EMPLOYMENT TRIBUNALS

Claimant: Mr D Calder

Respondent: Metroline Travel Limited

Heard at: Watford Employment Tribunal (In Public; By Video)

On: **26 August 2026**

Before: Employment Judge Quill; Ms L Thompson; Mr T Poil

Appearances

For the Claimant: Litigant in person

For the respondent: Mr J Boyd, counsel

The remedy decision with summary reasons was given orally on 26 August 2026. No request for reasons was made on the day, but there has subsequently been a request for written reasons. These are the full written reasons.

WRITTEN FULL

REMEDY REASONS

1. These reasons should be read alongside the liability judgment and the written full reasons. In the interest of proportionality, the decisions and findings of fact stated there will not necessarily be repeated below, but were part of our reasons for making the remedy decisions.

2. This was a 3 hour hearing to decide remedy for the complaints which succeeded. We were not, of course, revisiting the complaints which failed, and were not making any award of compensation for those.

3. Following the liability hearing, case management orders were made and were sent to the parties in writing.

4. For this remedy hearing, the Claimant produced no new witness statement. The Respondent produced written statements from James Harvey (so a new statement from him) and from Raluca Sandu (who had not given evidence at the liability phase.

5. We still had access to the documents from the liability phase, and there was a remedy bundle of 224 pages, and a separate index.

6. The hearing took place entirely by video. At the outset of the hearing we discussed the list of issues for the hearing, and whether it would be necessary for us to swear in any witnesses for cross examination purposes.

7. The case management orders had stated:

> 13. The issues to be decided at the remedy hearing will include:
>
> 13.1. What was the termination date of the Claimant's contract of employment? (Which will include making findings of fact about when the dismissal letter was sent, by which method, when was it delivered to the Claimant and when did he read it).
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> 13.2. What was the Claimant's "rostered pay"?
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> 13.3. What was the contractual entitlement to sick pay, and should the calculation of the wages properly payable for 31 March 2022 to 31 May 2022 be based on sick pay entitlement rather than "rostered pay"?
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> 13.4. Assuming the termination date was in 2022, and assuming the parties agree the leave year ran from 1 January to 31 December, the formula for calculating the Claimant's WTR entitlement for 2022 is: X/365 x 5.6 x [week's pay], where X is the number of days from 1 January to the termination date. The Tribunal will determine what a "week's pay" is in accordance with the legislation.
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> 13.5. What is the amount of the deduction from wages?
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> 13.6. What compensation is the Claimant entitled to for the breach of the Working Time Regulations 1998?
>
> 13.7. What should be awarded for the failure to supply written particulars (see paragraphs 10.2 and 10.3 of EJ Manley's list of issues at page 652 of the Respondent's liability bundle)
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> 13.8. Should there be any other adjustment to any award? For example, as a result of Section 207A Trade Union and Labour Relations (Consolidation) Act 1992 (Effect of failure to comply with Code: adjustment of awards)?

8. The Respondent was not offering James Harvey for cross-examination in any event. The Claimant's position about when he received the dismissal letter was discussed, and Mr Boyd said that he did not seek to cross-examine the Claimant about it. Having listened to the Claimant's comments about the

approach that he intended to take to the issues to be decided in this hearing, the Tribunal decided that we would not need to have Ms Sandu sworn in and answer questions.

Termination Date

9. **Law about termination of contracts of employment**. In the absence of any specific contractual provisions which limit or enhance the methods available to a party, one party's communication to the other in relation to termination of the contract of employment becomes effective when that communication actually occurs.

   9.1. For an oral communication, it makes no difference whether it is face to face, by phone, by video, etc. The words uttered by the one party are heard (pretty much) instantaneously by the other, and have immediate effect. The speaker and/or the listener can give direct evidence about the time and date of the communication.

   9.2. For a written communication, the same legal principles apply to a text message, an email, a letter sent by post, a letter which is hand delivered. The communication does not take effect when sent, or even when delivered. It takes effect when it is read[1]. If there is a dispute about when it was read, and the Tribunal has to make findings of fact, then the inherent likelihood of reading the item promptly might differ depending on the mode of communication, but the legal principle is the same.

10. **Decision about termination of the Claimant's contract of employment**. Although Mr Harvey says the letter was sent twice (i) by ordinary first class post and (ii) by recorded delivery, our finding is that the Claimant only received it once.

11. The Respondent has not provided any documentation about recorded delivery. Such documentation, if it existed, might either show that the letter was signed for on a particular date, or else that it was not signed for, and not collected from the delivery office. If the latter, then that would not be evidence that the dismissal decision had been expressly communicated to the Claimant; since no such evidence has been provided, we do not have to address how a failure to collect the letter should be treated.

12. As stated in the liability decision, the date on the letter had the year as "2023". We accept that was a mistake, and it does not mean that the letter was

[1] Where the facts seem to demonstrate that the recipient – for some reason – did not read the communication despite knowing about its receipt, and (therefore) having had a reasonable opportunity to do so, then there might have to be analysis. However, that did not arise in this case, based on our findings of fact.

actually written in 2023.

13. Mr Harvey's statement includes:

> I arranged for the letter and attachments to be posted and recall that I posted them via post on 19 December 2022. In particular, I posted a copy via Royal Mail 1st class and a copy by recorded delivery both on 19 December 2022, as was Metroline's usual practice at the garage

14. Arranging for something to be posted implies that he gave instructions to some administrative / clerical staff to actually make sure the letter was sent via Royal Mail. Whereas the words "I posted" implies that Mr Harvey was actually the person who provided the items directly to Royal Mail.

15. He also stated:

> I no longer work for Metroline so cannot check internal postal records.

Arguably, that is more consistent with his having delegated the posting task to someone else. However, all we need really say is that no-one claims that the letter was sent any earlier than 19 December 2022 and that Mr Harvey does not claim to have any direct knowledge of when it was delivered.

16. The Claimant's recollection is that he read the letter after Christmas Day but before New Years Day. He cannot recall the exact date. The Respondent did not seek to cross-examine the Claimant on the point, but does rely on the fact that it was a long time ago, and that the Claimant himself acknowledges that he does not recall the exact date. In other words, it is not suggested that the Claimant is deliberately lying, just that he might be wrong and that Mr Harvey's account is strong enough evidence for us to decide that the letter was delivered to the Claimant's home address on 20 December 2022.

17. The Claimant says he read the letter promptly on receipt, and our finding is that he did do. He knew about the disciplinary hearing and it is entirely consistent with the Claimant's approach to responding to the Respondent's correspondence during 2022 that he read the letter promptly on receipt.

18. A letter which tells someone that they are dismissed is memorable. Christmas Day and New Year's Day are landmarks. On the balance of probabilities, if the Claimant had found out that he was dismissed just before Christmas, he would remember that that was the case, and if he found out that he was dismissed just after Christmas, he would remember that that was the case.

19. There is nothing inherently implausible about a letter that was posted on Monday 19 December 2022 not being received before Christmas Day. On

the contrary, the Royal Mail notifies its customers of “last posting days” in the run up to Christmas that do not suggest that they expect items to be delivered either one day or two days later.

20. The Claimant’s account (albeit not contained in formal sworn testimony) is one we accept.

21. To the extent that there is any presumption that a letter posted on 19 December 2022 would be received by 20 or 21 December 2022, the Claimant has rebutted that presumption. We reject the Respondent’s submission that the Claimant probably received (and read) the letter on 20 December.

22. The first working day after Christmas 2022 was Wednesday 28 December 2022. On the balance of probabilities, the letter was delivered to the Claimant’s address that day and read by him that day. It makes no difference overall whether the single letter that the Claimant received was sent recorded delivery or ordinary delivery. The Claimant’s opinion is that it was ordinary delivery, but what matters is that he read it on 28 December 2022 (and not before) and that he knew that it told him that his employment ended with immediate effect. [Technically, it said that he was dismissed with effect from 9 December 2023, but the Claimant correctly understood that the intended meaning was 9 December 2022, as was made clear by the comments about when he would receive final payments etc. The Claimant has – quite rightly – never tried to argue that he thought the intended dismissal date was in the future, rather than in the past, as of the date that he read the letter. His appeal documents and the ET1 show that he knew he had been dismissed without notice.]

Law relevant to deduction from wages

23. Under Part II of the Employment Rights Act 1996 ("ERA") is section 13. This gives workers the right not to suffer unauthorised deductions from their wages. It reads in part:

> (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.
>
> (2) In this section 'relevant provision', in relation to a worker's contract, means a provision of the contract comprised—
>
> > (a) in one or more written terms of the contract of which the employer has

given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(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."

24. Section 14 identifies a number of types of "excepted deduction" to which section 13 does not apply.

25. Sections 23-26 deal with enforcement. A worker may present a complaint to an employment tribunal that their employer has made a deduction from wages in contravention of section 13.

26. Section 24(1)(a) provides that where a tribunal finds such a complaint well-founded it shall make a declaration to that effect and order the employer to pay the worker the amount of the deduction. Sections 25 and 26 contain ancillary provisions.

27. Section 27 defines the term "wages" for the purpose of Part II. Sub-section (1) sets out the definition in detail. This includes "any fee, bonus, commission, holiday pay or other emolument referable to [the worker's] employment, whether payable under his contract or otherwise". That is subject to certain exclusions listed in sub-section (2).

28. The Employment Tribunal must decide whether there has been a deduction within the meaning of the section 13. That depends on sub-section (3), and specifically on whether the sum claimed was "properly payable" (on the relevant occasion and "after deductions"[1]).

29. "Properly payable" means payable pursuant to a legal obligation. Such an obligation will typically arise under the contract of employment, though it need not do so (see New Century Cleaning Co. Ltd. v Church [2000] IRLR 27).

30. If there is a question about whether the sum in question is "properly payable" that question must be resolved by the employment tribunal. That includes that – if required – it will need to resolve any dispute as to the meaning of the contract relied on.

31. Once the tribunal has decided whether there has been a deduction it must then consider whether it was authorised by any of the means specified in Part II.

Law in relation to sick pay

32. In general, there is no term implied into all employment contracts to say that an employee will be paid if they are unable to work due to sickness, and such no implied term to say that they will not be paid. The decision about whether there is, or is not, a contractual right to be paid for sickness absence depends on entirely on the actual agreement between the employer in question and the employee in question. That does not mean that only written contract clauses are relevant. There could be an express oral agreement, or a term that arises out of past conduct.

Decisions about Rostered Pay / Sick Pay

33. We referred in the liability decision to the phrase "rostered pay" as it is used in the disciplinary policy.

34. The Claimant's payslips included (amongst other things) payments called "basic pay", "overtime", "miscellaneous" and "Engineering Bon". For the latter, Ms Sandu's statement stated that:

> The Claimant is not entitled to an Engineers' bonus payment as criteria were based on attendance and depot loss milage. The Claimant could not have met the bonus criteria whilst suspended. The Claimant received a bonus payment in February 2022 [204] and March 2022 [205] as eligible engineers are paid one month for performance / criteria met in the prior month (see [159 and 160] for the Claimant's bonus eligibility).

35. However, the statement as a whole, including that paragraph, does no more than assert that "rostered pay" means "basic pay". We have to ask ourselves whether – if the disciplinary policy had meant basic pay – why the disciplinary policy used the expression "rostered pay" rather than "basic pay".

36. As an industrial jury, our assessment is that "rostered pay" is not an expression that includes voluntary overtime or "miscellaneous" items. However, in the context of what someone will be paid during a suspension, "rostered pay" means the sums that the employee would have received if (i) not suspended and (ii) therefore attending work as planned. In context, our interpretation of the phrase "rostered pay" is that the Claimant does not lose entitlement to a bonus that was partly based on attendance just because – as a result of the employer's decision to suspend him – he did not attend work.

37. We discussed the Claimant's sickness absence, for 2 months during suspension, in the liability decision, and referred to it in list of issues for the remedy hearing.

38. Pages 205 to 206 of the remedy bundle show the Claimant's payslips for March, April, May, June 2022.

39. The March item appears to show a debit (alleged overpayment), but that does not appear to be relevant to our decisions (as in, it is not an additional alleged deduction, and does not, therefore, affect the arithmetic). What is relevant is that the Claimant did not receive zero, but was paid SSP of £415.47 (April) and £417.27 (June). Those were the only SSP payments.

40. Ms Sandu's statement said, at paragraph 25:

> The Claimant was entitled to SSP only during his sick leave period, as per Metroline's usual policies and procedures when an employee commences sick leave once disciplinary proceedings have commenced. In this regard:
>
> - Metroline's standard terms of employment for Engineers (which Metroline would have applied to the Claimant) state "if you go off sick once disciplinary proceedings have commenced (and for these purposes only, "disciplinary proceedings" shall include when the Company invited you to attend a Fact Finding interviews and/or suspends you form duty), you shall not be entitled to Company sick pay and will receive SSP only, provided always that you comply with the appropriate reporting procedures and are eligible for SSP" [220]; and
>
> - Metroline's Disciplinary Policy in place at the time suggested at paragraph 4.4 that suspension would be without pay if an employee is deemed to have reported sick as a hindrance to the disciplinary process [112 – 113].

41. Certainly, Ms Sandu's statement has been given in good faith. That is our finding, and the Claimant does not argue otherwise.

42. However, page 220 of the hearing bundle, and Ms Sandu's evidence do not persuade us that, in the Claimant's case, there was an agreement that he would be paid SSP only if sick during a disciplinary process.

43. We observe that one of the claims which succeeded was failure to provide written particulars, and we also note that pages 220 and 221 are extracted from some document whose provenance has not been demonstrated. It is not simply that the full document was not included in the bundle, but it was not disclosed to the Claimant either.

44. The second bullet point in Ms Sandu's paragraph 25 is a matter which we discussed in the liability decision. Notably, in around August/September 2021, the Claimant was notified that there would be an investigation hearing

and he was originally paid SSP only after he submitted a Fit Note. However, the Respondent reinstated full pay after the Claimant had met Bill Harvey.

45. Our comments in the liability decision were that Mr Harris (who instructed payroll to pay SSP only) appeared to have relied on the provision in the disciplinary policy that we discussed (and that Ms Sandu mentions).

46. However, the fact that Mr Bill Harvey reinstated the Claimant's pay after the Claimant did attend the investigation meeting satisfies us that (i) the employer was satisfied that, by attending the investigation meeting, even though technically signed off sick, the Claimant had not "hindered" the investigation and (ii) reinstatement of full pay was, therefore, appropriate.

47. This decision (by Bill Harvey) is not consistent with a contractual term that employees who went sick during a disciplinary process would get SSP only, regardless of whether they "hindered" the investigation or not.

48. The evidence as a whole satisfies us that in general, the contractual agreement between him and the employer was that if the Claimant was off sick he was entitled to contractual sick pay (being a sum equivalent to rostered pay) for no less than 2 months. The Respondent has not persuaded us that paragraph 10.6 on page 220 applied to the Claimant's contract with the employer.

49. No evidence has been provided from a specific person who specifically decided what the Claimant should be paid for the period 31 March 2022 to 31 May 2022. In general, at the liability hearing, we were told that the employer had decided that the Claimant was not entitled to be paid at all, and we rejected that argument. We discussed what questions the Claimant had asked (for example, orally to Mr Jones, and in writing to HR) and that no detailed written response was provided.

50. The Claimant was not provided with written information that (i) contractual sick pay was discretionary and (ii) that (notwithstanding paragraph 10.4 on page 220, which on the Respondent's case was part of the contractual agreement with the Claimant) it was being withheld.

51. Our decision is that the wages properly payable for 31 March to 31 May 2022 should have been equivalent to the rostered pay that he was entitled to because of suspension.

Other relevant law

ACAS uplift

52. The ACAS Code of Practice on disciplinary and grievance procedures must be taken into account by the employment tribunal if it is relevant to a question arsing during the proceedings.

53. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides

> (2) If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—
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> (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,
>
> (b) the employer has failed to comply with that Code in relation to that matter, and
>
> (c) that failure was unreasonable,
>
> the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

54. So, a failure to complain with a Code has to be an unreasonable failure for this provision to have effect. Some failures might not be unreasonable, and so that is one of the decisions the Tribunal has to make.

Employment Act 2002

55. Part I ERA includes the requirements of section 1 to provide a statement including written particulars of the information mentioned therein, and of section 4 to provide a written update when necessary.

56. As per section 38 of the Employment Act 2002, if a relevant complaint is successful, and if the employer was in breach of the Part I requirements as of the date the claim was presented, the Tribunal can make an additional award.

> (3) … the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
>
> (4) In subsections (2) and (3)—
>
> (a) references to the minimum amount are to an amount equal to two weeks' pay,
>
> and
>
> (b) references to the higher amount are to an amount equal to four weeks' pay.
>
> (5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6) The amount of a week's pay of a worker shall—
(a) be calculated for the purposes of this section in accordance with Chapter 2 of Part XIV of the Employment Rights Act 1996 and
(b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay)

Working Time Regulations

57. The Working Time Regulations 1998 ("WTR") set out the statutory minimum holiday entitlement for each full holiday year (5.6 weeks) and the right of an employee to be paid in lieu of unused entitlement on termination. Usually the termination date is part way through (not at the end of) the holiday year, and so the entitlement for that final period is pro rata.

Analsyis, Conclusions, Calculations etc

58. We accept that the Claimant was paid correctly up to 28 February 2022.

59. As stated above, our decisions are that he was entitled to rostered pay from then onwards, until the end of employment. That included the period of sickness absence.

60. As stated above, the last day of employment was 28 December 2022.

61. Thus the wages properly payable to the Claimant were his rostered pay for the 9 complete months (1 March to 30 November) and for the partial month from 1 to 28 December.

62. If the Claimant believes that the employer failed to pay appropriate amounts as employer's pension contributions to any particular scheme, then that is a matter for him to pursue elsewhere. Such (alleged) payments would not be wages properly payable to the Claimant and any such (alleged) lack of payment would – therefore – not be a deduction from wages.

63. As of 1 March 2022, the Claimant's basic pay was £3,789.38 gross per month. However, his rostered pay also included the engineering bonus, which was an additional £62.93. So his rostered pay – and the wages properly payable - for that month came to £3,852.31.

64. There was an increase on 1 April 2022. From then, the basic pay increased to £4,168.32. The engineering bonus (given we have taken the average, as per Mr Boyd's calculations) did not change. So the rostered pay from 1 April 2022 was £4231.25 gross per month.

65. Thus for the period 1 April to 30 November 2022, the wages properly payable were 8 x £4231.25 = £33,850.00.

66. For December, we consider the best calculation to be: 28/31 x £4231.25 = £3821.77.

67. So the aggregate of what was properly payable from 1 March to 28 December 2022 was £3,852.31 + £33,850.00 + £3821.77, which is £41,524.08.

68. In fact, he received nothing other than the SSP paid for the period of sickness absence. He was paid only the two sums £415.47 and £417.27.

69. **Thus the unauthorised deduction for the period 1 March to 28 December 2022 was £40,691.34**.

70. For holiday pay, the Claimant's holiday accrued from 1 January 2022 to 28 January 2022 (362 days). He did not use any of it.

71. As of the termination date, the monthly pay was £4231.25 gross, which was assess as £4231.25 x 12/52 = £976.44 per week.

72. We assess his pro rata entitlement to payment in lieu of unused holiday to have been: 362/365 x 5.6 weeks X £976.44. That is £5423.12.

73. Instead of that amount, he was actually paid £1,229.88. **He is entitled to receive the difference, namely £4,193.24**.

74. For section 38 of the Employment Act 2002, we do regard it as a serious matter that an employer with the size and resources of the Respondent, providing services to the public, failed to comply with section 1 ERA (according to its admission in this litigation). That has had a significant impact on the Claimant, including at this remedy hearing.

75. That being said, as is clear from the evidence as a whole, the Claimant did have – for example, the staff handbook. Information about the disciplinary and grievance procedures was sent to him. He was familiar – to some extent – with the rights to challenge decisions as granted to him by the procedures.

76. In all the circumstances, we are not satisfied that this is the type case to which the nature of the breach is such that we should award 4 weeks' rather than 2 weeks' pay. There are also no circumstances such that it is just and equitable to award anything less than 2 weeks. **Thus we award 2 weeks pay at the relevant statutory cap (£571) so £1142.00**.

Approved by:

Employment Judge Quill

Date: 14 October 2026

REASONS SENT TO THE PARTIES ON
20 October 2026

FOR THE TRIBUNAL OFFICE

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If there are written full reasons for the judgment, they are also published. Written summary reasons are not published.

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

The reasons given orally were the summary reasons. If a request for written reasons is made (within the time limit), the Tribunal might choose to supply written summary reasons or else the Tribunal might choose to provide the written full reasons.

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