



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss L Ayad  
**Respondent:** WL Retail Ltd  
**At:** London Central Employment Tribunal  
**On:** 28 July 2025  
**Before:** Employment Judge Brown

## Appearances

For the claimant: In Person, with her mother as lay representative  
For the respondent: Did not appear and was not represented

## REMEDY JUDGMENT

The Judgment of the Tribunal is that:

1. The Respondent shall pay the Claimant £8,593.20 compensation for unfair dismissal, comprising:
  - a. A prescribed element of £5,166.70. The prescribed period was from 24 April 2024 to 28 July 2025.
  - b. A non prescribed element of £3,426.50.  
Both those figures already include a 10% uplift for failure to comply with the ACAS Code of Practice.
2. The Respondent shall pay the Claimant £11,236.16 for injury to feelings for protected disclosure detriment, comprising £10,000 for injury to feelings and £1,236.16 interest at 8% per annum from the date of detriment to the date of hearing. An ACAS uplift does not apply to that figure.
3. The Respondent shall pay the Claimant £783.20 compensation for wrongful dismissal. That sum comprises 4 weeks' notice pay at £178 per week, plus a 10% uplift for failure to comply with the ACAS Code of Practice No 1.
4. The Respondent shall pay the Claimant £539.96 gross for unpaid wages for April 2024. That sum comprises £490.88 for 38.5 hours worked in April 2024 plus 10% uplift for failure to comply with the ACAS Code of Practice No 1.

5. **The Respondent shall pay the Claimant £350.63 gross for unpaid holiday pay accrued at the termination of her employment. That sum is comprised of £318.75 holiday pay, plus 10% uplift for failure to comply with the ACAS Code of Practice.**
6. **The Respondent shall pay the Claimant £50.36 compensation for breach of contract in failing to enroll the Claimant and make NEST pension payments for her in August September and October 2023. The ACAS uplift does not apply to that award.**

## REASONS

### Facts

1. By an oral judgment given on 28 July 2025 I decided that
  - 1.1 The respondent automatically unfairly dismissed the claimant because she had made protected disclosures.
  - 1.2 The claimant mitigated her loss.
  - 1.3 It was not appropriate to order reinstatement or re engagement as a remedy for dismissal because the respondent is entering insolvency and it would not be practicable for the claimant to be reinstated or reengaged when the respondent is not trading.
  - 1.4 The respondent wrongfully dismissed the claimant, when it dismissed her without notice.
  - 1.5 The respondent subjected the claimant to a detriment on the grounds that she had made protected disclosures, by subjecting the claimant to a disciplinary meeting on 10 January 2024.
  - 1.6 The respondent made unlawful deductions from the claimant's wages when it failed to pay her any wages for April 2024.
  - 1.7 The respondent failed to pay the claimant holiday pay accrued at the termination of her employment.
  - 1.8 The respondent breached the claimant's contract when it failed to make NEST pension payments in August September and October 2023.
  - 1.9 It is appropriate to apply an ACAS uplift of 10% to the Claimant's complaints, for breach of the ACAS Code of Practice.
  - 1.10 The calculation of the compensation due to the Claimant would be determined in a separate remedy, written judgment.
2. The claimant was employed by the respondent as a part time shop assistant, from 5 May 2023 until 24 April 2024.
3. She was not paid for April 2024.
4. The Claimant's date of birth was 10 May 1992. Her age at effective date of termination (EDT) was 31 years. Her total continuous service at the effective date of termination was 51 weeks.
5. Her average gross and net weekly pay were the same, based on the 12 complete weeks for which she was paid for before dismissal. She did not earn enough to

pay tax or national insurance, Her net and gross average weekly pay was  $(£860.63 + £784.13 + £490.88) / 12 = £178$  per week. This was calculated on the 12 weeks in which she worked, from January 2024 to the end of March 2024. She was not rostered to work in the week beginning 25 March 2024, so I discounted that week. The Claimant was not paid for work she did in April 2024.

6. Her hourly pay was £12.75 gross.
7. According to the Claimant's rostered hours for April, p134 – 135, the Claimant was rostered to work for 13, 15 and 11 hours in 3 consecutive weeks, until 24 April 2024. She was therefore rostered to work for 39 hours, for which she was not paid. The Claimant conceded that she should have 0.5 hour deducted in respect of 10 April 2024. She therefore worked, but was not paid, for 38.5 hours.
8. The Claimant's holiday year ran from January to January each year. In the year 2024, the Claimant had accrued 25 hours' holiday, but was not paid for any holiday. She asked for holiday in April 2024 but was not given any.
9. The Claimant sought payment for holiday accrued in 2023. She honestly admitted that she was not prevented from taking holiday in 2023 - she took 4 days in August 2023, which she requested and for which she was paid. The Claimant was not aware that she would lose holiday which she did not take in a holiday year. She was not encouraged by the Respondent to take holiday.
10. I found that the Claimant had mitigated her loss.
11. I found the following facts about the Claimant's feelings as a result of the disciplinary meeting on 10 January 2024: Mr Musialek was intimidating and abrupt. He accused the Claimant of "chatting shit" about the owners at the Christmas party, but when the Claimant denied this and asked what she had done, he just shrugged. He singled her out for being late and for the stockroom being messy, when other employees were regularly late to work and all were responsible for the stockroom. The Claimant was very distressed and upset by how Mr Musialek had spoken to her. The meeting made her feel stressed, targeted, and unfairly treated. She shared her distress and anxiety with her fellow employee, Ms Meek.
12. The Claimant provided medical evidence. Her GP, Dr Verghese, provided a report dated 6 January 2025, saying that "Since she was fired from her job she has experienced a flare up of severe mental health and physical health symptoms." A report from her Counsellor reported that the Claimant had felt excluded and persecuted by her employer after about 8 months into her role – the time of the disciplinary meeting. The counsellor also reported about the Claimant's symptoms after she had been dismissed.

## **Law**

### **Unlawful Deductions from Wages**

13. Employment tribunals are entitled to make awards for unlawful deductions from wages gross, leaving it to the employer to work out exactly how much of the gross

sum should be paid to the worker and how much to HMRC: see *Walters t/a Rosewood v Barik* UKEAT/0053/16 (13 February 2017, unreported). The tribunal also has power to make an award for consequential losses, ERA 1996 s 24(2).

#### A Week's Pay

14. For statutory purposes, the computation of a week's pay is governed by ERA 1996 ss 220–229. For employees with no normal working hours, s 224 ERA provides that a week's pay is the average pay in period of 12 weeks ending in the last complete week before the calculation date.

#### Wrongful Dismissal

15. In awarding damages for wrongful dismissal, in order to put the employee in the position they would have been in had the contract been performed, account must be taken of the tax and National Insurance contributions that would have been paid. Tribunal awards are tax free up to £30,000. Damages for wrongful dismissal in awards made below this amount are therefore calculated on the basis of net pay.

#### Holiday Pay

16. Under Regs 13 & 13A Working Times Regulations 1998 workers are entitled to take paid holidays and to be paid holiday pay. The right under Reg 13 is 4 weeks; the right under Reg 13A is 1.6 weeks, meaning that a worker has a right to 5.6 weeks paid holiday. Under Regulation 14 WTR 1998, an employee is to be entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired but which has not been taken by the employee during that time.
17. Regulation 14(3) provides for calculation of the amount of holiday pay due in these circumstances as follows:  $(A \times B)$  less C, where A is the period of leave to which the worker is entitled, B is the proportion of the leave year expired and C is the period of leave taken.
18. The award of holiday pay is paid gross.

#### Injury to Feelings

19. The Tribunal is guided by principles set out in *Prison Service v Johnson* [1997] IRLR 162 in relation to assessing injury to feeling awards. Awards for injury to feelings are compensatory. They should be just to both parties, fully compensating the Claimant, (without punishing the Respondent) only for proven, unlawful discrimination for which the Respondent is liable. Awards that are too low would diminish respect for the policy underlying anti-discrimination legislation. However, excessive awards could also have the same effect. Awards need to command public respect. Society has condemned discrimination because of a protected characteristic and awards must ensure that it is seen to be wrong.

20. Awards should bear some broad general similarity to the range of awards in personal injury cases. Tribunals should remind themselves of the value in everyday life of the sum they have in mind by reference to purchasing power.
21. It is helpful to consider the band into which the injury falls, *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102. In *Vento* the Court of Appeal said that the top band should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the grounds of race or sex. The middle band should be used for serious cases which do not merit an award in the highest band and the lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence.
22. In respect of claims presented on or after 6 April 2024, the “Vento bands” shall be as follows: a lower band of £1,200 to £11,700 (less serious cases); a middle band of £11,700 to £35,200 (cases that do not merit an award in the upper band); and an upper band of £35,200 to £58,700 (the most serious cases), with the most exceptional cases capable of exceeding £58,700.
23. Aggravated damages are available for an act of discrimination (*Armitage, Marsden and HM Prison Service v Johnson* [1997] IRLR 162, [1997] ICR 275, EAT).
24. The award must still be compensatory and not punitive in nature, *Commissioner of Police of the Metropolis v Shaw* [2012] IRLR 291, EAT. In that case, the EAT said that aggravated damages are usually an aspect of injury to feelings. The aggravating factors cause greater hurt, thus increasing damages. The EAT also said that a separate figure for aggravated damages can be given; or it can be wrapped up in one overall figure. The circumstances attracting an award of aggravated damages fall into three categories:
  - (a) The manner in which the wrong was committed. The basic concept here is that the distress caused by an act of discrimination may be made worse by it being done in an exceptionally upsetting way. In this context the phrase “high-handed, malicious, insulting or oppressive” is often referred to – it gives a good general idea of the kind of behaviour which may justify an award, but should not be treated as an exhaustive definition. An award can be made in the case of any exceptional or contumelious conduct which has the effect of seriously increasing the claimant's distress.
  - (b) Motive. Discriminatory conduct which is evidently based on prejudice or animosity or which is spiteful or vindictive or intended to wound is, as a matter of common sense and common experience, likely to cause more distress than the same acts would cause if evidently done without such a motive – say, as a result of ignorance or insensitivity. That will, however, only of course be the case if the claimant is aware of the motive in question: otherwise it could not be effective to aggravate the injury. There is thus in practice a considerable overlap with (a).
  - (c) Subsequent conduct.
25. In *HM Land Registry v McGlue* UKEAT/0435/11, [2013] EqLR 701, EAT. The EAT said that aggravated damages 'have a proper place and role to fill', but that a tribunal should also 'be aware and be cautious not to award under the heading

“injury to feelings” damages for the self-same conduct as it then compensates under the heading of “aggravated damages”.

## **Discussion and Decision**

### **Decision - Holiday Pay Award**

26. Under Regulation 14 WTR 1998, an employee is to be entitled to be paid, at termination of employment, the proportion of holiday that he is entitled to in proportion to the holiday year expired but which has not been taken by the employee during that time.
27. I did not award unpaid holiday pay for 2023 – the Claimant was not prevented from taking her 2023 holiday. The right to be paid accrued holiday under Reg 14 WTR applies to the current holiday year.
28. The Claimant had accrued 25 hours’ holiday. She was not paid for any. The Respondent shall pay the Claimant  $25 \times £12.75 = £318.75$  holiday pay, plus 10% uplift for failure to comply with the ACAS Code of Practice = £350.63.

### **Decision - Wrongful Dismissal Award**

29. Pursuant to the Claimant’s contract of employment, she was entitled to 4 weeks’ notice.
30. The correct award for wrongful dismissal was £783.20. Calculated as  $£178 \text{ per week} \times 4 = £712$ . Applying 10% uplift for failure to comply with the ACAS Code of Practice = £783.20.

### **Decision - Unlawful Deductions from Wages Award**

31. The Respondent failed to pay the Claimant for 38.5 hours worked in April 2024. The correct award was  $38.5 \times 12.75 = 490.88 + 10\% = £539.96$ .

### **Decision - Unfair Dismissal Award**

32. There was no basic award for unfair dismissal.
33. I did not award for loss of statutory rights for unfair dismissal, as the Claimant did not have 2 years’ service.
34. I had already found that the Claimant mitigated her losses following dismissal.
35. The Claimant claimed loss for 65 weeks from the dismissal to the date of the hearing.
36. I awarded her compensation for that period, for loss of earnings.
37. The calculation was as follows:

37.1  $\text{£}178 \times 65 = \text{£}11,570$ .

37.2 Deduct Notice Pay at  $\text{£}712 = \text{£}10,858$ .

37.3 Deduct earnings from 6 Temporary Jobs (7 weeks) of  $\text{£}6,161 = \text{£}4,697$ .

38. Net loss of earnings =  $\text{£}4,697$ .

39. Add 10% ACAS Uplift brings the amount to  $\text{£}5,166.70$ .

40. That was the prescribed element of the award. The prescribed period was from 24 April 2024 to 28 July 2025.

41. I also awarded the Claimant's modest loss of past employer pension payments: 65 weeks loss at  $\text{£}2.75 = \text{£}178.75$ .

42. I did not make another award for loss of holiday pay – the past loss of earnings calculation assumes that the Claimant would have taken her paid holiday entitlement as part of that pay.

43. I accepted the Claimant's claim for job seeking expenses at  $\text{£}225$  - @  $\text{£}15$  per month, for 15 months . That was a modest amount, taking into account travel, telephone and internet expenses.

#### **Unfair Dismissal Future Loss Award**

44. I accepted the Claimant's contention that she is likely to take about 15 weeks to obtain alternative employment at the same rate of pay as with the Respondent. She has not been able to secure such employment thus far, despite having made reasonable efforts. I accept that she has childcare responsibilities and that her child requires additional help and support.

45. Her future loss of earnings will be  $\text{£}178 \times 15 = \text{£}2,670$ .

46. Her future loss of employer's pension contributions will be  $15 \times \text{£}2.75 = \text{£}41.25$ .

47. The total of the non prescribed elements of the award for unfair dismissal are:

47.1 Past pension loss -  $\text{£}178.75$

47.2 Job seeking expenses -  $\text{£}225$ ,

47.3 Future loss of earnings -  $\text{£}2,670$ .

47.4 Future loss of employer pension contributions -  $\text{£}41.25$

Total -  $\text{£}3,115$ .

48. Add 10% ACAS uplift brings the total to:  $\text{£}3,426.50$ .

49. Total non prescribed element is  $\text{£}3,426.50$ .

#### **Decision - Injury to Feelings Award**

50. The Respondent subjected the Claimant to a single act of detriment when it subjected her to a disciplinary meeting on 10 January 2024.
51. The atmosphere in the meeting was Mr Musialek was intimidating and abrupt. He used a swear word and singled her out for being late and for the stockroom being messy, when other employees were regularly late to work and all were responsible for the stockroom. The Claimant was very distressed and upset by how Mr Musialek had spoken to her. The meeting made her feel stressed, targeted, and unfairly treated. She shared her distress and anxiety with her fellow employee, Ms Meek.
52. The Claimant was able to continue to work. I did not accept that this meeting resulted in personal injury. The Claimant's GP report said that the Claimant's mental and physical health had been worsened by her subsequent dismissal, which was not the detriment found in this case.
53. I did accept that the Claimant had ongoing feelings of persecution and being excluded, as a result of the meeting, as reported by her counsellor.
54. I did not make a separate award for aggravated damages, but I considered that Mr Musialek's intimidating and rude behaviour meant that damages for this act should be at the higher end of the appropriate band of Vento.
55. This was a comparatively serious single act of detriment. The appropriate band of Vento was the lower band - £1,200 to £11,700 (less serious cases);.
56. I made an award at the higher end of that band, taking into account Mr Musialek's intimidating behaviour and the Claimant's significant and ongoing feelings of distress as reported by her counsellor. I awarded the Claimant £10,000 for injury to feelings.
57. Applying interest at an annual rate of 8% for  $(366 + 198 = 564)$  days since 10 January 2024 =  $(564/365 \times 0.08 \times 10,000 =)$  £1,236.16 interest.
58. The total award for injury to feelings, including interest is £11,236.16.
59. I did not apply the ACAS Uplift to this award, because it did not arise out of the Claimant's dismissal.

**Decision – Award for Breach of contract for Failure to Enrol the Claimant in NEST**

60. The Respondent breached the Claimant's contract when it failed to pay her NEST pension payments for August, September and October 2023.
61. I accepted the Claimant's calculations of 3% on her qualifying pay for:
62. August = £18.06,
63. September = £18.06 and
64. October = £14.24, total £50.36.



65. The Respondent shall pay the Claimant £50.36 for breach of contract for failure to enroll and pay NEST pension payments. I did not apply the ACAS Uplift to this award, because it did not arise out of the Claimant's dismissal.

**Employment Judge Brown**

4 August 2025

Sent to the parties on:

12 August 2025

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For the Tribunal Office:

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