RESERVED REMEDY JUDGMENT

EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		**RESPONDENT**
THOMAS BLAKELY	**V**	**WAYFAIRER TRAVEL LIMITED**

HELD BY VIDEO AT CARDIFF ON: 30 MAY 2025

BEFORE: EMPLOYMENT JUDGE S POVEY

REPRESENTATION:
FOR THE CLAIMANT: **IN PERSON**
FOR THE RESPONDENT: **MR LUDLOW (COUNSEL)**

REMEDY JUDGMENT

1. The Respondent must pay the Claimant the sum of £75,833.06, made up of:

	£
1.1. Unauthorised deductions from wages	17,763.90
1.2. Basic award	7,700.00
1.3. Compensatory award	50,369.16
Total	75,833.06

2. The Employment Protection (Recoupment of Jobseeker's Allowance & Income Support) Regulations 1996 do not apply.

RESERVED REMEDY JUDGMENT

REASONS

Background

1. By a judgment & reasons[1] given orally to the parties on 11 February 2025, I found that the following complaints were made out and succeeded:

    1.1. Automatic unfair dismissal

    1.2. Ordinary unfair dismissal

    1.3. Unauthorised deductions from wages

    1.4. Breach of contract

2. I listed the case for a Remedy Hearing and issued associated case management directions. The Remedy Hearing took place by video on 30 May 2025. I was provided with a bundle of documents ('the RH bundle'), as well as having access to the documents ('the bundle') and witness statements from the liability hearing. The parties respectively provided an updated Schedule & Counter Schedule of Loss. I heard oral evidence from the Claimant and received written and oral submissions from Mr Ludlow for the Respondent and from the Claimant. Due to lack of time, I reserved my decision.

The relevant law

3. The basic award for unfair dismissal is calculated using the formula set out in sections 119 to 122 of the Employment Rights Act 1996 ('ERA 1996'). That formula includes the Claimant's gross weekly wage at the date of termination of employment, subject to a cap, which at the relevant time was £700 per week (per section 227 of the ERA 1996).

4. Sections 123 to 126 of the ERA 1996 set out how the compensatory award for unfair dismissal is assessed and calculated. The total amount of the compensatory award shall not exceed the lower of a years salary or £115,115 (per section 124 of the ERA 1996). The calculation of compensation for unfair dismissal looks at immediate losses (from dismissal to the Remedy hearing) and future losses (from the Remedy Hearing onwards).

5. The basic and the compensatory awards can be reduced where the Tribunal finds that the Claimant contributed to their dismissal by reason

[1] A written copy of the reasons were subsequently provided to the parties upon request ('the written reasons').

of their conduct. The tests are different in respect of each award. The test for the basic award is per section 122 (2) of the ERA 1996:

> Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly.

6. The test for reducing the compensatory award is per section 123(6) of the ERA 1996:

> 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.

7. The compensatory award (but not the basic award) can also be reduced to reflect the chance that, had the Respondent followed a fair procedure, the Claimant would have been fairly dismissed in any event (a so-called Polkey adjustment, per Polkey v AE Dayton Services Ltd [1987] IRLR 50 (HL)).

8. Section 24 of the ERA 1996 sets out what the Tribunal must do if a complaint of unauthorised deduction from wages is well-founded, as follows (so far as relevant):

> (1) Where a tribunal finds a complaint…well-founded, it shall make a declaration to that effect and shall order the employer—
>
> (a) in the case of a complaint [of unauthorised deduction from wages] to pay to the worker the amount of any deduction…
>
> …

9. Section 86 of the ERA 1996 provides for minimum notice of termination to be given by the parties to the contract of employment. Under normal circumstances, an employee with more than one month's continuous service is entitled to one week's notice, and having completed two years' service is entitled to two weeks, with the number of weeks increasing by one each year until a maximum of 12 weeks' notice.

10. Where the Claimant has been dismissed without the appropriate notice, the Claimant is entitled to claim the damages which are equivalent to the wages which he would have earned between the time of the actual termination and the time at which the contract might lawfully have been terminated (by due notice), together with the value of any contractual fringe benefits which the employee would have received during the same period. The damages are calculated by reference to the greater of the minimum period implied by section 86 of the ERA 1996 and "reasonable notice". The calculation of a period of reasonable notice takes account of

all the circumstances of the case including the nature of the employment, the seniority and responsibilities of the employee.

11. The Tribunal has the power to increase or decrease awards by up to 25% where there has been an unreasonable failure by either party to comply with the ACAS Code of Practice on Disciplinary & Grievance Procedures (per section 207A of the Trade Union & Labour Relations (Consolidation) Act 1992).

12. The Claimant is under a duty to mitigate the losses suffered as a result of the Respondent's unlawful acts. The Claimant is expected to take reasonable steps to minimise the losses suffered. It is for the Respondent to prove, on the balance of probabilities, that there has been a failure to mitigate, by showing that the Claimant acted unreasonably (per Fyfe v Scientific Furnishing Ltd [1989] IRLR 331; Wright v Silverline Car Caledonia Ltd UKEATS/0008/16).

13. The Tribunal has the power to award interest in respect of compensation awarded by reason of discriminatory conduct. Interest can also be awarded if sums ordered to be paid remain unpaid. The Tribunal has no power to award interest in respect of awards under the ERA 1996. (Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996, as amended by the Employment Tribunals (Interest on Awards in Discrimination Cases)(Amendment) Regulations 2013).

14. Awards will be 'grossed up' by a Tribunal where the sum to be received by the Claimant will be taxed. The purpose is to place in the Claimant's hands the sum he would have held had he not been treated unlawfully, i.e. to compensate for the true net loss. There is a £30,000 tax free amount available per tax year. Tax will have to be paid on any compensation in excess of £30,000, awarded in consequence of or otherwise in connection with the termination of employment (per section 401 of the Income Tax (Earnings and Pensions) Act 2003).

15. Adjustments to the awards should be calculated and applied first (including the addition of any interest). Then the award should be grossed up (if applicable). Finally, any statutory cap should be applied.

Findings of fact

16. The Claimant does not seek reinstatement or reengagement. His remedy is compensation only. So far as relevant, and drawing from my judgment & reasons on liability, the Claimant's employment began on 20 August 2012 and ended with immediate effect on 3 July 2024.

17. There were a number of specific findings of fact which needed to be determined in order to properly consider the Claimant's claim for compensation and the parties respective submissions.

18. By way of general application, where monthly, weekly and daily figures had to be calculated, I applied the following formulae:

    18.1. Monthly figures = annual figure /12

    18.2. Weekly figures = (monthly figure x12)/52

    18.3. Daily figures = weekly figure/5

The applicable pay figures

19. It was not in dispute that the Claimant's salary with the Respondent was £60,000. As that figure was agreed and was the figure in force at the time that the Claimant's employment ended, the following gross figures applied:

    19.1. £5,000 per month

    19.2. £1,153.85 per week

    19.3. £230.77 per day

20. In addition, and for the same reasons, it was also possible to discern the following applicable net figures (as at 3 July 2024, applying 2024/25 tax and national insurance rates and bands):

    20.1. £3,779.74 per month

    20.2. £872.25 per week

    20.3. £174.45 per day

Pension & child care contributions

21. The payslips provided in the RH bundle showed the Respondent contributing £110.07 per month toward the Claimant's workplace pension.

22. In his Schedule of Loss, the Claimant claimed a figure of £150 per month in lost pension contributions. It was unclear how this figure had been calculated or what evidence was relied upon in its support.

23. As such, I preferred the evidence within the payslips and found that the Respondent contributed £110.07 per month toward the Claimant's pension. That equated to £25.40 per week and £5.08 per day.

24. There was a more fundamental disagreement between the parties as to child care contributions. In summary, the Claimant said that the Respondent paid him an additional £6,600 per year (£550 per month)

toward his child care costs. The Respondent denied this and claimed that those payments were made to the Claimant's wife, when she was employed by them. As such, the Respondent argued, they formed no part of the Claimant's remuneration package.

25. The Claimant relied, in particular, on payslips which had been in evidence for the liability hearing and which the Claimant had asked to be added to the RH bundle (at [73] – 75]). He said that these recorded a reconciliation exercise by the Respondent in April, May and June 2024, wherein he was paid the childcare contributions to which he was contractually entitled and which had been omitted from his pay until that point.

26. Those payslips did indeed record sums totalling in the region of £9,500 being paid to the Claimant by the Respondent over those three months. Each monthly entry is described as 'Childcare'. The Claimant also referred to his witness statement for the liability hearing (which he adopted as his evidence in chief at the Remedy Hearing), as follows:

    26.1. In paragraph 2, he referred to childcare support contributions of £6,600 per annum as part of his remuneration, in addition to his salary; and

    26.2. At paragraph 30, he explained the reconciliation process which took place in April, May and June 2024 and referred to emails in evidence from the Respondent's accountants.

27. The Respondent suggested that the payslips relied upon by the Claimant were either generated or authorised by him.

28. The allegation by the Respondent as to the provenance of the payslips was not supported by any evidence. In contrast, the email referred to by the Claimant from the Respondent's accountants (at [284] of the bundle) was sent to him in December 2024 and explicitly referred to "*three payroll adjustments made in April, May and June 2024*".

29. As such, I found that the payslips relied upon by the Claimant were genuine and that he was paid sums in 2024, by way of reconciliation, in respect of childcare contributions. There was also a consistency throughout the Claimant's written and oral evidence of his entitlement to childcare contributions.

30. For those reasons, I found that the Claimant was entitled, as part of his remuneration package and under his contract of employment with the Respondent, to monthly sums of £550 toward the costs of childcare. That equated to £126.92 per week and £25.38 per day.

<u>Contributory conduct</u>

31. The Respondent submitted that the Claimant contributed to his dismissal by reason of his conduct and any award should be reduced by 100% to reflect this.

32. Specifically, the Respondent relied upon the following alleged conduct (per Paragraph 63 of the Respondent's written submission & within the Counter Schedule of Loss at [7] & [11] of the RH bundle):

    32.1. Failure to carry out his role in the months prior to his dismissal;

    32.2. Strategically delaying the conclusion of the share buy back agreement; and

    32.3. Contributing to the Respondent's belief and understanding that the employment had been ended by mutual agreement in April 2024.

33. I reminded myself that there are two different tests of contributory conduct, depending upon which aspect of an award for unfair dismissal is being adjusted:

    33.1. For the basic award, it must be just and equitable to reduce the award because of the Claimant's conduct before his dismissal.

    33.2. For the compensatory award, the dismissal must have been caused or contributed to by reason of the Claimant's conduct.

34. The starting point was to determine whether, as alleged, the Claimant had engaged in the conduct complained of. In my judgment, two of the allegations of conduct alleged by the Respondent were at odds with my findings as set out in the liability decision.

    34.1. I found that the Claimant did not disengage from the business or lessen his work during 2023 or 2024 (at Paragraphs 22 - 24 of the written reasons). It follows that it was simply not correct to state that the Claimant failed to carry out his role in the months leading up to his dismissal.

    34.2. For numerous reasons, the suggestion that the Claimant agreed to mutually end his employment was without foundation and at odds with the extensive evidence presented at the liability hearing. A summary of my findings in that regard were contained within Paragraph 55 of the written reasons (wherein I concluded that it was "*self-evident*" from the email exchanges that took place at the time that there was no mutual agreement to terminate, a conclusion reinforced by the factors detailed thereafter in the written reasons).

35. For those reasons, I did not find that the Claimant failed to carry out his role in the months prior to his dismissal nor did I find that he in any way contributed to the Respondent's belief that the employment had ended

by consent in April 2024. Those allegations of contributory conduct fell at the first hurdle.

36. The Respondent provided no evidence to support its allegation that the Claimant had strategically delayed the share buy back agreement nor, more importantly, that any such strategy caused or contributed to the Respondent's decision to dismiss him. As found, the principal reason for terminating the Claimant's employment was that he asserted his statutory right to be paid his wages (per Paragraphs 64-66 of the written reasons). The Respondent failed to show that the on-going negotiations about the share buy back agreement played any part in its decision to terminate the Claimant's employment, still less that the Claimant was deliberately delaying the conclusion of an agreement, for strategic purposes or otherwise.

37. As such, there was no contributory conduct on the part of the Claimant and no adjustment shall or can be made to any award as a result.

Polkey adjustment

38. The Respondent also sought a 100% reduction in any compensatory award on the grounds that the Claimant would have been fairly dismissed in any event, within a very short time frame, on the basis of either some other substantial reason ('SOSR') or redundancy (per the principle in Polkey).

39. Specifically, the Respondent claimed that there had been, variously, an irretrievable breakdown of the employment relationship, the Claimant's role had become redundant and was no longer needed and the failure to finalise the corporate deal (per the Counter Schedule of Loss at [10] – [11] and the Respondent's written submissions at Paragraphs 61 – 62).

40. I was required to determine two questions:

    40.1. If a fair procedure had been followed, would it have affected when the Claimant would have been dismissed?

    40.2. What is the percentage chance that a fair process would still have resulted in the Claimant's dismissal?

41. As found, no procedure whatsoever was followed by the Respondent, who dismissed the Claimant for asserting a statutory right. If a fair procedure had been followed, then it would undoubtedly have affected when the Claimant would have been dismissed.

42. However the percentage chance that, even if a fair procedure had been followed by the Respondent, the Claimant would have been dismissed was, on the facts of this case, zero. That was because the Respondent dismissed the Claimant for asserting the statutory right to be paid wages

to which he was lawfully entitled. There was no procedure, fair or otherwise, which could render a dismissal for that reason fair. That is why it is designated as being automatically unfair (per section 104 of the ERA 1996). Such dismissals are unfair and cannot become fair because of the procedure followed. It is simply not possible in law to dismiss an employee fairly for asserting a statutory right.

43. No other reason for the Claimant's dismissal was made out. On the Respondent's case, it dismissed the Claimant in the erroneous belief that his employment had already ended but as found, that belief was misplaced and did not, in any event, reveal a potentially fair reason under section 98 of the ERA 1996 (per Paragraph 63 of the written reasons).

44. The Respondent now contends, for the first time, that the relationship with the Claimant had irretrievably broken down and/or his post was redundant. That was premised on the same factual allegations relied upon for contributory conduct, namely:

    44.1. Failing to carry out his role in the months prior to his dismissal; and

    44.2. Strategically delaying the conclusion of the share buy back agreement

45. The Respondent said that in those circumstances, dismissal would have occurred, fairly, within a very short time frame either for SOSR or on grounds of redundancy.

46. The Respondent provided no evidence to support these contentions. The reasons advanced were, to a degree, factually at odds with my findings on liability (in respect of the Claimant disengaging from the business prior to his dismissal). It was not suggested that the share buy back had concluded, even now, so it was fanciful to suggest that the continuing negotiations would have given the Respondent a fair reason to dismiss the Claimant.

47. In truth, and as found, the Claimant was continuing in his employment in a diligent and effective manner up until his arbitrary and automatic unfair dismissal on 3 July 2024. Any breakdown in relationship was not coming from the Claimant, who continued to perform his duties notwithstanding his wages being unlawfully withheld and his employer reaching conclusions as to the mutual termination of his employment, which were untenable then and remain so.

48. In short, on the evidence presented, there was nothing to reasonably suggest that the Respondent would have had any lawful reason to dismiss the Claimant, in the short term or at all. The Respondent invites the Tribunal to speculate to levels not permissible by the principles in Polkey. Rather, what the evidence did indicate was that only one party to

the employment relationship was acting in a manner which had the potential to cause an irretrievable breakdown and that was the Respondent. What the Claimant demonstrated, even in the face of such conduct, was that he was prepared to continue working and maintaining the relationship.

49. It follows that there was no basis to make any Polkey adjustment.

Mitigation of loss

50. The Claimant is expected to take reasonable steps to minimise the losses suffered as a result of the Respondent's unlawful acts. The burden of proving that the Claimant has failed to mitigate his losses is on the Respondent. The Respondent has to prove, on the balance of probabilities, that the Claimant acted unreasonably (not merely that the Claimant failed to take a step which was reasonable). That requires consideration of the following:

50.1. What did the Claimant do & what steps, if any, should he have taken?

50.2. Was it unreasonable for the Claimant to have failed to take any of those steps?

51. The Respondent says that the Claimant failed in his duty to mitigate his losses. In its written and oral submissions, reliance was placed on the following:

51.1. The Claimant's decision to stay with his current employer, Routescape, where the Claimant says it will take him four years to achieve the same remuneration as had with the Respondent; and

51.2. The Claimant could and should have applied for other roles, with examples provided in evidence by the Respondent (all of which dated from April 2025 onwards)

52. The Claimant was dismissed on 3 July 2024. He secured employment with United Aerospace with effect from 8 July 2024, as a Composite Operator, working 40 hours per week at £12 per hour (at [25] – [31] of the EH bundle). His hourly rate increased to £13 per hour from 13 September 2024 (per [40]). There was no evidence of any pension or child care contributions being received by the Claimant from United Aerospace.

53. As explained by the Claimant, he had to find any job following his dismissal in order to ensure his bills and outgoings were met. I did not understand the Respondent to take issue with the Claimant's decision to secure employment with United Aerospace in support of its submissions as to mitigation of loss.

54. Whilst at United Aerospace, the Claimant secured a role back within the travel industry with a local travel company, Routescape. He was appointed as Senior Travel Operations manager with effect from 25 November 2024, at a salary of £40,000 per annum (at [53] – [60] of the RH bundle). His salary increased to £42,000 from 1 April 2025.

55. In addition, Routescape contributed £105 per month toward the Claimant's workplace pension (per the payslips in evidence). However, they did not pay the Claimant any contributions toward child care.

56. The Claimant says he plans to stay at Routescape for the foreseeable future and has not looked for, and does not currently intend to look for, alternative or better remunerated employment. He explained that, for him, his role with Routescape was about more than the remuneration and talked about the importance of community and developing tourism in West Wales. He anticipated that it would take him about four years with Routescape to reach income commensurate to what he was receiving with the Respondent.

57. In my judgment, the Claimant acted reasonably in mitigating his loss by immediately securing employment, albeit lower paid, with United Aerospace and thereafter, securing employment back in the tourism industry with Routescape.

58. Was it unreasonable for the Claimant to not apply for other jobs but instead seek to build his career with Routescape, albeit will take him longer to match the remuneration he was on with the Respondent?

59. The Respondent failed to provide any evidence of available jobs before April 2025, so I found that it had not discharged the burden on it for the period from November 2024 until April 2025. Thereafter, whilst the Claimant is entitled to develop his career in the manner that he wishes, the issue is about whether the Respondent should continue to be liable for losses that flow from that. In my judgment, in so far as the duty to mitigate was concerned, it was unreasonable for the Claimant not to at least consider the marketplace and be actively looking for other roles.

60. On that basis, I found that the Claimant's decision not to actively seek other employment discharged the Respondent of the burden of proof on it.

61. The next question was the date from which commensurate income would be reasonably obtained. Given the limited evidence of the marketplace produced by the Respondent, I concluded that it would be reasonable for the Claimant to have secured commensurate income no more than 12 months from April 2025, that is, by the end of March 2026.

<u>Notice period</u>

62. The parties agreed that the Claimant was entitled to a minimum of 11 weeks notice (per the statutory provisions under section 86 of the ERA 1996). However, the Claimant argued that, in the absence of any contractual notice period, he was entitled to reasonable notice, which he said, as director and founder of the Respondent, was a notice period of six months. That was resisted by the Respondent.

63. It was not in issue that the Claimant co-founded the Respondent, was (and remains) a 50% shareholder and had been managing director from the Respondent's incorporation on 20 August 2021 until his dismissal on 3 July 2024. The Claimant described in his evidence how he set up the main office in Bristol and led the Sales, Product & Customer Services team (per Paragraph 8 of his witness statement). From July 2023, the Claimant was actively engaged in negotiating the share buy back proposals and pursing an exit strategy from the Respondent. As found in the liability decision, heads of terms for the buy back were agreed between the parties in January 2024, albeit the Claimant continued in his full time role and did not diminish in his engagement with, or work for, the Respondent.

64. But for the events from July 2023, I would have been inclined to agree with the Claimant that six months was a reasonable period of notice for someone in a senior position akin to the Claimant's and given his responsibilities within the business. However, the context included on-going discussions and negotiations to secure the Claimant's exit from the Respondent on mutually favourable terms. In those circumstances, I found that a reasonable period of notice was four months, a period appropriately adjusted for the expectations of both parties prior to the actual termination of the Claimant's employment on 3 July 2024.

Conclusions & calculations

65. Based upon those findings of fact, and my decisions on liability, I made the following awards to the Claimant.

Unauthorised deductions from wages

66. The Claimant was not paid his wages, his pension contributions or his child care contributions for the months of April, May and June 2024, nor was he paid for the period 1 – 3 July 2024. He was entitled to an award of those sums.

67. As the Claimant is no longer employed by the Respondent, I have made the award using the gross income figures. It will be the Claimant's responsibility to account to HMRC for the amounts owed by way of tax and national insurance.

68. The sums awarded were calculated as follows:

68.1. Unpaid wages for April, May, June & 1-3 July 2024:

68.1.1. £5,000 x 3 months = £15,000.00

68.1.2. £230.77 x 3 days = £692.31

68.1.3. £15,000 + £230.77 = £15,692.31

68.1.4. Sum awarded = £15,692.31

68.2. Unpaid pension contributions for April, May, June & 1-3 July 2024:

68.2.1. £110.07 x 3 months = £330.21

68.2.2. £5.08 x 3 days = £15.24

68.2.3. £330.21 + £15.24 = £345.45

68.2.4. Sum awarded = £345.45

68.3. Unpaid childcare contributions for April, May, June & 1-3 July 2024:

68.3.1. £550 x 3 months = £1,650

68.3.2. £25.38 x 3 days = £76.14

68.3.3. £1,650 + £76.14 = £1,726.14

68.3.4. Sum awarded = £1,726.14

69. The total award for unauthorised deduction from wages is £17,763.90 (£15,692.31 + £345.45 + £1,726.14).

Basic award

70. The partes agreed that the applicable multiplier for the basic award was 11 (as the Claimant was employed by the Respondent for 11 complete years). Whilst his weekly gross wage was £1,153.85, the cap on a week's pay applied to limit the sum to be multiplied to £700 (the statutory cap which was in force when the Claimant's employment ended).

71. That resulted in a basic award of £7,700 (11 x £700).

Compensatory award: introduction

72. I calculated all the elements of the compensatory award on a net basis, and grossed up those amounts in excess of the £30,000 tax free amount.

73. I began first by calculating the Claimant's immediate loss, that is, from the effective date of termination of his employment (3 July 2024) until the Remedy Hearing (30 May 2025). I then calculated future loss.

Compensatory award: loss of statutory rights

74. The Claimant sought £500 to compensate for the fact that, as a result of his unfair dismissal, he will have to be continuously employed for a period of two years before he acquires certain statutory rights (most notably, the right not to be unfairly dismissed.

75. The Respondent did not take issue with this element of the Claimant's Schedule of Loss or the amount sought.

76. As such, I awarded the Claimant £500 for loss of statutory rights.

Compensatory award: notice pay

77. As found above, the Claimant was entitled to four months reasonable notice (for the period 3 July 2024 – 2 November 2024). The net sum awarded was calculated as follows (not including pension and child care contributions, which are addressed below):

77.1. £3,779.73 x 4 months = £15,118.92

Compensatory award: loss of earnings

78. This award was in respect of the difference in wages received by the Claimant from 3 November 2024 (when the above-awarded notice period would have elapsed) until 30 May 2025 (the date of the Remedy Hearing).

79. From 3 November 2024 to 22 November 2024, the Claimant was employed by United Aerospace. That equated to 15 working days or three weeks. Based on the figures found above, the Claimant earned £1,308.48 during that period (£436.16 x 3 weeks). If still employed by the Respondent, the Claimant would have been paid wages of £2,616.75 for the equivalent period (£872.25 x 3).

80. The difference between the two sums was £1,308.27 (£2,616.75 - £1,308.48). That sum is awarded to the Claimant for loss of earnings for the period 3 November 2024 to 22 November 2024.

81. From 25 November 2024 until 30 May 2025, the Claimant was employed by Routescape. His salary began at £40,000 per annum but increased from 1 April 2025 to £42,000 per annum.

82. The period in question was six months and one week. The Claimant received £16,955.70 net pay by Routescape for that period, as follows:

    82.1. 25 November 2024 – 31 March 2025 (four months & one week)

        82.1.1. (£2,693.06 x 4) + £621.46 = £11,393.70

    82.2. 1 April 2025 – 30 May 2025 (two months)

        82.2.1. £2781 x 2 = £5,562

    82.3. £11,393.70 + £5,562 = £16,955.70

83. Had he remained employed by the Respondent, the Claimant would have received net pay of £22,834.89 (per (£3,779.74 x 6) + £174.45).

84. The difference between the two figures was £5,879.19 (£22,834.89 - £16,955.70). That sum is awarded to the Claimant for loss of earnings for the period 25 November 2024 to 30 May 2025.

Compensatory award: pension contributions

85. The Claimant received no contributions towards a workplace pension from United Aerospace. In contrast, had he remained employed by the Respondent, he would have received £110.07 per month. He was entitled to be compensated for that loss, in the sum of £513.08, for the period of 20 weeks and one day, the period of his employment with United Aerospace (per (£25.40 x 20) + £5.08).

86. As noted above, I did not include pension contributions in the award for notice pay, in order to avoid any double compensation.

87. Routescape contribute to the Claimant's pension, in the sum of £105 per month. For the period from 25 November 2024 to 30 May 2025, they would have contributed £654.23 (per (£105 x 6) = £24.23). If the Claimant had remained employed by the Respondent, it would have contributed £685.82 to his pension during the same period of time (per (£110.07 x 6) + £25.40).

88. The difference between the two sums is £31.59 (£685.82 - £654.23).

89. The combined sum of £544.67 is awarded to the Claimant for loss of pension contributions from the date of dismissal to the date of the Remedy Hearing (£513.08 + £31.59).

Compensatory award: child care contributions

90. The Claimant received no child care contributions from either United Aerospace or Routescape from 3 July 2024 to 30 May 2025. That period was 10 months, three weeks and four days.

91. Had he remained employed by the Respondent, the Claimant would have received, over the equivalent period of time, £5,982.28 (per (£550 x 10) + (£126.92 x 3) + (£25.38 x 4), which equates to £5,500 + £380.76 + £101.52).

92. The sum of £5,982.28 is awarded to the Claimant for loss of child care contributions from the effective date of his dismissal until the Remedy Hearing.

93. As noted above, I did not include child care contributions in the award for notice pay, in order to avoid any double compensation.

Compensatory award: future loss

94. Based upon my findings above, the Claimant was entitled to an award for future loss of earnings for the period up to 31 March 2026 (where it would, in my judgment, be reasonable for him to have secured employment on commensurate financial terms to his employment with the Respondent).

95. The following calculations are based on the Claimant's likely salary for that period remaining at £42,000, with monthly pension contributions of £105 and no contributions towards child care. The period in question is 10 months (2 June 2025 – 31 March 2026).

96. The Claimant can expect to receive £27,810 in wages from Routescape (£2,781 x 10). Over the same period, had he remained employed by the Respondent, the Claimant would have received £37,797.40 in wages (£3,779.74 x 10). The difference is £9,987.40 (£37,797.40 - £27,810).

97. The Claimant can expect to receive £1,050 in pension contributions from Routescape (£105 x 10). Over the same period, had he remained employed by the Respondent, the Claimant would have received £1,100.70 in pension contributions (£110.70 x 10). The difference is £50.70 (£110.70 - £1,050).

98. The Claimant will receive no child care contributions from Routescape. Over the same period, had he remained employed by the Respondent, the Claimant would have received £5,500 in child care contributions (£550 x 10).

99. The sum of £15,538.10 is awarded to the Claimant for future loss (£9,987.40 + £50.70 + £5,500).

Adjustments: ACAS Code

100. The Claimant seeks an uplift to the awards because of the Respondent's failure to follow the ACAS Code of Practice on disciplinary & grievance procedures ('the ACAS Code'). The ACAS Code's disciplinary provisions only apply in cases where there is '*culpable conduct*' or performance correction or punishment (per Holmes v Qinetiq Ltd UKEAT/0206/15) .

101. The Claimant was not disciplined nor dismissed on grounds of conduct or performance, so the ACAS Code was not relevant. It was therefore not appropriate to make any adjustment in this regard.

Adjustments: interest

102. The Claimant seeks interest at 8% on his past losses (per his Schedule of Loss, at [3] of the Remedy Bundle).

103. As detailed above, the Tribunal's power to award interest on awards of compensation is limited to:

    103.1. When an award is not paid, interest accrues on the unpaid sum; and

    103.2. In discrimination claims under the Equality Act 2010.

104. As neither of those circumstances applied, there is no power to award interest, as claimed or at all.

Adjustments: grossing up

105. The purpose of grossing up is to ensure that, where sums received by the Claimant will be subject to taxation, the amount he receives serves to compensate his true net loss.

106. Sums received in connection with the termination of employment are taxable. However, that is subject to a £30,000 tax free amount. In other words, any sums awarded in excess of £30,000 will be taxable and the Claimant will be responsible for accounting to HMRC for the tax due.

107. As such, it was necessary to gross up any award over the £30,000 tax-free threshold. The Claimant's marginal tax rate was utilised (which, in this case, was 20%).

108. The basic award was calculated and awarded gross already. It did not require further grossing up. The unauthorised deductions from wages award was also calculated and awarded gross, with the Claimant being responsible for accounting to HMRC. It similarly did not require grossing up.

109. The compensatory awards of loss of earnings, unpaid notice pay and loss of statutory rights were calculated and awarded net. Any part of those awards which in excess of the tax-free £30,000 threshold will require grossing up.

110. This first step was to deduct from the £30,000 threshold the awards already made gross of tax that did not require grossing up (that is, the basic award and unauthorised deductions from wages award), as follows:

    110.1. £30,000 – (£7,700 + £17.763.90) = £4,536.10

111. That meant that a further £4,536.10 of the remaining award would not be liable to tax. That amount needed to be deducted from the sum which required grossing up (to avoid the Claimant being over compensated), as follows:

    111.1. £44,871.43 (being the sum of the net awards) - £4,536.10 = £40,335.33

112. The amount to be grossed up was therefore £40,335.33. However, grossing up does not mean that the figure is inflated by 20%. Rather, it requires a reverse percentage calculation (since the marginal tax rate will be applied to the gross figure, not the net figure), as follows:

    112.1. £40,335.33/0.8 (being 1 – 0.2, the marginal tax rate) = £50,419.16.

113. The applicable grossed up sum was therefore £50,419.16. When the basic award (£7,700) and the unauthorised deduction from wages award (£17,763.90) were added back in, the total award was £75,833.06

<u>Adjustments; the cap on unfair dismissal awards</u>

114. As noted above, the cap on unfair dismissal awards applies to the compensatory award made under section 123 of the ERA 1996. It is applied after all other adjustments have been made, including any grossing up.

115. The applicable cap is the lower of £115,115 or 52 weeks' gross pay (i.e. £60,000).

116. The compensatory award is "*such amount 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*" (per section 123 of the ERA 1996).

117. The compensatory award does not include the basic award (which is calculated and awarded pursuant to the provisions of sections119 – 122 of the ERA 1996) or, on the facts of this case, the award for unauthorised deductions from wages (as those sums were not "*loss sustained…in consequence of the dismissal*").

118. It followed that the compensatory award, to which the cap applied, was the total award less the basic award and less the award for unauthorised deductions from wages, as follows:

    118.1. £75,833.06 – (£7,700 + £17,763.90) = £50,369.16

119. The cap would apply to any applicable compensatory award in excess of £60,000. The applicable compensatory award in this case (£50,369.16) was less than the cap and so the cap was of no effect.

Conclusion

120. The Respondent must pay the Claimant the sum of £75,833.06, made up of the following:

    120.1. Unauthorised deductions from wages: £17,763.90

    120.2. Basic award: £7,700.00

    120.3. Compensatory award: £50,419.60

121. The Claimant did not claim nor was in receipt of any relevant welfare benefits following his dismissal and so the recoupment provisions (per the Employment Protection (Recoupment of Jobseeker's Allowance & Income Support) Regulations 1996) did not apply.

122. The sums due are payable within 14 days of receipt of this decision (per Rule 64 of The Employment Tribunal Procedure Rules 2024). The Claimant is reminded that he must account to HMRC in respect of tax and national insurance which arises from or is associated with this award.

Order posted to the parties on
17 June 2025

Adam Holborn
For Secretary of the Tribunals

Approved by:
EMPLOYMENT JUDGE S POVEY
Dated: 17 June 2025

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