



EMPLOYMENT TRIBUNALS

Claimant: Jane Cassera
Respondent: NHS Dorset Integrated Care Board
Heard at: Bristol by Cloud Video Platform
On: 28 May 2025
Before: Employment Judge David C. Gardner

Representation:

Claimant: In person
Respondent: Mr Kennedy (counsel)

JUDGMENT having been sent to the parties on 13 June 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules 2024, the following reasons are provided:

REASONS

Introduction

1. This is a claim alleging unfair dismissal brought by the Claimant, Ms Jane Cassera, against her former employer, the Respondent, NHS Dorset Integrated Care Board (“the ICB”).
2. The hearing took place on 28 May 2025 where after preliminary discussions I heard evidence from Ms Cassera on her losses (and she was cross-examined by Mr Kennedy) and both parties made oral submissions. I gave judgment on the day, which included oral reasons on the day. The written judgment was sent to the parties on 13 June 2025, but as is standard where an oral judgment has been given that written judgment did not include

written reasons. Written reasons have since been requested by Ms Cassera and these are those written reasons.

3. Ms Cassera represented herself in the proceedings before the Tribunal. The ICB was represented by Mr Kennedy of counsel. Both parties approached the hearing in a sensible, professional, and measured way for which I am grateful. Mr Kennedy and those instructing him made careful and sensible concessions in line with their duties under the overriding objective in r.3(4) of the Employment Tribunal Rules 2024 to properly and helpfully narrow the issues for the Tribunal and Mr Kennedy's advocacy has been helpful and properly measured. Ms Cassera must also be paid tribute. She too provided measured and helpful advocacy and, quite properly, has recognised where concessions have had to be made.

Brief History

4. The Claimant was employed by the Respondent as a Programme Manager, Band 8a, from 12 August 2019. Her role sat within the Programme Management Office within the Strategy and Transformation Directorate. I am told that Programme Managers typically work to specific projects which can be time limited, similar to a consultant model.
5. The Respondent is an NHS Integrated Care Board. It has statutory responsibilities for the planning and clinical commissioning of the healthcare needs of the people and communities in Dorset. It came into effect on 1 July 2022. Its predecessor organisation was NHS Dorset Clinical Commissioning Group, but there is no dispute that the Respondent is the proper respondent for the whole relevant period of the Claimant's employment.
6. There is a long history of deployment and redeployment of the Claimant within the Respondent's organisation for the duration of her employment. There is also a long history of grievance and redundancy processes. I recognise this but it is not necessary for me to make findings of fact about these issues or to comment in any detail in this judgment on what happened given the level of agreement between the parties before me. My judgment will concentrate on the issues I need to resolve.

Dismissal

7. The parties agree that the Respondent dismissed the Claimant and ended the Claimant's employment with it with an effective date of termination of 23 November 2023. I accept that agreement and find that the Claimant was dismissed on that date.

Unfair Dismissal

8. The Respondent does not argue and has not argued since its letter to the Tribunal on 22 May 2025 that the Claimant's dismissal was fair and accordingly it accepts that the Tribunal will make a declaration that the Claimant's complaint of unfair dismissal is well-founded.
9. Pursuant to s.98(1) Employment Rights Act 1996, it is for the Respondent to establish that there was a potentially fair reason for dismissal. As the Respondent advances no evidence or reason for the dismissal, and indeed accepts that I will find that the Claimant's dismissal was unfair accordingly, I accept and I find that the Claimant's dismissal was unfair and thus that her complaint of the same is well-founded.

Remedy

10. The Claimant has confirmed that she does not seek remedies of reinstatement or redeployment. Her requests are limited to financial awards.

Basic Award

11. The Claimant has calculated the basic award as £3,858.00 and the Respondent has accepted that calculation. Both parties accept and invite me to award this amount and I will do so.
12. The only other claims which the Claimant makes are for compensatory awards, to which I will now turn.

Compensatory Award

13. Before going to the law and more contentious aspects of this claim, I pause to note that the Claimant has claimed £500.00 for loss of statutory rights and the Respondent has accepted that this award should be made and that it should be made free of other arguments relating to offset or over compensation. On that basis, both parties accept and invite me to award this amount and I will do so.
14. I turn to the claims for loss of earnings and I begin with the law.

Section 123 Employment Rights Act 1996:

(1) ... the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales.

...

15. I remind myself of the principle set out in *Norton Tool Co Ltd v Tewson* [1973] All ER 183 and repeated in other cases that compensation is for financial loss only and is not punitive.
16. Relevant to the question before me is the judgment in *Whelan v. Richardson* [1998] IRLR 114 at 117, where the Employment Appeal Tribunal stated:

(3) ... where the applicant has secured \ permanent alternative employment at a lower level of earnings than he received before his unfair dismissal. He will be compensated on the basis of full loss until the date on which he obtained the new employment, and thereafter for partial loss, being the difference between the pre-dismissal earnings and those in the new employment. All figures will be based on net earnings.

...

(5) As soon as the applicant 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.

17. That principle was confirmed by the Court of Appeal in *Dench v Flynn* [1998] IRLR 653, with the qualification, as fairly accepted by Mr Kennedy, that it is not a hard rule and that: “*The question for the... Tribunal was whether the unfair dismissal, could be regarded as a continuing course of loss*”

Loss from ETD to 13 May 2024.

18. The parties agree that from 30 September 2023 to 13 May 2024 the Claimant was not in work, but that on 13 May 2024 she obtained work at Dorset Council. In doing so the Claimant was, in my view, properly mitigating her losses in accordance with s.123(4) Employment Rights Act 1996.
19. After her dismissal the Claimant received from the Respondent a payment in lieu of her 3 months’ notice period which resulted in a net payment of £8,887.41 (i.e. 3 x £2,962.47). The Claimant also received a redundancy payment of £16,984. That comes to a total of £25,871.41.
20. The Claimant assesses her losses for that period to be, I take from the schedule she produced (which appeared at p71 in the bundle), the sum of £17,047.87. The Respondent, in its letter of 22 May 2025, assesses it to be £21,104.33. Whichever figure I would adopt, it is a sum below the sum she has already received from the Respondent.
21. In her closing submissions the Claimant confirmed that she accepts that these payments represent adequate compensation for the months not in employment and I concur. Accordingly, I find that the Claimant has already received just and equitable compensation, within the terms of s.123(1) of the Employment Rights Act 1996, for this period and I determine that I should not order any compensatory award for this period.

Evidence on loss, post 13 May 2024.

22. I have considered the evidence put before me in the remedy bundle of some 71 pages. The Claimant fairly before me accepted that the difference

in pay between her employment with the Respondent and her employment at Dorset Council was, to use the term she used in evidence before me, “*minimal*”.

23. The crux of the Claimant’s complaint is that she experienced a further loss of earnings because she felt compelled to leave her role at Dorset Council on 30 September 2024 because the behaviours of managers at Dorset Council compelled her to leave and that this is attributable to the Respondent because, to use her terminology in evidence before me, it “*triggered*” the memories and feelings of her treatment by the Respondent and the impact of the Respondent’s processes. She thus felt compelled to leave that role.
24. In considering this submission I have considered all the written evidence I have before me and the oral evidence which I have heard.
25. I firstly note that I have no medical evidence before me as to the impact of either the Respondent’s actions on the Claimant’s mental health, be that at the time of dismissal or any ongoing impact. In fairness to the Claimant, she accepts this and gave her explanation for this before me in evidence on the basis that she “*Does not suffer from clinical mental health issues, they were situational.*” I observe that as a result of the lack of medical evidence and the Claimant’s observations that it will be difficult, but not impossible, for me to find that mental health issues on an ongoing basis can be properly attributed to the Respondent’s actions.
26. I turn then to the evidence which is before me on this point.
27. In her 3rd statement on remedy, which the Claimant confirmed on oath, she said this:

*Albeit different circumstances, the Claimant was triggered by a negatively charged working environment **unfortunately predominantly perpetrated by her new line manager.** The Claimant subsequently felt compelled to leave that employment in the interests of her mental health. In light of circumstances as described above, this decision weighed heavily but it did not feel like an option.”*

[my emphasis added]

28. In her letter of resignation to Dorset Council, she said this:

my decision is because of [Manager Name], her superior and condescending attitude, her poor and frequently inappropriate communications, and her dictatorial and spiteful line management.

...

I am now in a position in which I must prioritise my mental and physical wellbeing and I do not wish to complete my probation.

29. Considering these statements, the evidence before me strongly suggests and I find that the predominant and principal reason that the Claimant left her employment with Dorset Council was because of the actions of her manager and/or supervisor at Dorset Council. Whilst I have no reason to doubt the Claimant's evidence that she was 'triggered' by this action, which reminded her experiences with the Respondent, it is clear that it is the action of her new managers which caused her to leave her employment with Dorset Council.
30. I understand that the Claimant may continue to feel aggrieved by her treatment by the Respondent, such as it was, and why, but that is not the test I have to apply. The principle is causation and in my view, in the circumstances of this case, the Respondent's actions are too remote, and Dorset Council's actions too crucial, to the Claimant's decision to leave Dorset Council to find that the Claimant's decision to leave and any loss arising was can properly be attributed to the Respondent.
31. Thus, I find that the Claimant's obtaining of employment with Dorset Council on 13 May 2024 did break the chain of causation and her loss of that employment with Dorset Council on 30 September 2024 cannot be regarded as a continuing course of loss attributable to the Respondent.

Pay Difference

32. I am mindful of and wish to add a brief note on the apparent difference in pay between the pay the Claimant received with the Respondent and the pay she received at Dorset Council and the Employment Appeal Tribunal's 3rd principle in *Whelan*.
33. I note that parties agree that there was a £97pm difference between pay to the detriment of the Claimant, which applying the principle in *Whelan* can be compensated for if just and equitable. I do, however, accept Mr Kennedy's submission that even applying that difference from the date of employment with Dorset Council to the date of this hearing, notwithstanding I have heard no evidence on other mitigation after the Claimant left Dorset Council, that the Claimant would still be over-compensated by the payments which have already been made by the Respondent if I reflected that in an award. Thus, I do not consider it just and equitable to make such an award.

Conclusion

34. I am satisfied and find that the Claimant was unfairly dismissed and her complaint is well founded. I will declare accordingly.
35. I am satisfied I should and will order a basic award of £3858.00.
36. I am satisfied that I should and will make a compensatory award for loss of statutory rights in the sum of £500.00.
37. I am satisfied that the payment in lieu of notice and redundancy payment made to the Claimant represent just and equitable compensation for the loss which arose out of her unfair dismissal from the ETD to the date that she obtained new employment at Dorset Council on 13 May 2024. As such, no compensatory award will be made for this period.
38. I am satisfied that the Claimant properly and sufficiently mitigated her losses by obtaining new employment with Dorset Council on 13 May 2024. However, I am not satisfied that any losses which arose thereafter, in particular arising from the Claimant leaving that employment on 30

September 2024, can properly be attributable to the Respondent. Thus, applying the test in s.123(1) of the Employment Rights Act 1996 and the aforementioned case law, no compensatory award will be made for this period.

39. The total award to the Claimant will, therefore, be £4358.00.
40. I note that in her witness statement, the Claimant stated “*Even if there were to be no financial award, the Claimant would still like to continue to tribunal for a judgement of her claim*”. Whilst I appreciate she may not have the judgment she would want on remedy, I hope that she has received the vindication she sought in that the Respondent has accepted and the Tribunal has ordered that she was unfairly dismissed.

Approved by
Employment Judge David C. Gardner

Date: 28 July 2025

REASONS SENT TO THE PARTIES ON

11 August 2025

Jade Lobb

FOR THE TRIBUNAL OFFICE