



# EMPLOYMENT TRIBUNALS

**Considered at:** London South **On:** 14 July 2023

**By:** Employment Judge Ramsden

**In the matter of Mr L Savage v Abellio London Limited**

**Consideration of judgment reached on:** 19 June 2023

## JUDGMENT ON RECONSIDERATION

1. The Respondent's application for reconsideration of the judgment given in this matter on **19 June 2023** is refused, and the decision in that judgment is confirmed.
2. There were some clerical errors in that judgment, though, and those have now been corrected in accordance with Rule 69 of the Employment Tribunals Rules of Procedure 2013 (the **ET Rules**).

## REASONS

3. The Respondent applied, under Rule 71 of the ET Rules, for reconsideration of part of my decision on remedy made on **19 June 2023**. In particular, in assessing the value of compensation that the Claimant should be paid for the period 16 April to 25 July 2022, I determined it should be calculated on the basis that the Claimant would have been well enough to return to work for this period (i.e., that compensation for this period should be on the basis of his full pay).
4. The Respondent considers that there was no evidence to support this conclusion.
5. In fact the finding was based upon a robust, common-sense inference/deduction from the available evidence. However, the Claimant's oral evidence, as referred to in the Respondent's reconsideration application, was that his return to full health was slowed "a bit" by his dismissal. He also said that, with that set-back

caused by his unfair dismissal, he was well enough to resume work around May/June 2022.

6. Assessing the value of compensation that should be awarded to the Claimant necessarily involved making a determination on a counterfactual – when the Claimant would have returned to work. In my assessment, given he had been too unwell to attend work for the period 6 October 2021 until May/June 2022, the “bit” should be determined – in the absence of any other evidence to guide that assessment – as a proportion of that period of ill health. If we take the period that he was too unwell to work as being eight months, it is reasonable in my view to assume that he would have returned to health one month earlier absent the set-back occasioned by the Respondent’s unfair dismissal of him, i.e., that the “bit” should be approximately one-eighth of the overall period of ill health.
7. The medical advice provided to the Claimant that he should not resume full time work until August was affected by the downturn in his health which the Respondent’s actions occasioned. It does not help determine when the Claimant would, absent the Respondent’s actions, have returned to work. Consequently, what was needed was the application of common-sense to the available evidence.
8. It is unavoidable that this assessment is broad-brush – that is the nature of a counterfactual determination with only the Claimant’s oral evidence of how his return to health was slowed by the Respondent’s actions. I consider the determination I made on 19 June 2023 to be a reasonable one, and consequently that there is no reasonable prospect of that decision being varied or revoked.
9. For the above reasons, the Respondent’s application fails.

Employment Judge Ramsden

Date 14 July 2023