contrary, and this assertion is supported by the fact that there was a collective grievance about this later in which it was alleged that none of these things have happened. We prefer and accept the claimant's evidence that only actions 4 and 7 were implemented.
40. The claimant appealed against this grievance outcome on 30 May. The grounds were that there had been further bullying and victimisation by Mr Britton and Mr Parrish; Mr Stewart had warned Mr Britton and Mr Parrish that the claimant had put in the grievance about them; and the outcome actions of Mr Kane were not holding Mr Britton and Mr Parrish accountable for their behaviour. In our view this was correct. They were not held accountable.
41. In respect of the actions the claimant said, in his appeal, that they were either already implemented and long overdue which is not wholly inconsistent with his evidence that only 4 and 7 were implemented. The claimant agreed to mediation. It doesn't appear to have taken place and we heard little to no evidence about that.
42. There was no evidence that anything was ever done with the claimant's appeal and the respondent put their case on the basis that the claimant had not appealed despite the fact there is a copy of the appeal in the bundle. We have to conclude and we find that the respondent had not, in fact, responded to the claimant's appeal in any way at all.
43. The claimant was then off sick from 5 June for two weeks with work related stress as a result, he said, of further interference by Mr Parrish about how the claimant should be doing his job.
44. Around this time there seems to have been some further grievance or complaint either by the claimant or by the Community Union. The claimant provided information as part of that process (whatever that process was) to Mr Nottage about the conduct of Mr Britton and Mr Parrish, but we heard no witness evidence about that. At some point around this time Mr Britton and Mr Parrish were suspended for three weeks. We do not know why. The respondent's case was that they assumed that it was in relation to some allegations by the claimant, but Mr Cox could not explain it, and we simply do not know the reason for their suspension. In any event, they returned to work three weeks later with no apparent consequences for whatever it was they were suspended for.
45. The claimant's evidence is that issues about problems and conflicts arising from the Fuel Support drivers using Core vehicles continue at this time and we accept that evidence. One manager in Thurrock would instruct Fuel Support drivers to use Core vehicles and Mr Stewart, the more local manager, would sometimes countermand or confuse that instruction.
46. The next relevant issue in the chronology relates to the alleged spillage on 21 September 2023. We do not need to rehearse the details of that about which we have heard a lot of evidence.
47. We find the claimant did not spill fuel and nor did he deliberately misrepresent that he had spilt fuel in order to goad Mr Britton in some way. It is clear, having heard the recording and the claimant's evidence that that is not what the claimant intended in the conversation. The claimant did however 'crack the API' believing

there was fuel on board the lorry. We prefer and accept the respondent's evidence that this is in breach of the respondent's and the refinery's policies and presents an obvious health and safety risk.

48. We also find that Mr Darker, the driver from whom the claimant was taking over the lorry, was in breach of company policy by leaving a substantial amount of fuel - which we find was around 600 to 1000 litres - on board which was then lost to Tesco. We find that the claimant had to do the drain down of the lorry and that Mr Darker refused to do so despite having time remaining on his shift to do so.
49. Mr Britton who was at this interaction then reported the claimant's actions in this interaction to management. In our view this report may have been malicious but was in any event opportunistic. The interaction was recorded, which is of itself suspicious, and by this time relationships between the claimant, Mr Britton and Mr Parrish were obviously very bad. It is wholly plausible that Mr Britton took an opportunity that he saw to get the claimant into trouble.
50. Part of the reason for Mr Britton taking this opportunity was, we find on the evidence from the bundle and from the claimant, because the claimant was perceived as someone who would report wrongdoing and not abide with the established practices which were contrary to company policy, but which were to the drivers' benefit.
51. We also refer back to the views about the claimant that had been spread Mr Decker that the claimant was someone who was a stickler for the rules and would not be adverse to getting his colleagues into trouble.
52. The claimant was investigated for this alleged spillage from 21 September by Mr Ross Burford who met the claimant on 13 October 2023. Despite the claimant's assertions, there is no evidence that Mr Burford said that the allegation was malicious or that he or anyone else could lose their job over it. However, he did agree that an outcome could be an investigation as to why fuel is regularly left on vehicles.
53. On 31 October 2023 the claimant was informed there would be no further action in respect of this allegation. Mr Burford said that he would discuss the issues raised about Mr Britton with the regional manager. It is not clear if he did, we have seen no evidence about that and nobody has been able to clarify it for us.
54. On 13 November there was an outcome to a collective grievance with Wayne Collier another driver which appears to have been raised by the trade union. It is not wholly clear if this was a response to the claimant's appeal against Mr Kane's decision, a collective grievance of the Community Union's own volition or something else. It appears to relate to a collective grievance brought by trade union officers, not the claimant, and the outcome is addressed to the trade union officers Mr Beaton and Mr Marsh not the claimant.
55. Once again, we have no additional evidence about this other than the outcome letter, but it does appear to concern the allocation of vehicles and the problems arising from Mr Parrish and Mr Britton overstepping their roles. In the outcome to that complaint, Mr Nathan Tress found that a lot of the issues stemmed from rumours, gossip and uncontrolled communications. It explains there is a tension between the unions. There is no finding that anyone has or has not bullied anyone else.

56. On 22 and 23 November the claimant put in two more grievances which were combined. These concern the alleged spillage and the claimant complains firstly, that Mr Britton reported a false and malicious spill and failed to take any appropriate action in respect of the spill; and secondly a further allegation that Mr Britton had singled the claimant out to report him for the way he had delivered fuel to a York garage in a coned off area. The context of these grievances is, and it is perfectly clear from them, that the claimant is complaining about ongoing bullying by Mr Britton.
57. These grievances were referred to Joanne Michael to investigate initially and she met the claimant with his trade union representatives on 19 January 2024. That meeting was brought to an end by the claimant's representative on the basis that he felt Ms Michael was leading the claimant in the way she was asking questions. She did, however, try to encourage mediation at this point but the meeting was adjourned. We have not heard whether anything came from that.
58. It has been suggested that the claimant had said in the course of this meeting that he wanted Mr Britton to be sacked. We prefer the claimant's evidence that he was (and we paraphrase the claimant's evidence) in effect thinking out loud in the meeting about what he wanted as an outcome. We find that he did not actually want Mr Britton sacked, he just wanted the bullying to stop.
59. We note in passing that it is apparent from the contemporaneous documentary evidence that the issues about lorry use and allocation was still continuing late into December.
60. The union having objected to Ms Michaels, the grievance was then passed to Mr Cox to consider. However, before we come to Mr Cox's grievance meeting the next instance we have to address was on 8 January 2024. This concerns an altercation or an argument between the claimant and Martin Lacey.
61. We find that Mr Lacey approached the claimant (which is consistent with both Mr Lacey's and the claimant's accounts) on 8 December at a service station to confront him about an issue that had happened some weeks previously in December. Although the claimant's evidence was that this incident was around nine months earlier, we have come to the conclusion that the claimant's recollection of dates is not wholly reliable. We think on the balance of probabilities it was more likely to be December.
62. The December incident, which was the cause of the argument in January, was that the claimant was in the tearoom at a site and Martin Lacey and Graham White were also there. The claimant heard a conversation which he interpreted as Mr White and Ms Lacey trying to goad him into a reaction of some kind. The claimant was not goaded but he was angry and frustrated. He left the room and punched the cork board on the wall in a different room. This was seen by Andy Lowe who told Mr Lacey about it. Mr Lowe told Mr Lacey that the claimant believed at the time that Mr Lacey and others were talking about the claimant.
63. Returning, then, to 8 January, Mr Lacey's account is set out in an email (we do not know who that email is to) dated 12 January. He says (as far as is relevant):

"I pulled into bp Barnetby Top to fill up, Andrew Long was there. I didn't acknowledge him. Got back to the yard, I went to the bathroom came out and noticed that Andrew Long was in our office. I said Mr Long just the man I want to speak to. I then said what's this bollocks about you punching the fucking wall because of a conversation I had to which he replied, no I didn't, I said I know you

did”.

64. Then it goes on.

“Andy Lowe told me about it. He said it was nothing to do with me, to which I said that’s bollocks. He took his glasses off and put them on the desk, adopted an aggressive stance. At that point my thinking about this situation has changed because I’m aware that Mr Long is a highly trained ex-soldier and I’m not. At no point did I threaten him, raise my voice, invade his space. He started on a rant about many things, I asked why are you shouting at me. He said I’m not, I’m that pissed off. He went on about Steve Gray for something I can’t remember what shouting about how he would fucking love to take Graham White down a dark lane/alley and do him basically (kick fuck out of him)”.

65. The claimant’s account is set out in an email of 9 January so that is the next morning very soon after the incident on the 8th. That email is to his trade union representatives and his manager at the time, Mr Nottage. The claimant’s account is that

“Last night I was Ignored by a Core driver at the filling station, then again in the yard and then he followed me into the office at 1am where I was pinned in and had nowhere to go. He started shouting and pointing his finger in my face. He was so angry about something that Andy low and Mark Dunderdale had supposedly said to him about me. I’m strangely glad this happened in away as I stood up to him and after it coming so close to us fighting we somehow talked it through. He made it clear that he is not one to jump on the trouble band wagon but is someone who sorts things out, man to man. For the record I am not stupid and I know that they are a select few of a band of merry men who are getting away with whatever they want to. I am now waiting in anticipation to see what the outcome is from your meeting on Thursday with John Cox and to see what will, if anything be done with Grahame Brittan after my further two grievance have been heard. Until then and in light of the last incident I honestly don’t feel safe to come into work as I am left feeling, what and who will be next.

I have been to see a doctor again this morning as I haven’t slept all night and would not be safe to drive anyway. He has signed me off as unfit for work due to work related stress once again”.

66. The claimant was then signed off sick for two weeks with work related stress immediately following this incident.
67. We prefer the claimant’s account of this incident. He reported it first. His account is broadly consistent with Mr Lacey and they both agree that Mr Lacey started it. Mr Lacey’s later assertion that the claimant taking his glasses off is aggressive is not plausible and the nature of the alleged threat changes in the re-telling by Mr Lacey.
68. However, there is also some consistency in the claimant continuing to be aggrieved by the lack of action against Mr Britton in this interaction which is reflected in Mr Lacey’s comments that the claimant was, in his words, ranting.
69. Even though the claimant raised with Mr Nottage that he had been accosted in a threatening manner by Mr Lacey the very next day, no action was taken about the claimant’s complaint. It was not a formal grievance and the email does have the tone of the claimant continuing to complain about inaction but, nonetheless, any reasonable manager presented with that information that two employees had

all but come to blows in a public place would or should have done something about it promptly.

70. Graham White put in a report to Mr Stewart of the altercation on 10 January. Unlike the claimant's complaint that complaint was investigated. The claimant returned to work on 27 January before his fit note expired and was sent home. He returned to work again on 29 January and on 31st he was suspended. The suspension letter is not specific about the allegation. It just refers to unacceptable conduct as noted to the claimant verbally on 31 January by Mr Nottage. With no direct evidence of what the claimant was told, we find on the balance of probabilities that the reason for the suspension was the incident on 8 January 2024 not the earlier incident of the claimant punching the wall or cork board.
71. Just going back a little bit in time, there was an investigation in which Mr Lacey, Andy Lowe, Mark Dunderdale and Steve Hutson were interviewed prior to the claimant's suspension about the allegation on 8 January. The claimant was invited to an investigation interview, but it did not happen before his grievance meeting with Mr Cox. The disciplinary process was paused pending the grievance on the request of the claimant's trade union. The claimant met with Mr Cox on 4 March to discuss his grievances from November and while the disciplinary process was suspended pending the outcome of this grievance. We heard little evidence or dispute about the grievance meeting. The claimant was represented and was able to put his case across. There was no discussion of the incident of 8 January except that the claimant referred to the punching the white board incident and said he didn't know what the current issue was. The claimant was still suspended at this point.
72. The claimant received the grievance outcome on 2 April. The grievance was not upheld. Mr Cox did not directly address the allegations of bullying. He dealt with the two specific complaints but he did say that he did not believe either allegation was malicious. He said that Mr Britton was fulfilling his role as a health and safety representative but he gave no consideration to the wider ongoing context. Mr Cox suggested a facilitated conversation (effectively mediation), but that did not go ahead. The claimant said he would have been willing to engage but there is no evidence that he had communicated that to the respondent. The claimant remained suspended at this point.
73. On 4 April the claimant appealed the grievance outcome at least in part on the basis that Mr Burford had said that the report of the spillage was obviously malicious. We find there is no evidence that Mr Burford did say that, and the claimant's recollection of this is not, in our view, reliable or accurate. The claimant also appealed on the basis that his allegations of bullying had not been dealt with and we agree and find that they had not been.
74. The appeal was allocated to Mr Murray who met the claimant on 24 April 2024. Again, the claimant was represented by his trade union and the claimant had an opportunity to set out his case. Again, there was no real challenge to the conduct of the appeal meeting. In that meeting the claimant was played a recording of the conversation about the spillage incident twice. Mr Murray noted that Mr Britton did not seem to have acted appropriately in response to a potential spillage, but it is not clear that any action was taken against Mr Britton or anyone else arising from their failings at that point. There was no discussion in that

appeal meeting about the allegations against the claimant or his ongoing suspension.

75. The next day, 25 April, we think that the claimant had an investigation meeting with Angela Talbot the new site manager at Immingham. There is no record of this in the bundle (and this is a particularly surprising oversight) but there is a reference in other documents to the meeting. In this meeting we find, on the basis of the surrounding contemporaneous evidence, that the claimant was told that it was alleged that he had threatened to cut Graham White's throat. There is no substance to this allegation at all, but it does indicate an inconsistency between the various reports from Mr Lacey and the people who might be described as being part of his group of what happened on 8 January.
76. This report had a significant impact on the claimant in relation to his status as a foster carer. It is not relevant to our decision but we find that we prefer the claimant's evidence that there was a local authority investigation. It was simply not reasonable or appropriate to suggest that the claimant should have produced evidence of such sensitive and personal matters for this hearing. It is possible that disclosing such details would have been unlawful in any event.
77. In May 2024 the claimant was put at risk of redundancy as were a number of other drivers. We find that because of the potential redundancy, the claimant started looking for other work.
78. The claimant then received his grievance appeal outcome on 6 June. His appeal was not upheld. Mr Murray said that Mr Britton did not act in a malicious manner in raising the concerns. The wider issue of ongoing bullying was not addressed.
79. On 20 June the claimant was told there would be no further action in respect of the allegation for which he was suspended. We have found that he was suspended for the alleged incident on 8 January. We found Mr Cox's evidence that the claimant was suspended for punching a wall to be incorrect. We do not necessarily say that Mr Cox has been deliberately dishonest to the Tribunal, his memory may have been tainted by preparation for this case. However, the punching of the wall is barely, if at all, mentioned anywhere in the respondent's documents.
80. There is no evidence of a fair investigation into the 8 January allegation against the claimant and no explanation of why Mr Lacey was not also investigated. Mr Cox was unable to explain this and could not account for his later re-framing of the allegation as being in respect of the wall punching incident.
81. We refer briefly to the outcome. It says, as far as is relevant:

"I write in regard to your current suspension and pending investigation outcome into the alleged incident which occurred on the 8th January 2024..."
82. This supports our finding that the altercation on 8 January was the allegation for which the claimant was suspended.
83. It goes on to say

"The allegations made against you are a breach of the Company's expected standard of behaviours and having reviewed the statements in front me, would be sufficient for the Company to move forward with potential disciplinary action against you.

However, taking into account the circumstances leading up to and after the incident I have discussed the matter further with Paul Murray, Business Unit Director and Trudy Brockway, HR Business Partner and we have agreed we will not take any action against you on this occasion. I must however state this type of behaviour is unacceptable and if any future incidents of this nature should arise the appropriate process will be followed”

84. The problem with this letter is that the claimant is told he has done something wrong, but not what, and then he is told that the respondent could take action but is not going to, but he is not told why. The claimant is left feeling like he has been admonished for no good reason and that difficulty, opacity and general confusion is compounded from the tribunal’s perspective by the complete absence of any of the usual sort of documentation you would expect to see in a disciplinary case such as a letter setting out the allegations, the notes of the disciplinary investigation, or an investigation report or similar documents.
85. Returning to the chronology: because of a period of leave and re-training the claimant finally returned to work on 1 August. While suspended he had received his basic pay only. The claimant requested backdated parity pay (a payment to bring Fuel Support drivers pay up to Core drivers’ pay), attendance bonus and various shift allowances.
86. The claimant was sent by email either on 11 or 12 August Mr Cox’s reply to his request for back pay. Mr Cox refused the claimant’s request on the basis that XPO policy is payment of basic pay on suspension only. We find that the reason for the refusal was that that is what Mr Cox believed. Mr Cox said that usually this matter is dealt with by HR and exceptions can be made but he said, and we accept, that this was his belief. There were no sufficient circumstances to justify deviation from what he believed the policy to be.
87. In fact, the rules for payment while on suspension are set out in the disciplinary policy. That does not refer to basic pay. That refers to full pay.
88. Going back to the resignation letter, it does not matter if the claimant got the letter on 11 or 12 August because he resigned within an hour in response to that letter. The claimant’s email documents are consistent in their internal chronology as are the respondent’s. The only difference is the date so the same documents the claimant has produced show that he received the letter on 11th and replied on the 11th. The ones that the respondent’s produced say that he was sent it on the 12th and replied on the 12th. It appears that there has been a technical issue somewhere. We do not need to make any findings about the reasons for this inconsistency because the outcome of it is that the claimant resigned in response to receiving that communication.
89. The claimant’s reasons for his resignation in his email are in summary that the respondent consistently failed to adequately address his allegations of bullying, harassment and victimisation and the final straw was the failure to pay what he perceived to be his entitlement to back pay on his return from suspension. We find that these are the real reasons that the claimant had in his mind for his resignation.
90. In respect of the claimant’s new job, the claimant applied for, was offered and on 22 July 2024 accepted a new job with Flow Gas. It was conditional on the completion of further formalities but the claimant had accepted that conditional offer.

91. We find therefore that the claimant intended to leave the respondent and take the job at Flow Gas at some point. The claimant's suggestion that that job was and, more importantly, that he told Flow Gas that it was just a fall-back position in the event that he was made redundant and that Flow Gas were happy with that uncertain arrangement was in our view implausible.
92. However, we find that the claimant had not handed in his resignation when he accepted the offer. This might have been because he wanted to make sure that he had a definite offer before leaving the respondent or it might be that he was still genuinely debating what he wanted to do. This is not inconsistent with our findings about his evidence. He could have been debating internally what he wanted to do while telling Flow Gas that he was definitely interested. It is open to an applicant to change their mind about a job offer at any point. However, we find that the claimant brought forward his decision to leave to 11 or 12 August in response to the letter from Mr Cox and this was in fact and we find the final straw for the claimant.
93. The final finding of fact relates to the respondent's action plans which were their responses to the problems at Immingham. We accept that senior managers put in place steps in the form of policies and instructions that they considered were appropriate to resolve the issues at Immingham.
94. They also did as much as they could to appoint a local manager but who, for the reasons we have already said, was only able to be on site for a very short period of time each day. The reality was, however, that without a consistent management presence at Immingham it was very unlikely that things would change on the ground and in our view they did not. Mr Parrish and Mr Britton remained able to have significant grip and control over what happened on the site. In our judgment they continued to bully the claimant. We do not say that the claimant was completely innocent. Clearly, he has expressed his frustrations in an intemperate way at times. However, in our view the claimant was continuing to experience bullying behaviour by Mr Britton and Mr Parrish relating predominantly to the use of vehicles. They were unhappy with the company policy about vehicle use and were able to exploit the absence of a manager to get things their own way. We also suspect that they were unhappy with the claimant raising grievances against them which disrupted their ability to run things how they wanted to and do the work they wanted rather than the work the respondent wanted to. In all likelihood that exacerbated matters.
95. It is relevant to refer to the fact that the respondent subsequently "bought out" the clause in the Unite Recognition Agreement relating to the use of the vehicles. We completely reject Mr Cox's evidence that the buyout was not just about the vehicle use. It very obviously is. It is spelt out in the relevant memo and could not be clearer. The announcement about the relevant agreement says:

"1.5% unconsolidated payment of £825 (removal of FS./core fleet vehicle usage in site agreement ".
96. The fact that the respondent had to buy back control of their own lorries from the union demonstrates the amount of power and control that Mr Parrish and Mr Britton were wielding at Immingham.

Law and conclusions

Constructive unfair dismissal

97. Section 95 Employment Rights Act 1996 sets out the circumstances in which an employee is dismissed, and s 95(1)(c) says that this includes circumstances where "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct".
98. This means that an employee is entitled to treat himself as dismissed where the respondent acts in repudiatory breach of contract and the employee resigns in response to that repudiatory breach without first waiving the breach or affirming the contract.
99. The term of contract relied upon by the claimant that he says was breached by the respondent is the implied term of mutual trust and confidence. This is a term implied into every contract of employment that *"The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee."* (*Malik v Bank of Credit and Commerce International SA* [\[1997\] IRLR 462](#), [\[1997\] ICR 606](#))
100. We address each of the allegations that are relied on as cumulatively amounting to a breach of that term.
101. From June 2022 to January 2024 the respondent failed to deal with abuse, threats and bullying from Tesco Core drivers including the rejection of his grievance on 2 April 2024 including not providing a safe place to work.
102. It is clear from our findings of fact that we found that the respondent did not effectively address the problems caused by Mr Parrish and Mr Britton. The respondent took a narrow view of the claimant's later grievances, dealing with the particular complaints but not addressing the wider issue of the ongoing bullying. I
103. In respect of the first grievance, while the respondent did appear to accept what the claimant said in his first grievance to Mr Kane, Mr Kane did not actually make any findings about the claimant's allegations. All he did was produce a list of actions without making any findings about bullying. In our view the respondent was unwilling or unable to rock the boat in Immingham. They obviously avoided making any decision that would be perceived as coming down on one side or the other although that is exactly what they needed to do. This applies to the claimant as well. Consequently, Immingham was not a comfortable place for the claimant to work and resulted in him going off sick at least once. The toxic environment was not a safe place for any of the drivers. It presented a risk to the claimant's mental wellbeing. For these reasons we uphold that allegation.
104. The second allegation is that
105. The claimant says that the respondent agreed to "take action" against Graham Britton on 22 May (but note the respondent disputes this and says that Graham Britton's reporting of the claimant was not malicious).
106. The respondent did fail to take any action against Mr Britton. A proper investigation should have led the respondent to come to the conclusion that even if there was a superficially plausible reason for complaints Mr Britton had raised it was clear in respect of the alleged spillage, for example, that he had just raised

a complaint rather than taking more appropriate actions by going to look at the potential spill or attempting to resolve it or de-escalate matters on the site.

107. The fact that someone in that meeting decided to record the interaction rather than address the problem is itself an indication that there was something deeply dysfunctional going on. From the claimant's perspective, it appeared that nothing had been done to address his complaints about Mr Britton. That did not have to be Mr Britton's dismissal and we have already found that the claimant was not pressing for Mr Britton's dismissal. In any event, it was not the claimant's right to press for a dismissal. However, something more than an action plan should have been done and it was not. We have not seen any evidence of a promise that the respondent would take action against Mr Britton, but that does not change the fact that action needed to be taken and none was.
108. For that reason, we uphold this allegation.
109. The next two allegations relate to 9 January 2024:
110. The respondent failing to deal with the claimant's grievance of 9 January 2024; and
111. The respondent failing to deal with abuse threats and bullying from Martin Lacey by failing to subject him to a disciplinary for his actions of 9 January 2024. (the Respondent disputes this version of events and says the Claimant, inter alia, punched the wall on this occasion).
112. These are part and parcel of the same complaint. We accept that formally the claimant did not raise a grievance but in our view that argument is an excess of pedantry. The claimant had clearly raised a serious concern that warranted consideration by the respondent.
113. In our judgment the respondent took Mr Lacey's side from the outset. They did not respond to the claimant's concerns of 9 January at all, and they did not conduct a proper independent investigation, or at least, none that we have seen, either into the claimant's alleged conduct or Mr Lacey's alleged conduct and did not challenge any of Mr Lacey's witnesses with the claimant's versions of events.
114. This failure to conduct the investigation was compounded by the outcome of 20 June when the claimant was left with a very confusing message that he had done something wrong, but the respondent would not be specific what he had done, and was not going to take any action but did not say why. Such an opaque outcome is inherently unfair and unjust, bordering on perverse.
115. The reason, however, for this unwillingness of the respondent to commit to any findings or outcome was because the respondent was not, in our judgment, prepared to make a finding against anyone because it simply had no control over what was going on on site. It made no findings against **any** of the protagonists - Mr Britton, Mr Parrish or the claimant – at any stage.
116. This allegation is also upheld.
117. The next allegation is:
118. The respondent generally failing to take action against Graham Britton who allegedly subjected him to trade union detriments.
119. For reasons set out below, there were no trade union detriments but for other reasons already discussed no action that the claimant was aware of, or that we

have seen, was taken against Mr Britton for any misconduct towards the claimant.

120. To that extent, that allegation is also upheld.

121. Finally:

122. The respondent's refusal to pay the claimant the amount he believes he should have been paid when on suspension, culminating in his decision to resign.

123. We set our reasoning about his out in detail below in respect of the unauthorised deduction from wages claim, but we find that the claimant was entitled during his period of suspension to his normal full pay, including any additions he would have received had he not been suspended. The claimant was refused the payments of these amounts.

124. This allegation is also upheld.

125. The claimant relies on a breach by the respondent of the implied term of mutual trust and confidence as the reason for his resignation which, he says, amounts to a constructive dismissal.

126. In our judgment the acts that we have referred do amount collectively to conduct likely to seriously damage or destroy the relationship of mutual trust and confidence. This ended with the final straw of the respondent failing to fully compensate the claimant for his absence during his suspension contrary to its own policy.

127. The fact is that the respondent had demonstrated over an extended period that it was not able or willing to remedy the toxic environment at Immingham and the bullying experienced by the claimant. This amounts, in our judgment, to a clear breach of the implied term.

128. The next question is whether the claimant resigned in response to that conduct and whether or not he affirmed the contract before doing so.

129. We have found as a fact that the claimant did resign in response to the email from Mr Cox about his backpay and he did so within an hour of receiving it. There can be no question of affirmation his contract or waiving the breach at that point.

130. Even if the claimant did affirm earlier breaches of his contract by returning to work after suspension, there was a further breach that was more than innocuous in refusing to pay the claimant his full pay on his return from suspension. This revived any previous breaches that might have been waived. (*Omilaju v Waltham Forest London Borough Council* [2003] EWCA Civ 1426)

131. What, then, about the job that the claimant had applied for?

132. As should be clear from our findings, in our judgment the claimant was already taking steps to leave before the final breach. His evidence was that that was because of redundancy and we accept that evidence. The reality is that the final repudiatory act of Mr Cox brought that forward. The claimant simply could not bear working for the Respondent any longer. The fact that he had a job to go to is either good luck or good planning but does not change the fact that the claimant resigned immediately he was told about the backpay.

133. In respect of being required to work his notice, section 95 of the Employment Rights Act 1996 identifies that a resignation amounts to a dismissal where someone resigns in circumstances where they are entitled to do so whether that

is on notice or not. The claimant worked his notice and he worked the bare minimum. This does not amount to affirmation of the contract or waiver of the breaches.

134. The fact that the new job had a substantial pay cut is also material. It gives weight to the claimant's argument that he would have preferred to stay, all else being equal. For these reasons we find that the claimant did resign in response to a repudiatory breach of contract and he did not waive those breaches or affirm his contract before doing so.
135. However, the fact of the new job, the impending redundancies and the fact that ultimately the FS role disappeared will impact on any compensation to which the claimant is entitled.
136. The claimant's clear evidence that we have accepted is that he was looking for another job to avoid dismissal for redundancy. He had accepted that job. The impact of that on compensation will need to be explored in remedy.
137. For the sake of completeness, the respondent has not pursued any case that the conduct was for a potentially fair reason (section 98 Employment Rights CAT 1996). In any event they have not shown that it was, so for these reasons the claim of constructive unfair dismissal is well founded and upheld.

Trade union claims

138. We can address the trade union detriment and automatic unfair trade union dismissal fairly succinctly. The three allegations of trade union detriment are set out in the list of issues. They are:
139. The Claimant says the Respondent agreed to "take action" against Graeme Britton on 22 May 2024 (but note the Respondent disputes this and says Graeme Britton's reporting of the Claimant was not malicious);
140. The Respondent failed to deal with abuse, threats and bullying from Martin Lacey by failing to subject him to a disciplinary for his actions of 9 January 2024 (the Respondent disputes this version of events and says the Claimant, inter alia, punched the wall on this occasion); and
141. The Respondent's refusal to pay the Claimant the amount he believes he should have been paid when on suspension
142. These are all dealt with as a matter of fact as part of the unfair dismissal claim.
143. The legal test in relation to the trade union claims is set out in section 146(1)(a) and 152(1)(a) of the Trade Union and Labour Relations Consolidation Act 1992 dealing with detriments and unfair dismissal respectively.
144. For detriments we must be satisfied that the purpose of the detriment was (in this case) to penalise the claimant for being a member of the community union rather than the Unite union.
145. Penalised means to treat unfavourably. The treatment relied on, and as found, is unfavourable treatment.
146. "Purpose" requires a degree of intention. It is not enough that the conduct is related to trade union membership has the effect of discouraging membership or even is because of membership. There must be a degree of intentional motivation to subject someone to punishment, to penalise them because of their membership with the trade union.

147. It is for the claimant to raise a prima facie that the purpose was to penalise the claimant for his trade union membership. If the claimant does this, then the burden falls to the respondent to prove otherwise.
148. The claimant has failed to prove that prima facie case in this case. If it was the case that the respondent sought to appease the Unite union at the claimant's expense this would have been enough to reverse the burden of proof, but in our view the respondent was wholly uninterested in the various trade union memberships.
149. There was a coincidence of difference of trade union memberships between Mr Parrish and Mr Britton and the claimant and there were ongoing union tensions because of all the surrounding context. Animosity from Mr Parrish and Mr Britton was driven by their view of the claimant's impact on their arrangement which limited the amount of work they had to do; their status at the Immingham site; and their views about the claimant that they got, rightly or wrongly, from Mr Decker. This was inadvertently facilitated by the respondent's management failure to deal with the claimant's grievances but it was not based on any animosity towards the claimant or the community union, or any desire to punish the claimant for his trade union membership.
150. The reason for the respondent's inaction was an unwillingness, as far as we can see, to come down on one side or the other. It was in effect the opposite of punishing for trade union membership. We think the respondent wanted to avoid any appearance of coming down on one side or the other combined with an inability to take practical steps because of the restrictions on managers being onsite. This is evidenced by the fact that no action was taken against Mr Parrish or Mr Britton when they were suspended for an unknown reason AND no action was taken against the claimant when he was suspended in very unclear circumstances. At the risk of repeating ourselves, there was just an unwillingness on the part of the respondent to really get to grips with the issues. For that reason, the trade union detriment claim is unsuccessful and is dismissed.
151. The test for unfair dismissal on trade union grounds although worded differently is effectively the same. It says
- (1) For purposes of [Part X of the Employment Rights Act 1996] (unfair dismissal) the dismissal of an employee shall be regarded as unfair if the reason for it (or, if more than one, the principal reason) was that the employee—
- (a) was, or proposed to become, a member of an independent trade union,
152. We must explore the mental reasoning of the decision makers. In this case it was Mr Cox, Mr Murray and Mr Kane and together the senior management generally who made the decision. For the same reasons that we have explained in relation to the trade union detriments claims, there is just no evidence from which we could conclude that the detrimental acts leading to the resignation were done for the purpose of penalising the claimant's membership of the community union. The claimant has not proved a prima facie case but, in any event the real reasons for the respondent's actions (and inactions) are as set out above.
153. For these reasons, these claims of detriment and unfair dismissal in relation to trade unions is dismissed.

Unauthorised deductions from wages

154. The starting point for this is that when deciding whether there has been an unauthorised deduction from wages, we must decide what wages are normally payable. (section 13(3) Employment Rights Act 1996).
155. That is the issue in this case. Was the claimant entitled to be paid basic pay or basic pay plus whatever he would normally have earned had he been working during the course of his suspension?
156. This is simply a matter of construing the disciplinary policy which says
“A colleague may be suspended on full pay whilst further investigation takes place to establish whether disciplinary action is to be taken”.
157. The question is, is full pay just basic pay?
158. We also have the contract of employment. This references the disciplinary policy and effectively incorporates the disciplinary and grievance procedures as part of the claimant's contract in so far as any of the terms are apt for incorporation. The contract says, relevantly
“The company reserves the right to suspend you with pay to investigate any allegation of misconduct against you while any disciplinary process against you is outstanding.
159. There is a reference to Appendix 1 of the contract in terms of pay but that is not an appendix in this contract and we were not referred to it at any point if it has been provided.
160. The clear meaning of the agreement is that the claimant or any person will be entitled to full pay while they are suspended. When determining the meaning of a contract we have to look at the words to determine what the parties agreed objectively, taking into account the surrounding circumstances.
161. In this case we are also apply the principle of *contra preferentum* which means that where there is ambiguity then the clause is interpreted against the person who is seeking to rely on it.
162. It is set out in the policy that suspension is a neutral act. That obviously means that an employee should not suffer a detriment, inadvertent or otherwise, while suspended. That is the context that we take into account.
163. Other than that, the term is quite ambiguous. The respondent seeks to rely on the clause to limit the claimant's pay, so we construe it against the respondent.
164. Putting all that together we conclude that the claimant is entitled to be paid what he would normally have been paid had he not been suspended.
165. In our judgment this includes undoubtedly the attendance bonus. Mr Malik attempted to compare suspension to sickness absence, but it seems to us that, while the purpose of attendance bonus is to discourage unwarranted sickness absence so that it would be perverse to pay attendance allowance when someone is off sick, the claimant has literally no control whatsoever over his absence while suspended.
166. The claimant would also have received parity pay if he had been at work. Again, the claimant had no control over that being taken away and if there is an identifiable or regular pattern of overtime shift payments, they should also be included on the basis that that is what the claimant would normally get had he not been suspended.

167. The comparison that was provided between two different periods is not, in our judgment, material. The question is: what should the claimant have been paid at the time? The answer is his basic pay plus whatever the claimant can prove he would normally have been working and entitled to.
168. That question will have to be answered when the tribunal considers remedy.
169. There is no suggestion that the claimant agreed to any deduction or whether it was otherwise authorised by statute or contract so for these reasons the claimant's claim of unauthorised deduction from wages is successful.

Employment Judge Miller

Date: 13 August 2026

Appendix – the issues

1. Constructive unfair dismissal, s. 95 ERA

1.1. Did the Claimant resign as a result of an act or omission or series of acts or omissions by the Respondent?

1.2. Did that conduct amount to a fundamental breach of the Claimant's contract of employment?

1.3. The term of contract relied upon by the Claimant is the implied term of trust and confidence. Specifically, he relies on the following allegations:

(a) From June 2022 to January 2024, the Respondent failed to deal with abuse, threats and bullying from Tesco Core drivers, including the rejection of his grievance on 2 April 2024 (including not providing a safe place to work);

(b) The Claimant says the Respondent agreed to "take action" against Graeme Britton on 22 May 2024 (but note the Respondent disputes this and says Graeme Britton's reporting of the Claimant was not malicious);

(c) The Respondent failing to deal with the Claimant's grievance of 9 January 2024;

(d) The Respondent failed to deal with abuse, threats and bullying from Martin Lacey by failing to subject him to a disciplinary for his actions of 9 January 2024 (the Respondent disputes this version of events and says the Claimant, inter alia, punched the wall on this occasion);

(e) The Respondent, generally, failing to "take action" against Graeme Britton, who allegedly subjected him to "trade union detriments"; and

(f) The Respondent's refusal to pay the Claimant the amount he believes he should have been paid when on suspension, culminating in his decision to resign.

1.4. Did the Claimant affirm the contract following the breach? The Respondent argues:

(a) The Claimant continued to work with Andy Parris and Graeme Britton;

(b) The Claimant continued to perform his contract post the conclusion of his suspension; and

(c) The Claimant worked his notice period.

1.5. Was any such fundamental breach of contract by the Respondent (which was not affirmed by the Claimant) the reason why the Claimant resigned?

1.6. If the Tribunal finds that the Claimant was dismissed, what was the reason for dismissal?

1.7. Did the Respondents act reasonably in treating that reason as sufficient for dismissal?

2. Automatic unfair dismissal, s. 152(1)(c) TULCRA

2.1. Did the Respondent dismiss the Claimant, because he was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused, or proposed to refuse, to become or remain a member?

3. Detriments contrary to s. 146(1)(a) TULCRA

3.1. In respect of the following allegations, did the Respondent treat the Claimant to a detriment for the sole or main purpose of preventing or deterring him from being or seeking to become a member of an independent trade union, or penalising him for doing so, as follows:

(a) The Claimant says the Respondent agreed to “take action” against Graeme Britton on 22 May 2024 (but note the Respondent disputes this and says Graeme Britton’s reporting of the Claimant was not malicious);

(b) The Respondent failed to deal with abuse, threats and bullying from Martin Lacey by failing to subject him to a disciplinary for his actions of 9 January 2024 (the Respondent disputes this version of events and says the Claimant, inter alia, punched the wall on this occasion); and

(c) The Respondent’s refusal to pay the Claimant the amount he believes he should have been paid when on suspension.

4. Unauthorised deduction from wages, s. 13 ERA

4.1. Did the Respondent make unauthorised deductions from the Claimant’s wages as follows:

(a) From the period 31 January 2024 to 28 June 2024; (b) A deduction in total of £6,171, made up of:

i. Parity pay at £3,800;

ii. Attendance bonus at £500; and

iii. Shift allowance increase of £1,871