



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Crean

Respondent: Urgo Ltd

Heard at: Cardiff, in person **On:** 21 March 2025

Before: Employment Judge Harfield

Representation

Claimant: Mr Morris (Counsel)

Respondent: Ms Nicholls (Counsel)

JUDGMENT having been sent to the parties on 25 March 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REMEDY REASONS

Introduction

1. This was a remedy hearing following my Liability Judgment of 18 November 2024 where I upheld the Claimant's constructive unfair dismissal claim and wrongful dismissal (notice pay) claim. At that first hearing I also dealt with two remedy issues. First, I found the unfair dismissal basic award and compensatory award should be reduced by 20% due to contributory conduct by the Claimant. Second I found the Claimant had failed to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures and it was just and equitable to decrease the unfair dismissal compensatory award by 10% and the notice pay award by 10%.
2. The matter came back before me on 21 March 2025 for a remedy hearing. I was asked to determine issues regarding the period of loss/mitigation in anticipation that once there was a determination on those points the parties may be in a position to agree the resulting figures. I heard evidence from Claimant and from Ms Kaur. I heard submissions from both parties' representatives. I had before me a remedy hearing file and written remedy statements from the Claimant and Ms Kaur.

The legal principles

3. In respect of the unfair dismissal compensatory award I reminded myself of the test under s123(1) ERA that 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. Further under section 123(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. Also relevant was section 123(4) which says 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.
4. Some other relevant principles include, as summarised in Cooper Contracting Limited v Lindsey UKEAT/0184/15/JOJ:
 - a. There is a duty on the Claimant to take reasonable steps to mitigate her loss but the burden of proof is on the Respondent. The Respondent has to prove the Claimant acted unreasonably in failing to mitigate; there is not a burden on the Claimant to show what she did was reasonable;
 - b. What is reasonable is a matter of fact to be determined taking into account the views and wishes of the Claimant as one of the circumstances but it is the Tribunal's assessment of reasonableness and not the Claimant's that counts;
 - c. There is a difference between acting reasonably and not acting unreasonably;
 - d. The Tribunal is not to apply too demanding a standard to the Claimant who is the victim of the wrong.
5. The tribunal should consider the questions identified in Gardiner-Hill v Roland Berger Technics Limited [1982] IRLR 498 and Savage v Saxena [1998] IRLR 182:
 - a. What steps was it unreasonable for the claimant not to have taken;
 - b. When would those steps have produced an alternative income;
 - c. What amount of alternative income would have been earned

The tribunal should make their findings on a broad evaluation of all the available evidence.

The parties' positions

6. The Claimant sought her losses to the date of the remedy hearing and a further 52 weeks losses (subject to the ultimate application of the cap on the amount of the compensatory award). Her submission was that the disciplinary procedure and dismissal had shattered her confidence and broken her mentally. Her case is that after her dismissal in January 2024 she was not well enough to contemplate doing any other work and in March/April 2024 she knew she had to pick herself up and decided to set up her own travel consultancy business. She says it was not sustainable and by June 2024 she was not spending any more time on it. She says that from then onwards she assisted her husband with his business administration working 18 – 20 hours a week and being paid £300 a week. Her case is that she is unable to think about going back into the work she did previously due to being so low in self confidence and suffering with anxiety, and that she also does not in any event think an employer would take on someone of her age because it takes a few years to build up a good sales base. At the time of dismissal she was age 58.
7. The Respondent submits that if the Claimant took reasonable steps she would have applied for a role at one of the Respondent's competitors and that it is an employees' market and that in any event the Claimant has good transferrable skills. They point to the fact there is no medical evidence in support of the Claimant's position. The Respondent argues the Claimant should have been able to secure a similar role within 12 weeks of the termination date.

Findings

8. In my judgement, the Claimant was unwell in the run up to her resignation found to be a constructive dismissal. That is evident in the findings made in the Liability Judgment, as shown by the Claimant being unable to attend the grievance and disciplinary hearing. It is also shown by the agreed delay in sending out to the Claimant the written outcome, other than the Claimant being aware of the decision to give her a first written warning, which was done due to the Claimant's health situation. It is further shown by the Claimant then resigning on 22 January, saying that by then she was feeling a little better and able to reflect more insightfully as to how she had been treated and how it left her feeling, and that she considered her relationship of trust in the business had been shattered.
9. It was evident from the Claimant's evidence at the remedy hearing that around that time she also become well enough to start thinking about how to move forward in the world of work, and she started to take preparatory steps in setting up her travel consultancy business from home. Whilst I acknowledge what the Respondent says about the absence of financial records for that travel business, I accept the Claimant's evidence that it did not actually net any income for her beyond the one client she referred to in oral evidence. I accept her evidence that by June 2024 it had withered away and since then the Claimant has assisted her husband with business

administration working 18 – 20 hours a week paid gross £300 a week. That has remained the position since.

10. The crux of the Claimant's evidence is that due to her experiences and her poor mental health, her trust in being able to work for any independent employer has been lost and that it has meant that she has not been able to work for any employer (other than her husband) whether in the medical sales field, or sales field or indeed anywhere else. In essence her position is that she tried to set up the travel consultancy because it was something she thought she could do, but also because she was her own boss doing it in the safety of her own home. Her position was that thereafter that working for her husband, as opposed to any other employer, is a place of safety.
11. But what is notable is that I do not have any medical evidence, not even GP records, in support of the Claimant's position about her health and her ability to look for other work/do work. The Claimant said in oral evidence that earlier on there had been an offer of anti-depressants by her GP but that she has been treating herself with herbal remedies when needed to try to manage her anxiety. I do not even have a record of that GP consultation. It has to be said it is quite unusual in a case like this, with a sustained period of loss being sought on the basis of medical unfitness, to not have any kind of medical records whether GP entries or a GP letter or sometimes more formal medical evidence.
12. I do not believe the Claimant is being untruthful in saying how she feels about that loss of trust. But I do consider that as part of her duty to mitigate her losses she was reasonably required to seek to improve her medical position, whether through treatment such as medication or talking therapies, or whatever else is on offer and with it to rebuild an ability to have trust to be able to apply for and secure employment. Given the duty to mitigate is the same as in the civil jurisdiction, and therefore is the test that applies in personal injury cases for example, I think that has to be right. The Claimant, as is anyone else in life, is entitled to make a choice not to take medication or seek treatment and it is not my job to dictate that. But the point is that it is not necessarily reasonable for that to be at the financial expense of the Respondent.
13. I do not have any medical evidence on what would happen if the Claimant had pursued that course of action, but it is difficult to hold that against the Respondent where that information and action lies in the hands of the Claimant. I take on board the many authorities that say, in effect, I have to do the best I can with what I have and this is not an exact science.
14. In my judgement, I do not consider the Respondent has shown it was unreasonable for the Claimant, in the circumstances she found herself in, to have a go at setting up the travel consultancy business. Working for herself would have been a gentle way to start to rebuild confidence. As Mr Morris says, with the benefit of hindsight, it may have been naïve to think that was a business world to start to enter given its competitiveness.

However, I do not consider it was unreasonable to give it a go. A period of self-employment would have given the Claimant time as well to seek to improve her health and wellbeing through medical treatment as appropriate, and as discussed already.

15. In my judgement, a period of 12 weeks was a reasonable time for the Claimant to give that travel business a go, and to seek to improve her health. I accept she received no actual income in that period and therefore she is entitled to her full losses in that 12 week period.
16. Thereafter I do consider that it was reasonable for the Claimant to appreciate that the travel consultancy business was not going to work out and that she reasonably needed to consider entering employment. I do not consider that it was unreasonable for the Claimant to work for her husband for a period to again rebuild her confidence gently in working for someone else. Again, that would have been a way to seek to continue treatment, for example, along the side. I therefore accept that after the initial 12 weeks giving the business consultancy a go, it was then reasonable for the Claimant to work for her husband for a period to achieve those ends.
17. However, I do consider that if the Claimant had taken reasonable steps to mitigate her losses she would then have been able to re-enter the world of sales, whether staying in the medical sales arm or another arm of sales where she accepts she has transferrable skills and is an industry in which her life career lay. I accept the Claimant's age and absence from the workforce for a period may have meant that process of re-entry would take slightly longer, but I do not accept that it means it was unrealistic. I accept Ms Kaur's evidence that, at least in the wounds field, there is a shortage of experience that the Claimant readily had, and which counts in the Claimant's favour in the balance against what the Claimant says about her age.
18. So in my judgment, the period in which the Claimant would reasonably have been rebuilding her confidence working for her husband, and during that time taking steps to look for and find employment at a level that replicated what she was earning before, is a period of a further 20 weeks.
19. So overall that works out as:
 - Full losses for 12 weeks in the trial of the travel consultancy business;
 - Partial losses for a further 20 weeks based on what the Claimant earned working for her husband;
 - No losses after that total 32 week period (in effect 8 months period of loss in total).
20. The parties were then given time to see if they could reach agreement on the appropriate figures applying those findings and the earlier findings relating to contributory conduct and the Acas reduction. They were able to do so and by agreement the Judgment incorporated:

- a. An unfair dismissal basic award at £10,802.40;
- b. An unfair dismissal compensatory award of £7448.84;
- c. Wrongful dismissal compensation of £10,605.14;
- d. Making a total award of £28,856.39.

Approved by:

Employment Judge R Harfield

17 June 2025

JUDGMENT SENT TO THE PARTIES
ON
18 July 2025

Kacey O'Brien
FOR THE TRIBUNAL OFFICE