



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE K ANDREWS

**BETWEEN:**

**Mr B Chowdhury**

**Claimant**

and

**Abellio London Ltd**

**Respondent**

**REASONS FOR THE REMEDY JUDGMENT DATED 5 OCTOBER 2018**  
**(PART RECONSIDERED)**  
**PROVIDED AT THE REQUEST OF THE RESPONDENT**

1. Background
2. By a Judgment dated 12 January 2018 I found that the claimant was unfairly dismissed and a remedy hearing was listed for 18 May 2018. That was then postponed due to the claimant's bereavement.
3. At the resumed hearing the claimant confirmed that he was still seeking reinstatement as his primary remedy. I had a witness statement from Mr Burbridge, trainer for the respondent, who was also present in person, and a small bundle of documents from each party.
4. Relevant Law
5. The provisions of the Employment Rights Act 1996 ("the 1996 Act") relevant to determining remedy on this claim are as follows:

Section 112:

(1) *This section applies where, on a complaint under section 111, an employment tribunal finds that the grounds of the complaint are well-founded.*

(2) *The tribunal shall—*

(a) explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and

(b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under section 113.

Section 113:

An order under this section may be-

(a) an order for reinstatement (in accordance with section 114), or

(b) an order for re-engagement (in accordance with section 115),

as the tribunal may decide.

Section 114:

(1) Reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) On making an order for reinstatement to the tribunal shall specify-

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) ...

(4) In calculating... any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of-

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

6. In deciding whether to make a reinstatement or re-engagement order the Tribunal shall consider the claimant's wishes, whether it is practicable for the respondent to comply and, where the claimant caused or contributed to his dismissal, whether it would be just (section 116).
7. Any sums awarded under sections 114(2) cannot be reduced on the ground that the claimant has failed to mitigate his loss (*City and Hackney Health Authority v Crisp 1990 ICR 95, EAT*).

8. Submissions

9. The respondent was very clear from the outset of this hearing that they have a bus driver job available for the claimant at any depot of his choice on his previously established pay rate. It is clearly practicable therefore for them to comply with any order for reinstatement.
10. The claimant was equally clear that he wished to return to his job although he wanted to return only to an early shift (due to his domestic commitments) and on route 109.
11. The respondent confirmed that their employees' contractual entitlement is to be employed as a driver with shifts and routes subject to operational requirements. Therefore they could not offer the claimant a specific route or shift. The process would have to be that he starts at a depot, states his preference for a route and then goes through the usual process of allocation according to operational need and driver preferences. Mr Burbridge confirmed that although no guarantees could be given, such a process may not take very long as there is a fairly rapid turnover of drivers. He was able to give an assurance that he would seek to give the claimant a priority in that exercise.

12. Reinstatement Decision

13. I conclude that it is practicable and appropriate to order reinstatement of the claimant to his original role with the respondent as a bus driver on the same pay grade that he was on at the time of his dismissal in May 2017. He will commence work on Monday 14 October 2018.
14. With the agreement of the respondent he will initially be re-employed at the Beddington depot. The respondent will make all reasonable efforts to allocate the claimant to an early shift and, as soon it becomes available or can be made available, route 109.

15. Amount payable by the respondent

16. At the oral remedy hearing, on the application of the respondent's representative when considering the award of pay pursuant to section 114(2), I reduced the amount payable to reflect a failure by the claimant to properly mitigate his loss.
17. When preparing the Judgment I realised the error that had been made in so doing (it is contrary to City and Hackney Health Authority v Crisp above). The parties were notified that I intended to reconsider that part of the remedy judgment of my own motion pursuant to rule 70 of the Employment Tribunal Rules of Procedure 2013 and to award him arrears of pay at the net weekly

rate of £474 for the period 18 July 2017 to 14 October 2018 (subject to any subsequent increases in pay during that period) together with an Order that the respondent makes appropriate pension contributions in respect of the same period. Any written representations from the parties in respect of that proposed reconsideration and as to whether a further hearing was required were invited to be received by the Tribunal within 14 days of the date the notice was sent to the parties. For the avoidance of doubt, it was confirmed that the notice of reconsideration had no effect on the reinstatement order the terms of which should be complied with.

18. No such representations were received although the respondent requested these written reasons. Accordingly I have so reconsidered and make the Order as to arrears of pay as set out above.

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Employment Judge K Andrews  
Date: 8 November 2018