EMPLOYMENT TRIBUNALS

Claimant: Michael Whyte

Respondent: Coca-Cola Europacific Partners Great Britain Limited

Heard at: Reading Employment Tribunal (by video)

On: 6 June 2025

Before: Employment Judge Annand

Representation

Claimant: Mr Whyte, representing himself
Respondent: Ms Barry (Counsel)

RESERVED REMEDY JUDGMENT

1. The Respondent is ordered to pay to the Claimant, subject to the provisions of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, the following amounts:

   a) A basic award of £**1,530.54**.

   b) A compensatory award of £**7,684.32**, made up of:
      1) Loss of income from 1 December 2023 to 2 April 2024, in the amount of £5,297.
      2) Loss of employer pension contributions from 1 December 2023 to 2 April 2024 in the amount of £530.56.
      3) Loss of share value in the amount of £648.17.
      4) Loss of statutory rights in the amount of £500.
      5) Business expenses in the amount of £448.74.
      6) An uplift of 15% due to breaches of the Acas Code, in the amount of £1,113.67.
      7) A reduction of 10% due to contributory conduct, in the amount of £853.82.

2. The total monetary award is £**9,214.86**.

3. The prescribed element is £**5,297**.

4. The prescribed element is attributable to the period 1 December 2023 to 2 April 2024.

5. The monetary award exceeds the prescribed element by £**3,917.86**, which is payable by the Respondent to the Claimant immediately.

6. The balance of the prescribed element (after payment of the relevant amount specified in the Recoupment Notice to the Secretary of State) is payable immediately after receipt of the Recoupment Notice.

REASONS

Introduction

1. On 6 June 2025, a remedy hearing was held to determine how much compensation the Claimant should be awarded in respect of his claim for unfair dismissal.

2. The Claimant worked for the Respondent from 24 February 2020 to 1 December 2023. He was initially employed as a Sales Representative and then moved to the role of Merchandiser. The Claimant submitted a Claim Form to the Employment Tribunal on 28 April 2024.

3. On 11 and 12 November 2024, a liability hearing was held by video. In the Reserved Judgment, sent to the parties on 17 January 2025, the parties were informed the Claimant's claim for unfair dismissal had been upheld. The dismissal was found to have been substantively and procedurally unfair, and I concluded there was no chance the Claimant would have been fairly dismissed if a fair process had been followed. I also found that the Claimant had caused or contributed to his dismissal by blameworthy conduct such that it was just and equitable to reduce the compensatory award by 10%.

4. For the remedy hearing, which was also held by video, the parties had agreed a joint bundle consisting of 366 pages. Shortly before the hearing, the Respondent also sent to the Tribunal a small additional bundle of documents relating to a car charger. The Respondent's position was that the Claimant owed the Respondent some money in respect of an electric car charger that had been installed in his home shortly before his dismissal. However, the Respondent accepted the Tribunal was not able to "offset" this from the Claimant's compensation for unfair dismissal, and so this was not a matter I took into account or reached any decisions about.

5. I was also provided with three witness statements for the remedy hearing. One from the Claimant and two from the Respondent's Samantha Walker (Director of Sales*)* and Catherine Chamberlain (Senior Reward Manager). I heard oral evidence from all three witnesses.

6. The Respondent also provided a spreadsheet with information regarding the Claimant's shares.

7. Finally, the Claimant also asked that I ensured that I had access to his witness statement from the liability hearing along with the witness statements provided by the Respondent's witnesses, Ms Walker and Ms McPhun. I made sure that I had access to these documents throughout the remedy hearing.

8. On 6 June 2025, I was able to hear the evidence and the parties' submissions, but there was not sufficient time to reach a decision and give an oral judgment, and I reserved my decision.

Findings of Fact

9. The Claimant was employed by the Respondent on 23 February 2020 as a Sales Representative. The Claimant's start date was mistakenly referred to in the Reserved Liability Judgment as being 1 February 2020, however the parties were agreed that it was in fact 23 February 2020.

10. In 2022, the Respondent was running an 'Equity Programme' which was part of its Inclusivity, Diversity and Equality agenda. The programme included a 'Career Builder' element, which gave employees the opportunity to access certain qualifications.

11. In January 2022, the Claimant enrolled in a Chartered Management Business Degree Apprenticeship. If completed, the Claimant would have obtained a degree in Business Management from Manchester Metropolitan University, and a Level 5 Diploma in Chartered Management. The Respondent agreed to fund the programme and gave him time off for study leave.

12. Ms Walker's evidence was that this was an accelerated apprenticeship programme, which was condensed into 2.5 years, instead of 4 years, because the Claimant already had some experience of the Respondent's business. The documents in the bundle included an offer letter sent to the Claimant from Manchester Metropolitan University which indicated he was being offered a place on a three year part-time course (p66). The offer letter noted the Claimant was required to sign a commitment statement and noted in certain circumstances the Claimant's enrolment may end, such as if he were to no longer be employed by the employer who would be funding the apprenticeship. The "Apprenticeship Particulars" indicated a start date of 2 February 2022 and the end date of the apprenticeship as being 31 August 2024. The estimated end date of the practical period was 30 June 2024 (p69).

13. In the Apprenticeship Agreement 'Notes and references' section, it stated:

> "1. The apprenticeship agreement. The apprenticeship agreement is a statutory requirement for the employment of an apprentice in connection with an approved apprenticeship standard. It forms part of the individual employment arrangements between the apprentice and the employer; it is a contract of service (i.e. a contract of employment) and not a contract of apprenticeship. If

all the requirements of section 1 of the Employment Rights Act 1996 are complied with, the apprenticeship agreement can also serve as the written statement of particulars of employment. You are not required to use this template, but the requirements of the legislation as described below must be met when you form your apprenticeship agreement."

14. As set out in the Reserved Liability Judgment, in 2023, the Claimant began to have difficulty managing his workload and studying for his apprenticeship. As a result, it was agreed he would move from the role of Sales Representative to the role of Merchandiser.

15. The Claimant remained in that role until he was summarily dismissed for gross misconduct on 1 December 2023. At the time of the Claimant's dismissal his gross salary with the Respondent was £26,529.48. His gross weekly pay was £510.18 and his net weekly pay was £429.64.

16. In her witness statement, Ms Walker noted, "in 2023, the salary range for Merchandisers was £21,400 - £24,400, whereas for Sales Representatives it was £27,500 to £29,000 (plus company car)." When the Claimant read this, he was concerned he had been underpaid. He was receiving £26,529.48, which was lower than the bottom end of the bracket for Sales Representatives indicated by Ms Walker (£27,500). The Respondent had agreed they would not reduce the Claimant's pay when he moved from the role of Sales Representative to Merchandiser. In 2023, the Claimant's salary was higher than the rates normally paid to Merchandisers. I was not provided with the precise details of what the Claimant was told regarding his pay when he moved from the Sales Representative role to the Merchandiser role, but it would seem unlikely he would have been told that not only would his rate of pay be protected but also that he would receive increases in line with a Sales Representatives role when he was performing a Merchandiser role. In any event, this was not a matter which I was able to determine as a part of the Claimant's remedy hearing for unfair dismissal. It was my role to work out the Claimant's losses based on the income the parties agreed he was receiving at the time of his dismissal, which was £26,529.48.

17. Throughout his employment with the Respondent, the Claimant received 6% employer pension contributions. He made 3% employee contributions, and this was double matched by the Respondent. The Respondent double matches employee contributions up to 12%.

18. At the time of his dismissal, the Claimant was 36 years old.

19. After the Claimant was dismissed, he was informed that his enrolment on the degree programme had come to an end as he was no longer employed by the Respondent. He asked if he could continue with the degree but was told he could not as the Respondent was not funding it and he had to be able to demonstrate the skills practically.

20. Ms Walker's evidence to the Tribunal was that the apprenticeship route taken by the Claimant was voluntary and they have only had a small number of

participants to date. The Claimant was the only participant in 2022. There was one participant in 2023, another in 2024 and 2 have started in 2025. None of the participants have finished the course yet. The programme is for those already employed by the Respondent on a permanent contract and the aim is for the individual to improve their skill set. There is no guaranteed career path outlined for participants. On completion of the apprenticeship, the employee continues in their role and at the same salary level. It is open to the employee to apply for promotions in the normal course of their employment, but there is no career progression route that follows the apprenticeship. The Claimant's evidence was that he was told on the course that the participants were able to increase their salary by, on average, £13,000 per year after they had obtained the degree and become a Chartered Manager (p148).

21. Ms Walker's evidence to the Tribunal was also that with all the Respondent's apprentice programs if, at the end of the program, they had real concerns about someone's performance, they may have a chat with them as to their ongoing suitability for the role. This had happened on a few occasions and resulted in the individuals leaving the Respondent at the end of the program. Ms Walker's evidence was that in the Claimant's case, as there were issues with his performance, the Respondent may have had such a conversation with him at the end of his apprenticeship, had he not been dismissed. She was of the view that even if the Claimant had not been dismissed, he was not on track for any kind of promotion on completion of his apprenticeship.

22. During the Claimant's employment with the Respondent, the Claimant was in a share plan. The Respondent operates a HMRC Approved Share Plan which allows its employees to invest between £10 and £150 in the Share Plan per month, up to a maximum of £1,800 per tax year. These are referred to as 'Partnership Shares'. Partnership Shares are not subject to a holding period and the employee can sell or transfer out of the plan at any time. Partnership Shares vest after 5 years, meaning that, if the employee leaves the Respondent's employment after that point, the employee can retain the shares without paying tax and national insurance contributions on the value of the shares on termination.

23. With the Respondent, in addition to Partnership and Matching Shares, employees may also receive dividends on their shares, and these are converted into more shares (Dividend Shares). The amount of any Dividend Shares cannot exceed £1,800 per tax year. Dividend Shares must be held for a minimum of 3 years. Dividend shares are paid in May and December of each year. The Claimant received Dividend Shares in December 2023. He received £269.69 worth of shares, which resulted in him receiving 5 further shares. He also received Dividend Shares in May 2024 and December 2024, after his employment had terminated.

24. The Respondent matches any investment made by the employee up to a maximum of £1,500 per year (Matching Shares). Matching Shares issued to the employee have to be held for a minimum of 5 years before they fully vest. Where an employee purchases £150 worth of shares each month, the matching shares would then be issued in the first 10 months of each tax year (April –

January inclusive) and no matching shares would be issued in February or March of that year, as the £1,500 cap would have been reached after 10 months.

25. The holding periods on the respective shares are: (a) Partnership Shares and Matching Shares only fully vest and become tax-free after 5 years and (b) Dividend Shares become tax-free after 3 years. However, the respective 5 or 3 year 'countdown' starts on the day that the shares are bought, and each monthly purchase is treated separately. Any Matching Shares that have not been held for 1 year on the date of termination of employment are also forfeited.

26. Where an employee's employment terminates for any reason, they have the option of selling their shares or moving them to a vested shares account. The tax treatment at the time the employment ends is governed by the scheme rules. Where the Partnership Shares have been held for less than 5 years and the employee either resigns or is dismissed, they are a 'Bad Leaver', and employees retain the shares but pay income tax and national insurance based on the value of the shares. Where the Partnership Shares have been held for less than 5 years, on termination of employment the employee retains the shares, but they would only be free from tax and National Insurance Contributions where the employee is a 'Good Leaver', which means they have been made redundant, retired, or left due to death or incapacity or if the company is sold. Where an employee holds the shares for more than 5 years and leaves the Share Plan trust on termination of their employment for any reason, no income tax or NICs is payable.

27. The Claimant had been employed for 3 years at the time of his dismissal, and he was treated as a Bad Leaver in respect of his Partnership Shares and therefore tax was payable on them all. This would have been the case had he left employment at any point up to February 2025 whether by his resignation or dismissal, at which point the Partnership Shares issued in February 2020 would have been tax and NIC free, on the basis he would have held these for 5 years or more. However, the tax position would change on a monthly basis as more shares vest, but the earliest that any of these shares would have been tax-free would have been February 2025.

28. The Claimant had received 'Matching Shares' based on his purchase of Partnership Shares. Where an employee resigns or is dismissed less than five years after the allocation of the Matching Shares, where held for less than a year, the employee loses the Matching Shares. Where held for more than a year but less than 5 years, the employee keeps the shares but pays income tax and National Insurance on the value of the shares.

29. On dismissal, the Claimant forfeited 30.529154 Matching Shares at a total value of £1,415.40, based on the share price of £46.36 as at the date of his dismissal, as these had been held for less than 1 year. The Claimant paid income tax and NIC on but retained the Matching Shares which had been held for more than 1 but less than 5 years as at the date of his dismissal. Income tax and NIC would have been payable had he left the Respondent at any point prior

to the respective shares being held for 5 years, unless any of the Good Leaver reasons applied.

30. In respect of the Dividend Shares, these were subject to tax but not national insurance at the time of the Claimant's dismissal, as these had been held for less than 3 years. A small number of the Claimant's Dividend Shares had been held for over 3 years, those that were issued in May 2020 and those were not subject to tax or NIC.

31. Ms Chamberlain's evidence to the Tribunal was that at the date of the Claimant's termination, the Claimant's shareholdings had a taxable value of £11,093.20. This is different to the market value because it is a figure calculated to determine the tax due. The closing share price on 1 December 2023 was £46.36. In order to cover tax and NIC, 101.56 shares were sold. The proceeds from the sale were £5,355.09. Of this, £5,213.8 of this was sent to payroll and £141.26 was paid to the Claimant. This is because Shareworks sell shares to cover a worst-case tax scenario (i.e. higher tax rate). For lower taxpayers, when the amount is sent to payroll for the appropriate deductions to be made, there is often a cash payment for the balance which is then made from the Respondent. 154 retained shares were then transferred into a Vested Shares Account (VSA). In accordance with the scheme rules, a total of £4,117.12 by way of tax and NI were deducted from the payment at the applicable rate. Of the remaining £1,096.68, £960 was deducted as a CSL student loan repayment and £136.68 paid to the Claimant.

32. On 1 December 2023, the total proceeds to the Claimant were £315.47 plus the transfer of 154 shares into a VSA account. The value of these shares on 12 February 2024, the date of transfer to VSA, was £8,120.08.

33. In her evidence, Ms Chamberlain set out what the position would have been if the Claimant had remained employed until 1 April 2024. If he had continued to buy £150 worth of shares per month, he would have held 273.99 shares in total, comprising of 152.74 Partnership Shares, 103.54 Matching Shares, and 17.71 Dividend Shares.

34. Based on the share price on 2 April 2024 (being the next working day following 1 April 2024, which was a public holiday), the total taxable value of the shareholding on 2 April 2024 would have been £14,071.06. In accordance with the scheme, 116.28 shares would have been sold to cover tax and NIC and 0.71 fractional dividend shares would have been sold. 157 shares would have been transferred into the VSA. The closing share price on 2 April 2024 was £54.75.

35. On 2 April 2024, the total proceeds to the Claimant would have been £176.43, plus transfer of 157 shares into a VSA account. The value of these shares on 11 June 2024, which is the date the value would have been calculated for the VSA, being the 11th of the month following the leaving date plus 60 days, would have been £9,046.52. Between 1 December 2023 and 2 April 2024, the total share gain would have been £787.42. However, due to the way in which deductions are taken for student loan repayments the Claimant would have

owed the Respondent the sum of £139.25. Therefore, the total share gain as a result of 4 more months of employment would have been £648.17.

36. From 4 December 2023 to 26 February 2024, the Claimant claimed Job Seekers Allowance. He was paid £84.40 per week.

37. As soon as the Claimant was dismissed, he began to apply for new roles. He applied for a large number of suitable vacancies (p150-248).

38. On 26 February 2024, the Claimant started in a new role with a company called Standout. His salary in the new role was £26,000 per annum. His gross weekly pay was £500. The Claimant had not provided any pay slips from this period, but the Respondent asserted the Claimant's net weekly pay was likely to have been £422.52 (having used an online tax calculator). The Claimant remained in this role until 1 April 2024, when he resigned to start in a new role with a different company which began on 2 April 2024.

39. On 2 April 2024, the Claimant started in the role of Tactical Retail Development Representative with Imperial Tobacco. In his role, his gross annual salary was £30,000, his weekly gross salary was £576.92, and his net weekly pay was £476.36. The Claimant's contract of employment showed he was offered a share plan with Imperial Tobacco that was similar to the share scheme offered by the Respondent, a pension scheme which double matched the employee contributions to up to 14%, and he was eligible for a bonus. The Claimant's continued employment was subject to a 6 month probationary period.

40. On 13 September 2024, Imperial Tobacco terminated the Claimant's employment on the basis that he had failed his probation. In the letter he was sent he was advised this was due to a failure to reach the required level of performance for the role. The Claimant's oral evidence to the Tribunal was that he was told by Imperial Tobacco that they wanted the Claimant to speak in a scripted way and they told him he had not done that to the standard they required. When he was cross examined, it was put to the Claimant that his failure to pass his probationary period with Imperial Tobacco was "down to him and him alone", which he accepted.

41. Between 14 September 2024 and 1 December 2024, the Claimant claimed Jobs Seekers Allowance. He was paid £90.50 per week.

42. On 15 November 2024, the Claimant sold his shares in the Respondent for £9,233.23.

43. On 2 December 2024, the Claimant started in a new role with A G Barr PLC as a Field Sales Representative. This role has a salary of £25,000. At the time of the remedy hearing, the Claimant remained in the role. The role entailed a 6-month probationary period, but he had not yet been informed if he had passed it or not.

44. In February 2025, the Claimant started a new degree with the Open University. It is a law degree, and he has had to start it from the beginning. In other words,

he was not able to transfer any credit from the degree course he had previously been enrolled in.

45. During the hearing, the Respondent accepted they had erroneously underpaid the Claimant £448.74 from his final wage payments as they had mistakenly made deductions for fuel payments.

The issues the Tribunal had to decide

46. The Tribunal needed to decide the following issues:

    a) What basic award is payable to the Claimant?
    b) If there is a compensatory award, how much should it be?
    c) What financial losses has the dismissal caused the Claimant?
    d) Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
    e) If not, for what period of loss should the Claimant be compensated?
    f) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
    g) Did the Respondent unreasonably fail to comply with it?
    h) If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?
    i) Does the statutory cap of fifty-two weeks' pay apply?

The relevant law

Type of awards for unfair dismissal

47. Compensation for unfair dismissal is made up of a basic award and a compensatory award.

48. To calculate the basic award, a statutory formula is applied, which takes into account an employee's age and the number of complete years' continuous service. Under section 119 of the Employment Rights Act 1996, the employee's years of continuous employment are counted backwards from the effective date of termination. The amount of the award is one and a half weeks' gross pay for each year in which the employee was 41 years old or older, one week's gross pay for each year in which the employee was below the age of 41 but not younger than 22, and half a week's gross pay for each year in which the employee was below the age of 22.

49. Under section 123(1) of the Employment Rights Act 1996, for the compensatory award, tribunals are required to award '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'.

50. The calculation of a compensatory award usually falls under two headings, immediate loss of earnings and future loss of earning. The immediate loss of

earnings is the losses incurred between the effective date of termination and the date of the remedy hearing. An employee may also have on-going future losses if by the date of the remedy hearing they have not obtained a new job or have obtained a job but with a lower salary than their previous employment.

Mitigation of loss

51. Section 123(4) of the Employment Rights Act 1996 provides: "In ascertaining the loss [sustained by the claimant] 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 …"

52. It is a fundamental principle that any claimant will be expected to mitigate the losses they suffer as a result of an unlawful act by giving credit, for example for earnings in a new job, and that the tribunal will not make an award to cover losses that could reasonably have been avoided. For example, a dismissed employee is expected to search for other work and will not recover losses beyond a date by which the tribunal concludes the individual ought reasonably to have been able to find new employment at a similar rate of pay. The claimant is expected to take reasonable steps to minimise the losses suffered as a consequence of the unlawful act. The test is simply whether the employee's conduct is reasonable on the facts of each case (*Yetton v Eastwoods Froy Ltd* [1966] 3 All ER 353, QBD).

53. The Tribunal will need to consider 1) what steps the claimant should have taken to mitigate his or her losses; 2) whether it was unreasonable for the claimant to have failed to take any such steps; and 3) if so, the date from which an alternative income would have been obtained, and the amount of that income.

54. The onus of demonstrating a failure to mitigate is on the respondent (*Fyfe v Scientific Furnishing Ltd* [1989] IRLR 331).

55. The employer's liability will normally cease before the date of the remedy hearing if the employee has obtained or ought to have obtained a new permanent job paying at least as much as the old job as there will no longer be a loss arising from the dismissal.

56. In *Courtaulds Northern Spinning Ltd v Moosa* [1984] ICR 218, EAT, the hearing did not take place until more than three years after the dismissal date. For 18 months of those three years, the claimant had worked for a new employer. He was then made redundant. The Employment Appeal Tribunal held the respondent's liability ceased when the claimant entered the new job because, according to the EAT, it was an equivalent permanent job. Thus, neither the claimant's earnings in the new job nor his renewed losses when he became unemployed again before the hearing were taken into account.

57. In *Whelan v Richardson* [1998] IRLR 114, the EAT held, "As soon as the [claimant] obtains permanent alternative employment paying the same or more than his pre-dismissal earnings his loss attributable to the action taken by the respondent employer ceases. It cannot be revived if he then loses that

employment either through his own action or that of his new employer. Neither can the respondent employer rely on the employee's increased earnings to reduce the loss sustained prior to his taking the new employment. The chain of causation has been broken'."

58. In *Dench v Flynn and Partners* [1998] IRLR 653, CA, the Court of Appeal held that an employer's liability for the loss suffered by an unfairly dismissed employee does not necessarily cease once the employee commences new employment of a permanent nature at a salary equivalent to or higher than that which the employee previously enjoyed. The Court acknowledged that in many cases the loss consequent upon unfair dismissal will cease on such an event. But to regard the obtaining of equivalent permanent employment as always putting an end to the attribution of the loss to the unfair dismissal can in some cases lead to an award that is not just and equitable. This was particularly so where the new employment appears to be permanent when originally entered into but which, through no fault of the employee's, proves to be of only a short duration. The Court of Appeal ruled that, in such a case, the reason why any subsequent employment did not last will be an important consideration. If the employee simply resigned for no good reason or was dismissed for incompetence or misconduct, for example, it is likely that a tribunal would take the view that any losses that the employee had subsequently suffered were attributable to his or her own behaviour and were not in consequence of the original unfair dismissal.

59. In *Cowen v Rentokil Initial Facility Services (UK) Ltd (t/a Initial Transport Services)* EAT 0473/07 the EAT reaffirmed that tribunals cannot always assume that permanent employment breaks the chain of causation such as to make the loss in question too remote to recover. Such a break may well occur, but the circumstances in each case need to be examined closely. The claimant had taken on a very different role in a new job after being dismissed, and accordingly the employment tribunal found that there was a strong possibility from the outset that his new employment might not continue beyond the probationary period. The EAT concluded that the only possible conclusion on the facts was that the taking of the new job for what transpired to be just a limited period did not break the chain of causation, with the result that the respondent was liable to compensate the claimant for his ongoing losses.

<u>The statutory cap on compensatory awards</u>

60. A statutory cap applies to a compensatory award under sections 117(1) and (2) and section 123 of the Employment Rights Act 1996. The applicable statutory cap is the lower of the current figure of £118,223 or 52 weeks' gross pay.

<u>Recoupment</u>

61. Under the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 (SI 1996/2349), a number of awards made by tribunals are subject to recoupment, whereby the state recovers from a respondent the value of certain state benefits paid to the claimant. This involves the tribunal identifying a part of the award that corresponds to a period of loss

during which the claimant was in receipt of job seeker's allowance, income-related employment support allowance, income support or universal credit. The respondent is required to not pay the claimant the sum the tribunal identifies, but to wait until the Department for Work and Pensions (DWP) recoups from them any benefits paid, with the remainder then being paid to the claimant by the respondent. Once the actual state benefits that are subject to recoupment are known, the DWP will claim this figure from the prescribed element retained by the respondent and any remaining monies must be paid by the employer to the employee. Further details are set out in the Annex below.

Conclusions

What basic award is payable to the Claimant?

62. The Claimant was 36 years old when he was dismissed for gross misconduct. He had been employed by the Respondent for 3 years and 9 months. The Claimant's gross weekly salary was £510.18. The Claimant is therefore entitled to a basic award of £1530.54 (3 years of service x one of week of gross pay).

What financial losses has the dismissal caused the Claimant? Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

Immediate losses

63. When the Claimant was dismissed from the Respondent, on 1 December 2023, his net weekly income was £429.64. If the Claimant had continued working for the Respondent from 1 December 2023 to 2 April 2024 (a period of 17 weeks and 4 days), he would have earned £7,647.59. According to the Claimant's witness statement, in that period, he earned a net figure of £2,350.59 from Standout. As a result, from the date of the Claimant's dismissal to the date his employment with Imperial Tobacco started the Claimant's loss of income was £5,297.

64. The Claimant clearly took reasonable steps to mitigate his loss. He applied for a large number of roles and was offered two new permanent roles quickly. The Respondent argued that once the Claimant had obtained a permanent role with Imperial Tobacco on 2 April 2024, as it was a role which offered him a higher rate of pay than he was earning with the Respondent, and similar or better other benefits, then the chain of causation was broken. The Respondent argued that as the Claimant lost that role as result of his own poor performance, the Respondent was no longer responsible for any losses which arose when the Claimant was dismissed at the end of his probationary period in September 2024.

65. Following the guidance in the Court of Appeal case of *Dench v Flynn and Partners*, and the EAT in *Cowen v Rentokil Initial Facility Services (UK) Ltd (t/a Initial Transport Services)*, I accept that an employer's liability for the loss suffered by an unfairly dismissed employee does not necessarily cease once the employee commences new employment of a permanent nature at a salary

equivalent to or higher than that which the employee previously enjoyed. However, this is not a case where the new employment appeared to be permanent when originally entered into but which, through no fault of the employee's, proved to be of only a short duration. Nor is this a case where the Claimant took on a very different role with Imperial Tabacco. In this case, the losses the Claimant suffered after September 2024 were attributable to his performance in the new role, and his failure to pass his probationary period, which he accepted in cross examination was down to "him and him alone". Therefore, I have concluded that the Respondent's liability to compensate the Claimant, in terms of his loss of income, his pension loss and the losses he has suffered as a result of his shares being sold on dismissal, is restricted to the losses incurred in the period, 1 December 2023 to 2 April 2024.

Loss of income - 1 December 2023 to 2 April 2024

66. As set out of above, the Claimant's loss of income over this period was £5,297. As he received Job Seekers Allowance over this period, this figure will be subject to the Recoupment Regulations, as explained above and below.

Pension loss - 1 December 2023 to 2 April 2024

67. The Claimant's payslips from when he worked with the Respondent showed he made employee pension contributions each month of £66.32. This was double matched by the Respondent, and therefore, the monthly employer contribution was £132.64. Multiplied by four for the months between the start of December and the start of April, this comes to £530.56.

Loss of share value - 1 December 2023 to 2 April 2024

68. As set out above, the Respondent produced a witness statement from Ms Chamberlain and a spreadsheet which set out that the total loss to the Claimant, in terms of the value of his shares, between 1 December 2023 and 2 April 2024 was £648.17. Based on the evidence given by Ms Chamberlain I accepted that this is an accurate figure.

69. The Claimant set out in his Schedule of Loss that he was seeking £9,721.50 for share plan losses. This was based on the argument that the Claimant's shares were taxed when he was dismissed and they would not have been taxed if he had remained employed with the Respondent, and because he forfeited a year of matching shares by being dismissed. However, as Ms Chamberlain explained, while the shares become tax free after 5 years, they do so on a rolling monthly basis. The Claimant would not have been able to simply sell all his shares after he had been employed with the Respondent for 5 years and not incur any tax liability. The Claimant would also have forfeited the final 12 months of Matching Shares unless he were to have left as a Good Leaver, which is a very narrow set of circumstances which were unlikely to apply to the Claimant.

70. The Claimant also picked up on the part of Ms Chamberlain's witness statement which noted, "Based on the share price as at 2 April 2024 (being the next

working day following 1 April 2024, which was a public holiday in the UK and US, so the relevant stock market was not open), the total taxable value of this forecast shareholding as at 2 April 2024 would have been £14,071.06." However, this was the taxable value, which Ms Chamberlain noted in her witness statement was different from the market value. Therefore, this figure does not represent what the Claimant would have received because that amount needed to be subject to tax.

71. As noted above, I have accepted that the Respondent's liability for the Claimant's losses ceased on 2 April 2024. If the Claimant had been employed with the Respondent until that date, he would have benefitted from a further £648.17 in terms of the value of his share plan. Therefore, £648.17 is the amount I have awarded to the Claimant for these losses.

Future losses

72. The Claimant set out in his Schedule of Loss that he was seeking the difference between what he was earning with the Respondent and what he had been informed he would be likely to earn once he had finished his degree and was a Chartered Manager. He had been informed that those who completed the qualification earned on average an additional £13,000 per year. He therefore sought three years losses, at the rate of £13,000 per year, which came to £39,000. The Claimant noted in his Schedule of Loss that the apprenticeship set out specific career progression paths which included roles such as Manager, Senior Manager, Head of Department and Operations Manager. He noted that had he completed his qualifications, he would have been eligible for these roles.

73. The Respondent disputed that the Claimant was entitled to be awarded loss of future earnings on the basis that the Respondent's liability ceased once the Claimant obtained a new role with Imperial Tobacco which offered a higher salary. Further, the Respondent argued that even if the Claimant had completed his apprenticeship he was not guaranteed a higher paid role with the Respondent. He would have needed to apply for a new role, the same as any other employee working for the Respondent. Ms Walker's evidence was that the Claimant was not on track for a promotion due to concerns about his performance.

74. As set out above, I accepted the Respondent's argument that its liability for the Claimant's losses ceased on 2 April 2024 once he was in a new role with a higher rate of pay. Furthermore, I did not conclude that the Claimant would have moved to a higher paid role once he had completed his qualifications if he had stayed working for the Respondent. I was not presented with any evidence which suggested he was on track to be promoted. He had already moved from a Sales Representative role to a lower grade role as a Merchandiser, and there were concerns about his performance raised by Ruth Wallace before the customer review which led to his dismissal. It may be that if he had been offered additional training these issues could have been resolved. However, I was not presented with any evidence which supported the suggestion that he would have been likely to move to a managerial role after he had obtained his

qualifications. As a result, I have not awarded the Claimant compensation for future loss of income.

Loss of Statutory rights

75. I have awarded the Claimant £500 in compensation for his loss of statutory rights.

Business expenses

76. As noted above, during the hearing, the Respondent accepted they had erroneously underpaid the Claimant £448.74 from his final wage payments as they had mistakenly made deductions for fuel payments.

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? Did the Respondent unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

77. The Respondent argued that the Tribunal should not make an uplift for failures to comply with the ACAS Code of Practice. The Claimant argued the uplift should be 25%.

78. Based on the findings set out in the Reserved Liability Judgment, I am of the view that the Respondent unreasonably failed to comply with the following parts of the Code of Practice:

a) Paragraph 12: *"Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made."* The Claimant faced three allegations. At the dismissal hearing, he was not asked any questions about the third allegation, and after it had been decided the Claimant would be dismissed, Ms McPhun later also upheld Allegation 3 against the Claimant (para 109 of the liability judgment). Ms McPhun did not go through the evidence regarding Allegation 3 with the Claimant in the hearing, and therefore he was not able to respond to the case against him.

b) Paragraph 18: "*After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing."* In the Reserved Liability Judgment, I concluded that Ms McPhun had a predetermined mindset that the Claimant would be dismissed (para 123 of the liability judgment), which is not in keeping with the Code which suggests the decision should be made *after* the disciplinary meeting with the Claimant.

c) Paragraphs 19 and 20: "*Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve*

performance within a set period would normally result in a final written warning. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation." The Claimant was not given a written warning in this case or a final written warning, despite the fact that it was clear this is what was envisaged in the Respondent's disciplinary policy (para 128 of the liability judgment).

79. In deciding what percentage uplift to award I have taken into account that the Respondent is a large company with considerable means. The managers involved in the process had access to human resources advisors for guidance. However, I have also borne in mind that this is not a case where no process was followed. The Claimant was informed of the allegations he faced. He was invited to an investigation meeting, disciplinary meeting, and he was permitted to appeal. I have weighed these factors and decided an uplift of 15% is suitable in this case.

80. The compensatory award to be paid to the Claimant consists of a) loss of income in the amount of £5,297, b) pension loss in the amount of £530.56, c) share losses in the amount of £648.17, d) loss of statutory rights in the amount of £500, e) business expenses in the amount of £448.74. This comes to a total of £7,424.47. 15% of £7,424.47 is £1,113.67. Together this makes a total of £8,538.14.

Reduction for contributory conduct

81. As set out in the Reserved Liability Judgment, the compensatory award will be reduced by 10% because of the Claimant's contributory conduct. 10% of £8,538.14 is £853.82. when the reduction is applied, the overall compensatory award is £7,684.32.

Does the statutory cap apply in this case?

82. There was some discussion during the remedy hearing about whether the statutory cap would apply in the Claimant's case. The Respondent's position was that it did because the Claimant was employed on a contract of employment, and his apprenticeship agreement was also a contract of employment, and not a statutory apprenticeship. However, in light of the decisions I have reached, as set out above, it was not necessary to consider this issue because the Claimant's compensation award fell below 52 weeks' pay or the prescribed limit.

Approved by:

Employment Judge Annand

Date: 8 July 2025

JUDGMENT SENT TO THE PARTIES ON

16 July 2025

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FOR THE TRIBUNAL OFFICE

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Claimant: Michael Whyte

Respondent: Coca-Cola Europacific Partners Great Britain Limited

ANNEX TO THE JUDGMENT
(MONETARY AWARDS)

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.