Case Number: 1309075/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr T Shah

Respondent: Food Hub Limited

Heard at: Birmingham **On:** 17 & 18 July 2025

Before: Employment Judge Maxwell
Mr Howard
Mr Spencer

Appearances
For the claimant: in person
For the respondent: Ms Chan, Counsel

JUDGMENT

1. The Claimant is entitled to:

   1.1 a basic award in the sum of £2,569.50;

   1.2 a compensatory award in the sum of £58,850.

   1.3 a total of **£61,419.50**.

REASONS

Preliminary

1. We were provided with:

   1.1 The Claimant's bundle of documents, running to 365 pages;

   1.2 The Respondent's bundle of documents, running to 478 pages (including the index).

2. We heard oral evidence in connection with remedy from the Claimant, Tanveer Shah.

3. Both parties addressed us orally in closing.

Facts

4. The Claimant was dismissed on 7 September 2022.

5. On 20 October 2022, the Claimant became ill. He was rushed to hospital and had a stent fitted. He spent the next 3 to 4 months recuperating from this procedure. Had he not been dismissed, the Claimant would not have been able to work during this time. Whilst the Claimant believes this health problem was caused by his treatment at the hands of the Respondent, we could not make such a finding without evidence from a cardiologist or another appropriate expert.

6. If the Claimant had still been employed, he would have taken sick leave. His contract provided:

> **11. Sickness and sick pay**
>
> **11.1 If you are absent from work due to illness or injury (or for any other reason save for pre-approved leave) you must let the Company know as soon as possible but no later than one hour before your first day of absence and keep the Company regularly advised if you continue to be absent. You will be required to complete a self-certification form for all absences up to 7 days (including Saturdays and Sundays). This must be submitted to the Line Manager.**
>
> **11.2 If you are absent for 7 or more consecutive days you must obtain a doctor's certificate and give or send it immediately to the Company. You must obtain doctor's certificates to cover the entire duration of your absence.**
>
> **11.3 If you fail to comply with the above procedures you may be disqualified from receiving Statutory Sick Pay ("SSP").**
>
> **11.4 Subject to certain limits and conditions you may be entitled to receive SSP in respect of absences due to sickness or injury at the appropriate rate. The Company may use its discretion and pay you the difference between your SSP and your full salary if you are absent from work due to illness or injury.**
>
> **11.5 Your "qualifying days" for SSP purposes are those days of the week on which you are due to work in accordance with this agreement.**
>
> **11.6 The Company will be entitled, at its expense, to require you to be examined by an independent medical practitioner of the Company's choice at any time (whether or not you are absent by reason of sickness or injury) for the purposes of assessing your fitness to perform your duties and you agree that the medical practitioner carrying out the examination may disclose to and discuss with the Company the results of the examination.**

7. On 1 February 2023, the Claimant began applying for alternative employment. His approach was to seek a senior position in the industry with which he was familiar. The Claimant made applications to businesses which competed with the

Respondent. He enjoyed some initial success, progressing past the sift and being invited to interview. The problem came when he was asked about leaving the Respondent. The Claimant felt obliged to respond honestly, telling his potential new employer that he had been dismissed in circumstances he contested and was pursuing litigation in the Tribunal. The Claimant says he detected a shift in the tone of the interview and his application did not progress further. The same pattern would repeat itself several times with different prospective employers.

8. The hearing bundle included a considerable body of job applications made through Indeed in the period February 2023 to May 2024. The Claimant also sought employment by way of LinkedIn.

9. The Claimant has a large family to support and in the absence of an income from paid employment, he sought and received financial support from his mother. This has become a source of tension within his family.

10. The Claimant found the situation difficult to bear. He had enjoyed well-paid employment for many years. He sees it as his role to provide for his family.

11. In March 2024, the Claimant went to see his GP, suffering with headaches, lethargy and finding it difficult to get out of bed. Whilst the Claimant believed he may have been suffering with some form of physical deficiency, the GP diagnosed low mood. The Claimant was reluctant to accept this diagnosis, as he had previously not been of the view that mental health problems were not serious in nature. Whilst the GP referred to the condition as low mood in a fit note, it is notable he signed the Claimant as unfit for work for a period of three months, which is suggestive of a serious mood disorder.

12. Whilst we do not have medical evidence directly addressing causation, we are satisfied the deterioration in the Claimant's mental health was primarily the result of his prolonged period of unemployment and financial situation, which of course stemmed from his dismissal. This is an entirely natural reaction and consequence. Whilst Ms Chan said we could not make this finding without medical evidence, she did not suggest any other likely cause.

13. The Claimant says that notwithstanding his doctor's advice, if he had found work he would have taken this up. This appears likely to us. The Claimant is a man of very firm views and we do no think he would have deferred to his GP on this. Furthermore, given our finding about the primary cause of his mental health problems, obtaining work and a source of income might assist in repairing this.

14. On 23 August 2024, Claimant was signed off for a further period of three months, this time the fit note referred to depression.

15. On 17 February 2025, the Claimant was signed off for six months with anxiety and depression.

16. The Claimant remains unemployed and unwell. He is considering retraining.

Law

17. Insofar as material, section 123 of the **Employment Rights Act 1996 ("**ERA") provides:

> **123 Compensatory award.**
>
> **(1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.**
>
> **(2) The loss referred to in subsection (1) shall be taken to include—**
>
> **(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and;**
>
> **(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.**

18. With respect to the question of an ACAS uplift, the code is concerned with more than just the appearance of a fair procedure; see **Rentplus UK Ltd v Coulson, [2022] ICR 1313 EAT**, per HHJ Tayler:

> **30. If an employer considers that an employee is guilty of misconduct or has rendered poor performance, I incline to the view that the Acas Code is applicable even if it said that dismissal is for SOSR because it resulted from the response of fellow employees to the misconduct or poor performance that had led to a breakdown in working relationships. However, it is not necessary to determine the point in this appeal. I consider it is clear that the applicability of the Acas Code is a matter of substance rather than form. I do not consider that an employer can sidestep the application of the Acas Code by dressing up a dismissal that results from concerns that an employee is guilty of misconduct, or is rendering poor performance, by pretending that it is for some other reason such as redundancy.**
>
> **[…]**
>
> **33. What if the employer goes through the motions of applying a fair procedure, but it is a subterfuge and nothing the employee says could possibly make any difference, because dismissal is predetermined, so that the process is truly a sham? Mr Kohanzad contends that in such circumstances the dismissal would be unfair but there would be no breach of the Acas Code which is all about complying with its basic procedural requirements, not substantive fairness. If an employer seeks to apply a procedure that fully complies with the Acas Code in good faith, but makes such a mess of it that the dismissal is unfair, I can see that it could be appropriate to award no uplift as there is no failure to comply with the terms of the Code, the unfairness is compensated by a finding of unfair dismissal. However, if an employer acts in bad faith and pretends to apply an appropriate procedure, I cannot see how that could amount to compliance with the Acas Code. If dismissal is predetermined and the employer will not take any account of anything said by the employee, at a**

hearing or appeal, it is hard to see how the employee is in a better position than would have been the case if the procedure had not been applied at all, and the meetings had not taken place. That would be my determination on application of first principles and common sense. I consider it is consistent with the authorities.

19. Ms Chan referred us to two authorities:

    19.1 **Aptuit (Edinburgh) Ltd v Kennedy UKEATS/0057/06** in connection with the approach to compliance with the ACAS code, when considering an uplift for alleged default by the Respondent;

    19.2 **Abrahams v Performing Rights Society [1995] ICR 1029 CA** for the proposition that where an employer has the contractual right to choose between two options, the employer can elect the most beneficial option to himself, rather than the contractual option which favours the employee.

20. In our view **Rentplus** was rather more on point for the case at hand than **Aptuit**. In connection with **Abrahams**, we note this was a breach of contract claim and the question of damages was at large, as opposed to an unfair dismissal claim where the Tribunal had to apply ERA section 123 in determining a compensatory award.

Conclusion

Basic Award

21. The parties are agreed the Claimant is entitled to a basic award in the sum of **£2,569.50** and we make that award.

Compensatory Award

22. The parties agree that the relevant figure for the statutory cap on the compensatory award is £58,850.

23. The parties are also agreed we should award compensation for loss of statutory rights in the sum of £500.

24. We did not understand Ms Chan to contend for a failure on the part of the Claimant to, reasonably, mitigate his losses. Whilst she asked a number of questions about the kinds of jobs the Claimant had been applying for, she did not in closing assert a failure in this regard. For the avoidance of doubt, however, we are satisfied the Respondent has not shown this. The Claimant has applied for a considerable number of jobs throughout the period following his dismissal. He started off looking at positions at a similar or higher level, but as the months passed began to lower his sights considerably.

25. The Claimant's net salary was £44,690.40 per annum, which equates to £859.43 per week.

26. The period 7 September 2022 to 20 October 2022 is 6 weeks and 1 day. The loss for this period was 6 1/7 x £859.43 = £5,279.36.

27. From 21 October 2022 to 31 January 2023, the Claimant was unfit for work because he was recovering from heart surgery. Whilst the Claimant's contract included a discretion for the Respondent to pay him full pay rather than merely SSP, in the event he had not been dismissed, we doubt this would have been exercised in his favour. As was demonstrated in connection with expenses claims, Mr Mula kept a firm grip on the Respondent's finances. It is unlikely he would have decided to approve full pay to the Claimant for a period of circa 4 months, whilst the Claimant was prevented from rendering useful service. Furthermore, in the hypothetical scenario in which the Claimant had not been dismissed, it is likely that Mr Mula would still have harboured concerns about the extent to which the Claimant had, in the recent past, been fulfilling his duties whilst at work.

28. Ms Chan did not contend the Claimant would have been fairly dismissed for incapacity as a result of this sickness absence and we think that unlikely. The nature of the Claimant's ill health at this time would have anticipated a recovery and return to work within a reasonable period.

29. From 21 October 2022 to 31 January 2023 is 14 weeks and 4 days. The loss for this period was 14 4/7 x £99.35 (being the SSP rate) = £1,447.67.

30. From 1 February 2023 to 26 March 2024, the Claimant was well and actively seeking work. This is a period of 59 weeks and 6 days. The lost pay was 59 6/7 x £859.43 = £51,443.02.

31. Accordingly, the Claimant's total losses to 26 March 2024 were

    31.1 £500 + £5,279.36 + £1,447.67 + £51,443.02 = £58,670.05.

32. Ms Chan argues that the Claimant has suffered no loss attributable to his dismissal for the period from 27 March 2024, because he was unfit for work. We do not accept this proposition. Given our findings about the primary cause of the deterioration in his mental health, had he not been dismissed he is unlikely to have been unwell. Further and alternatively, we are not satisfied the Claimant would have followed his doctor's advice about fitness for work if a good job had been offered to him. The point is, however, largely an academic one, given our conclusion about whether an ACAS uplift is appropriate.

33. We are satisfied that an ACAS uplift of 25% is appropriate. We take this opportunity to remind the parties of our conclusion about the disciplinary process:

> **Fair procedure**
>
> **161. Following the Claimant's summary dismissal by Mr Mula, the steps taken thereafter had the superficial appearance of fairness: an appeal was heard and allowed; an investigation was conducted; the Claimant was suspended pending the outcome; the Claimant attended two investigatory interviews and had an opportunity to comment on the evidence; a case to answer was found; a disciplinary hearing was conducted by a different manager; the allegation was upheld and the Claimant dismissed.**

> **162. The difficulty is that we are not satisfied any of those involved in the various steps, carried them out in a fair, independent and open-minded manner. On the contrary, our finding is that this was a process orchestrated by Mr Page, to achieve the outcome already decided upon by Mr Mula, namely dismissal. Whilst Mr Sturrock was purportedly the investigator, we found he did not carry out that role in practice. It was Mr Page who did the investigation and he was looking only for evidence which supported the allegation. The vital fuel card data was not obtained or presented in a fair and complete way. As for the probationary employee Ms Green, she was not a remotely appropriate person to be appointed as decision-maker. The case for the Claimant's dismissal was, purportedly, prepared and to be presented by her line manager. The Respondent's CEO had already decided to dismiss the Claimant, believing he was, in effect, stealing from the company. In the circumstances, Ms Green was under enormous pressure, whether express or implied, to make sure the Claimant was not allowed to come back to the business. Sadly, we have come to the conclusion that the process followed by the Respondent was an exercise in window-dressing.**

34. In short, the process was not a genuine one undertaken in good faith. On the contrary, it was orchestrated to achieve a predetermined outcome. We note that our finding of “window dressing” is not very different from the “dressing up” of a process referred to in **Rentplus**. A predetermined process is no better for the employee than having no process at all. In the circumstances, a 25% uplift is appropriate.

35. Ms Chan suggested it was the Claimant who was at fault in failing to appeal. We do not criticise him for that. It was obvious to him at the time that the process he had been through already was not a fair one. There would be no good reason for him to suppose an appeal would be any fairer.

36. The Claimant's losses to 26 March 2024, were only a whisker below the statutory cap. A 25% uplift takes the prospective award well above that limit. A decision about future loss from 27 Match 2024 is not, therefore, required.

37. The Claimant also claimed for his car allowance. We have some doubts about that, as this would be intended to compensate the Claimant for the costs of running a vehicle to carry out his duties. Given he was not carrying these out, then there ought to have been no loss. In any event, even if there had been a financial value if this benefit beyond defraying work-related motor expenses, an award under this heading would merely take the Claimant further beyond the cap.

38. The same point can be made about the question of grossing up.

39. The Claimant's compensatory award is, therefore, capped at **£58,850**.

Approved by: **EJ Maxwell**

Date: 18 July 2025