



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Jeremy Collard  
**Respondent:** Plaza Premium Lounge (UK) Limited  
**Heard at:** Reading **On: 21 July 2023**  
**Before:** Employment Judge Gumbiti-Zimuto

## Appearances

**For the Claimant:** In person  
**For the Respondent:** Ms Y Barlay, consultant

## REMEDY JUDGMENT

The respondent is ordered to pay to the claimant the sum of £16,211.91 in compensation for unfair dismissal.

## REASONS

1. The claimant has produced a witness statement for the remedy hearing and a schedule of loss setting out the sums that he claims for unfair dismissal. The claimant asks for an award of compensation in the sum of £49,585.74. The respondent has not produced a counter schedule of loss or introduced any new evidence for the remedy hearing.
2. The issues that I have had to consider on remedy have principally been (a) whether the claimant failed to mitigate his losses and, (b) whether the claimant's award of compensation should be reduced applying the Polkey principle.
3. The claimant received a redundancy payment in this case, and as the reason for the claimant's dismissal was redundancy, the claimant is not entitled to a further basic award so I am only concerned with the compensatory award.

### Polkey

4. Any Polkey adjustment is applicable to the compensatory award. I have had to consider whether if a fair process had occurred, would it have

affected when the claimant would have been dismissed? I have also had to consider what is the percentage chance that a fair process would still have resulted in the claimant's dismissal?

5. In this case I have been unable to conclude that it is just and equitable to make a Polkey reduction. The liability judgment points out that there is a lack of evidence from the respondent explaining what they did in the process leading to the claimant's dismissal on the grounds of redundancy. In the absence of any evidence put before me on the issue of remedy from the respondent there is not an evidential basis for me to find that if a fair process had occurred, it would it have affected when the claimant would have been dismissed or what the percentage chance that a fair process would still have resulted in the claimant's dismissal was.
6. My conclusion is therefore that a Polkey reduction is not appropriate in this case.

#### Mitigation

7. The matter that has given me cause for more anxious scrutiny is the question of mitigation. The evidence that I have been provided indicates that the claimant was somebody who made some efforts to find employment following his dismissal on the 30 June 2021. The evidence before me shows a job seeker's diary, it's not a complete record but it does show what it shows in terms of efforts by the claimant to find work. The claimant's oral evidence is that he was seeking employment from the time of his dismissal. The evidence that he gave is that he obtained employment after a significant period of time, which appears to have been from about June/July 2022. Since when he has continued to be in employment either with his current employer or another employer.
8. The respondent says that the evidence produced shows that there was a failure to mitigate his losses and it relies on the claimant's evidence that in September 2021 he began a course of study at university in regenerative agriculture. The claimant in the period of the following academic year then received a student grant or student loan and remained on the course for one academic year, when the claimant reached the age of 60 the claimant was not entitled to a student loan and so his studies came to an end.
9. I note from the information before me soon after completing that one academic year the claimant obtained employment and he has been in employment ever since with two different employers. First with his current employer, he then left that employer to work for Ibis, he later resigned from employment with Ibis to once more take up employment with his current employer where he remains.
10. The question I have to determine is whether the claimant has failed to mitigate his losses. If he has failed to mitigate his losses I need to determine when he would have been likely to obtain employment had he not failed to mitigate his losses. I haven't really been able to understand

what the claimant's aims or intentions were in seeking to undertake the course in regenerative agriculture at the time that he did. He was supposedly seeking full-time employment but in September 2021 he enrolled on a full-time course. He explained his reasoning as simply that this put him in a slightly better position, that is being a student, in relation to council tax and possibly other benefits. The claimant also said that there is some prospect of advancing his personal ambitions or interests by undertaking the course. My conclusion is that undertaking this course is not a mitigation of his losses in the way that sometimes undertaking a course could be considered a reasonable course of action which would mean that there was not failure to mitigate losses even though that person wasn't able to be available for work because of undertaking a course of study. This claimant was undertaking this course of study essentially to satisfy his personal interest.

11. The question then is was he available to undertake that work and if so did he continue to mitigate his losses by seeking employment. The evidence that the claimant gives is that he did continue to seek employment while he was a student. So, it seems to me that unless I simply disbelieve him he did continue in his efforts to seek alternative employment.
12. There is however an evidential difficulty in this case for the claimant in that his job seekers diary appears to go quiet in relation to seeking alternative employment from the time that he enrolls on the course. It seems to me that it's possible that claimant wasn't really seeking employment once he enrolled on the course, and while I accept it was certainly a possibility that the claimant was continuing to look to find employment, as he told me that the course only required his attendance for two days a week, there is no evidence of it presented.
13. I'm satisfied that the claimant would have had great difficulty at the time of his dismissal in finding alternative employment in the summer of 2021 which was a time when businesses were still adversely affected by COVID. There were changing restrictions over a period of time and a lot of potential employers were laying off employees, the claimant himself is an example of such a person. With the best will in the world and also noting that the claimant was in the period prior to September 2021 making efforts to find employment I don't think it is proved by the respondent that there was any failure to mitigate his losses in the period up to September 2021 and taking into account the general state of the country at the time I think in any event even if he had a fully mitigated his losses by seeking employment full time, the claimant wouldn't have got a job before the end of 2021.
14. The question that I have to try and fathom is what would have happened after the end of 2021. I note that the claimant was able to find employment in 2022 very soon after he ended his course. It is my view that if the claimant had continued to look for employment from the very start of 2022 that it's likely that he would have been able to secure employment within a period of three months or so. Assessing all those factors together I am

satisfied that in this case had the claimant properly mitigated his losses he would have been able to secure alternative employment after a period of nine months from the date of his dismissal.

15. With that in mind I've gone on to calculate the compensation that I believe the claimant is entitled to recover.

Award

16. I make an award for loss of earnings for a period of nine months in the sum of £15,089.31. I make an award in respect of pension losses in the sum of £540 pounds. I am satisfied that the claimant should be able to recover something in respect of loss of statutory rights and I make an award of £500 pounds. The claimant has incurred expenses in seeking employment and I am satisfied that he is entitled to recover those and I make an award £82.60. The award of the Tribunal is therefore £16,211.91.

17. The award of compensation in this case is subject to the recoupment provisions and therefore I set out the following:

- (a) Total monetary award £16,211.91
- (b) Prescribed element £15,089.31
- (c) Period of prescribed element 30 June 2021 to 31 March 2022
- (d) Excess of monetary award over prescribed element £1,122.60

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Employment Judge Gumbiti-Zimuto

Date: 27 July 2023

Sent to the parties on: .2 August 2023.

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For the Tribunals Office

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