



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Tobin

**Respondent:** William Hill Organization Limited

**Heard at:** London Central by CVP      **On:** 2 and 7 May 2025

**Before:** Employment Judge N Walker

## **Representation**

Claimant: in person

Respondent: Mr Gittins of Counsel

# RESERVED REMEDY JUDGMENT

The Respondent is ordered to pay the claimant the sum of £ **£68,065.29** calculated as set out below, subject to proper deductions of tax which must be paid to HMRC.

## REASONS

- 1 Most of the calculation had been agreed between the parties, based on accepted actual losses.
- 2 The first area of dispute was that the respondent submitted that the sum due to the claimant should not be grossed up without taking account of the claimant's personal allowance. I was referred to the cases of *Yorkshire Housing Limited v Cuerden* UKEAT/0397/09/SM and *Finlay* UKEAT/0260/14/BA. I do not find this submission correct.
- 3 The payment will be made to the claimant in the 2025/2026 tax year.
- 4 The claimant has now obtained alternative employment which commenced on 18 March 2025 (i.e. prior to the previous tax year end) and therefore throughout this tax year, he will be earning from his new employment. He is not receiving any compensation applicable to earnings for this tax year. There is no claim for ongoing losses after the start of the new job.

- 5 The respondent's argument is based on cases seeking to ensure that the claimant is put into the same position he would have been but does not get a windfall due to a standard tax rate being used to calculate the gross up, rather than the graduated rate and personal allowance which would in fact be applied. We are not told in those cases what the time periods in question were, but they must have involved on-going future losses.
- 6 In this case, to take into account the claimant's personal allowance for this tax year as the respondent submits would unfairly reduce the net amount the claimant earns from his new employment. In order to fully mitigate his losses, the claimant must be in receipt of at least the same remuneration, which should be taxed on the same basis as it would have been had he remained employed by the respondent. To allocate part or all of his personal allowance from this new tax year to the compensation would be tantamount to reducing his effective earnings from this new employment and would thus reduce his mitigation. That cannot be a correct approach which is why I am certain that the cases I was referred to must have related to ongoing future losses rather than historic losses in a previous tax year. If the claimant had not obtained new employment, the position would have been different.
- 7 Unfortunately, there is no mechanism by which the claimant can be paid this compensation which would give him the benefit of personal tax allowances or threshold tax rates which would have been applicable in the 2024/2025 tax year. In those circumstances my conclusion is that the appropriate grossing up should be at a flat rate of 40% which I have done.
- 8 The second area of dispute was over the appropriate percentage payment for the bonus. The respondent had calculated the bonus on the basis of what it termed "midpoint expectations". The claimant had never had a midpoint bonus achievement in the past. The respondent's calculation in the bundle showed a 20 per cent rate for this as opposed to a potential 35 per cent. The reason for this percentage being used was that the respondent does not have a record on file of the claimant's assessment which was due to take place between 3 June and 30 August 2024. The claimant was suspended on 17 July 2024 and lost access to the respondent's systems.
- 9 The respondent's calculation document in the bundle shows the claimant had a bonus potential of 45 per cent of his salary of £86,460. That means the maximum bonus he could get was £38,907.
- 10 The company element of 9% of that potential bonus is shown as £3,501.63 which is 9 per cent of the total potential bonus of £38,907.
- 11 The respondent's calculation then shows the claimant at 20 per cent rather than 35 per cent of the personal element being what I was told was a midpoint expectation rate as noted above.
- 12 That rate is not based on the actual likely amount of bonus that would have been paid, and I do not regard that as a proper approach given the claimant was suspended and locked out of the system before the bonus assessment period was completed. Further, the respondent's calculation of 20 per cent is not understandable. The amount shown is in fact only 7 percent of the

bonus potential. 20 per cent is £7,781.40 which added to the company element of 9 per cent at £3501.63, is £11,283.03.

- 13 If the claimant had been awarded the full amount of his personal element, consistent with previous years when a bonus was paid, 35 percent of the bonus potential of £38,907 is £13,617.45 plus the company element of £3,501.63 = £17,119.08.
- 14 The claimant says he was always rated at the higher level in the years that a bonus was paid, and I have no reason to doubt that in different circumstances he would have completed and filed the required assessment. There was no evidence from the respondent to counter the claimant's evidence about his bonus, merely a reference to the absence of the completed assessment. In the circumstances I have taken the bonus rate which is consistent with the claimant's past performance
- 15 The bonus would have been taxed at 40 per cent so the net amount is £17,119.08 less 40 per cent (£6,847.63) = £10,271.45. I have used that as the net figure in my calculation.

#### **CALCULATION OF AWARD**

Commencement Date:	17 December 2019
Effective Date of Termination (EDT):	30 August 2024
Length of Service:	4 complete years
Claimant's age at EDT:	38
Gross Annual Salary:	£86,460.00
Gross Weekly Pay:	£1,766.59
Net Weekly Pay:	£1,253.57
Net Daily Pay:	£250.71
Pension contributions calculated at monthly £720.50 -	£166.27 per week
Hearing date:	11 March 2025
New employment started:	18 March 2025

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Note: Net weekly pay includes flex balance payment for car

Note: The wrongful dismissal compensation is included in the unfair dismissal calculation.

Note: The claimant said he did not claim any benefits

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**Basic Award** £2,800  
(Calculated as 4 x week's pay capped at £700)

**Compensatory Award**

GROSS Loss of earnings 30 August 2024 to 31 November 2025  
During 3 month notice period

13 weeks and 1 day

13 weeks – at £1,766.59 per week = £22,965.67

1 day at £353.32

Total sum due for notice period = £23,318.99

NET Loss from 1 December to 17 March 2025

(i.e 15 weeks and 3 days)

£1,253.57 net per week x 15 weeks = £18,803.55

£1,253.57 net x 3 days = £752.14

Total net pay £19,555.69

Loss of statutory rights £450.00

Expenses incurred in seeking new employment £450.00

Loss of pension

£166.27 x 28 weeks = £4,655.56

£166.27 x 4 days = £665.08

Total £5,320.64

NET Loss of Bonus payment £10,271.45.

Mitigation – Nil as the calculation ends when the claimant got new employment  
on 18 March 2025

Total Compensatory Award before tax  
£59,366.77  
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PLUS Basic Award £62,166.77

**TAX COMPUTATION**

**Payment for Notice Period = £23,318.99 – fully taxable**  
**Calculated as above**

**Balance - £62,166.77 - £23,318.99 = £38,847.78**

**Sum to be Grossed up above £30,000 = £8,847.78**

**Grossed up at 40%**

**8,847.78 x 100 divided by 60 = £14,746.30**

**£30,000 + £14,746.30 = £44,746.30**

**TOTAL AWARD £44,746.30 + £23,318.99 = £68,065.29**

Approved by:

**Employment Judge N Walker**  
**11 May 2025**

JUDGMENT SENT TO THE PARTIES  
ON

15 May 2025

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FOR THE TRIBUNAL OFFICE