



EMPLOYMENT TRIBUNALS

Claimant: Mr Alex Colby
Respondent: Bracknell Printroom Limited

Heard at: Reading Employment Tribunal by video
On: 22 and 23 June 2026
Before: Employment Judge George

Representation

Claimant: Self representing
Respondent: Mr B Large, counsel

JUDGMENT

1. The claimant was wrongfully dismissed.
2. The claimant was unfairly dismissed.
3. The holiday pay claim is dismissed on withdrawal.

WRITTEN REASONS

JUDGMENT with summary reasons was given at the hearing on **23 June 2026** and written full reasons were requested at the hearing in accordance with Rule 60(7) of the Employment Tribunal Procedure Rules. The following written full reasons are therefore provided:

Relevant procedural history

1. Following a period of conciliation between 3 September 2024 and 25 September 2024, the claimant presented a complaint on 25 September 2024. The grounds of response, the ET3 form, was entered, in time, on 25 October 2024. The claim arises out of the claimant's employment as a Logistics Manager or (according to the respondent) Warehouse Manager between 3 May 2025 and 29 July 2024.
2. The decision about whether the claimant was or was not dismissed is not the only issue in this case. However, it is the key issue. Both the claimant and the respondent now agree that the employment came to an end on 29 July 2024. Mr Colby alleges that he was called up to Mr Simon Lewington's office and told that he was dismissed with no notice and was given the reason that the respondent

could no longer afford to pay him. The respondent states that the claimant verbally resigned in front of three members of the company's team saying that he had been offered a job by a friend which paid more money and, in short, that he had had enough.

3. At the hearing I had available to me a joint electronic file of documents running to 254 pages. The respondent sought to rely upon the witness evidence of three witnesses: Clinton Harcup, Simon Lewington and Santino Lewington. Unfortunately, Mr Santino Lewington was abroad in Italy and an application to call him to give evidence by video from Italy had been refused because the respondent had not shown that there was no legal or diplomatic barrier to the tribunal taking oral evidence from Italy. I agreed to take his signed statement into account and give it such weight as was appropriate, given that he had not been cross examined upon it. Mr Large had provided an opening note, draft List of Issues and PDF document containing relevant extracts from legal textbooks and authorities.

Respondent's amendment application

4. On 5 June 2026 the respondent had applied for permission to amend their grounds of response to run an alternative argument that, if the tribunal finds that the claimant was dismissed, the reason, and the potentially fair reason for the dismissal, was that they had mistakenly believed that he had resigned. They wished to argue that that would be the potentially fair reason of some other substantial reason of a kind that justifies dismissal of the claimant. I refused that application at the outset of Day 1.
5. As developed in writing and orally before me, the proposed alternative defence was based on the possibility of a factual finding that the Tribunal accepted the respondent's case that the claimant resigned, but also accepted their evidence that he resigned and said he would leave at the end of the month; they would say that then it was agreed that the termination date should be the date of the conversation, namely 29 July. The proposed alternative defence was hedging against an argument that the employment in fact terminated when somebody suggested that the termination date should not be 31 July as, on the respondent's case was preferred by the claimant, but two days earlier. Their primary case is that the claimant resigned in breach of contract giving short notice. But their alternative case is that it was then agreed that the termination date should be 29 July.
6. The relevant law can be stated fairly briefly. In Vaughan v Modality Partnership (UKEAT/0147/20), HH Judge James Tayler considered the well known authority of Selkent Bus Co. Ltd v Moore [1996] I.R.L.R. 661 EAT and referred to decision on an amendment application as requiring a focus upon the practical consequences of allowing the amendment at paragraph 21,

"what will be the real practical consequences of allowing or refusing the amendment. If the application to amend is refused how severe will the consequences be, in terms of the prospects of success of the claim or defence; if permitted what will be the practical problems in responding. This requires a focus on reality rather than assumptions."

7. The factors that are commonly relevant to that exercise include the nature of the amendment, the timing and the manner of the amendment, and the balance of prejudice. In the present case, because the application is made so close before the final hearing, I should focus on the practical consequence for the final hearing.
8. What Mr Colby argued in his objections is that he had prepared his case for a two-day hearing to respond to what is in the ET3. He would have to change or adapt his argument if this second strand were permitted to proceed. He is a litigant in person and he received some assistance from the Citizen's Advice Bureau, but I accept that there would be prejudice to him in terms of the practical consequences of having to adjust his planning at such a late stage.
9. On the other hand, as far as the respondent is concerned, my view is there is limited prejudice. There may be a theoretical prospect that rather than making a binary choice between the claimant's evidence and the respondent's evidence, there is a finding which would support the argument that they seek to introduce. However, Mr Colby has not put forward an argument that if (contrary to his evidence) he resigned then the respondent dismissed him by suggesting an effective date of termination of 29 July rather than 31 July. His position is clearly that he was actually dismissed with effect on 29 July. In that situation, it seems to me that this is not a necessary amendment. It is not an amendment that is necessary for the respondent to make in order to guard against an alternative argument which is presently being advanced. Therefore I do not accept that it is liable to disadvantage them if they cannot pursue this defence. In fact, it puts forward a relatively confusing alternative case where the prospects of the situation arising that allowed the argument to be supported by the evidence seem slim. Furthermore, it is contrary to the respondent's own evidence and, as the claimant says, it confuses things.
10. For those reasons, the balance of prejudice is in favour of rejecting the application.

Reasons for the witness order

11. A witness order was granted in the late afternoon of Day 1 to secure the attendance of Mr Harcup who gave evidence by video from within the U.K. on 23 July 2026.
12. When the application for the witness order was made by Mr Large, on behalf of the respondent, he referred to a case called Dada v Metal Box Co Ltd [1974] I.C.R. 559, NIRC. That is guidance that I have to start by looking at whether a witness order is necessary, looking at the evidence that the witness will give, and the relevance of that evidence to the issues in the case.
13. Requiring the order to be necessary does not mean that the applicant, the respondent in this case, has to show that the intended witness has entirely refused to attend voluntarily. In the present case, Mr Harcup did attend for a period of time on Day 1. However, the applicant should always request the witness's voluntary attendance in advance first, and if they either refuse to attend or equivocate, (meaning they are unclear whether or not they are able to attend

and give their full evidence) then the order may be necessary.

14. I also took into account the Presidential Guidance on Case Management (2018) Guidance Note 3, which sets out the guidance on witness statements and witness orders. Paragraphs 5 to 9 of guidance note 3, explain the way in which judges should exercise the power under what is now rule 34. Focusing again on whether it is a necessary element, the guidance specifically points to witnesses who may be unwilling or willing but their current employer or their new employer does not agreeing to releasing them. That was not exactly how Mr Harcup explained it but he certainly explained that he was unwilling to stay beyond his lunch break, if that proved necessary to enable Mr Colby to ask all the questions that he has for Mr Harcup. I understood him to say he was willing to attend during his own time (the lunch break) but not willing to take annual leave or to be absent from his new workplace during working time. I was unwilling to hear his evidence on the limited basis that it was available yesterday and that is what led to Mr Large making the late application.
15. I was under some pressure of time yesterday to hear, consider and determine the application which meant that there were some things that I was not able to spend time exploring with Mr Large. For example, in order not to jeopardise the hearing as a whole I was unable to ask what attempts had been made by the respondent to secure Mr Harcup's attendance in a manner that would allow his evidence to be given as it should be given to an employment tribunal, notwithstanding it being a video hearing. I was not able to find out whether, in essence, the respondent had followed their duty under the guidance on remote hearings, to explain the sort of situation that Mr Harcup needed to be in to make sure that the documents were available to him and to explain to him the reality of what giving evidence would mean.
16. It was clear that yesterday he did not have the available documents; he did not have sufficient time set aside to potentially give evidence; he was not in a quiet place, and all of that was unsatisfactory. My assumption from the limited availability that Mr Harcup was willing to provide voluntarily was that there did not appear to be a satisfactory explanation from the respondent as to why the tribunal and Mr Colby were in this position that one of their witnesses of the key event, in a case which is extremely fact sensitive, was not available and ready at the disposal of the tribunal in order to answer all necessary_ questions on their witness statement rather than only so many as could be fitted in during their lunch break.
17. Perhaps the respondent had not taken the steps that they should have done to make Mr Harcup available. Perhaps they had not made clear to him what his obligations were, or there may be another explanation. Maybe they did and Mr Harcup was constrained by his personal circumstances in his new job. I do not know that. But what is clear is none of that is to do with Mr Colby; that is simply not the claimant's fault and it is not the tribunal's fault. So, there was no good explanation as to why we were in that position.
18. However, I have to balance that against the potential importance of Mr Harcup's evidence. The reason that this is a fact sensitive case is that the key issues depends upon whose evidence I believe; whether I accept Mr Colby's evidence

or whether I accept Mr Lewington's evidence and the other respondent's witnesses.

19. The respondents have said from the outset that there were three people in the meeting who said one thing but they had not been able to call oral evidence from one of those witnesses because he is in Italy. Again, that is not Mr Colby's fault, but it means that the prejudice to the respondents of not being able to rely on Mr Harcup's evidence is greater than it would otherwise have been. That is why I decided that the balance was in favour of making the witness order notwithstanding the fact that, as Mr Colby said in his observations on the application, we should not have been in that position. Nevertheless, to do justice between the parties, given the importance of the issues, I decided that it was necessary to make the order.
20. As a consequence it was not possible to complete all of the cross examination, submissions, deliberation and judgment in time in order to go on to determine remedy – the claimant having been successful. I gave oral summary reasons for my decision to uphold the claim of unfair dismissal, heard evidence and argument on the remedy issues and reserved judgment on remedy. That reserved remedy judgment is in a separate document sent with this.
21. There has been an unfortunate delay in finalising these judgments due to a particularly heavy workload and a period of leave. I apologise to the parties for any inconvenience caused.

Findings of fact

22. I make my findings of fact taking into account all of the evidence, both documentary and oral, that was admitted at the hearing. I am not going to set out in my reasons all of the evidence that I heard. I am only going to make the principal findings of fact that are necessary to enable me to reach conclusions on the issues in the case. Where it has been necessary for me to resolve conflicting factual accounts I have done so by making a judgment about the credibility or otherwise of the witnesses based on their overall consistency and the consistency of accounts given on different occasions, particularly when set against such contemporaneous documents as exist.
23. I should make a few comments about memory because, in general, recollections of the same incidents can frequently vary without it necessarily being the case that the participants are lying, or that one of them is lying. Certainly, it is possible for accounts to vary even if the participants are doing their best to remember the details which were significant to them. Different details of an incident can stand out to different participants and when making an assessment about which account of an event I prefer, I look at the overall coherence of a witnesses account and whether their account was internally logical. I look at how consistent the account was with other evidence and consider whether it is plausible that a person would do what is alleged, based on what is known about the context . That might, of course, require me to make findings of fact about the context. I consider documentary evidence. It is also relevant that the date at which a first account is given can affect its reliability because how the incident is first recalled by the witness, and how it is first recorded can affect the reliability of their

account.

24. A brief chronology of relevant events is that the claimant's continuous employment started on 3 May 2005, initially with the company called Macro Limited or Mace Macro Limited but then, with effect on 1 September 2008, his employment was transferred to this respondent by a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Initially, he was based on a services contract with a client in Henley-on-Thames.
25. At some point, the contract - or his assignment to that contract - came to an end, and with effect on 3 April 2023, the claimant started work at the respondent's Bracknell headquarters. That is evidenced by the letter at page 37 (produced by the claimant) signed by Mr Cooper, the then Managing Director, setting out 11 points of amendment to the original contract of employment that set out the terms on which he was to work once he had transferred to the Bracknell headquarters.
26. Mr Cooper bore the general HR responsibility, although I accept that the respondent, in general, uses an external HR consultant and expert employment law specialist as needed.
27. Sadly, the claimant's marriage broke down towards the autumn or end of 2023. He wrote an email on 18 October 2023 (some six months after he transferred to Bracknell) which is at page 38. He wrote to Mr Cooper explaining the personal struggles that he was experiencing and saying that he was experiencing a deficit of income over expenditure £400 per month following the transfer. He asked to vary his hours because he was struggling with childcare responsibilities and had missed his collection from the food bank. Essentially he was asking for help and also explained that it would be more difficult once he had to change a company car for a van and stated the impact that that would have on him.
28. One of the points in the contract variation was that he would have, while working, the benefit of a van for his personal use, although not on annual leave unless agreed in advance.
29. It also appears from that email at page 38 that there was a dispute, and certainly some ongoing dissatisfaction on the part of the claimant, about the circumstances in which the work had ended at the clients in Henley. That is not something that has been necessary for me to go into in any more detail than that.
30. The next matter that the claimant has given evidence about is that, in January 2024 he was given a written warning by Mr Cooper in respect of an absence, and that is at page 41, with the claimant's response and account of what happened at page 42.
31. In March, the claimant's personal circumstances became even more difficult when he lost his rental home and, thereafter, was in insecure temporary accommodation with friends, as he explains in his paragraph 6. This seems to have been a situation that went on for some time and he produced some correspondence with South and Vale Council, at pages 251 to 252, where he was corresponding with a representative of the council about any assistance that he might be entitled to from them in his situation. Amongst the things that he

says is that, on 5 July he explains:

“As it stands I’ve been sleeping between friend’s couches and sometimes in the back of a work vehicle for just over three months now. Due to circumstances this has to come to an end by August 1st latest. I’m still trying to recover my finances and am trying to save for a deposit and first private rent payment. I just wanted to enquire that if I was unable to find any suitable housing that would allow me to be near to my three children what additional support if any I might be entitled to.”

32. The claimant explained in oral evidence that when he said that “this has to come to an end by August 1st” he meant the temporary accommodation with friends because where he was living in Tilehurst had to be available to sell by his friend.
33. There is then the following exchange of emails. On 10 July, the claimant told the representative of the council, when he explained about why he has not been putting in bids for accommodation, that he is

“Looking for somewhere that would allow him to have his children”

He has three children of the marriage, and he says he needed somewhere suitable which had

“...access to their schools in Shiplake in Henley. I only have access to a two seat work vehicle that I can use during the week.”

He further explained how things were difficult.

34. It is against this background that there was an exchange between the claimant and Mr Lewington on 29 July 2024. The respective witnesses, the claimant and Mr Lewington Sr, have polarised accounts of that event as I explained at the start of these reasons. I will explore that in more detail below. However, what the parties did following the exchange is also relevant to my findings about it.
35. On 1 August, so three days after the key exchange, the claimant wrote to the respondent in an email (page 76), and stated:
- “Please can I request that when you send my termination to Adelle’s address that you will also send me a copy my email.”
36. He chased for some action on that on 6 August. This was sent to Mr Cooper, whom the claimant understood to be responsible for HR. On 6 August Mr Cooper replied “I will pass on to Crystal and get this sorted ASAP”. I understand Crystal to be the external HR representative.
37. It is worth noting, in passing, that Mr Cooper did not respond asking what the claimant expects; some to the effect what recognition of his own resignation did the claimant expect? The question arises; did Mr Lewington speak to Mr Cooper? But then Mr Cooper did not respond in a way which suggests it was news to him that the claimant was leaving the company.
38. The evidence about Mr Cooper’s position however is that he was about to retire, he was working limited hours, and his wife was very ill. So, the respondent says that the very brief summary way in which Mr Cooper responded there should not

be given too much weight because he may not have been particularly aware of the situation. Nevertheless, if (assuming the respondent's account to be correct) the claimant had resigned to Mr Lewington, the respondent had not taken steps to write to the claimant to confirm the conversation and had not taken steps to process the termination of employment in any way – such as by calculating whether there was any accrued holiday pay. There is no P45 that I have noticed that I have been taken to in the hearing file. That would not be determinative of who ended the employment but either way is documentation one would expect the respondent to issue.

39. The next relevant email in the same chain is on page 75 where, on 20 August, Mr Colby writes to Ms Harrison saying:

“It has been three weeks now since my employment ended at Printroom without notice. Please can I have an update on my following letter asap.”

40. The pay date for this company is 18th of the month so, had the claimant been going to be paid something in that payroll, it might have been paid on 18 August. The respondent makes the point that, if the claimant had been expecting some unspecified settlement or some notice pay, that is a very limited challenge in the wording of that email.
41. On 27 August, there not having been any response for or on behalf of the claimant in the meantime, Mr Colby chased again and copied Mr Lewington in this time saying: “It’s been over 4 weeks now a real shame following 19 years of loyal service to Printroom.” And he says that he is going to reach out to Citizen’s Advice to clarify his legal rights.
42. Mr Lewington responded on 28 August with an email (page 73) which had attached the letter that is at page 44. He stated in the email that he has attached a confirmation of resignation and expresses surprise at the comments about Citizens Advice and ACAS. He also says, “I hope that your new gardening career with your friend is going well.” This was the first documentary evidence from Mr Lewington about what happened.
43. The attached letter stated as follows:

“I am writing to confirm our recent conversation on the 2nd of August during which you verbally informed myself (Simon Lewington), Clinton Harcup and Santino Lewington of your decision to resign from your position as at Bracknell Printroom Limited. I acknowledge your resignation and confirm your last day of employment will be the 2nd of August

We can confirm that Bracknell Printroom Limited agreed that you can leave immediately to start your new job. Your official working day will be the 2nd of August, and your final payment, including any outstanding entitlements, will be processed on the 18th of August.

I thank you on behalf of the company for your loyal service and wish you well in the future.”

44. So far as the evidence before me shows, the respondent did not take any steps at all to find out whether they owed the claimant anything if he had, as they said, resigned.
45. The claimant responded to that on the same day, (page 71 to 72). In its essentials the account he set out there is the same as the accounts that appeared in the claim form and also in his witness statements. The claimant's account has remained consistent since then.
46. His detailed account is in paragraphs 7 to 19 of his witness statement and, in broad terms, he says that he was asked to "come upstairs" by Santino and he did so some 10 minutes later. He entered the office and Mr Simon Lewington was in it. Mr Santino Lewington entered and closed the door and then Mr Simon Lewington dismissed him saying "We can't afford to pay you." The claimant says that the reason seemed plausible to him based upon what he knew of the company's finances. He was then told that, as he had been paid on 18th and for the month end, he was free to leave. He says that he knew that the company was not entitled to do that but expected there to be some settlement forthcoming. He asked to keep the company delivery van for the day and said that he needed to collect some belongings because he was about to become homeless. Mr Harcup was then called into the meeting to discuss the availability of the van but he was told that the van could not be left with the claimant. Therefore, Mr Harcup gave the claimant a lift to Henley. He then says he wished the best to Mr Lewington, and Mr Lewington snr said to him "We will sort you out" which the claimant seems to have taken as some sort of reassurance.
47. By contrast, Mr Simon Lewington's account is set out in paragraphs 3 and 4 of his witness statement, and it is that the claimant came into the office where he, his son, and Mr Harcup were working, and said he had been offered another job by a friend who offered better pay, closer to home and would be leaving at the end of the month. He said that he had accepted a landscaping role. They offered him the option of leaving immediately and he agreed. He set out in paragraph 6 of his witness statement details of the role that the claimant had carried out and why that was important to the respondent.
48. Mr Santino Lewington was not available for cross examination. It appears there had not been an understanding on the part of the respondent, certainly the lay clients, that his presence in Italy would mean that he was not able to give evidence from abroad. So, it is not that he has chosen to be absent, which is relevant to the weight that should be given. However, when I look at his witness statement, it is quite vague and lacking in detail. All he says is that he remembers the claimant saying that he was leaving and was going to do some gardening work for a friend. His father's account was that the claimant had accepted a landscaping role.
49. The wording of Santino Lewington's 2 paragraph statement makes it sound as though he had only recently been asked to recollect the events. In paragraph 2 he stated that "It has been sometime now, but I remember around Summer 2024 when the Claimant was upstairs in Keith's office saying that he was leaving and he was going to do gardening work with a friend." That is the entirety of his account of the actual conversation. Given that the wording is vague in itself, and

he has not attended to be cross examined upon it, I give little weight to that statement.

50. The respondent also called Mr Harcup who came and was cross examined having responded to the witness order that I made yesterday. His 3 paragraph (unsigned) witness statement was read to him and he confirmed that he was happy with the contents. In it he stated that he recalled the claimant saying that "he is leaving us at the end of the month to work for his friend" and remembered driving him home. Again, there was scant detail in the witness statement that Mr Harcup provided, but there were points of contradiction with the claimant's account, certainly in that Mr Harcup, as Mr Simon Lewington says, was in the room and recalled the claimant saying that he was leaving to work for his friend.
51. The following points that were made by the respondent as to why I should prefer the respondent's account to the claimant's.
52. First, it was argued that Mr Harcup should be regarded as a relatively independent witness. That may be the case; he considers Mr Simon Lewington a friend but he does not seem to be particularly close; he is no longer employed by the company. He, and to some extent Mr Simon Lewington, came across as busy people whose priority, understandably, is getting on with their lives and their work. I do not infer any particular disrespect to the Tribunal from that demeanour.
53. However, there was a broadbrush nature to Mr Harcup's evidence. He seemed to answer questions with what he felt confident in saying rather than focusing on what he had been asked. Perhaps this stemmed from unwillingness or inability because of the passage of time, to engage with the detail of what he was being asked to recollect. That is not necessarily to his discredit but it does mean that his evidence is of limited value because of its broadbrush nature.
54. The claimant makes the point that it is easier to tell one big lie and harder to be consistent with little details. I think that that is something that I give weight to. Mr Harcup insisted he was in the room when the claimant entered but in oral evidence, and this is not in his written statement, he suggested that he tuned out or absented himself when the conversation began to be about the claimant's employment. This meant that, in the end, his oral evidence was that he had not heard or could not recollect the detail of the conversation that the claimant had set out in detail in his witness statement, one way or another.
55. Nevertheless, the impression of the oral evidence was that the claimant initiated the conversation because Mr Harcup said he came into the office saying, " 'Hi, I need a word,' and it weren't a word with me so I wasn't going to get involved." Therefore his oral evidence was that he had not heard the conversation and didn't give oral evidence about who said which words and in which order. He came back to what he could recollect about it which was that his concern and priority was to retain the delivery van which was needed for work deliveries during the day.
56. He was the claimant's line manager but he denied having been told about the specific circumstances of the claimant's housing problems. I find that slightly implausible given that he was told about financial challenges the claimant faced.

By and large he stuck to his account, but it was the claimant who came to raise something, and that he was already in the room. But, ultimately, as I say, his oral evidence was that he did not hear the conversation that was the crux of the case.

57. Mr Simon Lewington did give evidence that the respondent generally relied on solicitors or, if it were appropriate, consultant HR representative, who would assist with all significant decisions. So, it was argued that if the respondent had been planning to dismiss the claimant because of cost, as the claimant alleges, they would have engaged, at the very least, Crystal Harrington. This is plausible. Mr Lewington snr comes across as realistic about his own areas of specialism and expertise and it was plausible that the normal process would mean that he had something to hand over.
58. Furthermore, there is the earlier written warning that Mr Cooper sent to the claimant, and Mr Lewington gave evidence about negotiations about the transfer of the claimant to the Bracknell head office. Those process had at least some documentary record.
59. On the other hand, as it happens, the person who had responsibility primarily for HR in the business at this point seems to be Mr Cooper, who was largely absent. For something that became quite important quite quickly, Mr Lewington's recollection of what he had done to communicate to Ms Harrington or to Mr Cooper, the consequences of the claimant's resignation was surprisingly vague.
60. There is an absence of documentation on the part of the respondent. It is true that a P45 would have been issued, or should have been issued, whether or not there was a resignation or a dismissal and would not point to one rather than the other in itself. It was argued by the respondent that the absence of it points more to a resignation. In other words, suggesting that the respondent would be more likely to generate paperwork if they dismissed the claimant than protect themselves if he had resigned. But this was an employee with 19 years' service; he was due to give one month's notice if you look at page 58; he had a contractual entitlement to 25 days' annual leave plus bank holiday. No steps whatever seems to have been taken on the respondent's account to see that the claimant was paid what he was due if only in respect of annual leave.
61. Mr Simon Lewington emphasized the importance to the company of the claimant's work and his position (see paragraphs 6 and 7 of his statement) and yet, on his account, there was no discussion of any hand over not even over the two days that the claimant allegedly said that he would continue to work. I can understand Mr Lewington's point that, if somebody says they wish to leave the company then their heart is no longer in it. However, there is an inconsistency between what Mr Lewington says about the importance of the claimant to the company and his decision not even to take advantage of those two days. There is also an inconsistency between his evidence that the claimant asked to retain the van for the duration of that day and his evidence, on the other hand, that the claimant agreed to leave early when that something that is internally inconsistent in the respondent's account.
62. On the respondent's evidence, Mr Lewington snr appears to mean that the

respondent had no responsibilities towards the claimant at all following his "resignation". This is not the attitude of a responsible employer. It and the above inconsistencies damage Mr Lewington snr's credibility. It also tends to suggest that, whatever steps Mr Cooper may have taken in the past to ensure the respondent adhered to good practice, Mr Lewington did not regard it as important. He referred in evidence to the departure of two other employees as being "50/50" which I inferred meant that they had left by way of mutual agreement with the respondent. His evidence generally came across as a slightly cavalier approach to the niceties of employment practice. He runs a business, he is not a lawyer, and I should not judge him too harshly for that. Nevertheless, the most obvious steps that the respondent could have taken to protect itself were not taken which causes me to doubt whether their account is, in fact, correct.

63. There are some points of detail that the respondents make in relation to the accounts given. So they say it is illogical that, on the claimant's account, Mr Lewington jnr would go to collect the claimant but then disappear and return after the claimant had gone upstairs. I do not think that is a weighty point. Mr Lewington might have been waiting for the claimant to complete a task. The information I have about what was said and done does not point to this being contradictory behaviour such that the claimant's account should be doubted.
64. They also take issue with the claimant's account about the positions of desks in the room where the meeting took place and argue that, in preparation for Mr Cooper's retirement his desk had been moved out of the room so the claimant could not have been leaning against it. Whether Mr Cooper's desk had been recently moved out of the room is neither here nor there.
65. On the other hand, the respondent argues that the context of the claimant's personal situation lends credibility to their account of his actions. They argue that there is evidence that he was struggling financially, that since he had moved to Bracknell he had a reduction in disposable income, that there was an attachment of earnings that was causing difficulties which had led to his losing his rental property. On the face of it, that might give a reason why the claimant wanted to have a job that paid more or wanted to have a job that was located in a more convenient location.
66. However, when I look at the contemporaneous documentation (page 250 to 252) dating from 8 and 10 July, what I infer from it is the importance, at that time, to the claimant of the work vehicle. He talks about trying to find accommodation in Henley with access to the children's school in Shiplake. He did not merely need transport from the Henley region to work in Bracknell. He needed transport to manage his childcare responsibilities. He would not have had transport if he had given up the job.
67. Furthermore, he had been sleeping in the van. He told the council that the accommodation would come to an end by 1 August. What happened between that email on 10 July and the meeting on 29 July that meant that he could give up the prospect of accommodating himself by sleeping in the van?
68. Although I agree that there is evidence that the claimant was unhappy with the

situation because of those various factors, it is insufficient to counter the fact that, leaving the job with the respondent would make things much worse. He had take-home pay of some £2,500 and he was using a vehicle for accommodation. I find it implausible that the person who wrote those emails would resign their job providing accommodation and £2,500 take home per calendar month some three weeks later. There is no evidence before me that would make such a decision rational.

69. The respondent then argues that I should look carefully at the correspondence at pages 71 to 76 and, in particular, the very moderate way in which the claimant expresses himself for somebody who said in his witness statement was aware of his rights. There is a lack of reference to being entitled to pay in lieu of notice; there is a lack of allegation against the respondent. But his account is that he was expecting a "settlement," that was the word he used in oral evidence. He said that he knew he was entitled to something and expected them to do right by him. In that context, when you read the words "When you send my termination," that does not read to me as a completely neutral term. Why would the respondent send a termination if the person writing that email believed that he had terminated the contract.
70. Again, looking at the email of 20 August, yes, he might have expected action by then as he knows the pay date is 18 August but he used the phrase "My employment ended without notice". It is not strongly indicative of his account but it is more consistent with his account than it is with the respondent's account. I place no weight upon him not having accused Mr Lewington of lying directly. Mr Colby is not a trained professional; he needed to be coached into asking the necessary questions and it is quite hard to actually make such direct accusations.
71. Other points that were made by the claimant that I do give weight to are that he has been transparent in producing documents which, in some cases, are giving the respondent ammunition. He has produced bank statements which he relies on as showing that he was in the process of recovering his finances. I do not accept that if a person has spent something approaching £100 in three or four purchases at garden centres then that shows evidence of self-employment as a landscape gardener. It is not evidence from which to infer that such casual self-employment might give the claimant, given his previous work history, enough income to make it worth his while resigning from his 19-year employment. He might have discussed the possibility of gardening work with a friend, possibly he did so with Mr Harcup before the events of 29 July. But it is illogical for him to swap his reliable, if difficult, position for that.
72. Overall, I find that the claimant's account to be internally consistent and coherent. It is also essentially consistent with contemporaneous documents whereas the respondent's accounts lack the detail that one would expect. They did not take the steps which one would expect a respondent to take if their account were true. Mr Harcup's evidence did not in fact support Mr Lewington's evidence in the crucial respect and it did not support Mr Lewington's evidence in the way one would expect looking at Mr Lewington's evidence what Mr Harcup did on that day. I give little weight to Mr Santino Lewington's witness statement.
73. For those reasons I prefer the claimant's account and find that on 29 July 2024

the respondent dismissed the claimant without notice or warning and told him that this was because they could no longer afford to pay him.

The Law applicable to the issues

74. As Mr Large says, the burden of proving the dismissal is on the claimant. It is for the claimant to satisfy me that his version of events is correct and should be accepted. I need to be satisfied of that according to what is called the civil standard of proof. That means that I need to be satisfied that it is more likely than not that the claimant's account is true.
75. Once the tribunal has decided that there was a dismissal they must consider whether it was fair or unfair in accordance with s.98 ERA 1996.

"Section 98 Employment Rights Act 1996

- (1) 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.
- (2) A reason falls within this subsection if it-
 - a. Relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - b. Relates to the conduct of the employee,
 - c. Is that the employee was redundant, or
 - d. is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) In subsection (2)(a)—
 - (a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
 - (b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal was fair or unfair (having regard to the reason shown by the employer)-
- (5) 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

- (6) shall be determined in accordance with equity and the substantial merits of the case.”

Conclusions on the issues

- (7) As a result of my finding that the claimant was dismissed, the wrongful dismissal claim succeeds. The respondent gave no notice. The claimant was entitled to 12 weeks’ notice. It is not contended that, if the respondent dismissed him, they had grounds for dismissing him without notice.
- (8) As far as the unfair dismissal claim is concerned, I found that the claimant was dismissed. It is then for the respondent to show the reason for the dismissal and that it was a potentially fair reason within section 98(2). Permission to amend their claim to allege some other substantial reason was refused and no other reason is evidenced or consistent with their evidence. I find that the respondent has failed to show the reason for dismissal or that it was a potentially fair reason. That does not, as far as I can see, preclude arguments on what might have happened had the dismissal not taken place.
- (9) As far as the ACAS Code of Conduct is concerned, I found that the claimant’s account of 29 July is to be preferred. It is probable that Mr Harcup was in the room when he entered but left, and perhaps the claimant has overlooked or forgotten that, but otherwise his account of what Mr Santino Lewington and what Mr Simon Lewington said that is set out in the claimant’s paragraphs 9 to 17, I find those facts to have happened. What Mr Simon Lewington explained as their reasons for dismissing the claimant, points to cost cutting rather than anything else. That is potentially a reason such as redundancy or a business reorganisation than it could reasonably be linked with the claimant’s conduct or performance. There is no evidence or allegation that the claimant brought a grievance or anything that should be regarded as a grievance.
- (10) The relevant Code of Conduct on disciplinary and grievance matters does not, in my view, apply to this sort of dismissal. So, the jurisdiction to uplift any compensation under section 207A of the Trade Union and Labour Relations Consolidation Act 1992 does not arise. It do not award any ACAS uplift.
- (11) The remedy issues which need to be the object of further evidence and argument are:
- a. What should the basic award be? Which will be the arithmetical calculation?
 - b. How much should the compensatory award be? This will require me to look at what financial losses has the dismissal caused the claimant.
 - c. In relation to mitigation, has the respondent shown that the claimant acted unreasonably by failing to take reasonable steps to replace their lost earnings, for example, by looking for another job.
 - d. If not, what period of loss should the claimant be compensated for and is there a chance that the claimant would have been fairly dismissed

anyway if a fair procedure had been followed or for some other reason?

e. If so, by how much should his compensation be reduced?

(12) If necessary there is the statutory cap.

Approved by:

Employment Judge George

15 September 2026

JUDGMENT SENT TO THE PARTIES ON
16 September 2026

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written full reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. 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:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/