



# EMPLOYMENT TRIBUNALS

**Claimant:** N Morokar  
**Respondent:** Aquesta Ltd  
**On:** 14-16 May 2025  
**Before:** Employment Judge McAvoy Newns  
**Heard at:** East London Employment Tribunal (via CVP)

**Appearances:**

**For the Claimant:** In person  
**For the Respondent:** Ms Mayhew Hills, Consultant

## RESERVED JUDGMENT ON REMEDY

1. The Claimant is awarded compensation for unfair dismissal of **£4,876.94**. This comprises a basic award of **£1,211.49** and a compensatory award of **£3,665.45**.
2. The Claimant is awarded compensation for damages for breach of contract of **£3,230.64**.
3. These are gross sums and the Claimant is responsible for the payment of any income tax and/or national insurance contributions that may be due on them.
4. The Recoupment Provisions do not apply.

## WRITTEN REASONS

### Background

1. Judgment as to liability was given orally during the hearing. The claims for unfair dismissal and breach of contract in respect of notice pay were upheld. I then heard evidence and submissions on remedy and reserved my decision. This is the judgment and reasons relevant to such remedy. No application for written reasons in respect to the judgment on liability as, to the extent I've been made aware, been made.

### Issues

2. The Claimant had not included a claim in her schedule of loss for a basic award. The Respondent however agreed with me that I was required to make an order for the same, even though this had not been claimed.
3. The Claimant claimed six weeks' notice pay (relevant to her breach of contract claim) and loss of earnings from 6 May 2024 until 31 August 2024. I explained to the Claimant that if she was claiming six weeks' notice pay, the period for which she claimed loss earnings would begin on 5 June 2024, six weeks after her termination date of 24 April 2024. This is to avoid double recovery. The Respondent agreed that the Claimant was entitled to six weeks' notice and her gross weekly pay was £538.44. However, for the reasons I gave in my oral judgment on liability, I had decided to reduce the compensatory award firstly because the Claimant had unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (**ACAS Code**) and secondly because she had contributed to the dismissal. The Respondent therefore submitted that the six weeks' pay ought to be considered as part of the compensatory award, as opposed to separate damages for breach of contract, meaning that it should be reduced alongside the rest of the compensatory award. I agreed to give this some thought whilst deliberating.
4. In her schedule of loss, the Claimant claimed commission during her employment. I pointed out to the Claimant that this was not listed as a claim at paragraphs 43 and 44 of the list of issues appended to the case management orders that followed the 15 January 2025 case management hearing with Employment Judge Searley. There is reference to commission at paragraph 40 of the orders however this appears to relate to commissions lost as a result of the dismissal which is a separate point. I highlighted to the Claimant that paragraph 5 of the orders states: "The claims and issues, as discussed at this preliminary hearing, are listed in the Case Summary below. If you think the list is wrong or incomplete, you must write to the Tribunal and the other side by 31 January 2025. If you do not, the list will be treated as final unless the Tribunal decides otherwise". The Claimant accepted that she had not done so. Furthermore, at the outset of this hearing, I went through the claims and issues with the parties in detail. No reference was made at this point to a free standing breach of contract or wages claim concerning commission. Although the Respondent could have cross examined the Claimant on this point when cross

examining her on other aspects of remedy, to do so would be irregular as it would be to revisit liability at a remedy hearing. Further, evidence relevant to the commission claim (as mentioned in paragraph 16 of the orders) had not been provided. For all these reasons and because the Respondent objected to me considering the commission claim at this stage, I decided not to do so.

5. The Claimant claimed for four days loss of salary whilst she was allegedly waiting for the hearing bundle to be delivered.
6. The Claimant's schedule of loss refers to a preparation time order which was paid late. The Claimant wished to claim interest on the same. I explained that this was not a matter for this remedy hearing.
7. Finally, the Claimant claimed compensation for mental stress, distress, hurt, humiliation and degradation arising out of matters relevant to this claim. I informed the Claimant that this was not an available remedy for unfair dismissal or breach of contract.

#### Evidence

8. The Claimant served a witness statement and was cross examined on that statement. No other witnesses gave evidence.
9. I also had sight of a large bundle of documents, a portion of which were relevant to remedy.
10. Having considered the evidence, both oral and documentary, I make the following findings of fact on the balance of probabilities.

#### Findings of fact

11. Relevant to the calculation of her basic award, the Claimant confirmed that her date of birth was 6 July 1957 and her employment terminated on 24 April 2024. It was agreed that she had two complete years continuous service and that her gross weekly pay was £538.44.
12. The Claimant applied for her first job in mid-May and stopped applying for jobs in early July, when her father began receiving palliative care. She did not begin her job search earlier because she was occupied with her son's wedding. She applied for around 10-12 jobs in total but accepts that she only has evidence of 3 applications. She secured a job with her current employer on 9 September 2024.
13. The Claimant said that she had to wait at home for four days for the bundle of documents for this case to be delivered. She had been advised by the Respondent's former adviser of the dates that the bundle would be delivered but the bundle did not arrive. She said she took unpaid leave to take these days off.

The Law

14. S.119 of the Employment Rights Act 1996 (**ERA**) states:

- (1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—*
  - (a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,*
  - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and*
  - (c) allowing the appropriate amount for each of those years of employment.*
- (2) In subsection (1)(c) “the appropriate amount” means—*
  - (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,*
  - (b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and*
  - (c) half a week's pay for a year of employment not within paragraph (a) or (b).*
- (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.*

15. The relevant parts of s. 123 of the ERA states:

- (1) Subject to the provisions of this section and [sections 124, 124A and 126], the amount of 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 in so far as that loss is attributable to action taken by the employer.*
- (2) The loss referred to in subsection (1) shall be taken to include—*
  - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and*
  - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.*
- (3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—*
  - (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or*
  - (b) any expectation of such a payment,*
    - only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122 in respect of the same dismissal).*
- (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.*
- (6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.*

16. In ***Cooper Contracting Ltd v Lindsey 2016 ICR D3, EAT***, Mr Justice Langstaff (then President of the EAT) summarised a number of principles drawn from the earlier case law that should be used to guide tribunals when considering whether there has been a failure to mitigate loss. He observed that there were considerable dangers in approaching the matter as though the duty to mitigate required the taking of all reasonable steps to lessen loss. Such an approach risked diverting focus away from the legal principles that applied to mitigation and might lead erroneously to the conclusion that if the employer could show a single reasonable step that was not taken it would inevitably succeed in its submission that there had been a wholesale failure to mitigate. To avoid such a mistake, it was imperative that the following guidance be firmly borne in mind:
- a. the burden of proof regarding a failure to mitigate is on the wrongdoer. A claimant does not have to prove that he or she has mitigated the loss;
  - b. if evidence as to mitigation is not put before the employment tribunal by the wrongdoer, it has no obligation to look for that evidence or draw inferences. This is how the burden of proof works in this context: responsibility for providing the relevant information belongs to the employer;
  - c. the employer must prove that the claimant has acted unreasonably. The latter does not have to show that what he or she did was reasonable. What is reasonable or unreasonable in this regard is a question of fact, to be determined after taking into account the wishes of the claimant as one of the relevant circumstances, although it remains the tribunal's own assessment of reasonableness — not the claimant's — that counts;
  - d. the tribunal should not apply a standard to the claimant that is too demanding. He or she should not be put on trial as if the losses were his or her fault, given that the central cause of those losses was the act of the employer in unfairly dismissing the employee;
  - e. the relevant test can be summarised by saying that it is for the wrongdoer to show that the claimant has acted unreasonably in failing to mitigate; and
  - f. in a case where it might be reasonable for a claimant to have taken a better paid job, this fact does not necessarily satisfy the test: it is simply important evidence that might assist the tribunal to conclude that the employee has acted unreasonably.

#### Submissions

17. Both parties provided oral submissions. They are not set out in detail in these Reasons but both parties can be assured that I have considered all the points made, even where no specific reference is made to them.

#### Conclusions

18. Considering the Claimant's age at the time of her dismissal (66), length of service and gross weekly pay, the basic award would have been £1,615.32. However, for the reasons given in my liability judgment, this has been reduced by 25% due to contributory fault. Consequently, the total basic award is **£1,211.49**.
19. I have given careful thought to whether I should include the Claimant's six weeks' notice in her compensatory award or make a separate award for damages for wrongful dismissal. I'm conscious that both legal claims were brought and determined. The legal claim for breach of contract in respect of notice pay, which is also often called wrongful dismissal, is brought pursuant to The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. This allows me to order damages which are arising or are outstanding on the termination of the employee's employment. I have found no case law mandating me to include this within the compensatory award and the Respondent's representative did not bring any such cases to my attention. The order of adjustments states that damages for notice would be one of the first points to be deducted, recognising that it is perfectly proper for it to be considered as a remedy distinct from the compensatory award. Consequently, I have awarded the Claimant the sum of **£3,230.64** as damages for breach of contract.
20. In respect to the compensatory award:
  - a. For loss of earnings, the relevant period is from 5 June 2024 (when the Claimant's notice would have expired) until 31 August 2024 (the date the Claimant claimed lost earnings until). This is 12 and 3/7 weeks. The Claimant's agreed weekly gross pay was £538.44. No agreement was reached as to her net pay however, looking at the Claimant's wage slip for March 2024, this amounts to £436.92. The burden of proof is on the Respondent to persuade me that the Claimant has failed to take reasonable steps to mitigate her loss. Naturally, the Claimant needed some time after being dismissed before beginning her job search, given the impact the dismissal had on her health. I have no reason to doubt that the Claimant applied for 10-12 jobs from mid-May until early July. She has been an honest and, at times, very candid witness throughout. The Respondent did not direct me or the Claimant to any roles the Claimant ought to have applied for and failed to do. It is understandable why the Claimant would wish to put her job search on hold whilst her father received palliative care. In this regard, I am not persuaded that the Claimant failed to mitigate her losses and award for lost earnings for the entire period claimed is made. This amounts to £5,430.29;
  - b. No claim was made for loss of statutory rights. It would be unfair of me to consider this on my own volition without hearing from the Respondent;
  - c. Considering the order of adjustments, I must firstly reduce the above sum by 10%. This results in a total of £4,887.26; and

- d. I must then reduce the sum at (c) above by 25%. Consequently, a compensatory award of **£3,665.45** is made.
21. In respect of the four days' pay whilst the Claimant waited for the hearing bundle, the ERA clearly states that compensation can be awarded in so far as that loss is attributable to action taken by the employer. There is no evidence before me of the Respondent itself being responsible for this alleged failure to deliver the bundle on time. Nor was the Claimant's decision to wait at home for the bundle to arrive attributable to action taken by the Respondent. Consequently, no order is made.
22. The Recoupment Provisions do not apply.

**Approved by:**  
**Employment Judge McAvoy Newns**  
**Dated: 16 May 2025**