



EMPLOYMENT TRIBUNALS

Claimant: John Brittain

Respondent: BAE Coffee Ltd

Heard: by Cloud Video Platform **On:** 6 March and, in chambers, on 26 March 2026

Before: Employment Judge Ayre, sitting alone

Representation

Claimant: Karen Brittain, the claimant's mother

Respondent: Did not attend and was not represented.

RESERVED JUDGMENT

1. The claimant was at time of his employment with the respondent, disabled due to anxiety and depression.
2. The claim for wrongful dismissal succeeds. The claimant was entitled to one week's notice of termination of his employment. The respondent is ordered to pay to the claimant the sum of **£469.80** (less tax and national insurance contributions) by way of damages for wrongful dismissal.
3. The claim for discrimination arising from disability is not well founded. It fails and is dismissed.
4. The claim for failure to make reasonable adjustments is not well founded. It fails and is dismissed.
5. The claim for holiday pay is well founded. The respondent failed to pay to the claimant all of the holiday pay to which he was entitled. The respondent is ordered to pay to the claimant the sum of **£375.84** (less tax and national insurance contributions) by way of outstanding holiday pay.

6. The claim for unauthorised deduction from wages is not well founded. It fails and is dismissed.
7. The claim that the respondent failed to provide itemised pay statements is well founded. The respondent failed to provide the claimant with itemised pay statements. The respondent is ordered to pay to the claimant the sum of **£409.12** in respect of unnotified deductions from pay.
8. At the time these proceedings were begun, the respondent was in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars. The respondent is ordered to pay the sum of **£939.60** to the claimant in respect of that breach.

REASONS

Background

1. The claimant issued a claim in the Employment Tribunal on 2 December 2024 following a period of early conciliation that started on 23 October 2024 and ended on 25 October 2024. The respondent disputes the claim and has, up until the final hearing of the claim, played a full part in the proceedings.
2. There have been two preliminary hearings in this case. The first took place on 13 March 2025.
3. The second preliminary hearing took place in public on 5 June 2025. At that hearing:
 1. The claims for unfair dismissal and whistleblowing were struck out on the grounds that they were misconceived;
 2. The respondent's application to amend its response to include an employer's contract claim was refused;
 3. A list of issues was identified;
 4. The case was listed for final hearing; and
 5. Case Management Orders were made to prepare the case for the final hearing.

The hearing

4. Each side had produced their own bundle of evidence. The claimant's bundle ran to 111 pages and included a "mental health statement" from the claimant, a very brief statement from Olivia Rushworth, the claimant's partner, an 'unfair dismissal strike out' statement from the claimant, and a statement from the claimant's mother.
5. The respondent's bundle ran to 46 pages and included witness statements from Heidi Chana the owner and manager of the respondent; Angela Chana, manager and

mother of Heidi Chana; Phoebe Chana, sister of Heidi Chana; and Libby Smith, former employee of the respondent.

6. On 4 March 2026 the claimant sent an additional 11 documents to the Tribunal by email.
7. The hearing was listed to start at 10 am. The respondent was not present. Enquiries were made with the listing team who indicated that no communication had been received from the respondent. The Tribunal does not have a telephone number for the respondent on its file. An email was sent to the respondent's email address asking them to join the hearing urgently. The start of the hearing was delayed until 10.30am.
8. By 10.30 am the respondent still was not present. There was no indication that delaying the hearing any further would result in the respondent participating. Rule 47 of The Employment Tribunal Rules of Procedure 2024 provides that *"If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."*
9. I did not consider that an adjournment would result in the respondent attending the hearing. There has been no application for a postponement and no record on the Tribunal file of any communication from the respondent for several months. I therefore decided to proceed with the hearing in the absence of the respondent.
10. The hearing started at 10.30 am on 6 March 2026 and lasted until shortly after 3pm. The respondent did not attend at any time. I heard evidence from the claimant and from Karen Brittain, the claimant's mother. I considered the documentary evidence submitted by both the claimant and the respondent and heard submissions from the claimant. In light of the number of issues that fell to be decided in the case, the Tribunal reserved its judgment and a further day was allocated in chambers for the Tribunal to reach its decision.
11. It was not entirely clear from the information before me how much the claimant was claiming in respect of notice pay, holiday pay and unauthorised deduction from wages. I gave the claimant some time to consider the position, and the claimant's representative told the Tribunal that the claimant seeks the following sums:
 1. One month's notice pay : £2,070.62 net;
 2. Holiday pay : £1,010 net;
 3. Unauthorised deductions from wages : £2,014.28 net

The issues

12. The issues that fell to be determined at this hearing were confirmed at the last preliminary hearing as being the following:

Time limits

1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before **24 July 2024** may not have been brought in time.
2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? In particular:
 1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 2. If not, was there conduct extending over a period?
 3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? In particular:
 1. Why were the complaints not made to the Tribunal in time?
 2. In any event, is it just and equitable in all the circumstances to extend time?
3. Was the unauthorised deductions complaint made within the time limit in section 23 of the Employment Rights Act 1996? In particular:
 1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the date of payment of the wages from which the deduction was made?
 2. If not, was there a series of deductions and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
 3. If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 4. If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Wrongful dismissal / Notice pay

4. What was the claimant's notice period? The claimant said that his notice period was one month and claims £2,070.62 net in respect of his notice period.
5. The respondent admits that the claimant was not paid any notice.
6. Did the claimant do something so serious that the respondent was entitled to dismiss without notice?

Disability

7. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?
 1. Did he have a physical or mental impairment: anxiety and depression?
 2. Did it have a substantial adverse effect on his ability to carry out day-to-day activities?
 3. If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 4. Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?
 5. Were the effects of the impairment long-term?
 1. did they last at least 12 months, or were they likely to last at least 12 months?
 2. if not, were they likely to recur?

Discrimination arising from disability (Equality Act 2010 section 15)

8. Did the respondent treat the claimant unfavourably by dismissing him?
9. Did the claimant's sickness absence arise in consequence of the claimant's disability?
10. Did the respondent dismiss the claimant because of that sickness absence?
11. Was the treatment a proportionate means of achieving a legitimate aim?
The respondent says the legitimate aims were:
 1. It is a small business with limited staff numbers;
 2. It was not sustainable for other members of staff to cover the claimant's role for such frequent absences;
 3. It was not financially viable for someone else to be employed;
 4. Covering the claimant's absences was unsustainable financially and from a human resources perspective; and
 5. The claimant was dismissed for gross misconduct alongside the absences.
12. The Tribunal will decide in particular:

1. was the treatment an appropriate and reasonably necessary way to achieve those aims;
 2. could something less discriminatory have been done instead;
 3. how should the needs of the claimant and the respondent be balanced?
13. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

14. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?
15. A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:
1. A practice of not providing employees with written contracts of employment;
 2. A practice of not providing payslips to employees;
 3. A practice of not providing information to employees about pension providers and pension deductions;
 4. A practice of paying employees late; and/or
 5. A requirement that employees work with an employee who had previously been convicted of having sex with a minor?
16. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that they caused him additional stress?
17. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
18. What steps could have been taken to avoid the disadvantage? The claimant suggests:
1. The provision of a written contract of employment;
 2. The provision of payslips;
 3. The provision of details of the pension provider and pension payments; and

4. The implementation of a safeguarding policy.

19. Was it reasonable for the respondent to have to take those steps and when?

20. Did the respondent fail to take those steps?

Remedy for discrimination

21. What financial losses has the discrimination caused the claimant?

22. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

23. If not, for what period of loss should the claimant be compensated?

24. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

25. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

26. Is there a chance that the claimant's employment would have ended in any event? Should his compensation be reduced as a result?

27. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

28. Did the respondent or the claimant unreasonably fail to comply with it?

29. If so is it just and equitable to increase or decrease any award payable to the claimant?

30. By what proportion, up to 25%?

31. Should interest be awarded? How much?

Holiday Pay (Working Time Regulations 1998)

32. Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when his employment ended? The claimant claims £1,010 net in respect of holiday pay.

Unauthorised deductions

33. Did the respondent make unauthorised deductions from the claimant's wages and if so how much was deducted? The claimant claims £2,014.28 net in respect of unauthorised deduction from wages.

34. The claimant asserts that unauthorised deductions were made in relation to:

1. Holiday pay;
2. Hours worked;
3. Sick pay; and
4. Tips.

35. The respondent says that the claimant has been paid all of the money he is entitled to.

Failure to provide itemised pay statements

36. Did the respondent fail to provide the claimant, at or before the time at which any payment of wages was to be made to him, a written itemised pay statement containing details of:

1. Gross pay;
2. Any deductions from gross pay and the purposes for which the deductions were made;
3. Net pay; and
4. If pay varied according to time worked, the total number of hours worked.

37. If the Tribunal finds that any unnotified deductions have been made from the claimant's pay during the period of thirteen weeks immediately preceding the date of the claim, should the Tribunal order the respondent to pay the claimant a sum not exceeding the aggregate of the unnotified deductions made?

Remedy

38. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

39. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay

under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

40. Would it be just and equitable to award four weeks' pay?

Findings of fact

13. The respondent is a small, family run business which operates a café in Wetherby. The claimant was employed by the respondent as a Team Leader from 14 April 2024 until he was dismissed without notice or payment in lieu of notice on 31 August 2024. At the start of the claimant's employment, it was agreed that the claimant would be paid £13.50 an hour. The claimant worked five days a week, although the days and times varied from week to week.

The claimant's mental health

14. The claimant has struggled with his mental health since he was a child. In 2006 he received counselling as he was struggling with anxiety following his parents' divorce and had some time off school. He subsequently had several bouts of anxiety and depression during which, at times, he was unable to function. In 2008, after he moved into his first flat, he experienced anxiety which developed again into depression and caused him to be unable to function. He stopped sleeping, eating, showering and interacting with family or friends.

15. Aged 20 the claimant received Cognitive Behavioural Therapy which helped him to manage his anxiety with a view to preventing it developing into depression. He did however have a further bout of depression following the breakdown of a relationship. He has suffered periodically from depression for many years.

16. In August 2024 the claimant's mental health deteriorated. He saw his GP who called the Crisis team and signed him off work for three weeks. The claimant was under the care of the Crisis team for at least seven months, and for a period of approximately 4 months, he took anti-depressant medication, Sertraline.

17. On 18 August 2024 the claimant's GP certified the claimant as unfit to work from 16 August to 29 August due to "mental health". The GP provided a further fit note certifying the claimant as unfit to work until 10 September but there was no evidence before the Tribunal as to the reason for absence in the second fit note.

18. The effect of the anxiety and depression on the claimant can be debilitating. The claimant describes feeling paralysed by it. He lies awake at night worrying and some days cannot get out of bed in the morning. During flare ups of his condition, he stays at home and avoids interaction with friends. He finds it difficult to get out of bed, shower, go shopping and eat and drink. He loses interest in his hobbies such as cycling and playing video games.

19. The respondent denied having any knowledge of the claimant's ill health. The claimant told the Tribunal that he does not really talk about his mental health but

that he had told the respondent he was stressed because he was not receiving pay slips and thought that he wasn't being paid correctly. There was no documentary evidence to suggest that the claimant told the respondent that he was suffering from anxiety and depression. The first fit note that he submitted in August 2025 during the course of his employment made no mention of anxiety and depression but referred in general terms to 'mental health' without being specific.

20. I find on balance that the claimant did not talk about his mental health to the claimant as this is consistent with his evidence to the Tribunal that he does not really talk about it, and with the fit note which merely referred to mental health. I find that he did not tell the respondent that he was suffering from anxiety and depression. I also find that he did not at any point suggest to the respondent that there was anything about his work at the café or his employment with the respondent that was causing him difficulty because of his mental health.

Dismissal

21. On 31 August 2024 the respondent dismissed the claimant with immediate effect. Heidi Chana, the respondent's owner, wrote to the claimant in the following terms:

"I am writing to inform you that you have officially been dismissed as an employee of BAE COFFEE LTD, effective today, 31/08/2024.

After review and previous multiple warnings about sickness I have taken the decision to end your employment. From being with the company for 4 months, you have taken a considerable amount of days sick, around 17 days sick or have left early due to sickness, which has impacted the business massively.

This also comes along with not turning up for work on numerous occasions, having little to no communication with myself. This is not correct conduct of a Team Leader and employee.

Any hours worked since your last pay will be paid to you at the end of the month...."

The claimant's absences from work

22. During the course of his employment with the respondent the claimant had a number of days off work. His evidence to the Tribunal, which I accept, is that he was absent on the following days and for the following reasons:

1. 4 May – absent due to sickness / vomiting;
2. 6 May – worked for 2-3 hours, then went home due to vomiting;
3. 7 May – absent due to vomiting;

4. 28 May – started work at 10 am rather than 7.30 am due to a late night hospital visit in connection with his partner's pregnancy;
 5. 1 June – absent due to his partner being rushed to hospital;
 6. 12 June – left early by agreement as the café was quiet;
 7. 15 July to 29 July – holiday and paternity leave
 8. 8 August – absent due to partner being in hospital;
 9. 16 – 31 August – absent due to depression and anxiety.
23. The claimant's baby was born on 23 July 2024. He had two weeks off around the birth – 8 days before, and 6 days after. He returned to work on 30 July. The respondent made enquiries about statutory paternity pay but were informed that he would not qualify for it.
24. At times the claimant was absent at short notice and without informing the respondent. Text messages in the respondent's bundle show several occasions where Heidi Chana was trying to contact the claimant. On 16 August Ms Chana sent two messages to the claimant. In the first she wrote :*"Hi John, Libby has told me you are not in work today and I am concerned about tomorrow. I will need you in tomorrow as we are already short. Please confirm you will be in for your shift....."* The claimant did not reply to that message, and later that day Ms Chana sent another message: *"Hi John, can you please respond to my message. I really can't afford to have you off tomorrow as there is only Libby and Jack. No one to cover whatsoever, which means I will have to shut BAE. I really need you in work. Thank you."* There is no record of any response to that message.

Hours of work

25. The respondent's evidence, as set out in its bundle of documents, was that the claimant worked a total of 528.9 hours during the course of his employment and was paid for 531.24 hours. It produced a table of hours worked against scheduled hours, which listed the following hours as having been worked:
- w/c 22 April – 43.75 hours; w/c 29 April – 41.5 hours; w/c 6 May – 26 hours;
w/c 13 May – 39.95 hours; w/c 20 May – 40.45 hours; w/c 27 May – 31.45 hours;
w/c 3 June – 42 hours; w/c 10 June – 38.45 hours; w/c 17 June – 40 hours;
w/c 24 June – 40.45 hours; w/c 1 July – 37.9 hours; w/c 8 July – 41 hours;
w/c 15 July – 14.5 hours; w/c 22 July – 0 hours; w/c 29 July – 0 hours;
w/c 5 August – 33.5 hours; w/c 12 August – 18 hours.
26. In his claim form the claimant said he worked 40 hours a week. In his Schedule of Loss the claimant said he worked the following hours:

April – 73 hours; May – 204 hours; June – 223 hours; July – 150 hours; and August 59.5 hours.

27. This gives a total of 709.5 hours. The claimant's evidence as to hours worked was limited and confusing. For example, he said that he had worked 39.5 hours in the week commencing 15 July but also said that he had been off work from 15 July for two weeks due to the birth of his baby. He also claimed to have worked 49 hours in the week commencing 29 April, despite having a day off sick on 4 May, and to have worked 49 hours in the week commencing 6 May, despite being off sick for most of the 6th May and all of 7th May. In his claim form he put his hours of work at 40 per week.

28. In her evidence to the Tribunal the claimant's mother gave evidence that the claimant worked a total of 606.92 hours. She also said in her evidence, however, that the claimant worked the following hours:

w/c 17 April – 55.62 hours; w/c 22 April – 50.5 hours; w/c 29 April– 41.5 hours;
w/c 6 May – 32 hours; w/c 13 May – 47 hours; w/c 20 May – 49 hours;
w/c 27 May – 40 hours; w/c 3 June – 42 hours; w/c 10 June – 38.45 hours;
w/c 17 June – 46.5 hours; w/c 24 June – 48 hours; w/c w/c 1 July – 45 hours;
w/c 8 July – 47.5 hours; w/c 15 July – 14.5 hours; w/c 5 August – 43.5 hours; w/c 12 August – 18 hours.

29. This gives a total of 659.07 hours.

30. There were, therefore, different figures for hours worked given in the claimant's evidence. The claimant's mother accepted that she had 'got in a pickle' when trying to work out the hours worked. The claimant told the Tribunal that he had completed time sheets whilst working for the respondent but did not have copies of those timesheets.

31. On balance I prefer the respondent's evidence on the question of hours worked. The claimant's evidence was inconsistent, contradictory, and not backed up by any contemporaneous documents.

Payments made to the claimant

32. The respondent produced in its bundle payslips and an extract from its bank statement showing that the payments set out below were made to the claimant. The payslips provided by the respondent indicate that the claimant was paid an hourly rate of £13.50.

33. During the course of his employment the claimant was paid the following sums:

1. 30 April 2024: Gross pay £320.63; Net pay £320.23. Hours worked: 23.45. The payment was made to the claimant on 1 May 2024.

2. 31 May 2024: Gross salary £2,127.38; Net pay £1,744.86. Hours worked:

- 157.35. The payment was made to the claimant on 31 May 2024.
3. 28 June 2024: Gross salary £2,055.51; Net pay £1712.13. Hours worked: 152.26. The payment was made to the claimant on 28 June 2024.
4. 31 July 2024: Gross salary £1944.14. Hours worked: 144.01. Gross holiday pay £283.50 (21 hours at £13.50 an hour); Total gross pay, including holiday pay: £2,227.64. Net pay £1829.09. £100 of this sum was paid to the claimant on 22 July 2024 and the balance was paid on 1 August 2024.
5. 29 August 2024: Gross salary £731.30; Net pay £720.73. Hours worked: 54.17. This sum was paid to the claimant on 3rd September 2024.
34. Total deductions of £398.55 were made from the 1 August 2024 payment, and total deductions of £10.57 were made from the 3 September payment.

Payslips

35. The claimant was not provided with any payslips during the course of his employment. Payslips were only provided by the respondent after the claimant issued these proceedings.

Written contract of employment

36. The claimant was not provided with a contract of employment at any point during the course of his employment. During the course of these proceedings the respondent produced a document headed 'Employment Contract'. The contract was signed on behalf of the respondent but not by the claimant. The claimant's oral evidence to the Tribunal was that he had not seen this contract before these proceedings, and that he had never been provided with a contract of employment. As the respondent did not attend the hearing, the claimant's oral evidence was not challenged by the respondent. I prefer the evidence of the claimant, given under oath, that he was not provided with a written contract of employment.
37. The contract of employment provided by the respondent provides that there will be a probationary period of three months, which can be extended by the respondent, and that the respondent can terminate employment during or at the end of the that period on one week's notice. The contract also states that the respondent can terminate employment in certain circumstances but does not state what period of notice is required. It does however specify that if the employee wants to terminate the employment he must give one month's notice in writing.

The Law

Burden of proof in discrimination claims

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

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision...”

39. There is, in discrimination cases, a two stage burden of proof (see **Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931** and **Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205**) which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In **Igen v Wong** the Court of Appeal endorsed guidelines set down by the EAT in **Barton v Investec**.

40. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment.

41. The Supreme Court confirmed, in **Royal Mail Group Ltd v Efobi [2021] ICR 1263**, that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

42. Where there are multiple allegations of discrimination, the Tribunal should consider whether the burden of proof has shifted from the claimant to the respondent in relation to each one, rather than taking a broad brush approach.

43. In **Glasgow City Council v Zafar [1998] ICR 120**, Lord Browne-Wilkinson recognised that discriminators ‘do not in general advertise their prejudices: indeed they may not even be aware of them’.

44. The Tribunal has the power to draw inferences of discrimination where appropriate. Inferences must be based on clear findings of fact, and can be drawn not just from the details of the claimant’s evidence but also from the full factual background to the case.

45. It is not sufficient for a claimant merely to say ‘I was badly treated’ or ‘I was treated differently’. There must be some link to the protected characteristic or something from which a Tribunal could draw an inference. In **Madarassy v Nomura International plc [2007] ICR 867** Lord Justice Mummery commented that: *“the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient*

material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.”

46. In ***Deman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1276***, Lord Justice Sedley adopted the approach set out in ***Madarassy v Nomura*** that ‘something more’ than a mere finding of less favourable treatment is required before the burden of proof shifts from the claimant to the respondent. He made clear, however that the ‘something more’ that is needed to shift the burden need not be a great deal. Examples of behaviour that has shifted the burden of proof include a non-response or evasive answer to a statutory questionnaire, or a false explanation for less favourable treatment.

47. Unreasonable behaviour is not, in itself, evidence of discrimination (***Bahl v The Law Society [2004] IRLR 799***) although, in the absence of an alternative explanation, could support an inference of discrimination (***Anya v University of Oxford & anor [2001] ICR 847***).

Disability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56. Paragraph 5 of Schedule 1 to the Equality Act obliges Tribunals to ignore the effect of medication when deciding when someone is disabled (the so called "deduced effect" and provides that;

"an impairment is to be treated as having a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities if measures are being taken to correct it and but for that it would be likely to have that effect".

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

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

58. The Equality Act 2010 Guidance on matters to be taken into account in determining questions relating to the definition of disability ("the Guidance") was issued by the Secretary of State pursuant to section 65 of the Equality Act in May 2011 and I have taken this into account when reaching my decision.

59. When deciding whether the adverse impact is substantial or not the Tribunal must take account of the cumulative effects of the impairment. The Guidance provides

examples of factors which it would be reasonable to regard as having a substantial adverse effect on normal day-to-day activities. Paragraph B2 states that “*The time taken by a person with an impairment to carry out a normal day-to-day activity should be considered when assessing whether the effect of that impairment is substantial*”. Paragraph B7 provides that: “*Account should be taken of how far a person can **reasonably** be expected to modify his or her behaviour. For example by use of a coping or avoidance strategy, to prevent or reduce the effects of an impairment on normal day-to-day activities. In some instances, a coping or avoidance strategy might alter the effects of the impairment to the extent that they are no longer substantial and the person would no longer meet the definition of disability. In other instances, even with the coping or avoidance strategy, there is still an adverse effect on the carrying out of normal day-to-day activities*”. Account should also be taken of where a person avoids doing things for example because they cause pain, fatigue or social embarrassment or because of the loss of energy or motivation.

60. Day-to-day activities are given a wide interpretation and in general will be things that people do on a regular or daily basis. They can include general work-related activities but will not include activities which are only normal for a small group of people.

Knowledge of disability

61. By virtue of section 15(2) and Part 3 of Schedule 8 to the Equality Act 2010 actual or constructive knowledge of disability is required in complaints of discrimination arising from disability and of failure to make reasonable adjustments. An employer will not be liable if it did not know and could not reasonably have been expected to know of the claimant’s disability.

62. An employer can not however ‘turn a blind eye’ to evidence of disability and the EHRC employment Code provides that employers must do all they can reasonably be expected to do to find out whether an employee is disabled. Paragraph 5.15 of the Code states that:

“An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy...”

63. That said, failure to enquire about a possible disability is not, in itself, sufficient to give a respondent constructive knowledge of the claimant’s disability.

64. In ***A Ltd v Z [2020] ICR 199 EAT*** the claimant was dismissed for repeated sickness absences and poor timekeeping. She had put her absences down to physical impairments, rather than the true cause which was depression, schizophrenia, stress and low mood which amounted to a disability. The respondent had some knowledge that the claimant may have mental health issues but did not make any enquires about them. The EAT held that the Tribunal was wrong to find that the employer had constructive knowledge of the claimant’s

disability because it failed to take account of what the employer might reasonably have been expected to find out if it had made enquiries. In the tribunal's view, the claimant would have continued to hide information about her mental health difficulties and insisted that she could work normally.

65. When considering knowledge for the purposes of a reasonable adjustments claim, the Tribunal should consider:

1. Did the employer know that the employee was disabled and that his disability was liable to disadvantage her substantially; and
2. If not, ought the employer to have known both that the employee was disabled and that his disability was likely to put him at a substantial disadvantage?

Discrimination arising from disability

66. Section 15 of the Equality Act 2010 states that:

“(1) A person (A) discriminates against a disabled person (B) ifr –

- (a) A treats B unfavourably because of something arising in consequence of B’s disability, and*
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

67. In a claim under section 15, no comparator is required, and the claimant is merely required to show that he has suffered unfavourable treatment and that the reason for that treatment was something arising because of his disability.

68. In ***Secretary of State for Justice and another v Dunn EAT 0234/16*** the then president of the EAT, Mrs Justice Simler, identified four elements that must be made out for a claimant to succeed in a complaint under section 15:

1. There must be unfavourable treatment;
2. There must be something that arises in consequence of the claimant’s disability;
3. The unfavourable treatment must be because of (ie caused by) the something that arises in consequence of the disability; and
4. The respondent must be unable to show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

Reasonable adjustments

69. Section 20 of the Equality Act 2010 states as follows:-

“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A’s puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...”

70. Section 21 of the Equality Act 2010 provides that:-

“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with a duty to make reasonable adjustments...”

71. Part 3 of Schedule 8 to the Equality Act 2010 (“Work: Reasonable Adjustments”) provides, at paragraph 20 (“Lack of knowledge of disability, etc”) that:

“(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know...that an interested disabled person has a disability and is likely to be placed at the disadvantage...”

72. Assuming that the claimant is a disabled person, the following are the key components which must be considered in every case:

1. What is the provision, criterion or practice (“PCP”), physical feature of premises, or missing auxiliary aid or service relied upon?
2. How does that PCP/ physical feature/missing auxiliary aid put the claimant at a substantial disadvantage in comparison with persons who are not disabled?
3. Can the respondent show that it did not know and could not reasonably have been expected to have known that the claimant was a disabled person and likely to be at that disadvantage?
4. Has the respondent failed in its duty to take such steps as it would have been reasonable to have taken to have avoided that disadvantage?

5. Is the claim brought within time?

73. Paragraph 6.28 of the Code sets out factors which it is reasonable to take into account when considering the reasonableness of an adjustment. These include:-

1. The extent to which it is likely that the adjustment will be effective;
2. The financial and other costs of making the adjustment;
3. The extent of any disruption caused;
4. The extent of the employer's financial resources;
5. The availability of financial or other assistance such as Access to Work; and
6. The type and size of the employer.

Wrongful dismissal

74. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 SI 1994/1623 gives Tribunals the power to hear claims for breach of a contract of employment or other contract connected with employment where the claim arises or is outstanding on the termination of the claimant's employment.

75. In a wrongful dismissal claim, where it is admitted that the claimant was not given or paid for his notice period, the question is whether the claimant was in repudiatory breach of his contract of employment such that the employer was entitled to dismiss him without notice.

76. In a wrongful dismissal case questions of reasonableness do not arise, and the issue is whether the employee was guilty of conduct so serious as to amount to a repudiatory breach of the contract of employment entitling the employer to summarily terminate the contract (***Enable Care and Home Support Ltd v Pearson EAT 0366/09***).

Holiday pay

77. Claims for holiday pay can be brought either as complaints of unlawful deduction from wages, as claims under the WTR or, if they arise or are outstanding on the termination of the claimant's employment, as claims for breach of contract.

78. Regulations 13 and 13A of the WTR contain the right for all workers to 28 days' paid holiday a year. Regulation 14 deals with compensation for untaken annual leave on the termination of employment and provides that:

"(1) Paragraphs (1) to (4) of this regulation apply where –

- (a) A worker's employment is terminated during the course of his leave year, and
- (b) On the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be –

- (a) Such sum as may be provided for the purposes of this regulation in a relevant agreement, or
- (b) Where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula

$$(A \times B) - C$$

Where –

A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date."

Unauthorised deductions from wages

79. Section 13 of the Employment Rights Act 1996 states that:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless –

- (a) The deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) The worker has previously signified in writing his agreement or consent to the making of the deduction...

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions) the amount of the deficiency shall be treated for the purposes of this Part as

a deduction made by the employer from the worker's wages on that occasion."

80. Section 23 of the Employment Rights Act 1996 gives workers the right to bring complaints of unlawful deduction from wages to the Employment Tribunal. The time limit for bringing such claims is contained within Sections 23(2), (3) and (4) which provide as follows:

"(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with –

(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made....

(3) Where a complaint is brought under this section in respect of –

(a) a series of deductions or payments...

the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable."

Itemised pay slips

81. Section 8 of the Employment Rights Act 1996 provides that:

"(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.

(2) The statement shall contain particulars of –

(a) the gross amount of the wages or salary,

(b) the amounts of any variable, and (subject to section 9) any fixed, deductions from that gross amount and the purposes for which they are made,

(c) the net amount of wages or salary payable,

(d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment; and

(e) where the amount of wages or salary varies by reference to time worked, the total number of hours worked in respect of the variable amount of wages or salary either as –

(i) a single aggregate figure, or

(ii) separate figures for different types of work or different rates of pay."

82. Section 11 gives workers the right to make complaints to Employment Tribunals if they are not provided with itemised pay statements or are provided with statements that do not comply with the legal requirements.

83. By virtue of section 12(3) of the Employment Rights Act 1996, where a Tribunal finds that an employer has failed to give a worker a pay statement in accordance with section 8, the Tribunal “*shall make a declaration to that effect*”. Section 12(4) provides that:

“Where on a reference in the case of which subsection (3) applies the tribunal further finds that any unnotified deductions have been made (from the pay of the worker during the period of thirteen weeks immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the worker a sum not exceeding the aggregate of the unnotified deductions so made.”

Failure to provide a statement of employment particulars

84. Section 1 of the Employment Rights Act 1996 places an obligation on employers to provide workers with a statement of particulars of employment on the commencement of their employment. Under section 4 employers are required to give workers a written statement containing details of any changes in the employment particulars.

85. Under Section 38 of the Employment Act 2002, if an Employment Tribunal finds in favour of a worker in a claim under any of the jurisdictions listed in Schedule 4 of the 2002 Act and makes an award to the worker; and, when the proceedings were issued, the employer was in breach of its duty under section 1(1) or 4(1) of the Employment Rights Act, the Tribunal must make an award of two weeks’ pay to the worker and can, if it considers it to be just and equitable in the circumstances, award four weeks’ pay to the worker. The amount of a week’s pay is calculated in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 and shall not exceed the maximum amount of a week’s pay specified in section 227 of the Employment Rights Act.

Respondent’s submissions

86. Although the respondent did not attend the hearing, I have read the bundle of documents that it produced, which included submissions and a defence of the claim.

87. The respondent’s submissions, as set out pages 3 to 5 and 15 – 18 of its bundle, were, in summary, that:

1. The claimant was dismissed during his probationary period due to a sustained pattern of unauthorised absences, poor communication and unreliability;
2. The respondent is a small independent café which made multiple attempts to

accommodate the claimant but could not continue to sustain the disruption caused;

3. The claimant did not disclose any disability during his employment;
4. The claimant's absences were not in consequence of his disability. Many were due to other circumstances such as his partner's pregnancy;
5. Dismissal was a proportionate means of achieving a legitimate aim;
6. The claimant was overpaid rather than underpaid;
7. The claimant did not submit any requests for holiday, but it was agreed that his holiday entitlement would be used for the birth of his child;
8. Payslips were provided as soon as possible upon request;
9. The claimant was not required to work with a convicted sex offender;
10. There is no evidence that the alleged PCPs caused disadvantage to the claimant;
11. The claimant was provided with a written statement of terms of employment;
12. The claimant does not meet the legal definition of disability under the Equality Act 2010. Intermittent short term illness does not satisfy the statutory test unless long-term prognosis is established;
13. The claimant is not entitled to any notice pay because his misconduct in terms of unauthorised absences and communication failures amounted to a repudiatory breach of contract.

Conclusions

88. This is a case in which the claimant adduced limited evidence (most of the oral evidence being given in response to questions from the Employment Judge during the course of the hearing), and the respondent did not give any oral evidence. In reaching my conclusions I have taken account of the limited evidence before me and reminded myself of the burden of proof provisions in relation to each of the claims brought by the claimant.

89. I have considered the documents submitted by the respondent but, as the respondent did not attend the hearing to give evidence or make representations, have placed limited weight upon those documents. In general, I have accepted the evidence given by the claimant, save on two issues, where his evidence was not credible. The first was in relation to the hours worked, where I have preferred the respondent's documentary evidence, and the second was in relation to what the claimant disclosed to the respondent about his disability. I have concluded that, other

than commenting that he felt stressed by the lack of payslips and submitting a fit note that referred in general terms to mental health, the claimant did not discuss his mental health with the respondent. The claimant did not disclose to the respondent that he was suffering from anxiety and depression or that there was anything about his work with the respondent that was causing him difficulty because of his mental health.

Time limits

90. When considering questions of time limits in relation to the allegations of discrimination, I have considered firstly whether there were any acts of unlawful discrimination and, if so, when those acts of discrimination occurred.
91. For the reasons set out below I have concluded that there were no acts of discrimination arising from disability, and that the respondent did not fail to make reasonable adjustments. As the substantive discrimination claims have failed, it has not been necessary for me to decide whether any acts of discrimination were in time or, if they were not, whether it would be just and equitable to extend time.
92. In relation to the complaint of unauthorised deductions from wages, I find that this claim is in time. Although the claimant was not specific in his evidence as to when the alleged unauthorised deductions were made, he is claiming that he was underpaid throughout his employment with the respondent. The last salary payment to the claimant was on 2 September 2024. The claimant was also paid on 1 May, 31 May, 28 June and 1 August. There were therefore a series of payments to the claimant in respect of which the claimant alleges unauthorised deductions, and the last two of those payments were less than three months before the claimant began early conciliation.

Wrongful dismissal / notice pay

93. The respondent admits that it did not give the claimant any period of notice or pay him in lieu of notice. It says that the claimant's conduct during the course of his employment amounted to gross misconduct and that it was entitled to dismiss him without notice.
94. The first question I have to consider is what the appropriate notice period was. The claimant says it was one month, although did not adduce any evidence in support of this assertion. There was no evidence before the Tribunal to suggest that a notice period of one month had been agreed between the parties.
95. Given the nature of the respondent's business as a very small employer in the food industry, it is in my view unlikely that a notice period of one month was the norm. I find that the parties did not agree a notice period of one month, and that the appropriate notice period is the statutory notice period of one week.
96. I have then gone on to consider whether the claimant did something so serious that the respondent was entitled to dismiss him without notice. I find that, whilst the claimant did have a high level of absence during his short period of employment, and that on occasion he did not contact the respondent about his

absence, leaving the respondent not knowing whether he would be at work or not, that conduct did not amount to gross misconduct. It was not sufficiently serious to go to the heart of the employment relationship, and at the time he was dismissed he had notified the respondent of his sickness absence and submitted a fit note certifying him as unfit to work. The claimant, whilst causing some disruption to the business, did not do something so serious that the respondent was entitled to dismiss him without notice.

97. I therefore find that the claimant is entitled to be paid one week's notice.

98. I have then gone on to consider what sum the claimant should be paid for that week's notice, taking account of the provisions of section 224 of the Employment Rights Act 1996. I have calculated the claimant's normal hours of work over the last 12 weeks of his employment, using the respondent's figures for hours worked, and taking no account of weeks in which the claimant did not work at all, as follows:

w/c 12 August – 18 hours; w/c 5 August – 33.5 hours; w/c 15 July – 14.5 hours; w/c 8 July – 41 hours; w/c 1 July – 37.9 hours; w/c 24 June – 40.45 hours; w/c 17 June – 40 hours; w/c 10 June – 38.45 hours; w/c 3 June – 42 hours; w/c 27 May – 31.45 hours; w/c 20 May – 40.45 hours; and w/c 13 May – 39.95 hours.

99. This gives total hours worked over that 12 week period of 417.65, an average of 34.8 hours a week. The agreed hourly rate of pay was £13.50 an hour, giving average gross weekly pay of (13.5×34.8) £469.80. I therefore find that the claimant's normal weekly pay was £469.80 gross.

100. The claimant is entitled to be paid notice pay of £469.80 gross. The respondent is ordered to pay that sum to the claimant, less such sums as it is required to deduct for tax and national insurance contributions.

Disability

101. I have no hesitation in finding, on the unchallenged evidence of the claimant at the hearing, that he has a mental impairment, namely anxiety and depression.

102. I also find that the impairment has an adverse effect on his ability to carry out normal day to day activities. He has periods of time when he is unable or finds it difficult to sleep, to eat, to get out of bed, to shower, to go shopping, to engage in his normal hobbies, and to socialise with friends. All of these are normal day to day activities which are affected by the anxiety and depression.

103. The impact of the anxiety and depression on the claimant is sufficiently severe at times that he has received periods of counselling, therapy, medication and, more recently, been referred by his GP to the Crisis team who have provided him with support over a period of months. When determining the question of disability, I have to consider what the impact of the impairments were on the claimant without the treatment or medication.

104. I accept the claimant's evidence about the impact of his depression and anxiety on him and find that the impact on his ability to carry out normal day to day activities is substantial. Given the number of activities that are affected, and the way in which they are affected, it cannot be said that the impact is trivial. It is, therefore, substantial.
105. Although the claimant does not suffer from depression all of the time, and has developed coping strategies, through treatment, to help manage his anxiety, the combined effects of the anxiety and depression are recurring and have been over a number of years, since the claimant was a child.
106. Paragraph 2(2) of Schedule 1 to the Equality Act 2010 provides that *"If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur"*.
107. The Guidance states that:
- "C5....Conditions with effects which recur only sporadically or for short periods can still qualify as impairments for the purposes of the Act, in respect of the meaning of 'long-term'....*
- C6. For example, a person with rheumatoid arthritis may experience substantial adverse effects for a few weeks after the first occurrence and then have a period of remission....If the substantial adverse effects are likely to recur, they are to be treated as if they were continuing. If the effects are likely to recur beyond 12 months after the first occurrence, they are to be treated as long-term...."*
108. I am satisfied that the substantial adverse effects on the claimant of the depression and anxiety are recurring. They have been recurring since the claimant was a child and have therefore lasted for substantially longer than 12 months.
109. For these reasons I find that the claimant is disabled by reason of anxiety and depression.

Discrimination arising from disability

110. The first issue I have considered in relation to this claim is whether the respondent treated the claimant unfavourably by dismissing him. I have no hesitation in finding that it did. Dismissal is for most employees unfavourable and it is clear that the dismissal was unwanted by the claimant.
111. I also find that the claimant's sickness absence in August 2024 arose in consequence of his disability. Although the fit note does not specifically mention anxiety and depression, it does mention mental health and there was no suggestion that the claimant was absent due to any other mental illnesses. It is not necessary for the employer to be aware of the causal link between the claimant's absence in August 2024 and his disability (***City of York Council v Grosset [2018] ICR 1492 CA***).

112. It is clear from the letter of dismissal that the claimant's absence in August 2024 played a part in the respondent's decision to dismiss him. The letter of dismissal refers also to other reasons, namely non-disability-related absences, leaving early, not turning up for work on numerous occasions and lack of communication.
113. The claimant does not have to establish that the 'something arising from disability' was the sole or even the predominant reason for the unfavourable treatment. In ***Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893*** the Employment Appeal Tribunal held that the claimant only needs to establish 'some kind of connection' between the unfavourable treatment and the something arising from disability. In ***Risby v London Borough of Waltham Forest EAT 0318/15*** the EAT held that a 'loose connection' is all that is required.
114. I am satisfied, on the evidence before me, that the claimant's disability related absence in August 2024 was a not insignificant part of the respondent's reason for dismissing the claimant. The claimant was therefore unfavourably treated because of something arising from his disability when he was dismissed.
115. I have then gone on to consider whether the respondent has established that the dismissal was a proportionate means of achieving a legitimate aim. I have heard no evidence about the legitimate aims relied upon by the respondent, nor any evidence as to why dismissal was a proportionate means of achieving those aims. The burden of establishing the defence to a section 15 claim lies with the respondent. It has not discharged that burden. I find that the dismissal of the claimant was not a proportionate means of achieving a legitimate aim.
116. The final question for consideration in relation to the discrimination arising from disability claim is whether the respondent knew or could reasonably have been expected to know that the claimant was disabled due to depression and anxiety. The answer to both parts of that question is 'no'.
117. The claimant did not disclose to the respondent that he had anxiety and depression because he did not like to talk about his mental illness. None of his absences prior to August 2024 were mental health related, but rather they were due to sickness and vomiting, and his partner's pregnancy. The fit note submitted by the claimant did not disclose what mental health conditions the claimant was suffering from, which was consistent with the claimant's reluctance to talk about his anxiety and depression.
118. The respondent's documentary evidence to the Tribunal indicated that the respondent did not know that the claimant suffered from anxiety and depression. There was nothing in the claimant's oral evidence to contradict that. Comments that the claimant felt stressed by the lack of payslips, and a fit note referring to mental health was not in my view sufficient to put the respondent on notice that the claimant was suffering from recurring anxiety and depression.

119. I therefore find that the respondent did not know that the claimant was disabled due to depression and anxiety, and that the respondent could not reasonably have been expected to know that he was.

120. For this reason the claim for discrimination arising from disability fails and is dismissed.

Reasonable adjustments

121. Knowledge of disability is also a prerequisite for a claim of failure to make reasonable adjustments. In addition, a claimant must also establish that the respondent knew or could reasonably have been expected to know that the claimant was likely to be placed at a substantial disadvantage by the provision, criterion or practice relied upon.

122. In light of my finding that the respondent did not know and could not reasonably have been expected to know that the claimant was disabled due to depression and anxiety, I also find that the respondent did not know and could not reasonably have been expected to know that the claimant was likely to be placed at a substantial disadvantage by the provisions, criteria and practices the claimant says were applied to him.

123. For these reasons the claim for failure to make reasonable adjustments fails and is dismissed.

Holiday pay

124. At the start of the hearing the claimant said that he was claiming holiday pay of £1,1010 net. The Schedule of Loss stated that the claimant was claiming 89.9 hours holiday pay.

125. I have calculated the claimant's holiday entitlement using the formula set out in Regulation 14 of the Working Time Regulations 1998. The claimant was entitled under the Working Time Regulations 1998 to 28 days' annual leave a year. The figure A in the calculation is therefore 28 days. The claimant was employed for just over 4 months. He was therefore employed for approximately 25% of the leave year, and 25% is figure B. The claimant was paid 21 hours' holiday.

126. As set out above in relation to the notice pay claim, the claimant worked an average of 34.8 hours a week. He normally worked 5 days a week, which means that his average number of hours worked per day was 6.96.

127. The claimant was paid for 21 hours which equates to 3 days' work (rounding up 6.96 to 7). Figure C is therefore 3.

128. $(A \times B) - C$ in the claimant's case is $(28 \times 0.25) - 3$ gives an outstanding holiday entitlement of 4 days. The claimant accrued 7 days pay during the period of his employment and was paid for 3 days. He is entitled to an additional four days holiday pay.

129. The claimant's daily rate of pay is £13.50 times 6.96 hours per day, which gives a gross daily rate of pay of £93.96. The claimant is entitled to four days' holiday pay, a total of **£375.84**.

130. The respondent is ordered to pay to the claimant the sum of £375.84 holiday pay, less such sums as it is required to deduct for tax and national insurance contributions.

Unauthorised deductions from wages

131. There was a clear conflict of evidence as to the number of hours worked by the claimant during the course of his employment. The respondent produced a table of hours worked but did not attend the Tribunal to give evidence. The evidence of the claimant and his mother was confused and, at times, contradictory. I make no criticism whatsoever of them for that, as I appreciate that neither of them is legally qualified and they do not have access to the time sheets that the claimant completed at the time. They have therefore attempted to calculate hours worked based on memory.

132. The claimant did not adduce any evidence in support of his assertion that the respondent made unauthorised deductions from his wages for tips and sick pay.

133. I have reminded myself that the burden of proof in claims of unauthorised deductions from wages lies with the claimant. Whilst I have sympathy for the claimant, it cannot in my view be said that he has discharged the burden of establishing that the respondent failed to pay him for the hours he worked, or to pay him tips and sick pay. He has not established that any unauthorised deductions were made from his wages.

134. The claim for unauthorised deductions from wages is not well founded. It fails and is dismissed.

Failure to provide itemised pay statements

135. The respondent did not provide the claimant with written itemised pay statements until after the commencement of these proceedings. The obligation under Section 8 of the Employment Rights Act 1996 is to provide the payslips at or before the time at which salary is paid. The respondent did not do that.

136. The respondent therefore breached section 8 of the Employment Rights Act 1996 and the claim for failure to itemised pay statements succeeds.

137. I have then gone on to consider whether the respondent made any unnotified deductions from the claimant's pay in the period of thirteen weeks immediately preceding the date upon which the claimant presented his claim to the Tribunal. The claimant presented his claim on 29 October 2024. The period of thirteen weeks immediately before 29 October 2024 begins on 29 July 2024.

138. In the period between 29 July 2024 and 28 October 2024 the respondent made two payments to the claimant: the net sum of £1,729.09 paid on 1 August 2024 and the net sum of £720.73 paid on 3 September 2024. Total deductions of £398.55 were made from the 1 August 2024 payment, and total deductions of £10.57 were made from the 3 September payment. These sums have been calculated by subtracting the net pay paid to the claimant on those dates from the gross pay shown on the payslips.

139. The respondent therefore made unnotified deductions of **£409.12** (£398.55 plus £10.57) from the pay of the claimant in the thirteen weeks prior to the issuing of this claim. The respondent is ordered to pay this sum to the claimant pursuant to section 12(4) of the Employment Rights Act 1996.

Failure to provide a statement of employment particulars

140. I accept the claimant's evidence and find that he was not provided with a written statement of employment particulars. The written contract was not produced by the respondent until after the commencement of these proceedings. The respondent was, therefore, in breach of its obligation under section 1(1) of the Employment Rights Act 1996 at the time these proceedings were issued.

141. I make an award of 2 weeks' pay under section 38 of the Employment Act 2002 for this breach. It would not, in my view, be just and equitable in the circumstances to award more than two weeks' pay because the claimant was only employed for a short period and the respondent is a very small business.

142. The amount of a week's pay for the purposes of this award is £469.80. The respondent is ordered to pay to the claimant the sum of **£939.60** under section 38 of the Employment Act 2002.

Approved by:
Employment Judge Ayre
Date: 10 April 2026

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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