



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101449/2025

Hearing held in Glasgow on 13 July 2026

Employment Judge R Mackay

Miss K Carruthers

Claimant
In Person

Jimmit Limited

Respondent
Represented by:
Mr Firmin,
Litigation
Consultant

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

At this hearing, the Tribunal decided as follows:

1. The claims brought under the Equality Act 2010 do not succeed and are dismissed.
2. The claim of detriment for making a protected disclosure succeeds and the respondent shall pay to the claimant the sum of **FOUR THOUSAND POUNDS (£4,000)** as compensation for injury to feelings.
3. The claims for holiday and notice pay, having been withdrawn, are dismissed.

REASONS

Introduction

1. The claims brought by the claimant were clarified at two case management preliminary hearings. Following those, the claims were identified as follows:
 - (1) Failure to make reasonable adjustments under Sections 20 & 21 of the Equality Act 2010 ("**EqA**").
 - (2) Discrimination arising from disability under Section 15 EqA.

- (3) A claim of detriment for making a protected disclosure under Sections 43B & 47B of the Employment Rights Act 1996 (“**ERA**”).
 - (4) Claims for outstanding holiday pay and unpaid notice pay.
2. At an earlier stage of the proceedings, the claimant withdrew a claim for unfair dismissal and during the course of this hearing, she stated that she was no longer insisting on her claim for outstanding holiday pay or unpaid notice pay.
3. The disability relied on by the claimant is severe migraines. Following receipt of medical evidence, the respondent accepted that the claimant met the statutory test.
4. For the failure to make reasonable adjustments claim, the PCP relied upon was the requirement to work in the evenings. The Section 15 EqA claim was similar in that it related to the claimant's inability to work evening shifts due to the effects of her disability and being treated unfavourably in not being offered shifts because of that inability. The respondent had been required to set out the legitimate aim relied upon. Whilst it did not do so in advance of the hearing, the Tribunal understood this to be the need to ensure adequate cover and fairness to all staff in a small team where evenings, particularly Fridays and Saturdays, were the busiest shifts.
5. The disclosure relied upon by the claimant was the disclosure to her manager of a video from the respondent's CCTV on 9 April 2025 which she alleged showed a member of staff drinking alcohol behind the bar, and carrying out a drug deal.
6. The detriment relied upon by the claimant was being removed from access to the CCTV system and being accused of spying on colleagues.
7. Although it was not referred to in the list of issues, the respondent's representative maintained the position (as set out in the ET3) that there had been a TUPE transfer of the respondent's business on 7 May 2025 to an individual named Stuart Maitland which had the effect of transferring the claimant, and liability for her claims to Mr Maitland. The Tribunal agreed to determine that question after hearing the evidence.
8. The claimant gave evidence on her own behalf. For the respondent, evidence was led from Ms Susan Mitchell, the respondent's manager. A bundle of documents was prepared by the respondent.

Findings in Fact

9. The respondent is a limited company set up by Ms Mitchell for the purposes of operating lease holdings of public houses.

10. The claimant was employed from 5 October 2023 at the Spateston bar in Johnstone. She has worked in the industry for over 20 years.
11. When she commenced employment, the bar was under different management. The respondent assumed responsibility as leaseholder for the bar in October 2024.
12. At the start of her employment, the claimant was engaged as a manager and held the regulated function of Designated Premises Manager. The Designated Premises Manager requires to have a personal licence and is appointed to supervise the sale of alcohol. Ultimate responsibility as licence-holder rests with the landlord and the Designated Premises Manager has reporting obligations to representatives of the landlord. In this case the person responsible was Mr Ian Gibson, Business Development Manager for Heineken.
13. The claimant was provided with a contract of employment by the previous leaseholder. In the contract, the hours of work section was left blank. In practice, the claimant worked between 28 and 40 hours per week on average. There was no entitlement in the contract or as a matter of practice to a fixed number of hours per week. The number of hours would fluctuate depending on shifts available as well as accommodating the requests of the claimant and other members of staff.
14. On the appointment of the respondent as leaseholder, Ms Mitchell assumed the role of Designated Premises Manager. The claimant, therefore, no longer held those regulatory functions. She remained a manager. As part of that, she had responsibility for the line management of staff. The pub operated with around six part-time staff. They were allocated shifts on a weekly rota. The busiest periods were Friday and Saturday evenings when more staff were required and expected to work their share. At quieter times, the bar might operate with only one member of staff.
15. The claimant started having headaches in 2022. These became more serious and in December 2023, she had a severe headache which led to semi-paralysis. She has undergone various tests and treatments, but the migraines remain severe. The symptoms include sleepiness, nausea, inability to focus, severe head pain and exhaustion. The claimant advised Ms Mitchell of her condition and the symptoms she was experiencing.
16. A trigger for the migraines is bright lights. As a consequence, the claimant is unable to drive at night due to the effect of car headlights and traffic lights. This is worse in winter months. As such, she avoids driving at night.
17. Shortly after the transfer to the respondent, the claimant became absent from work, initially from flu and then from symptoms of her migraines. She was

absent for approximately three and a half months, returning to work at the end of March 2025. On her return, she requested a phased return whereby she would work two or three day shifts only. She explained that she was not able to work at night but was otherwise willing to work at weekends during the day for the time being.

18. In the period from her return from absence until the end of her employment with the respondent, the claimant and Ms Mitchell exchanged WhatsApp messages whereby the claimant would list shifts she was able to do. Ms Mitchell agreed in almost all cases to the shifts requested by the claimant. She typically worked two day shifts a week. She was never asked to work a night shift.
19. During the claimant's absence from work, the respondent appointed a new manager at the premises. The claimant was upset that this happened during her absence.
20. On 9 April 2025, the claimant carried out a routine check of CCTV from the previous evening. She noted that, at the end of the shift, the new manager was seen drinking what she identified as beer behind the bar. He was also seen exchanging something with a customer under the counter. The claimant considered that this might have been drug dealing. She described the area as being known for drug dealing. Although it is not illegal for staff to consume alcohol whilst on duty, they are not permitted to be under the influence of alcohol.
21. The claimant initially spoke to the Business Development Manager for the landlord. She expressed her concerns about what she saw and sent him the video. She also had a discussion with Ms Mitchell about the issue.
22. The claimant returned to work the following Monday. She was unable to access the CCTV as the password had been changed. She asked Ms Mitchell if she had done this, which Ms Mitchell confirmed. Ms Mitchell accused the claimant of spying on staff. She refused to provide the claimant with the new password.
23. Ms Mitchell suggested that she was satisfied that there had been no wrongdoing and that the employee might have been drinking apple juice. The claimant put to Ms Mitchell in cross-examination, that the drinks being consumed by the member of staff had the colour and the "head" of pints of beer. The Tribunal was satisfied that the claimant held that belief. It did not find credible Ms Mitchell's evidence that it could be apple juice with lemonade.
24. Ms Mitchell saw the transaction below the bar as being potentially payment for alcohol. Whilst it was not possible for either party to ascertain what was being transferred, the transfer of items under the counter created a

reasonable suspicion in the mind of the claimant. Paying under the counter is not consistent with a normal cash transaction for alcohol.

25. The claimant was due to work the following day but again became absent from work. She did not return before her employment was terminated on 5 May 2025.
26. Prior to 5 May 2025, Ms Mitchell had been in discussions with Mr Maitland about the transfer of the leasehold role to him. Ms Mitchell was moving to a new role at that time. It was intended that Mr Maitland would take over and commence with effect from 7 May 2025. He did not in fact do so. As such, the bar closed.
27. The claimant learned that her employment was being terminated with effect from 5 May 2025 by WhatsApp message from Ms Mitchell on 2 May 2025. The claimant was upset at being given the news in such a way and with so little notice. Ms Mitchell gave evidence that the claimant had been sent letters, but she did not receive them. Ms Mitchell made reference to the planned TUPE transfer.
28. On being advised of this by Ms Mitchell, the claimant contacted the Business Development Manager. He told her that there had been some enquiries about the transfer of the bar but that nothing was confirmed. The pub remained closed for a number of months. All of the staff were dismissed with effect from 5 May 2025. Some went to work for Ms Mitchell at a different pub where she had assumed responsibility. The claimant was upset that she was not given that opportunity.
29. Since the termination of her employment, the claimant has been working for her sister. She has made efforts to find other bar work but struggles given her inability to work evenings.
30. Since the termination of her employment, the claimant has suffered anxiety. She has been prescribed antidepressants and betablockers. A major part of her hurt was the appointment of another manager when she was off sick, the manner of her dismissal and the failure of Ms Mitchell to offer her a position at her new pub in circumstances where other members of staff had moved with her.

Submissions

31. Both parties made brief submissions which the Tribunal took into account in reaching its decision. For the respondent, Mr Firmin's primary submission was that by virtue of a TUPE transfer, the respondent no longer had any responsibility for the claims. He accepted however that from the evidence, it was clear that even if a TUPE transfer had been proposed, it did not ultimately

take place. There was no evidence of any TUPE transfer at a later date to any other leaseholder.

Relevant Law

Duty to make adjustments

32. Section 20 of EqA provides:

(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.

[...]

33. Section 21 provides:

(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 that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Discrimination arising from Disability

34. Under section 15(1) of EqA, "discrimination arising from disability" occurs where:

(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.
35. In ***Pnaiser v NHS England and another [2016] IRLR 170***, the EAT summarised the approach to claims for discrimination arising from disability as follows:
- (a) The Tribunal must identify whether the claimant was treated unfavourably and by whom.
 - (b) It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the motive of the alleged discriminator in acting as he or she did is irrelevant.
 - (c) The Tribunal must then determine whether the reason was "something arising in consequence of [the claimant's] disability", which could describe a range of causal links. That stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
 - (d) The knowledge required is of the disability; not knowledge that the "something" leading to the unfavourable treatment was a consequence of the disability.

Detriment for Protected Disclosure

36. Workers are protected under ERA from suffering detrimental treatment 'on the ground that' they have made a protected disclosure. In Section 43A ERA, "protected disclosure" is defined with reference to Section 43B ERA. Section 43B ERA provides:
- (1) *In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—*
 - (a) *that a criminal offence has been committed, is being committed or is likely to be committed,*
 - (b) *that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*
 - (c) *that a miscarriage of justice has occurred, is occurring or is likely to occur,*
 - (d) *that the health or safety of any individual has been, is being or is likely to be endangered,*

- (e) *that the environment has been, is being or is likely to be damaged, or*
- (f) *that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

37. The EAT *in Williams v Brown UKEAT/0044/19* held that section 43B(1) requires there to be (i) a disclosure of information, (ii) the worker's belief that the disclosure is in the public interest, (iii) such belief being reasonably held, (iv) such belief being that one of the scenarios in sub-paragraphs (a) to (f) of section 43B(1) of ERA exists, and (v) that belief also being reasonably held.
38. The requirement to disclose 'information' is important. That can be done verbally or in writing but must involve providing sufficient factual details of the relevant issue and not merely voicing general unhappiness or concern – *Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT/0195/09*.

Decision

39. The Tribunal first considered whether there had been a relevant transfer under TUPE to Mr Stuart Maitland on 7 May 2025. As a matter of fact, there was no transfer. It was agreed in evidence that whilst this may have been envisaged, it did not actually take place. As such, the employment of the claimant did not transfer to Mr Maitland on that date or on any other date. There having been no other TUPE transfer suggested at any later date, the claimant's employment did not transfer to any third party. As such, liability for the claims remains with the respondent.
40. The Tribunal went on to consider the claim for failure to make reasonable adjustments. Disability having been conceded, it was also accepted that the respondent knew of the claimant's disability during and following the time of her extended absence from work by reason of the severe migraines.
41. The Tribunal considered whether the respondent had the PCP of requiring employees to work in the evenings and it was satisfied that the respondent did have such a policy. That was not in dispute. The evenings were the busiest times, particularly on Fridays and Saturdays and the respondent would not be able to operate in circumstances where the limited number of staff they had worked only during the day.
42. The Tribunal was also satisfied that the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability. An

important consequence of her disability was difficulty with bright lights and the resultant difficulty she had in driving at night.

43. The respondent was aware of that disadvantage given that she explained this to Ms Mitchell.
44. The claimant's position was that reasonable steps were not taken to avoid the disadvantage. The implication of that was that she was still required to work in the evenings.
45. As a matter of fact, however, the claimant was not at any time following her absence ever required to work at night. She was asked to offer shifts and in almost all cases, she was allocated the shifts she requested. Whether or not those steps were reasonable, the respondent did in fact take the steps which were suggested would avoid the disadvantage. For the avoidance of doubt, the Tribunal was satisfied that it was reasonable for the respondent to put in place the steps it did at least on an interim basis. Given the claimant's subsequent absence from work, there was never a time when the interim arrangements were removed.
46. For those reasons, the claim under Sections 20 and 21 of EqA fails and is dismissed.
47. The Tribunal reached a similar conclusion in assessing the claim under Section 15 EqA.
48. In considering first whether the respondent treated the claimant unfavourably by virtue of not being offered more shifts, it was the claimant's own choice to come back on a phased basis and to offer a lower number of shifts than was typical prior to her absence. She was provided shifts on virtually all of the dates she requested. She was never asked to work evening shifts which she was unable to do.
49. Whilst it is clear that the claimant's inability to work evening shifts was something which arose in consequence of her disability, there was no unfavourable treatment as she was not refused extra shifts. It is not, therefore, necessary to consider whether any treatment was a proportionate means of achieving a legitimate aim.
50. The claim under Section 15 EqA is therefore dismissed.
51. The Tribunal then considered the claim for detriment for making a protected disclosure.
52. The Tribunal first analysed what the claimant says she disclosed. This involved footage from a video which she believed showed a member of staff

drinking alcohol behind the bar and passing material below the counter which she thought indicative of drug dealing.

53. The claimant disclosed that information initially to the Business Development Manager of the landlord. She also subsequently discussed it with Ms Mitchell.
54. The Tribunal was satisfied that the claimant believed the disclosure of information to be in the public interest. She had a reasonable belief that what took place amounted to criminality and otherwise inappropriate behaviour for an employee in a position of responsibility in a public house. It is clearly in the public interest that public houses operate lawfully.
55. In contrast, the Tribunal was not satisfied by the suggestions put forward by Ms Mitchell about potentially innocent explanations.
56. The Tribunal was satisfied, therefore, that the claimant's belief was reasonable and that the claimant believed that the information tended to show that a criminal offence had likely been committed – both in relation to drug dealing and potential intoxication at work. Again, in the circumstances, that belief was reasonable having regard to the circumstances.
57. In considering whether she had disclosed it to an appropriate person, the Tribunal was satisfied that in disclosing initially to the Business Development Manager, she was complying with the legislation given that the landlord was the ultimate person with responsibility for the premises and ultimate responsibility for the licence. The definition of "employer" is deliberately wide in this context. In any event, there was a subsequent discussion of a similar nature with Ms Mitchell, the most senior person in the respondent.
58. The Tribunal then considered whether the respondent changed the passwords and accused the claimant of spying on her colleagues on ground that she made the protected disclosure. It was satisfied that she did do both things and that both things were detrimental to the claimant. She was a senior employee who had previously had access to CCTV and to remove her access showed a lack of trust and respect for her position. It was also unacceptable to accuse her of spying on colleagues in circumstances where she genuinely and in good faith raised concerns about wrongdoing.
59. Had the claimant not made the protected disclosure, those detrimental activities would not have occurred. The claim under this section accordingly succeeds.

Remedy

60. As set out above, the claimant's employment terminated along with that of her colleagues on 5 May 2025 for reasons unrelated to her protected disclosure.

That termination would have happened regardless of the protected disclosure. The claimant does not, therefore, have loss of earnings to claim.

61. The Tribunal went on to consider injury to feelings.
62. It is clear from the evidence that the claimant was aggrieved by a number of events. These included the appointment of a manager in her absence, the abrupt termination of her employment and the lack of an offer of alternative employment at the respondent's new premises. It is also clear that the detrimental treatment following the claimant's protected disclosure was a factor in the injury to feelings she sustained.
63. The combination of events led to the claimant becoming more unwell and being prescribed medication, recognising that her disability was itself the major contributing factor to her lack of wellbeing. She was, nonetheless, able to take up alternative employment with her sister shortly after the termination of her employment and has been seeking work elsewhere.
64. The acts found to be detrimental as a result of the protected disclosure are relatively contained. It was a one-off incident. As such, having regard to that and to the other unrelated elements which led to distress and ill health, the Tribunal concluded that injury to feelings should be awarded in the lower Vento band. Weighing all of the factors together, the Tribunal considered it appropriate to make an award of £4,000.

Date sent to parties

11 September 2026