EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr S Khan	**v**	**Slough Borough Council**

Heard at: Reading

On: 30 August 2024 and 10 September 2024 (in chambers)

Before: Employment Judge George
Dr C Whitehouse
Mrs M Thorne

Appearances

For the Claimant: in person
For the Respondent: Mr S Bishop, counsel

RESERVED JUDGMENT

1. The respondent shall pay to the claimant compensation for victimisation of £2,250 plus interest of £732.82 (calculated at 8% per annum from 4 November 2020 to 28 November 2024) making total compensation of **£2,987.82**.

2. The claimant was unfairly dismissed. The calculation of unfair dismissal compensation is as follows:

Basic Award	
4 X £425.77	1,703.08
12 X £638.66	7,663.92
Total Basic Award	9,367.00
Redundancy payment	(13,162.20)
Excess of redundancy payment over basic (s.123(7) ERA)	3,795.20
Compensatory Award	
Prescribed Element	
Loss of basic salary 01.09.2021 to 15.08.2023 23.5 months @ £1,582.49	37,188.52
Loss of pension benefit 01.09.2021 to 15.08.2023 23.5 months @ £107.03	2,515.21

Total immediate loss of earnings	39,703.73	
LESS 50% loss apportioned between competing factors	(19,851.87)	
LESS Carers Allowance 30.08.2021 to 15.08.2023	(7,226.70)	
Subtotal	12,625.17	
LESS 50% reduction for chance of fair dismissal	(6,312.59)	
LESS excess of redundancy payment over basic award	(3,795.20)	
Total Prescribed Element	2,517.38	2,517.38
<u>Non-Prescribed Element</u>		
Loss of statutory rights	500	
LESS 50% reduction for chance of fair dismissal	(250)	
Subtotal (non-prescribed element)	250	250
Total Award		**£2,767.38**

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply. The prescribed element is **£2,517.38** which is the sum which must be withheld from the claimant until the value of any state benefits subject to the recoupment procedures is known. The prescribed period is **1 September 2021 to 15 August 2023**. The total award of compensation for unfair dismissal is **£2,767.38**. The balance is **£250.00** which is the sum which must be paid to the claimant.

4. The total sum to be paid by the respondent to the claimant is £2,987.82 + £250 = **£3,237.82**. The additional sum of £2,767.38 is to be withheld an any balance after the respondent has accounted to the Department of Work and Pensions for state benefits will be remitted to the claimant.

REASONS

1. The case had been listed for a two day hearing on 29 and 30 August 2024. The notice of hearing stated that it was to be a remedy hearing. However, there was an outstanding application for reconsideration of the liability judgment and the accompanying letter indicated that Employment Judge George's provisional view was that reconsideration could be considered first and, if any part of the judgment remained, the tribunal could go onto assess compensation if necessary. The position was clarified by the tribunal the week before the hearing.

2. The claimant explained on Day 1 that he had not appreciated that the reconsideration hearing was to be determined and was prepared for a remedy hearing. Nevertheless, the tribunal heard and rejected the reconsideration application; we gave judgment on that on the morning of Day 2, 30 August 2024. The balance of 30 August 2024 was spent hearing

evidence and submissions relevant to the remedy issues. Judgment on remedy was reserved and the panel met in chambers on 10 September 2024 to determine the remaining issues. The reconsideration judgment and written reasons are sent at the same time as this reserved judgment.

3. We had the benefit of a hearing file divided into two sections: section A contained documents said to be relevant to reconsideration and section B documents said to be relevant to remedy. Those included at page B2 the claimant's schedule of loss to 1 April 2024 which had been professionally prepared on information provided by him to Hillingdon Law Centre. In addition, the respondent sought to rely upon a late disclosed and unsigned witness statement of the evidence proposed to be given by Tracy Walters. It was not necessary for them to call Ms Walters because her evidence was only relevant to the practicability of reinstatement or re-engagement. The claimant confirmed that he had now decided that he did not seek either to be reinstated into his old job or re-engaged into a different suitable position with the respondent. He is now working for his own company – effectively self-employed – as a taxi driver and finds that more flexible to allow him to meet his caring responsibilities.

4. In addition, the claimant had sent to the tribunal 6 PDF documents attached to an email dated 28 August 2024. These included a document headed "My statement – part of schedule of loss and hearing bundle" which sets out the factual basis for his claim that he has suffered loss of earnings. All of the documents were admitted into evidence and he was cross examined on them. During cross-examination of the claimant it emerged that he had also disclosed 8 payslips to the respondent which had not been included in the hearing file or forwarded to the tribunal separately and copies of those were obtained.

5. The issues to be determined were clarified because some of those set out in List of Issues 5.1 to 5.12 on pages 92 and 93 of the Liability Hearing Bundle no longer needed to be decided.

    a. The claimant confirmed that he did not seek reinstatement or re-engagement so we did not need to decide LOI 5.1.

    b. The claimant's redundancy payment was more than the amount which would be payable to him by way of a basic award. Any excess would go to reduce any compensatory award because of s.123(7) Employment Rights Act 1996 (ERA).

    c. The claimant has not argued that there should be an uplift for an unreasonable failure to comply with an applicable ACAS code.

6. The remaining issues to be decided were:

    a. What compensation for injury to feelings was it just and equitable to award?

b. Should interest be awarded and, if so, how much?

c. What financial losses has the dismissal caused the claimant?

d. Does the decision by the claimant and his wife that she should move to Pakistan with their daughter and he should become the primary carer for their oldest two sons break the chain of causation?

e. Has the claimant taken reasonable steps to replace his lost earnings, for example by looking for another job?

f. If not, for what period of loss should the claimant be compensated?

g. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

h. If so, should the claimant's compensation be reduced? By how much?

Injury to feelings

7. The compensation to be awarded for the successful victimisation claim has to assessed as a sum which is to compensate the claimant for feelings of hurt and anger caused by the single successful act of victimisation.

8. The law in relation to injury to feelings is well established. We remind ourselves of the case Armitage, Marsden and HM Prison Service v Johnson [1997] ICR 275 EAT where it was said, among other things, that the awards for injury to feeling should be compensatory rather than punitive and that, on the one hand, they should not be so low as would diminish respect for the anti-discrimination legislation but on the other they should not be excessive. We should also remind ourselves of the purchasing power of the value of the award of everyday life and balance that with the need that awards for discrimination should command public respect.

9. The injury must be proved, our findings must be evidentially based and the injury for which compensation is claimed must result from the discrimination which has been proved: MOD v Cannock [1994] IRLR 509 and Alexander v The Home Office [1988] ICR 604.

10. The well-known case of Vento v. Chief Constable of West Yorkshire Police (No. 2) [2003] ICR 318 CA (followed by Da'Bell v NSPCC [2010] IRLR 19 EAT) set out three bands or brackets into which it was said that awards of this kind could fall. Following the judgment in Da'Bell, which increased the levels of the bands to take into account inflation since the Vento decision, the lowest band was increased to £6,000, the middle band from £6,000 to £18,000 and the highest band, reserved for the most serious cases, £18,000 and above. In De Souza v Vinci Construction (UK) Ltd [2017] I.R.L.R. 844 CA, it was held that the 2012 Court of Appeal case which applied a general uplift to damages for pain, suffering, loss of amenity, physical inconvenience

and discomfort of 10% should apply to awards of compensation for injury to feelings by the employment tribunal.

11. Following the judgment in De Souza, the Presidents of the Employment Tribunals in England & Wales and Scotland have published Presidential Guidance by which the Vento bands are updated annually. The present claim was presented on 18 September 2021 and therefore the applicable bands are those set out in the Fourth Addendum:

    a. £27,400.00 and upwards for the most serious cases;

    b. Between £9,100.00 and £27,400.00 for serious cases not meriting an award in the highest band;

    c. Between £900.00 to £9,100.00 for less serious cases, such as an isolated or one-off act of discrimination.

12. The claimant complained of a number of acts which he alleged to be discrimination on grounds of race or religion or belief or to be victimisation. The single complaint which has succeeded is described in paragraphs 78 onwards of the reserved liability judgment. The claimant's account to the SPM on 16 November 2020 is quoted in para.89.

13. It is clear from that early account that he felt under threat that he would not get his position if he said something (to support the grievance) and did not cooperate (see also liability hearing file page T: 53). He was worried that his line manager might start disciplinary proceedings if he made a mistake in the future as revenge. His appeal against dismissal refers to feeling shocked at her inclusion in the interview panel and not expecting the process to be fair; that was because she had exerted pressure on him to withdraw his support for a colleague's grievance. We need to be careful not to take account of the claimants feelings of hurt caused by other acts. A large majority of his complaints have been found not to be well-founded and we do our best to focus upon what we have been told about the effect of this incident in isolation.

14. He states in his schedule of loss that he suffered mental health issues after losing his job. We do not doubt that but, because we found his dismissal was not an act of discrimination or victimisation, injury to feelings or the psychological impact of dismissal are not taken into account in assessing the appropriate level of award.

15. A relatively modest award is appropriate for feelings of anxiety and threat about his job from November 2020 to the time of the interview when we consider his greater anxiety from matters which were not unlawful subsumed that caused by the 4 November phonecall. On the one hand his job was fundamental to the claimant's wellbeing and family's security. On the other, these feelings would have been relatively short lived and superceded by his reaction to later events. We think that an award toward the lower end of the lowest bracket is appropriate and award £2,250.

16. We award interest on that at the judgment rate of 8% from 4 November 2020 to the date of this judgment (28 November 2024) which is 1,486 days. 8% per annum on £2,250 is £180 per annum, £15 per calendar month or £0.49 per day. 1486 X £0.49 = £732.82. The total award is therefore £2,987.82.

Unfair dismissal

17. When assessing the amount of compensatory award under the Employment Rights Act 1996, the starting point is s.123 which provides that the compensatory award shall be:

"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".

18. This requires us to consider the effect of the unfair dismissal and whether the connection between that and its consequences was sufficient to found a claim that loss flows from it. If we are of the view that there was more than one cause of the loss, the respondent is only responsible to the extent that their contribution is material to the causes of the loss.

19. The legal principle that a claimant must take reasonable steps to mitigate their losses is found in s123(4) ERA:

> "(4)In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland."

20. The burden of proof in relation to an allegation of failure to mitigate loss is at all times on the respondent. The three main questions for the ET to consider are – Gardiner-Hill v Roland Berger Technics Ltd [1982] IRLR 498:

    a. What steps were reasonable for the claimant to have taken in order to mitigate their loss;

    b. Whether the claimant acted unreasonably in failing to take those steps; and,

    c. To what extent, if any, the claimant would actually have mitigated their loss if they had taken those reasonable steps.

21. If the tribunal has to go on to consider whether there should be deductions from compensation then, on the authority of Polkey v A E Dayton Services Limited [1987] IRLR 503, compensation may be reduced on the basis that had the employer taken the appropriate procedural steps which they did not take then that would not have affected the outcome.

22. At the time of his redundancy, the claimant was working reduced hours of 25 hours per week. He had done so for some 15 years previously in order to provide care for his two (now) adults sons, who have special needs. He had

increased the level of care which he provided to them to support his wife who was then a full time carer for their four children because as they grew to be teenagers and later adults the couple decided it was better for their father to provide the personal care required. They had considered asking for increased support from the council by way of carers coming into the home but decided that they did not want the impact that would have on family life.

23. An abbreviated chronology is as follows:

30 March 2021	The claimant is informed that he was unsuccessful in interview
6 April 2021	From this date onwards, he applies unsuccessfully for alternative roles with the council
15 April 2021	He presents his grievance
6 May 2021	He is give notice of redundancy with effect on 30 July 2021
16 June 2021	Approximate date when the claimant becomes unwell and unfit to work
29 July 2021	Date on which change of occupation noted for council tax purposes
30 July 2021	Effective date of termination

24. The claimant became the primary carer for his three sons when his wife and daughter relocated to Pakistan. The decision that they should do so took place no later than 29 July 2021 because the council had been informed that his wife was no longer resident at the property as at that date. The claimant's claim for full time carer's allowance was awarded from 30 August 2021 (See his schedule of loss at B3.). As the primary carer, he was unable to work and that situation persisted until his second son was no longer living with him from August 2023. His oldest son moved into supported accommodation from 24 September 2021 (see the tenancy agreement) but between that date and August 2023 the claimant was the primary carer for his second son, whose own special needs mean that he needs full time care and his third son, who was and is a secondary school student.

25. The first question is whether the claimed financial losses are caused by the dismissal – whether they flow directly from the dismissal – or whether they are caused by the family decision that the claimant should become the primary carer for their three sons and that his wife and daughter should relocate to Pakistan to live with the claimant's parents. The respondent argues that the decision to become the primary carer was unrelated to the dismissal and breaks the chain of causation. The respondent argued that the

claimant would have to show that the change in circumstances was an inevitable consequence of the dismissal. The following points were made:

a. It is clearly not an inevitable consequence of the dismissal that the claimant's wife should leave the UK with her daughter so that the claimant became the sole carer of the three sons who remained living in the U.K.;

b. Whatever the reasons for that decision, they did not flow from the dismissal;

c. The chronology suggests that running down to the claimant's last day at work, he and his wife were in discussion about a decision which would have taken months to come to but the council were told of the change of occupancy of their property at the same time as the employment ended;

d. There was no financial pressure to make the decision then because the redundancy sum amounted to over 30 weeks of net pay which would provide a safety blanket to allow the claimant to look for work;

e. This points to the decision that the claimant's wife left on the last day of work as being for some other reason then impecuniosity – it was not that there was no other reasonable way of organising their affairs. The status quo could have been maintained for a period of job-seeking.

26. Assessing the compensatory award requires us to consider the cause or causes of the loss. The loss is said to be loss of income from 31 July 2021 onwards. The claimant states in his Statement that

> "When I lost the job my income got zero, I had difficult financial time, my daughter and wife left for good they moved abroad to live with my parents who were supporting them financially. I was alone with my special needs sons, now one is 22 years old and second special need son is 20 years old. So I was full time carer, I was in receipt of carer allowance, at that time it was not possible for me to do any job".

27. The claimant was unable to work because he was a full time carer. We respectfully disagree that the claimant has to show that the decision that he should become the primary carer was an inevitable consequence of the dismissal. The first question is whether the fact that he was a full time carer flowed directly from the unfair dismissal for redundancy; whether the dismissal was a material cause of the claimant becoming a full time carer?

28. We accept that the council tax records show that the claimant and his wife told the council that she was no longer an occupant of the family home from 30 July 2021 onwards. We accept the claimant's evidence that she and he travelled between Pakistan and the UK during the summer 2021. He does not appear to have claimed carer's allowance until 30 August 2021. Nevertheless, the clear statement to the council shows that they had decided by no later than 30 July 2021 that Mrs Khan and their daughter were going to

relocate. Therefore they made that decision before the claimant's notice period ended and implemented it in July and August 2021.

29. There was more than one reason why the wife left for Pakistan. As set out below, the claimant has not provided full and comprehensive details of his income from August 2023. There are four specific ways in which the information provided is incomplete and that leads us to have some concerns about the reliability of some of his evidence. Nevertheless, we give weight to the evidence he gave about their thought processes when deciding to make the significant change to the family circumstances. He said this in answer to cross examination that they made the decision in the best interests of their children but there was not one factor:

"Not one factor. A number of factors which my daughter behaviour, financial, my parents' support - they have agricultural land. Its difficult decision, but let's assume I would have continued in my job as I was working and was selected same as my other colleague was selected, … if everything had been the same, maybe we would have been together because the other factors would not have triggered. The main factor was the job. Other factors were there - main factor is change of circumstances and change in circumstances is that I lost the job."

[The reference to another colleague is to a colleague in a different department whom the claimant believed to have been successful in redeployment and in negotiating a reduced hours contract]

30. We make the following findings based on his oral evidence;

    a. Before the end of his employment, the claimant was looking for alternative roles – including searching for roles outside the council.

    b. The roles which were available tended to be full time and require the highways engineer to travel including at short notice or unpredictably. It's fair to say that the claimant did not produce documentary evidence to support this and it wasn't in his witness statement – there was no dedicated remedy statement. Given the decision they made and the application for carer's allowance these applications must have been before the end of his employment.

    c. Full time work and a role which was further from his home than his role at Slough BC had been would not allow him to carry out the carer's role for his two sons which he was already performing while employed for the respondent.

    d. He and his wife understandably prioritise their children's best interests and were trying as much as possible to maintain stability – particularly for the two oldest children for whom change is particularly difficult.

    e. That is the personal situation that the claimant and his wife were in at the time of the redundancy.

f. The redundancy payment would have given them some financial security over approximately the equivalent of 36 weeks' net pay.

g. The claimant and his wife had concerns about their daughter's wellbeing which were unrelated to his loss of employment. She did not appear to be thriving at school. She was showing signs of behaviour which they feared might be signs that she was mimicking her older brothers and they worried that living with them was having an adverse effect on her.

h. The claimant's parents have agricultural land in Pakistan and are able to use that to support his wife and daughter. They found what they regarded as suitable schooling for her there. In fact she has moved from school to school since relocating but at the time the decision was made the family were making a positive choice for the daughter's benefit.

31. Based on that we find that, had the claimant not been made redundant, the wife would probably not have relocated to Pakistan at the end of July 2021. The question about whether she would have gone at all is a different question because there were undoubtedly other factors in play. Those factors did not suddenly emerge after May 2021; with so many challenges at home the claimant and his wife must have had constant discussions all the time about how to act in the best interests of children with different needs.

32. They had the financial wherewithal to choose to stay longer. The claimant has been the main breadwinner since the needs of the oldest son became apparent. He would not lightly have given up his professional career and the prestige that he and his family considered it gave him was apparent from his evidence. His description of his role now shows how important caring for his sons remains: he visits them regularly and brings them home cooked food.

33. We accept that the family decision that the claimant should become the primary carer does flow from the redundancy – although there were other concurrent causes. He was looking for work, that available was mostly full time and geographically inconvenient. He has not told us details of how they made the financial assessment that it was necessary for financial reasons to take the personally challenging step of splitting the family. However other factors, primarily the daughter's underachievement and her behaviour in mimicking her brother played an important part of the decision. We accept that the loss of income, due to the claimant becoming a carer was attributable to the respondent's act in making him redundant. The claimant was anticipating a time when he was unable to find convenient alternative employment and he and his wife were trying to find an alternative which provided the stability of family life that he had enjoyed as a part time employee of the respondent. As he said, life was smooth. In that sense, the big change to family life at that point was caused by the change in employment status although it was also caused by other factors.

34. However, the respondent should only be liable for that loss to the extent that their contribution was material to the causes of it. We assess the extent of

that contribution caused by the other factors set out above as 50% and there should be a 50% deduction to take account of that.

35. The respondent argued that, in the alternative, there was a failure to mitigate loss by the claimant's decision to split the family and put himself in a position that he was unable to earn.

36. There are four different ways in which the claimant under-estimated his earnings from alternative employment or self-employment:

    a. He stated that he didn't get work as a chauffeur until 1 December and produced payslips from Chauffeur On Time Limited. When asked why Job Seekers Allowance had stopped on 14 June 2023 when it could have continued to October, he explained that he had worked as an Uber driver once he had his license to do so. This was obtained in March 2023. He explained the absence of paperwork on the basis that it was with his accountant in order to file his tax return; copies should have been retained and he should have declared this income in his updated schedule of loss. This was for a couple of months.

    b. He worked as a chauffeur, effectively on a self-employed basis, from 18 September 2023 onwards so in fact for approximately 2 months before the income credited in the updated schedule of loss. It was for a company called Chauffeur Group.

    c. He then set up Chauffeur On Time Limited and was paid through that company. He has disclosed payslips from that company. We accept that a reasonable inference to draw from the amount of pay on the payslips as employee is that he is paying himself the amount that is covered by the personal allowance. He is the shareholder of that company. There is no suggestion of anything improper but it seems likely that he will get additional income taken in the form of dividends and that has not been declared. He accepted the principle of that. He again explained his vagueness about the detail on the basis that the paperwork was with his accountant but again, the tribunal's need for this information could have been anticipated when preparing for the hearings.

    d. No loss is claimed from April 2024 onwards so the absence of information of income from Chauffeur On Time from April 2024 onwards is not an omission material to our decision.

37. The claimant said that he had travelled abroad to see his parents (and wife and daughter) which had led to an inadvertent overpayment of carer's allowance between April and June 2023 because he should have said that he wasn't in the U.K.. We accept this explanation and that there were probably no relevant earnings between April and June 2023 for that reason. However, from the time JSA ended until he started working for Chauffeur Group, there were earnings which have not been quantified and were only disclosed in cross-examination. We accept that these would have been limited to some extent by the continued caring responsibilities.

38. The claimant's son moved to residential care on 15 August 2023. We find that from that date any loss ends because he was or should have been able to work any reasonable hours to fully mitigate his loss and had prepared for that transition in the months prior to his son's change of residence. He had started to prepare for his change of career probably in the Spring of 2022 because he needed to work towards obtaining his license. Although there is no documentary evidence of the amount of such income, that is because the claimant has not made full disclosure.

39. The questions we ask when considering whether there has been a failure to mitigate are:

    a. Acting reasonably, what steps would the claimant have taken to mitigate his loss?

    b. Did he act unreasonably in not taking those steps?

    c. If so, then had he taken them, what income from alternative sources would have been earned?

40. Although it can be argued, as the respondents have, that he would have been able to seek work on an employed basis as an engineer, this is where the personal circumstances of the claimant are particularly relevant. It is argued that there was an unreasonable failure to mitigate loss by the claimant putting himself in a position where he was unable to seek work for so long. We disagree. From the claimant's perspective, he did not act unreasonably in putting his family first when he found he was unable to find work locally and with as family friendly hours as he had enjoyed with the respondent. He spoke movingly of the challenges posed by his sons' Autism and argued that he should be accepted as a person with special needs children with the impact that had on his ability to find alternative work. As he put it "in my case nothing is normal". He found an alternative career which was more flexible and took steps to retrain. This required a year to obtain a license and also necessary CRB and medical checks, a health & safety test and English test. He was, during employment, giving significant care for his sons because of the laudable decisions that he and his wife had taken to prioritise their needs. It was not unreasonable to seek to continue to provide that care and it has not been shown that there was, in fact, suitable alternative work available which would have allowed the family to maintain the balance of working and caring that they had established. There was no failure to mitigate loss.

41. We finally turn to the Polkey question; whether there should be any deduction for the percentage chance that the claimant would not have remained in employment in any event. There are two particular uncertainties here:

    a. The likelihood that the claimant would have succeeded in a fair process;

    b. The likelihood that a part-time contract would have been negotiated or that the claimant would have accepted a post, if offered, on a full time basis. He has claimed losses at the part-time rate so his case

must be that he would have been successful and would have been employed part-time.

42. We have decided that, had the claimant not been made redundant, then he and his wife would probably not have decided to split the family and for her to move abroad with their daughter. They would have dealt with the challenges posed by what they now know about their daughter's condition without relocating.

43. Although the claimant said that he would have looked at increased care from outside agencies in order for him to increase his hours at work, that seemed very much to be an afterthought. However, the prospect of a job share with the other candidate is one which might have been open had it remained difficult to decide between them in a fair process. A more likely prospect suggested by the claimant was that he might send his son to live in residential care sooner.

44. However the claimant's primary case is that, had he been successful, he would have asked for the post to be made part-time. He pointed to a colleague whom he claimed had done the same but the respondent's instructions were that that colleague had two part-time roles.

45. When asked why it was more likely that he should be appointed than Mr Saleem he stated that he had been scored the same or higher than Mr Saleem by the other panel members than Mrs Hothi.

46. Although the starting point for a deduction from compensation to take account of the chance that the claimant would have been dismissed had Mrs Hothi not been involved in the redundancy selection process for either him or his colleague, there are factors which both increase and decrease the prospects that the claimant would have remained in part time work with the respondent. The schedule of loss claims a part-time wage and therefore presupposes that the claimant would not have worked full time.

47. Factors which make it more likely that the claimant would have been successful in the redundancy exercise and remained in employment are that it was Mrs Hothi's scores which caused Mr Saleem to be scored one point higher than Mr Khan in the original exercise and the prospect that he would have made alternative arrangements for his sons' case which permitted him to work additional hours or that the respondent would be able to accommodate fewer than full time hours. Factors which make it less likely that the claimant would have been successful in remaining in employment are that the remaining post in the organisation was a full time post and his private life would make it extremely challenging for him to work full time. There is no evidence that a job share with Mr Saleem was workable because it was not explored in evidence only in submissions so it is no more than a prospect.

48. The different factors and the uncertainty around them cause us to conclude that there is no reason to move from the 50% chance that the claimant would have been successful in selection and in negotiating a part time position

(which is the factual basis of his claim). There will be a 50% deduction from compensation to take account of that chance.

49. The claimant has received a number of benefits declared in the schedule of loss at page B:3:

    a. Carers Allowance – 30.08.2021 to 15.08.2023 £7,226.70

    b. Job Seekers Allowance – 03.05.2023 to - 14.06.2023 £420.00

    c. Universal Credit – 31.08.2021 to 15.02.23 - £19,292.60

50. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply because the claimant has been receiving Job Seekers Allowance and Universal Credit. The Carers Allowance was received by the claimant in the nature of replacement earnings and credit needs to be given for it. The Recoupment Regulations mean that the prescribed sum (as set out in the calculation in the judgment) needs to be withheld from the claimant by the respondent until they know the value of any state benefits to which the recoupment provisions apply. They will then pay to HMRC the amount of those benefits up to the value of the prescribed element and the balance will be paid to the claimant. The excess of the compensatory award over the prescribed element must be paid to the claimant straightward.

51. The claimant's severance pay exceeded the statutory redundancy calculation by £3,795.20 and that falls to be deducted from the compensatory award.

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Employment Judge George

Date: 28 November 2024

Sent to the parties on: 2 December 2024

For the Tribunal Office

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/