



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Hughes  
**Respondent:** Eurochange Ltd  
**Heard at:** Bristol **On:** 14 May 2021  
**Before:** Employment Judge Oliver  
Members Mr H J Launder  
Ms R A Clarke

**Representation**  
**Claimant:** In Person  
**Respondent:** Miss Klaudia Zakrzewska, Litigation Consultant

## RESERVED JUDGMENT ON REMEDY

The unanimous judgment of the Tribunal is as follows:

The Respondent is to pay to the Claimant the total sum of **£50,122**, made up as follows:

1. Unfair dismissal

Basic award	£ 528
Compensatory award	£ 31,594
Total	£ 32,122

2. Detriment for making a protected disclosure

Injury to feelings	£ 18,000
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The Recoupment Regulations apply to the compensatory award for unfair dismissal. The prescribed period is 8 November 2019 to 14 May 2021. The prescribed element is £23,935.

## RESERVED REASONS

1. The hearing was conducted by the parties attending by video conference (CVP). It was held in public in accordance with the Employment Tribunal Rules. It was conducted in that manner because the parties had consented to such a hearing and a face to face hearing was not desirable in light of the restrictions imposed by the Health Protection (Coronavirus, Restrictions) (England) (Amendment) (No. 4) Regulations 2020 and the Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020, as amended and because it was in accordance with rule 46, the Presidential Guidance on remote hearings and open justice and the overriding objective to do so.

2. Judgment was reserved as there was not sufficient time for the Tribunal to deliberate and deliver its decision within the one-day listing.
3. The claimant had succeeded in the following claims at a liability hearing held on 15-17 March 2021:
  - a. Detriment for making a protected disclosure. The acts of detriment were (i) the area manager's behaviour on a call to the claimant on 18 May 2019; (ii) the respondent's failure to investigate the specific allegations of theft made by the claimant as part of the grievance and appeal process; and (iii) the respondent's failure to address the claimant's concerns about the area manager's behaviour.
  - b. Automatic unfair dismissal for making a protected disclosure. The claimant resigned in response to these detriments.
4. The issues for the remedy hearing are:
  - a. What compensation should be awarded for detriment for making a protected disclosure to the date of termination of employment, including injury to feelings and personal injury.
  - b. What compensation should be awarded for unfair dismissal for making a protected disclosure, including a basic award and a compensatory award.
  - c. Should there be any award for aggravated damages or exemplary damages.
  - d. Should there be an uplift for failure to comply with the Acas Code on Grievance Procedures.

### **Evidence**

5. We made directions at the conclusion of the liability hearing for preparation for the remedy hearing.
6. We had two bundles of documents – one containing agreed documents for the hearing, and one containing disputed documents. We read section 1 of the agreed documents, the claimant's medical reports, and a copy of an email from the respondent to the Tribunal on 9 July 2020. We only read other documents if they had been referred to by the parties during the hearing.
7. The parties had provided an updated Schedule of Loss and a Counter-Schedule of Loss, which we have considered in detail and discussed with the parties during the hearing.
8. We had a lengthy witness statement from the claimant, which we took as read. We also heard oral evidence from the claimant. The respondent did not call any witnesses. We also heard oral submissions from both parties.

### **Findings of Fact**

9. We have considered all the evidence and submissions and we find only those facts necessary to decide the issues in the case.
10. The claimant was employed by the respondent from 29 March 2018 until 8 November 2019, when he resigned with immediate effect. He was 52 on the effective date of termination. The parties agree that his gross weekly basic pay

was £352 and his net weekly basic pay was £297.16. He also received annual pension contributions of £483.86.

11. The claimant has been receiving Universal Credit payments following the ending of his employment. He says this is because he is too unwell to work at the moment. He has not looked for work since the ending of his employment because he says he is too unwell. He hopes that the conclusion of these proceedings will help him to recover so that he can look for work, but he does not know how long this may take.

12. The remedy hearing bundle contains statements of fitness for work covering the period from May 2019 to 15 May 2020 (although the final statement is unsigned). These all refer to “stress related problem”. The claimant also provided the following medical evidence, which was not challenged by the respondent:

- a. A letter from the claimant’s GP dated 29 April 2021. This states that he presented to a GP on 10 occasions between 29 May 2019 and December 2020 due to work related stress. It states that he was signed off from work until 31 May 2021 due to a stress related problem. The letter confirms that the claimant has been under the care of the Early Intervention in Psychosis Team since August 2020. He has declined medication but is engaging with psychological therapies.
- b. A letter from the claimant’s Cognitive Behavioural Therapist. The letter describes the claimant as being frustrated, anxious and saddened by the impact of the Tribunal case on his personal relationships and not feeling believed. The letter also describes the claimant being triggered by a belief he and his colleagues were being stolen from, which was exacerbated when he was not taken seriously by the company. It refers to a specific incident on 24 May 2019 when giving a statement to his manager, when he knew people were lying and this triggered a belief there was a cover up, causing him to fear for his life. Levels of stress were increased dramatically by preparing for the case. The letter says he has become isolated, felt cut off from others’ reality, has described periods of depression, and had a shift in his thinking to “thoughts tumbling” out of his control.
- c. A letter from the claimant’s community psychiatric nurse dated 7 April 2021. This described how a combination of stress, anxiety, sleep deprivation, relationship difficulties and financial hardship has contributed to a significant deterioration of the claimant’s mental health and has led to a high level of concern about his overall wellbeing and safety (the claimant having once taken an overdose 20 years previously). The letter says that the claimant had become very fixated on the issues that had happened within his employment, the feeling that no one believed him, what the outcome would be of the employment tribunal and what the consequences of this tribunal could lead to. He also expressed consistent feelings that there should be further consequences for those involved in what he perceived as a conspiracy. He was offered long-term support due to signs of stress-induced symptoms of psychosis. The letter states, “*we believe that the impact of the stress bought about by having to resign from his employment has had a severe and lasting impact on Nick’s mental and physical health, relationships, finances, confidence and overall functioning including his fitness to work.*”

13. The claimant provided a very lengthy (72-page) statement for the remedy hearing. This describes the full chain of events and his reaction to these events in detail. The claimant confirmed that the impact summary in his schedule of loss was an accurate description of the effect of all events on him, as follows:

*“The psychological impact on me of my experience, as a result of the respondent’s actions, has been extremely severe and will be very long-lasting. The mental anguish and suffering I have endured has had an impact significantly beyond simply being unfit to work. I have suffered, among other symptoms, from anxiety, weight loss, sleep disorders, nervousness, depression, a reduced ability to concentrate, low energy, mood swings and withdrawal from / falling out with friends and family. I genuinely hope to recover over time from this ghastly episode, which seems never-ending, but I have found it frightening and isolating. I feel deeply undermined and have suffered a grave loss of confidence and stability.”*

14. We asked the claimant to describe the effect of the three detriments on him. In relation to the call from his area manager, he described this as making him realise there would not be a proper investigation and it was a cover-up. He described feeling hopeless after this call, that there was nothing he could do, and that he had been “warned”. He said that his life fell apart from that day, and he is still distressed now when he thinks about what the area manager said. In relation to the respondent’s failure to address his concerns about the area manager’s behaviour, the claimant said he was expecting immediate retribution, and when this did not happen it triggered a downward spiral that he is still in. In relation to the respondent’s failure to investigate the theft, he said the failure to investigate theft when the respondent’s own employees were being stolen from had a big effect on his life, and also his personal life had fallen apart as others did not believe him. He said there had been no justice and this was with him 24 hours a day.

15. The respondent presented some information about the effect of the coronavirus pandemic on their business. They have implemented some redundancies and put other staff on furlough. The respondent accepts that the claimant would not have been made redundant. However, they say that the claimant would have moved to a 30 hours per week contract at £8.80 per hour from 1 August 2020. This is the date when all employees were moved to a 30 hours per week contract. The claimant did not know whether this was correct as he has had no involvement with the respondent since his resignation, but he accepted the principle that he should be compensated for the earnings he would actually have lost if he had remained employed.

### **Applicable law**

16. **Detriment for making a protected disclosure.** A Tribunal may make an award of compensation for detriment for making a protected disclosure. The amount of compensation shall be “*such as the tribunal considers just and equitable in all the circumstances having regard to - (a) the infringement to which the complaint relates, and (b) any loss which is attributable to the act, or failure to act, which infringed the complainant’s right*” - section 49(2) Employment Rights Act 1996 (“ERA”). This includes compensation for injury to feelings (***Virgo Fidelis Senior School v Boyle*** 2004 ICR 1210, EAT).

17. The dismissal of an employee cannot be treated as a detriment (section 47B(2) ERA). Where a detriment has been followed by a dismissal, compensation

for detriment (including injury to feelings) should be assessed up to the date of dismissal (*Melia v Magna Kansei Ltd* [2006] IRLR 117 (CA)).

18. Compensation for injury to feelings is calculated in the same way as for discrimination claims. There are three “Vento” bands which set different levels of award for injury to feelings. These have been updated over time, and the latest figures are contained in the Presidential Guidance on Vento Bands. The claim was presented after 6 April 2019 and before 6 April 2020, so the guidance for this period should be used. The lower band is £900 - £8,800, the middle band £8,800 - £26,300, and the upper band £26,400 - £44,000. The lower band is for the least serious cases such as a one-off incident or an isolated event. The middle band is for more serious cases which don’t merit the top band. The top band is generally for the most serious cases such as a lengthy campaign of harassment which causes significant injury. The award is to be based on the extent of the injury to the claimant.

19. **Dismissal for making a protected disclosure.** There is no cap on compensation for unfair dismissal for making a protected disclosure (section 124(1A) ERA). However, compensation for unfair dismissal cannot include compensation for injury to feelings (*Dunnachie v Kingston upon Hull City Council* [2004] UKHL 36). This applies to a dismissal or constructive dismissal for making a protected disclosure.

20. Compensation for unfair dismissal consists of:

- a. A basic award calculated in accordance with section 119 ERA, based on age, years of service, and a week’s pay (capped at £525 per week between 6 April 2019 and 5 April 2020). A basic award is payable in unfair dismissal cases where the claimant does not have two years’ service.
- b. A compensatory award of “*such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer*” (section 123 ERA). This includes immediate and future loss of wages, pension loss, and loss of statutory rights based on years of service.

21. If a claimant in a successful unfair dismissal claim has received Job Seekers’ Allowance, Income-related Employment and Support Allowance, Universal Credit or Income Support following dismissal, the Tribunal must apply the ***Employment Protection (Recoupment of Jobseeker’s Allowance and Income Support) Regulations 1996 (SI 1996/2349)*** (the Recoupment Regulations) so that the Government can recover the cost of those benefits. The Tribunal is required to specify the “prescribed element” (past loss of earnings) and the period to which it relates. This means that the amount of these benefits should not be deducted from the compensatory award.

22. Aggravated damages can be awarded where the behaviour of the respondent has aggravated the claimant’s injury. They can be awarded where the respondent has acted in a “high-handed, malicious, insulting or oppressive manner” (*Broome v Cassell & Co Ltd* [1972] AC 1027). The focus should be on the aggravating effect on the claimant’s injury to feelings (*Rookes v Barnard* [1964] AC 1129). There must also be a causal link between the aggravating act complained of and the injury or loss suffered by the claimant. Aggravated damages are designed to

compensate the claimant for injury and not to punish the respondent. Aggravated damages can be awarded based on the conduct of the respondent after dismissal, including the manner of defending the proceedings.

23. Exemplary damages can be awarded to punish the respondent, and are only available in limited cases, where the compensation itself is insufficient punishment and the respondent's conduct is either (i) oppressive, arbitrary or unconstitutional action by servants of the government, or (ii) calculated to make a profit which could exceed the compensation otherwise payable to the claimant (*Rookes v Barnard* [1964] AC 1129 and *Kuddus v Chief Constable of Leicestershire Constabulary* [2001] UKHL 29).

24. There is an Acas Code on Disciplinary Procedures and a separate Code on Grievance Procedures. If there has been an unreasonable failure to follow one of these Codes by the employer, and the employee subsequently brings certain successful claims, the tribunal can adjust the amount of compensation by up to 25% either way (section 207A, Trade Union and Labour Relations (Consolidation) Act 1992).

### Conclusions

25. **Compensation for unfair dismissal for making a protected disclosure.** This involves a basic award and a compensatory award.

26. **Basic award.** The parties agree this is the sum of £445.74 (a week's pay x 1 full year's service x 1.5 as the claimant was aged 51 at the time of his resignation). However, it appears that the parties had incorrectly used the net rather than gross figure for weekly pay. The correct sum is £352 x 1.5, which gives a basic award of **£528**.

27. **Compensatory award.** Having considered the information from the respondent, we accept that, if the claimant had remained employed, he would have moved to a 30 hours per week contract from 1 August 2020, at the rate of £8.80 per hour. We note that this should increase to £8.91 per hour from 6 April 2021 in line with the annual increase in national minimum wage.

28. The respondent argued that the claimant had failed to mitigate his loss, and was fit enough to have been looking for work in 2020 and 2021. This was based on the fitness for work statements in the bundle, which expired from May 2020. The respondent said that these notes all refer to general stress rather than work related stress. The respondent also argued that the claimant had failed to seek full professional help as he had declined medication.

29. We find that the claimant has not failed to mitigate his loss. We accept that he has been too unwell to work until the date of this hearing. We note in particular the letter from his GP dated 29 April 2021, which says the claimant has been signed off as unfit to work until 31 May 2021. We do not consider the absence of any reference to work related stress in the fitness to work statements to be relevant, as the medical evidence clearly shows the claimant has been too unwell to work, and his medical reports describe how this was triggered by events at work and the tribunal proceedings. He has also been receiving Universal Credit on this basis. It is a personal choice whether to take medication, and this is not relevant to the issues we are deciding, particularly because the claimant has been seeking other types of therapy and took part in CBT treatment programme with Silver Cloud2. We therefore find that the claimant should be awarded his full loss to the date of this hearing.

30. The compensatory award for loss to the date of the hearing breaks down as follows, based on the figures and calculations in the respondent's counter-schedule of loss (including the pension calculations). Net figures from 1 August 2020 have been calculated by the Tribunal using an online salary calculator, based on gross pay of £8.80 per hour, and £8.91 per hour from 1 April 2021.

31. From 08.11.2019 to 01.08.2020 (38 weeks)

Loss of basic salary 38 x £297.16	£11,292
Loss of pension benefit 38 x £37.44	£ 1,423
	<b>£12,715</b>

32. From 01.08.2020 to 01.04.2021 (35 weeks)

30 hours per week @ £8.80 per hour gives a gross pay of £264 per week, which equates to net pay of £250 per week.

Loss of basic salary 35 x £250	£ 8,750
Loss of pension benefit 35 x £23.36	£ 818
	<b>£ 9,568</b>

33. From 01.04.2021 to 14.05.2021 (6 weeks)

30 hours per week @ £8.91 per hour gives a gross pay of £267 per week, which equates to net pay of £252 per week.

Loss of basic salary 6 x £252	£ 1,512
Loss of pension benefit 6 x £23.36	£ 140
	<b>£ 1,652</b>

34. This gives a total figure for loss to the date of the hearing of **£23,935**.

35. For future loss, the claimant had proposed a further 52 weeks, and the respondent a further 26 weeks. Although the respondent has argued that the claimant is fit to return to work, it is clear from the medical reports that the claimant is currently unwell and not fit to work. However, much of his current stress has been attributed to these tribunal proceedings, which have now been concluded. We have considered the fact that the claimant would be looking to replace a 30 hours per week job at minimum wage, and there may be various ways of replacing this lost income. Having taken all of these matters into account, we find that the claimant is very likely to be sufficiently recovered to start part-time work in around six months of the hearing date. We therefore limit future loss to a further 26 weeks from the date of this hearing.

36. Using the same net figure of £252 for a week's pay, as above:

Loss of basic salary 26 x £252	£ 6,552
Loss of pension benefit 26 x £23.36	£ 607
	<b>£ 7,159</b>

37. Both parties also included the sum of **£500** for loss of statutory rights in their schedules of loss.

38. This gives a compensatory award of £23,935 + £7,159 + £500, a **total of £31,594**.

39. **Detriment for making a protected disclosure.** This relates to detriment during employment. There is no claim for financial loss during employment, so any award is limited to injury to feelings.

40. ***Injury to feelings.*** The claimant seeks a sum in excess of the top Vento band, based on the extent of his psychological injury and the respondent's conduct throughout the matter. The respondent says that any award should be in the bottom Vento band, due to the claimant's history of mental health issues, and the fact the tribunal only found one incident of victimisation.

41. We do not agree that any award should be in the bottom band. This is generally only appropriate for a one-off incident or isolated event, which has a limited effect on a claimant. It is not correct that the tribunal only found one incident of detriment relating to the phone call from the claimant's manager. There are three detriments – the call, the respondent's failure to address this behaviour, and the respondent's failure to investigate the allegation of theft. The claimant had experienced an incident of depression in 2001. However, it is clear from the medical evidence provide for this hearing that the claimant's current ill health was caused by what had happened at work. We accept the claimant's evidence the there was an isolated incident in 2001, but he had not been unwell again until the events which are the subject of these proceedings. The respondent also raised the fact the claimant had refused consent to access his GP records during employment, which meant he could not be referred for support. We do not see that this point is relevant to our assessment of injury to feelings.

42. We do not agree with the claimant that any award should be at or above the top band. This is only appropriate for the most serious cases, such as a lengthy campaign of harassment which causes significant injury. It is clear that the claimant has been seriously unwell. We accept his evidence about the psychological impact he has been experiencing, as set out in paragraph 13 above. We also accept the medical evidence which attributes the illness to events at work and the stress of the tribunal proceedings. The claimant undoubtedly feels that he has been subject to a lengthy campaign by the respondent. However, we are making an award solely in relation to the three detriments we found had taken place. We cannot make an award relating to the dismissal. We also cannot make an award relating to other alleged treatment of the claimant. In particular, we made no findings in the liability hearing that there had been a theft, or that there had been a deliberate cover-up by the respondent.

43. We have considered this issue carefully. It is difficult to attribute specific injury to the three detriments which occurred, as opposed to other issues. The recent medical reports refer to other matters as being significant factors in the claimant's ongoing psychological ill health – not being believed, belief there was a cover-up, become very fixated on the issues that had happened within his employment, and feelings that there should be further consequences for those involved in what he perceived as a conspiracy. It is clear from the claimant's own evidence that he has been caused particular distress by his belief that there has been theft and a conspiracy to cover this up by the respondent, and he wants the alleged perpetrators to be brought to justice. This tribunal made no findings that these things happened.

44. We find that an award in the middle Vento band would be appropriate. We have taken into account the claimant's oral evidence at the hearing when he was asked about the specific effect on him of the three detriments, as set out above. These events contributed significantly to the claimant's psychological distress at the time. The call from the area manager was a trigger for the claimant to become very unwell and have to be signed off work. The respondent's failure to address this issue, or investigate the actual theft allegations, exacerbated the claimant's



psychological distress. However, it now appears that much of the claimant's ongoing illness is caused by other factors and ongoing beliefs.

45. We therefore award the sum of **£18,000** for injury to feelings, taking into account the serious psychological effect of the detriments on the claimant at the time of these events.

46. The claimant has also asked for an additional award for personal injury, based on his recent medical reports. He did not argue for a specific figure. We do not make any award for personal injury. It is not possible to determine how much of the claimant's ongoing illness has been caused by the detriments as opposed to other factors. The medical reports do not explain this, and refer to issues other than the three detriments. The award of £18,000 for general injury to feelings already takes into account the overall impact on the claimant of the three detriments, including his psychological ill health at the time of the relevant events.

47. We note that compensation for injury to feelings in respect of discrimination unrelated to the termination is not taxable as earnings (accepted by the Upper Tribunal and Court of Appeal in **Moorthy v HMRC** [2018] EWCA Civ 847), and the same principle should apply to injury to feelings for detriment not related to termination.

48. **Aggravated and exemplary damages.** The claimant asks for aggravated damages on the basis of the respondent's failure to address the issues he raised and the respondent's attempt to cover up the wrong-doing. He refers specifically in his schedule of loss to the failure to investigate the allegations of theft, and the outcome letters to his grievance which did not offer an apology but put him under pressure to return to work. He also refers to an email from the respondent's representatives to the tribunal dated 9 July 2020, during the proceedings. He says that this makes unjustified assertions that he does not have a genuine belief in the subject matter of the claim, is bringing the case for financial gain, and is using the case to persecute a former colleague. He also complains about the statement in this letter that "*that these proceedings are being brought because of an illness or condition which the claimant has, or had, and his illness or condition currently has not been caused by the respondent*", which he says resulted in him having to consult his GP again.

49. Aggravated damages can only be awarded where the respondent has acted in a "high-handed, malicious, insulting or oppressive manner", and this has aggravated the claimant's injury. We understand that the claimant was distressed by the respondent's treatment of his allegations. However, although we found three incidents of detriment, we made no findings that there had been a cover-up or that the respondent had otherwise been acting in this type of manner. The distress caused by the detriments has already been covered by the general injury to feelings award.

50. In relation to the email from the respondent's representative, we can understand that the claimant would have found this distressing as it makes allegations about his motivations and his mental health. Having considered the matter carefully, we find that this email does not cross the line into behaviour that would attract aggravated damages. It is certainly a robust email which makes personal allegations against the claimant. However, this was written in the context of ongoing litigation, following a difficult Preliminary Hearing, and we do not find that it is sufficient to lead to an award of aggravated damages.

51. The claimant agreed that he was not pursuing exemplary damages after the Judge explained the very limited circumstances in which such an award can be made (as set out in the legal summary above).

52. **Uplift for failure to follow the Acas Code on Grievance Procedures.** The claimant's schedule of loss included an uplift of 25% for "*failure to comply with Acas...as I believe that my employers failed to treat me fairly and reasonably*". The claimant explained at the hearing that his sister has helped to draft this document and he was not able to give any specific examples of breach of an Acas Code. As the respondent followed a grievance procedure, potentially the Acas Code on Grievance Procedures would apply. However, we made no findings about breach of the Code during the liability hearing, and the claimant did not argue this point at the remedy hearing. We therefore make no uplift to the overall award.

53. We make a total award of **£50,122**.

**Employment Judge Oliver  
Date: 18 May 2021**

Reserved Judgment and Reasons sent to the Parties: 25 May 2021

FOR THE TRIBUNAL OFFICE

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