



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Lovejoy

**Respondent:** (1) Rowgate Group Ltd (2) CE Jeatt & Sons Ltd

## JUDGMENT

The respondent's application dated 21 August 2023 for reconsideration of the Judgment sent to the parties on 11 August 2023 is refused, save in relation to one aspect regarding application of the **Employment Protection (Recoupment of Benefits) Regulations 1996**.

## REASONS

1. There is no reasonable prospect of the original decision being varied or revoked, for the reasons set out below. The sub-headings are taken from the respondents; application.

### Payslips for and resignation from First Bus

2. This point appears to relate to the figures used to calculate compensatory loss, specifically the respondent appears to be questioning the Tribunal's acceptance of the claimant's evidence regarding his earnings with First Bus.
3. At the hearing, the Tribunal gave its decision in relation to:
  - a. Mitigation of loss
  - b. Contributory fault – ss122/123 Employment Rights Act 1996
  - c. ACAS uplift – s207A Trade Union and Labour Relations (Consolidation) Act 1992
4. The Tribunal was not asked to determine the Claimant's salary with First Bus. Having given its decision on the above three points, the parties then agreed the figures amongst themselves. It was those figures that led to the figures awarded in the Judgment.

5. The respondent now seeks disclosure of documents relating to the claimant's pay with First Bus. However this application post-dates the litigation and judgment in this matter. This is therefore not grounds for reconsideration. Nor is it an application for disclosure that the Tribunal will entertain at this stage of the litigation. If specific disclosure was required by the respondent, an application should have been made to the Tribunal prior to the final hearing, not after judgment is entered.
6. In any event, the purpose of such disclosure at this stage of litigation is unclear to the Tribunal. The respondents, via their counsel, reached agreement with the claimant about the sums to be entered within the Judgment.

**Paragraph 28 of the Judgment**

7. This point relates to the Tribunal's findings on the claimant's mitigation of loss. There is no reasonable prospect of demonstrating a misdirection of law here.
8. The case of AG Bracey v PJ Iles [1973] IRLR 210 was not raised by the respondents' counsel during the hearing.
9. The Tribunal reminds the parties of the burden of proof in relation to mitigation of loss (see paragraph 24 of the Judgment).
10. The points made by the respondents have no reasonable prospect of resulting in the Judgment regarding mitigation of loss being varied or revoked.

**Paragraphs 43, 45, 46, 47, 49, 49 and 80 of the Judgment**

11. This point touches on contribution under ss122/123 of the Employment Rights Act 1996 ("ERA").
12. The respondents argue that there is no mention of the fact that the respondents did not have access to the video of the First Incident, and that this was not taken into account by the Tribunal.
13. The respondents seek to say that the culpable/blameworthy conduct by the claimant was that he did not disclose the video to the respondents during the internal disciplinary process. It is said that the withholding of the video by the claimant was material to his dismissal.
14. This was not an argument that was run by the respondents' counsel at the hearing. The argument in relation to contribution that was run by the respondent at the hearing related to the claimant's conduct in relation to the First Incident itself. A reconsideration application is not the forum for raising new arguments that were not raised at the final hearing.

15. The points made by the respondents have no reasonable prospect of resulting in the Judgment regarding contribution under ss122/123 ERA being varied or revoked.

**Paragraphs 89 and 90 of the Judgment**

16. This is another point regarding mitigation of loss. The respondents argue that the claimant broke the chain of causation regarding losses flowing from his dismissal, by resigning from First Bus in October 2022.
17. At paragraph 17 of the respondents' application, they state "The respondents' actions did not lead to the claimant resigning voluntarily ...". This is not the question. The question, in terms of mitigation of loss, is whether the claimant acted reasonably. As above, the burden of proof is on the respondent to show that the claimant acted unreasonably.
18. This point appears to show the respondents attempting to relitigate a point that was determined at the final hearing.
19. The points made by the respondents have no reasonable prospect of resulting in the Judgment regarding mitigation of loss being varied or revoked.

**Paragraphs 92 and 93 of the Judgment**

20. This point relates to mitigation also. The respondent alleges that the Tribunal should have found that the claimant should have been looking for a job nearer to home from February 2022.
21. The claimant was not cross-examined as to whether he had applied for jobs whilst employed by First Bus (from February 2022), whether nearer to home or at all. Nor was the point made in submissions by the respondents' counsel that the claimant should have continued searching for a higher paid job whilst working for First Bus. The points made by respondent counsel regarding mitigation were that:
  - a. The Claimant should have got a job earlier than February 2022; and,
  - b. That he should not have resigned in October 2022.
22. This point appears to be a new argument that was not raised at the final hearing.
23. The points made by the respondents have no reasonable prospect of resulting in the Judgment regarding mitigation of loss being varied or revoked.

**Paragraph 97 of the Judgment**

24. The respondents' appear not to understand the Tribunal's meaning in relation to paragraph 97, which refers to the determination of the percentage uplift under the **Trade Union and Labour Relations (Consolidation) Act 1992**.

25. Paragraph 97 of the Judgment relates to the point made in Slade v Biggs and Stewart [2022] IRLR 216, that:

“applying a final sense-check, is the sum of money represented by the application of the percentage uplift arrived at by the ET disproportionate in absolute terms and, if so, what further adjustment needs to be made?”.

26. At the stage of determining the appropriate percentage uplift, the final amount of compensatory award was yet to be determined. Therefore the sense-check had to be based upon the schedule of loss.

27. The points made by the respondents have no reasonable prospect of resulting in the Judgment as to the 15% uplift being varied or revoked.

**Paragraphs 95 and 97 of the Judgment**

28. The point regarding the respondents' connection to NatWest Mentor Services was made by the claimant's counsel in his closing submissions. The respondents' counsel had the opportunity to respond to those submissions, but did not do so.

29. The points made by the respondents have no reasonable prospect of resulting in the Judgment regarding the ACAS uplift being varied or revoked.

**Recoupment**

30. The claimant's representative's email of 28 June 2023 did not find its way to the Tribunal. The Tribunal has become aware of that email solely through the respondent's reconsideration application: this is regretful.

31. The parties are in agreement that the Judgment needs to be revised to reflect the requirements of regulation 4 of the **Employment Protection (Recoupment of Benefits) Regulations 1996**. The Judgment has been revised accordingly, and will be sent to the parties in a separate document.

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Employment Judge **Shastri-Hurst**

Date 15 December 2023  
JUDGMENT SENT TO THE PARTIES ON

..29 December 2023.....

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FOR THE TRIBUNAL OFFICE