



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Z Kabir  
**Respondent:** John Lewis PLC  
**Heard at:** East London Hearing Centre  
**On:** 28 November 2022  
**Before:** Employment Judge Jones

## Representation

**Claimant:** Mr Z T Simret (Legal Executive)  
**Respondent:** Ms L Gould (Counsel)

# RESERVED REMEDY JUDGMENT

1. The Claimant has been successful in his complaint of unfair dismissal.
2. The Claimant is entitled to the following remedy:
3. The Claimant's dates of employment were 2003 – 29.07.2020  
His age at the effective date of termination was 44  
The Claimant's gross salary per week was £515.53 (£420.85 net)  
The Respondent contributed £14.43 per week to his pension

## Basic Award:

4. (14 years at 1 week's pay per year (14) and 3 years at the rate of 1.5 week's pay per year (4.5)) = 18.5 years x £515.53 gross pay per week = £9,537.30.
5. 10% reduction for contributory fault = £9,537.30 – 953.73 = £8,583.57.
6. **The Basic Award = £8,583.57**

## Compensatory Award:

7. From 28 October 2020 – 21 November 2021 = 55 weeks x £420.85 = £23,146.75.
8. Loss of partnership pension contributions £14.43 x 55 = £793.65.

9. Loss of statutory rights = £450.
10. Loss of Partnership Bonus = £500.
11. The total compensation award is = £23,146.75 + £793.65 + £450 + £500 = £24,890.40
12. Less: - income earned in November 2021 = £3,284/12 = £273.67.
13. The total compensatory award of (£24,890.40 - £273.67) = £24,616.73 must be reduced by 25% to reflect the Claimant's contributory conduct.
14. £24,616.73/25% = £6,154.18. £24,616.73 - £6,154.18 = **£18,462.55**
15. **The Compensatory Award = £18,462.55.**

Breach of Contract:

16. 17 years employment = 12 weeks' notice entitlement. Notice period: 29 July 2020 to 28 October 2020.
17. Notice Pay = 12 x £515.53 = £6,186.36
18. **Compensation for breach of contract = £6,186.36.**
19. **The total remedy due to the Claimant for his unfair dismissal is £33,232.48.**

Recoupment

20. The Employment Protection (Recoupment of Job Seeker's Allowance and Income Support) Regulations 1996 apply.
21. The Claimant is entitled to a total Monetary Award of **£33,232.48**
22. The amount of the Prescribed Element is **£18,462.55**
23. The dates of the period to which the prescribed element relates is 28 August 2020 to 7 October 2022.
24. The amount by which the Monetary Award exceeds the Prescribed Element is **£14,769.93.**
25. The Respondent is ordered to pay the Claimant immediately the sum of **£14,769.93.**
26. The Respondent is ordered to pay the Claimant the balance of his remedy, **£18,462.55**, once it has received the Notice from the Department of Work and Pensions and satisfied that notice. If the DWP informs the Respondent that it does not intend to issue a Recoupment Notice, the Respondent must immediately pay the whole of the remuneration to the Claimant.

# REASONS

1. The Claimant succeeded in his complaint of unfair dismissal and he is therefore entitled to a remedy judgment.

## Evidence

2. At today's hearing the Tribunal had live evidence from the Claimant. He did not produce a witness statement but did produce copies of various documents. The Tribunal had documents and oral submissions from both parties. The Tribunal also had access to the documents and statements prepared for the liability hearing.
3. The Tribunal drew the following conclusions from the evidence before it.

## Findings of fact

4. The Claimant was unfairly dismissed for serious misconduct. His effective date of termination was 29 July 2020.

### *Re-employment – reinstatement/re-engagement*

5. The Claimant wanted to be reinstated to his old job or to be re-engaged with the Respondent. He disputed the Respondent's assertion that it was operating a recruitment freeze because of the way in which the Covid-19 pandemic and the various lockdowns imposed in the UK between March 2020 and beginning of 2022 had affected trading. The Claimant stated that it was more important to him to be re-employed by the Respondent than to be awarded compensation. He wanted to be reinstated or re-engaged. However, the Claimant did not refer to a specific job or position or location that he should be re-engaged to. He was also not able to challenge the Respondent's position that his old job at South Woodford was no longer in existence at the time of the remedy hearing.
6. The Tribunal finds that it is likely to be difficult for the Claimant to be reinstated to his original job. The Respondent stated that the job no longer existed but even if it did, the Respondent submitted that given the circumstances of the case, there would likely be issues of trust and confidence between the Claimant and his colleagues/managers at the South Woodford store. The Claimant contributed to his dismissal by by conduct which his direct line manager considered to be threatening. It is this Tribunal's judgment that it was not reasonable for it to have been considered as threatening but it also a fact that this was Mr Ford's conclusion at the relevant time and that other managers may hold the same view. The Respondent confirmed that it had accepted the judgment but that it considered that the Claimant had committed serious misconduct, which called into question his ability to be a trusted partner in the business. The Claimant submitted that the only person who could reasonably say that they had an issue with the Claimant was Mr Ford and it was no clear whether he was still managing that store. The Respondent did not clarify the situation with Mr Ford but instead submitted that the Claimant's misconduct would affect the ability of all managers of its stores to be able to have trust and confidence in him.

7. That position was supported in the witness statement for Ms Ridley and in the evidence from Mr Gladstone and Ms Lakey. The managers were in agreement that the Claimant's conduct in sending the text messages fell short of the standards set in the company handbook and below the partnership principles.
8. The Respondent produced information on two jobs that were available as of today's date. The Claimant had been sent details of these jobs last Friday. Although the Tribunal adjourned the hearing to give the Claimant the opportunity to consider these jobs, in conjunction with his legal adviser, the Claimant refused to engage with the jobs. One was a night shift assistant in Rickmansworth for approximately 25 hours per week and a customer delivery driver in Bishops Stortford, for 19 hours per week. Although the Claimant did not say, the Tribunal finds it likely that both jobs would have been difficult for the Claimant to do because of distance from his home. The Claimant presently lives in E4 and travel to Bishops Stortford would take approximately 1.5 hours each way. There would likely be a similar journey to and from Rickmansworth. The Claimant stated that he had not applied for either job before today as he did not believe that the Respondent would consider re-employing him.
9. The Claimant did not accept that those were the only two jobs that the Respondent had available. He did not have evidence of any other jobs. It was the Respondent's case that there was a recruitment freeze in operation due to the pandemic and various factors in its sector. The Claimant had not done any searches online or elsewhere to see whether there were any vacancies in the Respondent. He simply suggested that it was unlikely that there were no other jobs. He suggested that the Respondent was likely to engage additional seasonal staff over Christmas but provided no evidence of that. The Respondent disputed that it would be recruiting a similar number of seasonal workers around Christmas 2022, as it had previously done for the holiday season, or that such work would be suitable for the Claimant. It was also not clear if the Claimant was asking the Tribunal to order the Respondent to re-engage him in a seasonal job, which could be fixed term. The Tribunal had no additional evidence on this from either party, apart from the information on the two jobs.
10. The Claimant was unable to point to any particular job in any store or affiliated business of the Respondent that he considered that he should be re-engaged into. He simply stated that the Respondent was big enough to find him a job.

#### *Losses*

11. The Claimant produced a Universal Credit (UC) journal at today's hearing. This shows that he completed paperwork to claim UC on or around 28 August 2020. The journal ends on 3 November 2022. The journal is for both the Claimant and his wife, Ms M Popy.
12. In January 2021 the Claimant was advised by the Job Centre to consider becoming self-employed as a way to work. He applied to HMRC for a UTR number and became self-employed. His registration was dated October 2021. The Claimant confirmed that he was self-employed at the time of the liability hearing in November 2021. The Claimant was still self-employed in May 2022.

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13. The journal shows that the Claimant also registered with Brook Street, Total Jobs and Maximus UK in March 2021. The Claimant had interviews for jobs on 25 May 2022 and 1 June 2022. The Claimant began paid work as an employee 10 April 2022. There was a P45 from the Star of Walton which confirmed that it ended on 31 August 2022. There was also a payslip from 'Desserts Town Ltd' dated October 2022. He started work with Desserts Town in August, once the job at the Star of Walton ended. Work search continued while the Claimant was self-employed as the self-employment work was occasional and sporadic. He closed his benefits claim when he started working in April 2022.
14. The UC journal also confirms that the Claimant and his wife had a third child in September 2022. They have a son who is enrolled in a fee-paying school. The Claimant is therefore keen to work.
15. A copy of the Claimant's HMRC tax return for his self-employed earnings were in the bundle. It stated that the Claimant's turnover for the year 2021 – 2022, was £4,676, with total allowable expenses of £1392. That left the Claimant with a surplus/profit of £3,284. As the Claimant only began working as a self-employed person in October 2021, the amount of that profit that relates to the period ending on 12 November 2021 would be no more than 1 month's wages.
16. The Claimant attended interviews for jobs in the period since his dismissal. Sometimes, the prospective employer would have heard about the liability judgment in this case and would raise it in the interview. The liability judgment was reported in the press and the Claimant found that a few prospective employers were aware of it. Once they mentioned it to him, he never heard back from them. It was the Claimant's evidence that once he started working with the Star of Walton he did not have any further input from the Job Centre.
17. At today's date, the Claimant continues to work under a zero hours contract with Desserts Town Ltd. They call him when they need him to deliver food. The Claimant continues in his search for secure employment, which is what he would rather be doing.
18. After due consideration of all the Claimant's evidence; the Respondent did not take issue with the Claimant's efforts to mitigate his losses.
19. The Claimant has 17 years' experience with the Respondent and therefore considerable experience with food retail. It is likely that he will have more options for employment soon as the retail sector recovers from the effects of the Covid-19 pandemic and as the liability judgment fades from the memory of prospective employers.
20. The Respondent disputed that the Claimant would have been paid a bonus for the year 2020 as there was no entitlement to it due to the pandemic and the disruption in trading. The Claimant was paid a Partnership Bonus in March 2019 of £818.16 tax free (323) and in March 2020 of £601.68 tax free (350). It is likely that although trading was disrupted due to the pandemic, the Claimant would have been entitled to be paid a Partnership Bonus in March 2021, although it is likely that it would have been a smaller amount than before. The Tribunal finds that the Claimant is entitled to a Partnership Bonus of **£500**, tax free for 2021. It was not submitted that the Claimant would not

have been entitled to a Partnership Bonus because of his misconduct.

### *Calculations*

21. The Claimant was employed between 18 October 2002 and 29 July 2020. The Claimant's case was that a week's pay was £597.15. He got this sum by taking the figure of £31,051.77, referred to on page 350 of the liability bundle, as Total Taxable Pay at 31 March 2020. He then divided that sum by 52. This comes to a sum of £597.15.
22. The Respondent challenged that calculation. In its application for reconsideration of the original judgment, the Respondent contended that the Claimant's basic annual pay was £17,824.20 and a week's pay was therefore £342.77 (£17,824.20/52).
23. We had a full payslips in the bundle at pages 319 – 359. Payslips for the financial year beginning April 2020 were - April = gross pay £2,191.52, net pay £1,794.78; May = gross pay **£2,131.07**, net pay £1,753.78; June = gross pay **£2,187.18**, net pay £1,791.76; and July = gross pay, **£2,383.70**, net pay £1,925.50.
24. The Tribunal finds that the Claimant's wages for the financial year 2019/2020 were higher than for the financial year in which he was dismissed. The calculation of his remedy will be made on the wages he earned in the financial year 2020, which was the year in which the Claimant was dismissed. May's wages included a special contributory bonus and all three (May, June and July) payslips contained additional partnership contributions. Those are therefore already part of the following calculation.
25. The Tribunal finds that a week's pay (gross) for the financial year 2020 – 2021 is calculated as follows, using the wages for May, June and July = £2,131.07 + £2,187.18 + £2,383.70 = £6,701.93/3 x 12/52 = **£515.53 (gross) per week.**
26. A week's pay (net) for the same period = £1,753.78 + £1,791.76 + £1,925.50 = £5,471.04/3 x 12/52 = **£420.85 (net) per week.**
27. The total sum paid to the Claimant as the Partnership Pension Contribution in the March 2020 wage slip, which was the total for the financial year, was £750.58. This equals a weekly sum of £750.58/52 = **£14.43.**
28. The Tribunal considered the following law when deciding on the remedy due to the Claimant for his successful complaint of unfair dismissal.

### **Law**

#### *Reinstatement/Re-engagement*

29. Section 112 of the Employment Rights Act 1996 states that where, on a complaint under section 111, an employment tribunal finds that the grounds of complaint are well-founded, the tribunal shall – (a) explain to the complainant that 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. The orders that can be made under section 113 are for reinstatement to the original post, or for re-engagement. The Claimant applied for reinstatement in his claim form and the Respondent's

witness statements for the liability hearing addressed this.

30. When a tribunal orders reinstatement, the employer has to treat the complainant in all respects as if they had not been dismissed.
31. An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to and that from which he was dismissed or other suitable employment.
32. Section 116 states that in exercising its discretion under section 113, the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account – (a) whether the complainant wishes to be reinstated, (b) whether it is practicable for the employer to comply with an order for reinstatement, and (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.
33. If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms. In so doing, the tribunal shall take into account – (a) any wish expressed by the complainant as to the nature of the order to be made, (b) whether it is practicable for the employer to comply with an order for re-engagement, and (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.
34. In deciding whether to use its discretion to order re-employment, the tribunal must consider the issue of practicability at the stage it makes the order and not at the time of dismissal. There is no onus on the employer to show that re-employment is not practicable. The issue is one for the employment tribunal to consider in the light of all the circumstances of the case as a whole.
35. The issue of practicability is a question of fact for the tribunal. In the case of *Port of London Authority v Payne* [1994] IRLR 9, Neil J emphasised that the tribunal should, in reaching its conclusion on practicability, give due weight to the commercial judgment of the management, unless they were disbelieved. Also, that  
  
*‘the standard must not be set too high. The employer cannot be expected to explore every possible avenue which ingenuity might suggest. The employer does not have to show that reinstatement or re-engagement was impossible. It is a matter of what is practicable in the circumstances of the employer’s business at the relevant time.’*
36. It was also held in the case of *Lincolnshire County Council v Lupton* [2016] IRLR 576 that re-engagement is not to be used as a means of imposing a duty to search for and find a generally suitable place within the ranks for a dismissed employee irrespective of actual vacancies. An employer does not necessarily have a duty to create a space for a dismissed employee to be re-engaged.

*Some of the factors that are relevant for the tribunal to consider*

37. Where there are no suitable alternative vacancies. In order for the parties to

be able to address the suitability of any vacancies, an employer should produce evidence as to what vacancies exist in its organisation at the time of the remedy hearing.

38. Also, the absence of confidence in a former employee can be a relevant factor in deciding whether re-engagement is practicable or whether the discretion should be exercised to make an order. The tribunal should not substitute its own assessment for that of the employer but must ask itself whether the employer genuinely believed that the employee had been dishonest and whether that belief had a rational basis.
39. It is the employer's view of trust and confidence, appropriately tested by the tribunal as to whether it is genuine and founded on a rational basis, that matters, not the tribunal's (*United Lincolnshire Hospitals NHS Foundation Trust v Ferren* [2017] ICR 513 HHJ Eady QC).
40. The ultimate question is whether it is practicable for this employer to re-employ this employee and whether the employer's objection to doing so is held upon a genuine and rationale basis.
41. This is not a reasonableness test (*Kelly v PGA European Tour* [2020] IRLR 927 EAT Auerbach J). A belief may have a rational foundation in evidence or information known to the person who forms it, though it has not been reasonably reached. This is why it is possible for an employer to rely upon a genuine and rational belief in misconduct as having a bearing on practicability, even though the dismissal for the same conduct was unfair. When the case went to the Court of Appeal, Lewis J gave the following guidance to employment tribunals on the approach to practicability where the employer contends that there has been a breakdown in trust and confidence such that re-employment is no longer practicable. The question, he said is  
*'whether the employer had a genuine and rational belief that the employee had engaged in conduct which had broken the relationship of trust and confidence between the employer and the employee'*.
42. Also, in the judgment of the Court of Appeal, Underhill J explained the meaning of the term 'trust and confidence' in this context. He stated that it was  
*'the common-sense observation that it may not be practicable for the dismissed employee to return to work for an employer which does not have confidence in him or her, whether because of their previous conduct or because of the view that it has formed about their ability to do the job to the required standards. Of course, any such lack of confidence must have a reasonable basis.'*
43. If the Tribunal decides not to order re-employment for the complainant, it will go on to consider the amount of financial compensation to award the Claimant.

#### Basic Award

44. This is set out in *Section 119 of the Employment Rights Act (ERA)* and is calculated using a formula that relates to the age and length of service of the successful claimant. It is designed to compensate the employee for loss of



job security caused by the unfair dismissal. It is calculated in units of a week's pay up to a ceiling. If the amount of a claimant's week's pay exceeded that ceiling, then the amount of the award is restricted to it.

45. The Tribunal can reduce the basic award in certain circumstances where it is expressly permitted by statute. This could be where one or more of the following circumstances exist in the particular case: i.e. the claimant's conduct before dismissal makes a reduction just and equitable, the employee has unreasonably refused an offer of reinstatement, the employee has been dismissed for redundancy and already received a redundancy payment or the employee has been awarded an amount in respect of the dismissal under a designated dismissal procedures agreement.
46. The basic award is calculated on the basis of gross weekly pay.

*Compensatory award*

47. This is set out in **Section 123 of the ERA**. It is intended to compensate the claimant for losses arising out of the dismissal, so far as that loss is attributable to action taken by the respondent. It is not to be used to punish the respondent. Such losses as can be compensated would include not just wages lost due to being unfairly dismissed but also any additional benefits attached to the employment that had been lost i.e. company car, health benefits, pension, travel allowances etc. In addition, the tribunal can compensate the claimant for any additional expenses occasioned by the loss of employment i.e. expenses incurred in seeking alternative employment. The compensatory award can take into account losses extending into the future. The tribunal has to make findings of fact based on the evidence before it, in order to determine how much and for how long it would be just and equitable to award to the claimant compensation for such future losses.
48. The claimant is under a duty to mitigate his/her loss and the tribunal would need to consider whether this has been done in deciding on which losses will be compensated. This refers in particular to the duty on the claimant to make diligent searches for alternative employment following dismissal.
49. The tribunal can make reductions from the compensatory award. They can reduce it to reflect the fact that the claimant's conduct caused or contributed to his dismissal.
50. Section 124 confirms that for dismissals occurring on or after 6 April 2020, the statutory cap, where applicable, is calculated as the lower of £88,519.00 or 52-weeks' gross pay.
51. The Claimant also succeeded in his complaint of wrongful dismissal. The Claimant agreed in today's hearing that there had been some double counting in the original remedy judgment as the notice pay was included as well as loss of wages for the same period. He also accepted that he had not offered any evidence in relation to the claim for holiday pay and that there was nothing owed to him in respect of holiday pay.
52. As the Claimant claimed Universal Credit after his dismissal, the recoupment regulations apply. These are contained in the Employment Protection (Recoupment of [Benefits]) Regulations 1996, as amended. As the Claimant will be awarded wages that he lost during part of the period following his

dismissal, this will also cover a period of time for which he has also been in receipt of Universal Credit. As a result, some of that money will have to be paid to the Department for Work and Pensions (DWP). The way this happens is that the Respondent will retain part of the award which relates to the Claimant's loss of earnings up to the date of the liability hearing. This is called the Prescribed Element. The Respondent will receive a Notice from the DWP which will either require the Respondent to pay all, or part of the Prescribed Element to the Department or tell the Respondent that it does not require any payment. When the Respondent receives the Notice from the DWP, it must pay the sum specified in the Notice to the Department and the balance should be paid to the Claimant.

## **Decision**

### *Re-employment*

53. The Tribunal can see why, after working for 17 years with the Respondent, the Claimant would want to go back to his old job and put the whole situation behind him. However, the Tribunal accepts the Respondent's submission that due to the Covid-19 pandemic and the knock-on effects of a number of lockdowns, the Respondent is operating a recruitment freeze and not recruiting staff right now and the two jobs the Claimant was told about were the only two jobs available in the company that he could do.
54. The Respondent is not required to create a job for the Claimant if one does not exist. The Tribunal will also not impose a duty on the Respondent to search for and find a job for the Claimant irrespective of the fact that there are no vacancies for jobs that he could do.
55. More importantly, the Tribunal accepts the Respondent's submission that there had been a breakdown in the trust and confidence between the Claimant and the Respondent, when he sent those nonsensical, stupid text messages. He did not think before sending that communication to his manager. He did not consider the impact on his manager until he saw his manager's reaction and by then it was too late to erase it.
56. In the circumstances, it is this Tribunal's judgment that the Respondent genuinely believes that the trust and confidence between the it and the Claimant was breached by him sending Mr Ford those text messages. The Respondent has a rational basis for that belief.
57. It is this Tribunal's judgment that it is not practicable for this employer to re-employ this employee because his original job no longer exists, there are no vacancies at the time of this remedy hearing that he can fill; and because the Respondent and its managers believe that the Claimant's misconduct had broken the relationship of trust and confidence between them. It would not be practicable for the Respondent to be ordered to re-employ the Claimant – whether as re-instatement or re-engagement – as, because of his previous conduct, it does not have confidence in him and his ability to do the job to the required standard. This was so even though he had done the job without any issue, for over 17 years. The issue is not his ability to be a customer services assistant. In this Tribunal's judgment, it is the Respondent's genuine belief that the Claimant's conduct, although not gross misconduct, raises a question as to whether he will be able to keep to its partnership principles in future,

were he to be re-employed.

58. In the circumstances, the Tribunal declines to use its discretion to order the Respondent to re-employ the Claimant. The Claimant cannot be reinstated as his job no longer exists. It is not practicable for him to be re-engaged as the Respondent has a genuine belief that the Claimant's misconduct has broken the relationship of trust and confidence between them.
59. The Tribunal then considered the financial compensation due to the Claimant.

Mitigation of loss

60. It is this Tribunal's judgment that the Claimant has mitigated his loss. He has made efforts to find alternative employment following his dismissal. The Claimant was initially in shock as he had not expected to be dismissed.
61. The Claimant had been employed by the same employer for 17 years which means that it is unlikely that he had been in the job market for some time. The Claimant submitted a claim for Universal Credit for him and his family in August 2020. The Claimant also attended interviews in that period of time and registered with HMRC as a self-employed person. The Claimant took steps to find alternative employment and in the interim, claimed relevant state benefits.
62. In this Tribunal's judgment, the jobs that the Respondent told the Claimant about on Friday, were not suitable for him and so he cannot be considered to have failed to mitigate his loss, by not applying for them.
63. The Claimant earned £3,284 net in the financial year April 2021 – April 2022, as a self-employed person delivering food. Although that income covers the whole financial year, it is this Tribunal's judgment that the period of time covered by this remedy judgment – July 2020 – November 2021, only overlaps with November.  $\text{£}3,284/12 = \text{£}273.67$ . He was employed from April 2022 – August 2022 with the at the Star of Walton Ltd. He earned £2,280 in that employment.
64. It is this Tribunal's judgment that the Claimant mitigated his loss.
65. The Claimant is entitled to the following payments as remedy for his unfair dismissal.

**Basic Award**

66. The Claimant is entitled to the following basic award using the gross wages figure of £515.53per week.
67. The Claimant was employed for 17 years. The Claimant's was 44 years old at his dismissal. The calculation therefore is 14 years at 1 week's pay per year (14) and 3 years at the rate of 1.5 week's pay per year (4.5) =  $18.5 \times \text{£}515.53 = \text{£}9,537.30$ .
68. 10% reduction for contributory fault =  $\text{£}9,537.30 - 953.73 = \text{£}8,583.57$ .
69. The Claimant is entitled to a Basic Award of £8,583.57

## Compensatory Award

70. From the dismissal date of 29 July 2020 to the hearing date of 12 November 2021 = 67 weeks. The first 13 weeks of this (29 July 2020 – 28 October 2020) is the Claimant's notice period. The Tribunal will compensate the Claimant for his wrongful dismissal below and address the balance of 54 weeks' pay as part of his compensatory award here.
71. Applying section 124 of the Employment Rights Act 1996, the Tribunal is able to compensate the Claimant up to the amount of a year's gross wages. A year's gross wages for the Claimant would have been  $515.53 \times 52 = 26,807.56$ .
72. It is this Tribunal's judgment that the Claimant has complied with the requirements of the Universal Credit system so that he was entitled to benefits until he closed his claim on 10 April. The Claimant reported his income to the Job Centre and provided them with all the information required. That demonstrates a cooperation with the procedures and makes it unlikely that the Claimant was hiding anything from the Respondent or the Tribunal, in relation to the information provided at the remedy hearing.
73. It is also likely that the Claimant was doing his best to find alternative employment following his dismissal from the Respondent. The Claimant and his wife have three small children and it is likely that he was doing all he could to find a new job. The Claimant has been working as a self-employed person doing food deliveries. At the same time, he has attended interviews and considered jobs outside of the supermarket industry.
74. It is this Tribunal's judgment that, in the circumstances, the Claimant has mitigated his loss.
75. The compensatory award will be calculated up to the liability hearing date of 21 November 2021. The delay in the remedy hearing not being listed until November 2022 was not the fault of either party.
76. It is also this Tribunal's judgment not to award the Claimant future loss beyond the liability hearing date of November 2021. In this Tribunal's judgment, the Claimant has a lot of retail experience which he should be able to use to gain employment. The economic effects of the pandemic have subsided a little and it is likely that his skills will be in demand. There will be jobs that he can secure that will result in an increase in household income for him and his family. Now that the case has finished and he has this remedy and considering that sufficient time has passed since his dismissal; the Tribunal believes that the Claimant will be able to find alternative employment and/or set up a viable business as a self-employed person. The Claimant did not make a case for future losses, apart from asking to be awarded it.
77. The Tribunal will award the Claimant sums to reflect the loss of pension payments up to the date of the hearing.
78. The calculations are therefore as follows, using the net pay sum of **£420.85**.
79. From 28 October 2020 – 21 November 2021 = 55 weeks x £420.85 = **£23,146.75**

80. Loss of partnership pension contributions  $\text{£}14.43 \times 55 = \underline{\text{£}793.65}$
81. Loss of statutory rights = £450
82. Loss of Partnership Bonus = £500
83. The total compensation award of **£23,146.75 + £793.65 + £450 + £500 = £24,890.40**
84. **Less:** - income earned in November 2021 =  $\text{£}3,284/12 = \text{£}273.67$ .
85. The total compensatory award of **(£24,890.40 - £273.67) = £24,616.73** must be reduced by 25% to reflect the Claimant's contributory conduct.
86.  $\text{£}24,616.73/25\% = \text{£}6,154.18$ .  $\text{£}24,616.73 - \text{£}6,154.18 = \text{£}18,462.55$

The Claimant is entitled to a compensatory award of £18,462.55.

*Breach of contract*

87. The Claimant was entitled to a maximum of 12 weeks' notice because he had been employed by the Respondent for 17 continuous years.
88. 12 weeks' notice relates to the period 29 July 2020 to 28 October 2020. The Claimant is entitled to a notice pay of  $12 \times \text{£}515.53 = \text{£}6,186.36$ .

The Claimant is entitled to compensation for breach of contract of £6,186.36

*Recoupment*

89. The Claimant has been entitled and claimed Universal Credit after his dismissal. His claim was from 28 August 2020 – 10 April 2022. It was not clear to the Tribunal whether he made a family claim or whether it just related to him.
90. The total Monetary Award in this case is as follows: -

- a. Basic Award = **£8,583.57**
- b. Compensatory Award = **£18,462.55**
- c. Breach of Contract = **£6,186.36**

**£33,232.48**

91. The calculation of the Prescribed Element is set out in Regulation 2(1), 3(1)(a) and Column 3 of the Schedule. In this case, it is simply the Claimant's loss of earnings which comes to a total of **£18,462.55**.
92. The dates of the period to which the prescribed element relates is 28 August 2020 = 7 October 2022, being the date on which the reserved judgment was sent to the parties.
93. The amount by which the Monetary Award exceeds the Prescribed Element is  $\text{£}33,232.48 - \text{£}18,462.55 = \text{£}14,769.93$ .

94. The Respondent is to pay the Claimant immediately the sum of **£14,769.93**.
95. The balance of **£18,462.55** is the element affected by the recoupment notice. That part of the Tribunal's award should only be paid once the Respondent has received the Notice from the Department of Work and Pensions and satisfied that notice. If the DWP informs the Respondent that it does not intend to issue a Recoupment Notice, the Respondent must immediately pay the whole of the remuneration to the Claimant.
96. The Claimant will receive a copy of the Recoupment Notice from the DWP. If the Claimant disputes the amount in the Recoupment Notice, the Claimant must inform the DWP in writing within 21 days. The Tribunal has no power to resolve such disputes which must be resolved directly between the Claimant and the DWP.
97. As the total judgment exceeds £30,000, the parties are to try to agree the grossing up element. If that is not possible, the parties must write to the Tribunal by 1 May 2023, with any observations on grossing up and the Tribunal will then amend the judgment accordingly. Any such correspondence must give details of the Claimant's total income for the tax year 2022 – 2023 and any other information necessary for calculating the tax liability on the £3,232.48 that the Claimant will receive above £30,000 as part of this remedy judgment.

**Employment Judge Jones**  
**Date: 17 March 2023**