Issue: Sept & Oct 2025

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eNewsletter

Welcome to our Sept & Oct 2025 eNewsletter!

In this edition, we provide details of the two new employment rights due to be implemented in the IOM on 1 November 2025 – Parental Bereavement Leave and Shared Parental Leave.

We include details of our Essential HR for Line Managers Development Programme commencing on 4 November 2025, as well as our Customer Service Excellence Programme which can be customised to meet your organisation's needs.

Various tribunal summaries cover unfair dismissal (some due to fundamental flaws within investigation processes), sex discrimination, harassment due to sickness absence, a ruling regarding commission payments, and constructive dismissal.

We also include details of our resources to support World Mental Health Day, World Menopause Day, and National Stress Awareness Day; together with our People and Culture Development Packages.

We hope you find our eNewsletter of interest.

Please feel free to forward this to other colleagues.

To sign up to our mailing list email contact@SmartHR.co.im

ISLE OF MAN EMPLOYMENT LAW CHANGES 1 NOVEMBER 2025

New employment rights for shared parental leave and parental bereavement leave will be introduced in the Isle of Man from 1 November 2025, once approved by Tynwald this month.

The new rights are the final provisions of the Employment (Amendment) Act 2024 to be introduced, providing crucial support for parents during challenging times and ensuring the continued commitment to supporting family-friendly policies.

Parental Bereavement Leave

Under the new rights, an employee, regardless of their length of service, is entitled to take up to 2 weeks' parental bereavement leave (for each child who has died or was stillborn) if they suffer the loss of a child under the age of 18 or they suffer the stillbirth of a child after 24 weeks of pregnancy. The leave can be taken as two consecutive weeks, two separate weeks, or as a single week. In the case of a miscarriage up to 24 weeks of pregnancy, 1 week of parental bereavement leave will be provided.

A new parental bereavement allowance will be introduced by the Government, subject to eligibility.

Shared Parental Leave

Shared parental leave will enable parents (including adoptive parents) to curtail their maternity leave or adoption leave early to create a shared parental leave entitlement and share up to 50 weeks of leave and up to 37 weeks of shared parental allowance (a benefit payable by the Government) to care for their child in the first 12 months of their child's life or placement for adoption.

A new shared parental allowance will be introduced by the Government, subject to eligibility.

NEED TO UPDATE YOUR EMPLOYEE HANDBOOK OR PEOPLE POLICIES?

We've been busy creating new people policies to comply with these two new family friendly rights. If you would like your employment documents reviewed and updated, including adding new shared parental leave and parental bereavement leave policies please contact Gail on gail@smarthr.co.im and we'll be happy to help.

ESSENTIAL HR FOR LINE MANAGERS DEVELOPMENT PROGRAMME - NEXT COURSE STARTS 4 NOV 2025

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Limited places! Book early to secure your place

Essential HR for Line Managers Development Programme

Next open course starts 4 Nov 2025

5 x 4 hour workshops - 9am to 1pm on Tue 4 Nov 2025, Tue 11 Nov 2025 Tue 18 Nov 2025, Thur 20 Nov 2025 and Wed 26 Nov 2025

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We are pleased to advise that we will be delivering another of our highly sought after Essential HR for Line Managers Development Programme's as an open course starting on 4 November 2025. This programme is highly practical and includes a wide range of people management case studies and scenarios and is being delivered in 5 x half day / 4 hours workshops - 9am to 1pm each session.

What do the 5 workshops cover?

- **Line Management Skills and Behaviours** – the manager's role and what makes a great manager, emotional intelligence, motivating and developing your team, and key people management skills.
- **The Employee Lifecycle** – equal opportunities, recruitment and selection within an equality framework, managing induction and probation.
- **Performance Management** – setting standards and SMART objectives, conducting effective appraisals, managing performance problems, providing constructive feedback, and having difficult conversations.
- **Managing Absence, Discipline, Grievances and Leavers** – managing short-term and long-term absences, disability and reasonable adjustments, managing discipline and grievances, and leaver considerations.
- **Mental Health and Wellbeing** – wellbeing responsibilities, an overview of common conditions, identifying the signs of declining wellbeing, supporting your team members, managing your own stress and mental wellness, and promoting positive health and wellbeing in the workplace.

Full details of the programme can be found in our EssentialHR brochure: here

Only a couple of spaces are available - to book, please contact Gail on gail@smarthr.co.im

You can also read various testimonials from Managers who have attended previous programmes on our Testimonials page: here

SALES MANAGER WINS £61K FOR UNFAIR DISMISSAL AFTER FOOD APP'S 'SUPERFICIAL' DISCIPLINARY PROCESS

A sales manager has won his unfair dismissal claim after an employment tribunal found "fundamental flaws" in his employer's disciplinary investigation, which concluded the claimant had not spent sufficient time "in the field".

As a senior member of Foodhub's sales team, Tanveer Shah was expected to spend at least four days per week working 'in the field' to train members of his team. However, after he was found to be working remotely from Egypt, he was sacked on the spot by the CEO of the food delivery app company.

Shah was initially dismissed in August 2022, but the decision was later rescinded and a disciplinary process was conducted. Following the investigation, Shah was dismissed again, with effect from 7 September 2022.

However, the Birmingham tribunal found the investigation to have "the superficial appearance of fairness", describing it as "an exercise in window dressing". The dismissal was therefore deemed unfair and Shah was awarded £61,419.50 in compensation. His religious discrimination claim was unsuccessful.

Background

Shah began working for Foodhub in 2018 and was promoted to UK field sales manager in July 2021.

Under company policy, promoted staff were subject to a six-month trial period. Ardian Mula, the company's CEO, and Jackie Sims, interim managing director, shared concerns about the amount of time Shah was spending in the field coaching, mentoring and leading his team. As a result, his trial period was extended.

In early 2022, Mula and Simon Farmer, Shah's line manager, found that he had been working remotely from Egypt, where his family lived, without being on approved annual leave. Location data from Shah's laptop suggested he had spent "several weeks" in the country, but he claimed this was inaccurate.

Around the same time, the business changed its company car benefit policy following complaints about tax treatment, requiring staff to obtain their own vehicles once the leases on their company cars expired. However, in February 2022, Farmer learned that Shah had not replaced his company car and told him he needed to do so within two weeks.

On 14 March 2022, James Page, senior HR business partner, had a meeting with Shah, intending to suspend him for failing to follow a "reasonable management instruction". However, Shah told Page he had just bought a vehicle. Instead of suspending him, Page issued a letter warning him of disciplinary consequences if he failed to work in the field for "at least four or five days a week".

Shah told the tribunal that, before Sims joined the company, he had not been required to spend that level of time working alongside his team. The tribunal accepted that this requirement was raised with him for the first time in January 2022.

Mula conducted a review of the previous month's expenses on 1 August. He discovered that Shah's expenses were far lower than the rest of his team. Mula had expected to see the opposite, considering Shah had a national role rather than a regional one.

The next day, Shah met with Mula and Farmer. Mula told him the expenses data demonstrated that Shah had only travelled six or seven times in the previous three months. Shah said he did not need to be in the field to do his job, but Mula pointed to his team's poor sales figures.

The tribunal heard that Mula was "angry" and accused Shah of "stealing money from the company" and "illegitimately taking a salary" by failing to do his job properly. He summarily dismissed Shah for gross misconduct.

Following this meeting, Page advised Mula that he should have followed the correct process when dismissing Shah. On 5 August, Shah appealed against the dismissal.

At the appeal hearing on 15 August, Neil Sturrock, global operations director, said he had decided to revoke the decision to dismiss Shah because the company had failed to follow the disciplinary procedure. He said Shah would be suspended while he investigated whether he had been fulfilling the duties of his role.

A meeting took place between Shah, Sturrock and Page on 22 August. While it was stated that Sturrock would be leading the investigation, the tribunal found he held this role "in name only" and that it was ultimately Page who made the enquiries and decisions. When asked about working remotely from Egypt, Shah said he had contracted Covid there while on holiday and had been unable to return to the UK. He did not say when he was in Egypt but agreed he had worked there remotely.

Shah explained that it was difficult for him to spend four days travelling every week because of the administrative burden of the role. He added that he spent the majority of his time in his local region.

While Foodhub found there was a case to answer, no investigation report was prepared and there was no document that set out its findings.

Following a disciplinary hearing led by Joanna Green, the recently appointed director of quality and organisational development, Shah was dismissed for the second time on 7 September 2022. **The tribunal determined that, because Green was only three weeks into her probation period when she made the decision, she would have felt pressure to come to the same conclusion as her boss and the company CEO. The tribunal therefore found that the disciplinary was a "foregone conclusion".**

Shah did not appeal the decision.

Thanks to Isabel Jackson and People Management for the tribunal summary. **This case highlights the importance of conducting investigations effectively, as well as disciplinary processes.**

CUSTOMER SERVICE EXCELLENCE - IS IT EMBEDDED IN YOUR ORGANISATION?

We're excited to introduce our NEW
Customer Service Excellence Programme
- a flexible, four-part development journey designed to assess, strengthen, and embed customer service standards that align with your organisation's values, behaviours, and strategic goals. Whether you're ready to embark on a full transformation or want to focus on priority areas, this programme is adaptable to your time, budget, and objectives.

🔹 **Part One – Customer Service Excellence Assessment**

"Temperature Check" of Current Standards

- A comprehensive audit of existing customer service practices
- Employee and customer feedback analysis to identify strengths and gaps
- A detailed report with key insights and actionable recommendations

Outcome: A clear understanding of where your service stands today and what is needed to enhance it.

🔹 **Part Two – Defining & Developing Your Customer Service Excellence Workshop**

Building a Bespoke Service Framework

- Define what exceptional service looks like for your organisation
- Develop service principles aligned with your values and goals
- Customise content for engaging, relevant team training

Outcome: A tailored framework that reflects your brand and organisational culture.

🔹 **Part Three – Your Customer Service Excellence Training**

Interactive & Practical Learning

- Engaging, high-impact training using real-world scenarios
- Equip staff with the mindset, skills, and techniques to excel
- Improve communication, problem-solving, and customer engagement

Outcome: A skilled, confident workforce delivering consistent, high-quality service.

🔹 **Part Four – Review of Your Customer Service Excellence**

Measuring & Embedding Long-Term Impact

- Assess training impact using feedback, performance data, and follow-ups
- Offer coaching, refresher sessions, or action planning
- Support lasting improvements and a culture of excellence

Outcome: Measurable results and a sustainable approach to outstanding customer service.

Want to know more?

Contact Natalie Cellamare, People & Culture Development Consultant to discuss how we can tailor the programme bespoke to meet your needs - natalie@SmartHR.co.im

FEMALE SAINSBURY'S MANAGER UNFAIRLY DISMISSED AFTER MALE COLLEAGUE'S SEXIST SLUR WINS £59K SEX DISCRIMINATION CLAIM

Tribunal rules retailer failed to address her complaints and carried out flawed investigations that instead blamed her management.

A female manager at Sainsbury's has won more than £59,000 after an employment tribunal ruled she was unfairly dismissed and subjected to sex discrimination following verbal abuse from a male colleague.

Miss Deborah Oziel, a convenience trading manager (CTM) at Sainsbury's East Finchley store, was called a "f***ing b***h" by colleague Matthew Henderson during a confrontation in front of staff and customers.

The Watford employment tribunal, chaired by Judge Bartlett with panel members Mr Miller and Mrs Hancock, ruled that Sainsbury's "wholly failed" to deal with her complaints and instead wrongly blamed her for poor management.

The tribunal upheld her claims of constructive unfair dismissal, whistleblowing detriment and direct sex discrimination, though it dismissed harassment claims on the basis that the same conduct amounted to direct discrimination.

She was awarded £59,333.14 in compensation, including £29,250 for unfair dismissal, £21,000 for injury to feelings, £2,000 aggravated damages and £3,718.14 interest.

Background

Oziel joined Sainsbury's in June 2016 as a CTM, a management position ranked band 3, reporting below the store manager but with responsibilities greater than a supervisor. She worked at the East Finchley branch, a small store where often only one or two staff members were present.

Henderson, by contrast, was a band 2 colleague who sometimes acted as a responsible colleague – effectively the duty manager during opening and closing hours.

The tribunal heard that, in September 2021, after Oziel challenged Henderson about failing to carry out allocated tasks, he reacted angrily, swearing and storming off. When she followed him to the store entrance to speak with him, he erupted again, calling her a "f***ing b***h" in front of customers and colleagues.

Despite the seriousness of the incident, store manager Nick Galvin led an internal investigation, speaking to Oziel, Henderson and other staff. He decided no disciplinary action was necessary and wrote in his outcome letter that "there can, however, be no further incidents like this".

The tribunal found Sainsbury's decision not to call Henderson as a witness during proceedings significant. Although the company cited concerns about his Asperger's diagnosis, there was no medical evidence provided, nor any workplace adjustment plan in place at the time.

Soon afterwards, Oziel became the subject of a grievance lodged by a male colleague, referred to as LD in the tribunal. **The tribunal found this process was mishandled: she was not informed of the allegations in advance, was asked to attend a meeting during her shift without notice and never received an outcome.**

By February 2022, she was also facing a misconduct investigation, led by investigating manager Danielle Hayes, accused of following LD outside the store and shouting at him. That investigation was later abandoned after she raised concerns.

The tribunal accepted her evidence that these processes caused her stress and contributed to her feeling unsupported.

On 25 January 2023, Oziel was assaulted by two female shoplifters while attempting to prevent theft. CCTV footage confirmed that one attacker punched her in the face, leaving her with bleeding gums and bruises. The incident caused her such distress that she called a suicide helpline that night.

Despite the seriousness of the assault, the tribunal found she received no follow-up support from managers: "No manager had a conversation with her, directed her to sources of support or requested security," it concluded.

Tensions with Henderson reignited on 7 February 2023, when he cornered Oziel alone in a small office with no windows and only one exit, stood in the doorway and swore aggressively at her. She repeatedly asked him to leave, but he refused until she activated her body camera.

Minutes later, he returned and again shouted abuse, this time in front of another colleague. On both occasions, he only retreated when he realised he was being filmed.

That same week, Henderson told another colleague that he intended to bring an imitation gun into the store to threaten Oziel. The tribunal found this threat was never investigated by Sainsbury's, despite being raised in her written complaint.

Instead, Henderson was suspended briefly for "swearing and acting aggressively". When disciplinary action was taken, the tribunal noted the imitation gun threat was omitted from the suspension letter, and Henderson was never questioned about it.

The outcome concluded merely that there had been a "breakdown in communication".

Oziel continued to raise her concerns. In March 2023, she lodged another grievance, but managers suggested her "poor management" of Henderson was to blame for the conflicts. She was told she should undergo mediation with him and warned that refusing could lead to disciplinary action.

The tribunal found this response inappropriate, particularly as Henderson had previously sworn at her during a mediation attempt.

Meanwhile, crucial bodycam footage capturing Henderson's 7 February abuse was deleted after 31 days, despite policies requiring preservation in such cases.

On 31 March 2023, after receiving no substantive response to her grievance, Oziel resigned by email, effective immediately. The tribunal accepted her evidence that she had reached "the point of despair" and no longer felt safe at work.

Panel's comments

In its judgment, the panel described Oziel as a "persuasive and credible witness" whose account was consistent and backed by evidence. By contrast, it said Sainsbury's witnesses gave "unpersuasive" and sometimes "inaccurate" evidence, and that its internal investigations were "fundamentally flawed".

The tribunal ruled that Henderson's use of the word 'b*h' was direct sex discrimination, noting the term was "primarily used against women" and that there was no evidence he behaved similarly towards male colleagues. Galvin had even admitted that two male CTMs "had no problem" with Henderson, while female managers faced ongoing issues.**

The panel concluded that Oziel's treatment amounted to less favourable treatment because of her sex, compounded by Sainsbury's failure to take reasonable steps to prevent it.

On her whistleblowing claim, the tribunal found her email of 7 February 2023 – raising the gun threat – was a protected disclosure. It criticised Sainsbury's for failing to treat it as a grievance, for not questioning Henderson or other witnesses and for instead placing blame on Oziel. These actions, it said, were "typical whistleblowing detriments" designed to discredit her.

The judges also ruled that the deletion of the bodycam footage was the "final straw" in a series of failures that destroyed trust and confidence, justifying her constructive dismissal claim.

Finally, the tribunal awarded aggravated damages, condemning Sainsbury's defence strategy as "high handed and unnecessarily oppressive". It said the company repeated unfounded criticisms of Oziel's management without evidence, relying on hearsay rather than establishing facts.

Overall, the tribunal concluded that Oziel had been unfairly dismissed. She had been subjected to sex discrimination by a colleague. She had also suffered detriment after making protected disclosures, and Sainsbury's had failed to act on credible threats to her safety.

Thanks to Islam Soliman and People Management for the tribunal summary

This case highlights the risks that employers face if they fail to act on employee complaints. Employers have a duty of care towards their staff and to take their safety seriously. Complaints, particularly including discrimination and whistleblowing concerns, should be investigated thoroughly, impartially, and in a timely manner. Furthermore, employers should ensure their staff are aware of their responsibilities regarding discrimination, harassment and victimisation - it isn't sufficient just to have policies in place, employers should ensure that regular training is provided to management and staff.

OUTSOURCING LEARNING AND DEVELOPMENT – FLEXIBLE SOLUTIONS TO SUPPORT YOUR ORGANISATION

What does your 'to do' list tell you?

Often, we procrastinate by placing the tasks we least enjoy at the bottom of our list – especially those outside our daily operational responsibilities. Learning and development frequently falls into this category. It can feel time-consuming, overwhelming, or even outside your area of expertise. Sometimes, it's simply a matter of not knowing where to start.

The benefits of hiring SmartHR to support your employees and contribute to the success of your organisation:

• **Specialist expertise** from qualified professionals in learning, development, and organisational culture.
• **An extra pair of hands** to help you achieve your objectives efficiently.
• **Bespoke solutions tailored to your needs** – we don't believe in a one-size-fits-all approach. Every organisation has different requirements and budgets, and we adapt accordingly.
• **Experts in coaching, mentoring, wellbeing, and neurodiversity,** ensuring a truly inclusive approach to development.
• **Identify your culture reality** and allow us to be honest in providing culture solutions that are relevant to you.
• **Talent retention and loyalty** – we help your people thrive, encouraging long-term commitment and growth.
• **Empowering employees** to be the best version of themselves, fostering a culture of continuous personal and professional development.
• **Future-focused strategies** – we leave behind tools and frameworks to ensure ongoing improvement.
• **Follow-up support to keep you on track,** with the option of ongoing assistance for future needs.
• **Flexible engagement options** – retain us daily, weekly, monthly, or on an ad-hoc basis, either onsite or remotely.
• **Global delivery capability** – we understand the needs of international organisations and can accommodate different time zones and delivery methods.
• **Building workforce resilience** to help your teams adapt and perform through change.
• **A trusted and reliable service,** consistently aligned with your business goals.

Contact Natalie Cellamare, People & Culture Development Consultant to discuss your learning and development outsourcing needs and find out how we can create a tailored solution to add value to your organisation - natalie@SmartHR.co.im

FINANCE DIRECTOR UNDERGOING CANCER TREATMENT EXPERIENCED HARASSMENT OVER SICKNESS ABSENCE, TRIBUNAL RULES

Judge finds breach of mutual trust and confidence after employer failed to award an inflationary pay rise and mishandled claimant's complaints and appeal.

A finance and IT director with cancer whose boss told him he had failed to consider the impact of his sickness absence on others was harassed, an employment tribunal has found.

The Reading tribunal heard that Mr L Ralfs, who was diagnosed with relapsed Hodgkin Lymphoma, was subjected to multiple instances of unfavourable treatment by his employer, The Arbib Education Trust. This included being warned that his future sick pay entitlement would be reduced if he fell ill again in the second year of service, and being denied an inflationary pay rise on the basis he was "new in role".

Employment judge George found that Ralfs had been subjected to disability-related unfavourable treatment, harassment and victimisation. His resignation amounted to constructive dismissal and was both unfair and discriminatory.

Other claims, including direct discrimination and detriment relating to whistleblowing, were dismissed. A remedy hearing will follow later this year.

Background

Ralfs, a former employee of The Arbib Education Trust, was asked to return as finance and IT director in 2021. Owing to a six-month notice period, he began on 1 February 2022, with an interim covering the role until 4 February.

Two days after starting his new role, Ralfs was diagnosed with a relapse of Hodgkin Lymphoma, a condition he had previously disclosed during recruitment. He promptly notified his manager, Mr R Bryant, and the HR director, Ms S Casemore.

On 22 February 2022, Ralfs emailed Bryant stating that the trust's operations should continue "with or without my support". By mid-March, following a WhatsApp message from Bryant asking Ralfs to report daily on whether he was working and to send weekly emails confirming his hours, Ralfs expressed discomfort with these expectations and declined to provide timesheets.

Ralfs had begun chemotherapy on 16 March and described this as a particularly challenging period. A letter from his haematologist suggested he might be able to undertake light duties from home, depending on how he felt.

Between 22 and 23 March, Casemore held two phone calls with Ralfs. On 29 March, she wrote to “summarise the position that we have agreed regarding your sick pay, undertaking work and staying in contact while you are undergoing chemotherapy”.

The letter warned that if Ralfs became ill again within the following year, his entitlement to sick pay would be reduced. It referenced a rolling 12-month calculation, implying that he would need to return to work for a full month to qualify for full sick pay.

However, the tribunal later found that Bryant had already decided, before a meeting with Ralfs on 18 February, to offer four months of enhanced sick pay at half pay, with no expectation for Ralfs to work during this period. The tribunal noted that it was Ralfs, not Bryant, who had raised the possibility of undertaking light duties during his treatment, based on his past experience that staying engaged with work supported his mental health.

After a period of absence, Ralfs returned to work on 21 November 2022 under a phased plan recommended by occupational health, starting at 50 per cent of his usual hours. A week later, however, he was informed that he would not receive an annual pay rise, with the letter citing that he was still “new in role”.

However, the tribunal heard this rationale was inconsistent with the trust’s own policy, which defined ‘new in role’ as starting after 1 March. Ralfs began on 1 February and therefore did not meet that definition.

The pay committee had met earlier, on 9 November, and considered a recommendation from Bryant, which read: “We are considering various options going forward but as a new role would suggest staying on the same salary at £87.5k.”

During the investigation, Casemore stated the ‘March’ definition applied only to staff on a pay scale, which Ralfs was not. She explained that ‘new in role’ in this context referred to being a recently appointed senior staff member on a negotiated spot salary. She also acknowledged a lack of a clear policy for roles such as finance director and recommended that this be addressed.

On 30 November, Ralfs challenged the pay decision in an email, asking: “Can I just check that I am ineligible for any increase… as I am technically ‘still new in role’ because of so much sick leave this year?”

He expressed concern that his serious illness was being used to justify withholding an inflationary pay increase. Ralfs met with Casemore on 30 November and again on 7 December. He was advised of the formal appeal process and opted to submit a written appeal to ensure equal treatment.

On 8 December, Ralfs submitted his appeal, arguing that the decision was discriminatory. He highlighted his contributions during his phased return, including giving up two months of enhanced sick pay in exchange for continuing to provide support. He described the refusal as “potentially unlawful discrimination” and contrary to “many of the trust’s guiding principles”.

However, the tribunal found his appeal was never forwarded to the pay committee as required by trust policy. Instead, trustees approved a pay rise informally by email, without reviewing his written statement, and he was incorrectly told the appeal had been "upheld".

On 12 December, during a meeting with Bryant, Ralfs was told he had not acknowledged the impact his illness had on colleagues, on the organisation and on Bryant personally. He also referenced "noise" surrounding the pay decision.

On 4 January 2023, Ralfs submitted a formal grievance, citing the pay decision, misleading communications and failure to follow internal policies. The trust responded that the inflationary award was not performance based and that no formal objectives had been set.

Independent investigator Marie Ashton concluded that the pay decision was based on Ralfs' limited time in post and wider budget constraints. While she did not find direct discrimination, she criticised the employers' communication. The grievance was partially upheld on grounds, though Ashton did not assess whether the cited reason 'new in role' was linked to Ralfs' disability-related absence.

In her report dated 6 February 2023, Bryant responded to Ralfs' list of achievements during treatment by stating he could "neither agree nor disagree" with them, adding: "Some of the items such as phone calls or Zoom meetings take considerably less time than others, and I do not believe it is possible to define what hours in a given week this may suggest."

On 24 February, Ralfs tendered his resignation, initially giving notice. He resigned with immediate effect three days later, on 27 February.

In his resignation letter, he cited discrimination in the pay award process, misrepresentation of his work during phased return, breach of internal policies, failure to notify him of changes to sick pay and failure to address his discrimination complaints.

Judge's comments

Employment judge George found that the trust's decision not to award Ralfs a pay review amounted to "unjustifiable unfavourable" treatment arising from his disability.

While Ralfs was paid in line with the trust's policy – only for hours worked and with no retrospective reduction – he was not informed of how the policy would apply to him until 12 December 2022, and then only orally, contrary to the policy's requirement for written communication.

The tribunal also considered comments made by Bryant during the same meeting. It accepted that he said Ralfs had not acknowledged the impact his illness had on colleagues, particularly himself, and may have mentioned having to work during his summer holiday. A further remark about "noise" surrounding the pay decision was considered neutral in isolation.

However, the combined effect of these remarks, especially in the context of referring to the trust's support for Ralfs, was found to **reasonably constitute harassment**. The tribunal concluded that this created a "hostile or offensive" environment, particularly given Bryant's senior position, and that Ralfs was reasonable in perceiving it that way. His complaint of harassment therefore succeeded in part.

Thanks to Mahalia Mayne and People Management for the tribunal summary.

WORLD MENTAL HEALTH DAY - 10 OCTOBER 2025

A recent CIPD study supported by Simplyhealth has found that only 29% of managers are being trained to support mental health. That leaves 71% without the support and guidance they needs.

The study also found that average absence levels have increased to 9.4 days per employee per year, compared with 7.8 days in 2023 and 5.8 days in 2022.

• Mental ill health is the top cause of long-term absence (41% of respondents citing it within top three causes) and minor illnesses by far the main reason for short-term absence (78%).

• However, mental ill health is the second main cause of short-term absence (29%), with stress a major cause of both short- and long-term sickness absence (26% and 28%, respectively).

SmartHR can deliver two workshops to support your management and staff: 1) Mental Health and Wellbeing for Line Managers, and a Mental Health and Wellbeing Awareness workshop for staff.

WORLD MENOPAUSE DAY - 18 OCTOBER 2025

World Menopause Day will be observed on 18 October 2025. The day aims to raise awareness about menopause and its impact on women's health.

Menopause can have a huge impact on people's lives - 3 in 4 experience symptoms and 70% experience stress as a result. From a workplace perspective these employees are often at the peak of their professional careers. 25% of staff consider leaving work due to their symptoms, and 10% actually leave work. 35% take leave for menopause symptoms. Are you supporting your team?

SmartHR can also deliver workshops to support your management and staff: 1) Managing Menopause in the Workplace, and 2) Menopause Awareness in the Workplace. Find out more here

NATIONAL STRESS AWARENESS DAY - 5 NOVEMBER 2025

According to The Burnout Report 2025, 91% of respondents reported experiencing high or extreme levels of stress in the past year. This marks a concerning trend compared to previous years.

The main contributors to stress include: heavy workloads and unpaid tasks, job security concerns, and mandatory office returns.

The report highlights a growing generational divide, with younger workers (ages 18 - 24) experiencing the highest levels of stress. Only 56% of young workers felt comfortable discussing their stress with line managers, a significant drop from 75% in the previous year.

SmartHR supports organisations in a number of ways including delivering Resilience in the Workplace training, designing and delivering engagement and wellbeing surveys, creating engagement and wellbeing programmes, and creating and embedding values frameworks. Contact us if your organisation would benefit from support - we'd love to help!

HEATHROW SECURITY OFFICER WHO SHOWED COLLEAGUE 'RACIST' VIDEO AWARDED £44K FOR UNFAIR DISMISSAL

In light of 20 years of 'trouble-free' service, tribunal finds decision to sack airport worker fell outside range of reasonable responses.

A security officer at Heathrow Airport has been awarded £44,000 at a tribunal after he was unfairly dismissed for showing a colleague a "racist" video. The claimant, Jose Gomes, allegedly said to his co-worker Manoj Dadral "this is what your country is like", before playing a video on his phone about "why India is a dirty country".

Dadral complained that the video was "highly offensive and totally inappropriate" and also accused Gomes of repeating a phrase that was derogatory to people of Indian heritage.

Gomes was later dismissed for breaking the company's dignity at work policy.

Despite agreeing with the respondent that the video was "racist" and "highly offensive", the Reading tribunal ruled that Gomes's dismissal was unfair.

The panel explained that the dismissal should have been measured against the "risk of recurrence". Due to Gomes's 20 years of "trouble-free" service at Heathrow airport, it found that the decision to dismiss was outside of the range of reasonable responses open to an employer.

Background

Gomes worked as a security officer at Heathrow Airport for 21 years prior to his dismissal.

In March 2022, he was elected as chair of Terminal 3 of the Unite trade union, taking over from Dadral.

Following the union election, Gomes and some colleagues complained to Davinder Gill about alleged harassment by Dadral which they had experienced since he was voted out as union chair. The following day, Dadral was suspended.

The matter was also reported to the police, and he was convicted of harassment without violence later that year.

On 6 June, Dadral raised a grievance against Gomes and his colleagues who had made the complaint, but, as far as the tribunal could tell, no action was taken by the airport.

On 25 July, Dadral submitted a formal complaint of "racial discrimination" against Gomes. The tribunal noted that, given the context in which it was given, there was "reason to doubt that he had made this complaint in good faith". However, it said this did not mean the complaint was not well-founded.

Dadral claimed that on 11 February that year, Gomes had entered the union room and said "this is what your country is like", before playing a video on his phone about "why India is a dirty country". Dadral described this as "highly offensive and totally inappropriate".

Dadral further alleged that Gomes had regularly commented: "If you shake an Indian man's hand then make sure you count your fingers after." Dadral claimed the remark was "clearly racist" and "unacceptable", adding that it was not something he should have to hear in the workplace.

Dadral also accused Gomes of making a comment about "the odour of Black people", adding: "He says that there is a phrase for their particular smell, I believe the word is a South African word, the word is 'katinga'. He has used this phrase on numerous occasions."

During a fact-finding meeting with Gill, Gomes claimed that his use of the word "katinga" and his reference to handshakes had not been directed towards anyone. He also admitted to showing Dadral the video, but argued that there was "nothing wrong with that" and that it was "not offensive, more educational".

The tribunal said it was "absurd" to describe the video in this way, stating that it contained "material that might be expected to be highly offensive to people of Indian nationality or heritage".

Gomes was suspended at the end of the meeting.

Following an investigation, disciplinary hearings were held on 8 and 15 November, led by Chloe Finlay. Although Gomes apologised for any offence caused and promised he would be more mindful and careful about what he shared, he was dismissed with immediate effect following the meeting.

Finlay found that his actions constituted harassment, which was classified as "gross misconduct" in the airport's disciplinary policy.

The dismissal letter stated that Gomez had shown the video to Dadral as he claimed, and that the content was "racist, highly offensive and completely inappropriate". It also said that Gomes knew what the handshake comment meant and that it would cause offence, and that he had used the word "katinga" in conversation around colleagues.

The tribunal found that there was "little that could be disputed about these findings".

Finlay further stated in the letter: "I have considered your clear love of the job you do and the fact that you have 20 years' service. You have informed me along with … your trade union representative, of the toxic nature of the union room environment.

"While I acknowledge this point, that the culture in the room was not satisfactory, I do not think it is an excuse for your behaviour."

Panel's comments

The panel said: "Dismissal in a case such as this cannot be an automatic response governed by a list of possible gross misconduct offences. It always has to be measured against the risk of recurrence."

It determined that Gomes was able to follow instruction from management due to his previous good track record at the company. This made it unlikely he would reoffend, meaning the decision to dismiss was outside the range of reasonable responses and therefore unfair.

The panel noted that while it could be concluded Gomes had been "naïve in his actions and his words", this did not mean he would make any offensive comments in the future.

The tribunal made a deduction for contributory fault from Gomes's remedy, which applied to both the basic and compensatory awards.

It also refused Gomes's application for reinstatement, due to the airport's "genuine concern" over what Gomes might do or say if he was allowed to return to working in his post and the "considerable prospect for conflict".

Lawyers' comments

Paul Seath, partner in the employment team at legal services company Bates Wells, explained that the respondent's disciplinary policy listed various offences as gross misconduct but only said they might lead to disciplinary action – not that they would end in dismissal. "There was also a comparator case of harassment, which was in the gross misconduct list, which did not end in dismissal," he said.

Employers should be aware that certain actions do not always automatically qualify as grounds for dismissal, Seath advised. Other factors, such as length of service and risk of recurrence, must be considered.

Jennifer Leeder, partner in the employment and immigration team at the law firm Birketts, advised employers to ensure they conduct investigations that are impartial, free from bias, thorough and inclusive of all perspectives.

"Employers are encouraged to use trained investigators and to maintain detailed records of all complaints, investigative steps, decisions and communications in order to protect all parties and support transparency," she said.

Leeder added that employers should ensure they are sensitive to "cultural nuances and linguistic differences" when assessing an employee's intent.

She said: "Always consider whether alternative sanctions would be appropriate before opting for dismissal, particularly in the case of long-serving employees."

Thanks to Isabel Jackson and People Management for the tribunal summary.

SMARTHR'S PEOPLE AND CULTURE DEVELOPMENT PACKAGES

At SmartHR, as well as providing retained and 'pay as you use' **people management packages**, we also provide a broad range of **people and culture development solutions** - and we can create a package bespoke to your needs. Below are a few examples of our people and culture support packages:

1. People Development Audit Package
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- Training Needs Analysis / Skills Gap Analysis
- Review of professional development in line with industry regulations
- Review of performance management framework and alignment to development processes
- Comprehensive report with insights and strategic recommendations
- Creation of a new / updated strategic learning and development framework

2. Culture Development Audit Package
- Organisational culture review and audit using an employee engagement survey
- Analysis and interpretation of survey data
- Comprehensive report with insights and recommendations

3. Retained People and Culture Development Package
- Combined People and Culture Development Audit, report and strategic recommendations
- Skills and Knowledge Matrix development
- Creation of a new / updated strategic people and culture development framework
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4. Wellbeing Audit and Support Package
- Creation and delivery of a wellbeing audit via a wellbeing survey
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- Detailed report with analysis and strategic recommendations
- Plus an agreed number of days of wellbeing-focused support within a specific timeframe e.g. this could deliver one wellbeing-focused workshops on a quarterly basis

5. PAYU People and Culture Development Services
- As-needed access to expert people and culture development support
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If you would like to discuss any of the above, please contact Gail, Natalie or Andrea or email contact@SmartHR.co.im

POTENTIAL FUTURE CHANGES TO UK EMPLOYMENT LEGISLATION IN 2026 AND 2027

There are various potential future changes to UK employment legislation proposed via the UK's Employment Rights Bill, including:

- Trade union rights
- The right to statutory sick pay from day one of sickness
- Collective redundancy protective award doubling from 90 days to 180 days
- Paternity leave becoming a day one right
- Unpaid parental leave becoming a day one right
- Whistleblowing and disclosure relating to workplace sexual harassment
- The establishment of a Fair Work Agency
- Voluntary requirement for employers with 250+ employees to publish action plans on gender pay gaps and menopause action plans
- Restricting the ability for employee to use 'fire and rehire' re variation to terms of employment
- Extending the time limit to bring tribunal claims from 3 months to 6 months
- Requiring employers to take "all" reasonable steps to prevent sexual harassment
- Introducing a new provision requiring employers to not permit harassment from a third party (such as a client or customer)
- Collective consultation during redundancy
- Giving zero hours and low hours workers a right to a guarantees hours contract
- Making flexible working a default day one right (apart from when it is not reasonably feasible)
- Extending protections for pregnant workers
- Day one right to take bereavement leave
- Also, a review of the Carer's Leave Act 2023 including the benefits of introducing paid carer's leave

The UK Government previously stated it would make **unfair dismissal a day one right from 2027**. The Employment Rights Bill has recently passed its third reading in the House of Lords and it now goes back to the House of Commons to vote on the various amendments made by the House of Lords.

The **day one unfair dismissal** amendment to the Bill proposes that there will be a six month period with no unfair dismissal rights (other than automatic unfair reasons), followed by an 18 month 'initial period of employment' with light-touch unfair dismissal rules. It is not expected that this amendment will be approved and it will remain to be seen whether the day one unfair dismissal rights will eventually be implemented in the UK.

We will provide further updates regarding agreed future changes to UK (and IOM) employment legislation and their implementation dates in future eNewsletters.

SECURITY SUPERVISOR SACKED FOR ALLEGEDLY ALTERING CONTRACT TO GAIN EXTRA HOLIDAY WINS £30K FOR UNFAIR DISMISSAL

Judge rules employer's investigation fell outside band of reasonable responses after firm failed to contact HR manager central to the dispute.

A security supervisor accused of falsifying his employment contract shortly after returning from a heart attack has been awarded nearly £30,000 for unfair dismissal.

The Inverness tribunal found that Cleanevent Services, a cleaning and security services provider for shopping centres, dismissed security supervisor John Hamilton for gross misconduct without carrying out a fair or reasonable investigation.

The company alleged that Hamilton had altered his contract to claim enhanced sick pay and extra holiday. But the tribunal said the company's refusal to contact the HR manager who he claimed authorised the changes meant the process was both procedurally and substantively unfair.

Employment judge Kemp ruled that the company had acted unreasonably by withholding the investigation report from Hamilton during the disciplinary process and repeating the error at appeal. He concluded that "no reasonable employer" could have believed Hamilton had acted dishonestly based on the evidence gathered.

The claimant was awarded a total of £29,706.74.

Background

Hamilton joined Cleanevent Services as a security officer on 15 January 2007 and was promoted to supervisor the following year. His terms included 20 days' annual leave, public holidays and statutory sick pay. His employment was later transferred under UK TUPE (transfer of undertakings) regulations to a predecessor of Cleanevent. During a UK TUPE transfer, employees' existing employment terms, conditions and continuity of employment are automatically transferred to a new employer.

In October 2016, Hamilton discussed a new role with the company's chief operating officer, Graham Drew. The new role was confirmed by email with a revised pay of £32,000, 28 days of holiday including bank holidays and a six-month review period. Drew promised that a written contract would follow.

Hamilton pushed for further improvements, asking for 25 days' annual leave plus bank holidays and six weeks' sick pay. He said these terms were discussed with Drew and HR manager Dawn Wise.

Wise sent Hamilton a written contract on 14 November 2016, but it only offered 20 days' holiday plus bank holidays and up to 10 days' of discretionary sick pay. Hamilton did not sign this version.

Hamilton later claimed that in negotiations up to late 2019, Wise told him to alter the document, sign it and return it. The tribunal noted that the discussions continued until December 2016. On 18 May 2017, Hamilton amended the 2016 draft, signed and printed it, sent a copy to Wise and uploaded it to the company's computer system.

The company disputed this, arguing that no such changes had been approved. Drew confirmed only a job title change and denied authorising extra leave or sick pay, claiming that Wise had no authority to do so.

In May 2019, Hamilton suffered a heart attack and spent three months off work. He received three weeks of full company sick pay before reverting to statutory wages.

Hamilton's eventual return to work was phased and his duties were reduced. The tribunal noted the three weeks of company sick pay was more than the 10 days in the 2016 contract but less than the 30 days Hamilton believed applied.

The tribunal heard that tensions escalated later that year when Hamilton used the company's holiday booking system on 17 December 2019 to request leave for 2 to 21 January 2022. The system flagged that his request exceeded his entitlement.

Believing he had 25 days plus public holidays, Hamilton uploaded the amended contract as evidence and exchanged messages with managers disputing his entitlement.

He told Drew he had 25 days in addition to bank holidays; site records later showed he had taken 29 to 33 days in some years, which the tribunal said supported his belief that his annual leave entitlement had increased.

This triggered an investigation led by senior manager Rod Callender, who was appointed an investigating officer in February 2020. The only version of Hamilton's contract held at head office was the unamended copy sent by Wise in 2016. Wise herself had since left the company and, following HR advice, was not contacted.

The tribunal heard that Belinda Stewart, a member of the HR department at Cleanevent Services, told Callender it was not normal to contact people outside of the company, but the tribunal found this policy was not established and Callender interviewed one external witness twice.

Callender interviewed Drew, who confirmed he had agreed to a change in job title but denied authorising additional sick pay or leave. He also stated Wise lacked the authority to approve such changes.

Callender reviewed payroll and holiday records, which showed Hamilton had often taken more than 20 days' leave in previous years.

On 11 March 2020, Hamilton attended an investigatory meeting and repeated his claim that Wise had told him to make the amendments. He said he had returned the signed version to head office and uploaded it to the company system.

Despite raising the possibility of contacting Wise, Callender followed HR advice not to pursue her evidence. Instead, the company relied on Drew's statements and the unsigned contract on file.

Hamilton was called to a disciplinary hearing on 2 September 2020, accused of falsifying his contract, misrepresenting leave and sick pay entitlements and breaching trust and confidence. The investigation report was not shared with Hamilton before the hearing.

On 23 September, he was dismissed for gross misconduct. In the dismissal letter, the dismissing officer, Kellie Spollin, said there was no supporting documentation for the amended contract or email trail of HR authorisation, and there was payroll evidence contradicting Hamilton's sick pay claims.

Hamilton appealed but the decision was upheld in October 2020 by HR manager Sara Hinsley, who concluded that there was a reasonable belief the contract had been falsified. Hinsley also accepted that Wise should have been contacted and that the investigation report ought to have been sent to Hamilton.

Judge's comments

Employment judge Kemp ruled that while Cleanevent Services genuinely believed Hamilton had altered his contract, the investigation "fell outside the band of reasonable responses".

The judge said the failure to contact Wise, the one person who could have confirmed or denied Hamilton's account, was a critical flaw. The judge stressed it was "obvious" the company should have attempted to obtain her evidence, particularly since other external witnesses had been contacted.

The tribunal also criticised Cleanevent Services for withholding the investigation report from Hamilton before his disciplinary hearing and appeal, questioning the fairness of the process.

Although Hamilton's own evidence was inconsistent, the judge said his version may have reflected his genuine understanding of instructions he believed came from Wise. Given the seriousness of the allegation – falsifying contractual documents – the tribunal held that a fuller investigation was required before dismissal could be justified.

The judgment stated that no "reasonable employer… could have" held the belief that Hamilton had acted dishonestly based on the investigation conducted.

The judge also stated that he did not consider Hamilton had falsified the employment document, but rather sought to revise it in line with previous discussions.

Thanks to Mahalia Mayne and People Management for the tribunal.

This is another case where the importance of the investigation process is emphasised. It is also extremely important to ensure that changes to terms and conditions of employment are clearly documented.

COMMISSION NOT PAYABLE WHEN SOLICITOR HADN'T DONE THE WORK HIMSELF, UK EMPLOYMENT APPEAL TRIBUNAL RULES

In Saul & Co v Rashbrook, a UK solicitor, Mr Rashbrook, claimed unpaid commission. His contract said he'd earn 20% commission on fees billed to clients once he billed more than three times his salary. He argued he should be paid commission based on all invoices issued on his files - even if others had done some of the work.

The employment tribunal agreed with his interpretation and upheld his claim for unlawful deduction from wages.

The employer appealed – and their appeal was successful.

The Employment Appeal Tribunal held:

- Contract clauses should be construed neutrally on given their natural and ordinary meaning.

- The clause clearly said commission was only due for "work carried out by the Employee" as a solicitor.

- This meant that only work done by Mr Rashbrook himself counted toward the commission threshold.

- Once the fees for work done by others were removed, he hadn't met the required threshold of three times his salary.

Applying the case of Jafri v Lincoln College, the EAT decided there was only one possible outcome: Mr Rashbrook hadn't earned the commission. There was no need to send the case back to the original tribunal.

The appeal was allowed and the claim was dismissed.

Thanks to Daniel Barnett for the Employment Appeal Tribunal summary.

CASE UPDATE: CONSTRUCTIVE DISMISSAL AND THE 'LAST STRAW' DOCTRINE

When can an employee resign and bring a claim after a series of employer breaches of trust?

An employee is entitled to resign and bring a claim that they have been constructively dismissed in response to a breach of the implied term of trust and confidence. This may follow a single act or it may consist of a series of actions on the part of the employer that cumulatively amount to a breach of the term. In such a case, the last act of the employer that leads to the employee leaving need not itself be a breach of contract. The issue in the employment appeal tribunal between James Marshall and his employer, McPherson, was whether there had been a 'last straw' that would enable the claimant to rely on earlier breaches as grounds to bring a claim that he had been constructively dismissed.

Facts

Marshall, an experienced heavy goods vehicle driver, was tasked with taking draft from distilleries and filling the intake hopper at a mill each night. Another driver did the same thing during the day to ensure the draff – residue from the brewing process – was continuously available as the mill operated 24 hours a day.

In 2023, a new intake system was installed at the mill that doubled its capacity and enabled the hopper to be emptied faster. Marshall felt under pressure to stop the hopper from running out of draff, which led to him being unable to take breaks. When he told his manager, their response was that he should "crack on" and do what he could.

Shortly after this, another driver was told to accompany him to check the draff was being tipped properly. Marshall felt offended and undermined. He complained that he felt unable to return to work and was invited to a meeting, where incidents that first occurred six years ago were raised. He had, at that time, also expressed health and safety concerns that had not been acted upon. He was offered a transfer to day work on an alternative route but he refused. An investigation into all the complaints was launched and, while that was being conducted, Marshall resigned.

Decision

The employment tribunal dismissed his claim, finding that the employer's actions that had prompted his resignation did not amount to a repudiatory breach. Checking up on Marshall was not a repudiatory breach and, even if the investigation had been delayed, this was not a breach that would allow Marshall to resign and claim constructive dismissal.

Marshall successfully appealed. The EAT found that the employment tribunal had misapplied the 'last straw' doctrine by requiring the final act to be independently repudiatory. This was not the correct test. The question that needed to be answered was whether the act that prompted the resignation contributed to a cumulative breach. It did not need to be a breach of contract. It was directed that a different tribunal should rehear the case.

Key points

The decision highlights that a final act need not be a serious or blameworthy act on its own. What matters is whether it contributes to a broader pattern of conduct that breaches the implied term of mutual trust and confidence. In practice, when an employment tribunal considers a claim of constructive dismissal it will assess whether there has been a repudiatory breach of contract that led to the resignation. If there was not, it should also consider whether the act or incident that led to the employee resigning was nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence.

Thanks to Chris Kisby for the summary.

NOISY WORKERS IRRITATING OLDER COLLEAGUES IS NOT AGEISM, TRIBUNAL RULES

Booking Administrator has age discrimination claims dismissed after complaining that ‘disruptive’ younger colleagues were distracting her from work.

A 66-year-old booking administrator who claimed “noisy and disruptive” behaviour from her younger colleagues amounted to ageism has had her claims dismissed at tribunal.

Catherine Ritchie claimed she couldn’t meet her daily objectives at Goom Electrical because of disturbances caused by her colleagues, most of whom were in their 20s and 30s. She also complained of her co-workers’ immaturity and said it was “difficult to watch the extreme time wasting and low productivity” .

The Watford tribunal found there was a difference in attitude between Ritchie – who believed the chatty behaviour to be unprofessional – and other staff, who enjoyed the social contact at work. The tribunal dismissed her claims finding this didn’t constitute age discrimination.

Background

Ritchie joined electrical engineering company Goom Electrical as a booking administrator in December 2020. During her time there, she was the oldest person at the company. All other booking administrators were in their 20s or 30s, with the exception of one who was in her 50s.

On 13 September 2021, Ritchie told a manager, Kat Cheesman, that she found the office a “very noisy environment” and was distracted when she tried to make calls. She claimed it was "unprofessional" of her colleagues to have personal conversations in the office, stating they were “not paid to socialise”.

Later that year, in a one-to-one meeting with Hannah Fearns, her manager, she complained colleagues were getting up from their desks and not answering the phones when they should.

Cheesman encouraged Ritchie to concentrate on her own KPIs and not worry herself about other people’s behaviour.

In February Ritchie’s target of 100 phone calls per day was increased to 120. She filled in an appraisal form claiming that she could not meet this KPI due to the distracting noise in the office, which she found embarrassing when making calls.

She complained that managers failed to intervene when staff were "noisy and boisterous" and claimed Cheesman also took part in the loud behaviour.

On 6 August, she submitted a formal grievance to HR manager Lexine Savva, explaining her concerns about the noise levels and stating that, by the end of the day, her head was pounding and she could be suffering from dysphonia, the medical term for hoarseness of voice.

During a meeting in relation to her grievance on 8 September, she explained that she felt she had not been respected when she asked colleagues to be quiet while chatting and socialising on work time.

She asked if she could move to another administrative position, but hearing this was not an option, she resigned.

Panel's judgement

Employment Judge Cowen and panel dismissed her claims of age discrimination and harassment related to age, finding there was a difference in attitude between her and the other employees at Goom Electrical.

Ritchie brought a public interest disclosure against her employer, where she raised the issue of excessive noise in the office and complained about desk placement and the office dog, which she claimed could cause a trip hazard. These were all dismissed by the panel.

During oral evidence Ritchie claimed making her sit for long periods was an example of age discrimination, as people over 60 are more susceptible to arthritis, but the panel dismissed this claim for lack of evidence.

While the tribunal accepted that Ritchie "took her work seriously and wished to remain professional at all times", it was not reasonable to expect all employees to have the same standards of work ethic.

"This resulted in her having unreasonable feelings of indignation about their behaviour when she did not have justifiable reason to do so," the panel said.

Expert comments

Liz Stevens, professional support lawyer in employment at Birketts, said the tribunal was satisfied that different attitudes to work and standards of workplace behaviour were not enough to establish an age-related harassment claim.

"Even though discrimination and harassment were not found to have occurred in this case, employers do need to be sensitive about the working environment and whether it might impact the productivity of their workforce," she said. Employers should consider whether reasonable adjustments might be required.

"Although not a factor here, this is particularly the case for neurodiverse employees, for whom the working environment might affect their ability to carry out their duties," Stevens added.

Thanks to Freddie Clemo and People Management for the tribunal summary.

EMPLOYEE SACKED FOR ONLINE SHOPPING AT WORK AWARDED £14K FOR UNFAIR DISMISSAL

Tribunal finds time spent on personal matters was not 'excessive', after accountancy firm installed spyware on claimant's computer to monitor use.

An accountant who browsed sites including Amazon, Very and Rightmove during working hours was unfairly dismissed, a tribunal has ruled.

The Bury St Edmunds tribunal heard that Anna Lanuszka, an accountancy administrator at Accountancy MK Services, was dismissed after spyware software found that she had been using her computer for personal reasons while at work. The software recorded that she had spent one hour and 24 minutes on "personal matters" across two days. However, employment judge Magee said this time period was not "excessive" and noted that use of her computer for personal reasons was not prohibited.

Additionally, the tribunal found Lanuszka's use of websites for work tasks had been wrongly categorised as personal use. The software's findings had been taken at face value by her employer, with no further investigation conducted.

Lanuszka's unfair dismissal claim succeeded and she was awarded more than £14,000 in compensation.

Background

Lanuszka began working at Accountancy MK in October 2017 as the company's only full-time employee. It ceased trading in 2021 and the business's founder and director, Agnieszka Krauze, set up a new company under the name Accountancy MK Services.

Lanuszka's employment was transferred to the new business in September that year, continuing in her previous role.

In July 2023, Krauze installed spyware software on Lanuszka's computer, which allowed her to record all activity. Analysis produced on 13 and 14 July found that the claimant had spent one hour and 24 minutes on "personal matters" and just over an hour on work matters.

The tribunal accepted Lanuszka's evidence that she was allowed to use her computer for personal matters if she had finished all of her work as well as during lunch breaks, noting that Krauze did the same. Lanuszka admitted that she had visited online retail sites Amazon and Very and the property search website Rightmove, as well as checking information for a planned trip to Brussels.

Her use of websites for work planning and Excel training were also wrongly categorised as “personal” by the software, according to Lanuszka.

Krauze told the tribunal that Lanuszka was sent a letter giving notice of a disciplinary hearing on 17 July, which she denied receiving. The tribunal found this document had not been produced at the time and was not given to Lanuszka.

Krauze provided diary entries to the tribunal that showed there were a series of performance issues with Lanuszka over the period of December 2022 to July 2023. However, the tribunal concluded that the entries had not been created on the days of the alleged incidents, but instead after the adjourned hearing in 2024, which **“seriously undermined”** Krauze’s credibility, according to the tribunal.

Krauze said she showed Lanuszka a set of the company’s policies in April 2021, including the code of conduct; however, the tribunal found these were never provided to her.

On 31 July 2023, Lanuszka was summarily dismissed. The dismissal letter stated that she had “engaged in private business activities during her working hours”, which was a “direct violation” of the company’s code of conduct. However, there was no mention of any previous conduct issues or warnings, or of any disciplinary hearing or discussion of the matter with Lanuszka. It also stated that a “thorough investigation” into the matter had been conducted, including consideration of “the gravity of the situation” and the potential impact it could have on the company’s reputation and productivity.

The tribunal accepted Lanuszka’s account, concluding that she was simply informed of her dismissal and there was no disciplinary hearing or further investigation.

Judge’s comments

Employment judge Magee found that there was no prohibition on Lanuszka using her computer for personal use, and that a “large proportion” of the time identified as “personal use” was for work purposes, professional development and training.

There was no further investigation into the spyware software’s findings on how much time Lanuszka had used the computer for personal use, the judge said. There was also no history of conduct issues and Lanuszka had not had any warnings. Magee noted that Krauze was aware of the two-year qualifying period for unfair dismissal in the UK and thought that Lanuszka did not have the right to bring a claim, as she believed Lanuszka’s employment had begun in September 2021 rather than her start date with the predecessor company, Accountancy MK, in 2017.

“By installing the spyware on Lanuszka’s computer, Ms Krauze intended to gather evidence to support a dismissal of Lanuszka,” Magee said, concluding that “it was Krauze’s desire to dismiss Lanuszka before Krauze believed that she would accrue two years’ service”. The judge said this was the “real reason” for Lanuszka’s dismissal, concluding that there were not reasonable grounds to support a conclusion that she was guilty of misconduct. “Dismissal was outside the band of reasonable responses available to a reasonable employer in the circumstances,” added Magee.

As there was no prohibition on personal computer use and the amount of time Lanuszka spent on these matters had not been shown to be “excessive”, the tribunal did not make any deduction for contributory fault. Lanuszka was awarded an uplift of 20 per cent because of her employer’s failure to follow the Acas code, as no procedure was followed and she was dismissed without any opportunity to explain herself.

Thanks to Isabel Jackson and People Management for the tribunal summary.

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