RESERVED REMEDIES JUDGMENT

EMPLOYMENT TRIBUNALS

Claimant: Z

Respondent: A Ltd

Heard at: Leeds Employment Tribunal (hybrid)

Before: Employment Judge Deeley, Mr Brewer and Ms Lancaster

On: 14 July 2025 (in public) and 15 July 2025 (in private)

Representation
Claimant: Mr M Heywood (Counsel)
Respondent: Mr S Mallett (Counsel)

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1. The claimant is awarded a total of £36,136.61 in relation to his complaint of unfair (constructive) dismissal under s98 of the Employment Rights Act 1996, consisting of:

   1.1 £11,020.09 in respect of the basic award; and

   1.2 £25,116.52 in respect of the compensatory award, calculated in accordance with the Reasons set out below.

REASONS

INTRODUCTION

Liability Hearing

1. The Tribunal issued its Reserved Judgment dated 15 April 2025 and sent to the parties on 22 April 2025 following the liability hearing of this claim in March 2025 (the "**Liability Judgment**"). The Liability Judgment decided liability matters relating to:

   1.1 the claimant's complaint of unfair (constructive) dismissal against the respondent (A Ltd); and

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1.2 the complaints brought by the claimant's wife (X) of:

1.2.1 unfair (constructive) dismissal against the respondent (A Ltd), who also employed her; and

1.2.2 sexual harassment against both the respondent (A Ltd) and the respondent's owner/Managing Director (Y).

2. This judgment should be read alongside the Liability Judgment. The restricted reporting order that applies to the Liability Judgment also applies to this judgment.

Tribunal proceedings

3. We considered the following evidence during the hearing:

3.1 a file of documents provided by the claimant;

3.2 additional disclosure from the claimant consisting of additional payslips, fit notes and Universal Credit payment summary (to which the respondent did not object); and

3.3 a witness statement from the claimant.

4. We considered the helpful oral submissions made by both representatives. Neither side provided any written submissions, although the respondent included brief written comments in its counter-schedule of loss that covered the key points discussed in their representative's oral submissions.

Adjustments

5. I reminded both parties and their witnesses that they could request additional breaks during the hearing at any time if required and frequent breaks were taken throughout the hearing.

REMEDY ISSUES

6. The claimant's complaint of unfair (constructive dismissal) succeeded for the reasons set out in our Reserved Judgment for the liability hearing of this claim. The respondent has appealed against the decision in relation to the claimant's claim. Z's wife (X) has also appealed against the decision in relation to her claim.

7. The respondent did not dispute the claimant's calculation of the basic award.

8. Section 123 of the Employment Rights Act 1996 sets out the basis on which the Tribunal must consider making a compensatory award:

123 Compensatory award.

(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—

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(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.

…

(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 or (as the case may be) Scotland.

9. The questions that the Tribunal has to determine on remedy in relation to the compensatory award are:
    - 9.1 What loss has been sustained by the claimant because of the dismissal (calculated net of tax)?
        - 9.1.1 What was the loss that the claimant has suffered up to the date of the remedy hearing on 14 July 2025?
        - 9.1.2 What future losses (if any) is the claimant likely to suffer? For what period?
        - 9.1.3 What amount (if any) should the claimant be awarded for loss of statutory rights and/or loss of long notice period?
    - 9.2 Has the claimant complied with his duty to mitigate his loss, i.e. has the respondent shown that the claimant has acted 'unreasonably' in failing to mitigate all or part of his loss?
    - 9.3 Is it just and equitable to reduce the compensatory award, for example because of intervening causes? In other words, was all or part of the loss:
        - 9.3.1 not sustained 'in consequence of the dismissal'; and/or
        - 9.3.2 not attributable to action taken by the employer?
10. The respondent did not raise any issues of contributory conduct by the claimant.
11. The Tribunal must also consider whether it is necessary to gross up any award for tax purposes, if the combined sum of the basic and compensatory award exceeds £30,000.
12. The Tribunal also notes that the statutory cap applies to the compensatory award.

ADDITIONAL FINDINGS OF FACT – REMEDY HEARING

13. These findings of fact are in addition to the findings of fact set out in the Reserved Judgment from the liability hearing of this claim.

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Past losses from the claimant's resignation to the remedy hearing and the claimant's duty to mitigate

14. The Tribunal first considered the claimant's net losses to the date of the remedies hearing on 14 July 2025 and his mitigation during this period.

15. The claimant resigned on 9 November 2021, having been absent on sick leave since the incident in September 2021. The claimant stated that he continues to suffer from ill health as at the date of this hearing and did not work or seek work for the first few months after his resignation. The claimant stated that he decided to start working in February 2022 for his father-in-law (SS) as a bricklayer. SS stated in a letter prepared for the DWP:

"I am a self employed bricklayer, I do work for subcontractors Mitchell & [Urwin], they pay me for the work I have completed, through the self employed basis. I have hired [the claimant] *as a self employed labourer. I have been able to offer him 3 days a week, £80 per day. This is available subject to weather and work permitted, i.e. would not get paid for a snow day or no materials."*

16. SS also stated that he and his wife had paid for the claimant to complete a health and safety course and had also paid for the claimant's liability insurance. (The claimant did not seek to reclaim these costs at remedy hearing).

17. The claimant said at paragraph 10 of his witness statement that:

> *10. By the February of 2022 I was still struggling but we needed one of us to try and get back to bringing in some income. Our families were fully aware of the situation and my father-in-law offered me the opportunity to work for him three days a week on a self-employed basis. This was manual labour brick laying and wasn't as well paid as my previous role. However, it was all I could manage at the time. As the role was through family there was no interview and no references required or anything like that. I couldn't have coped with the stress and anxiety of applying for jobs and attending interviews. It gave me something to focus on and helped us out financially.*

18. The claimant continued to work for SS until SS's retirement in April 2024. The claimant's earnings varied during this period, depending on:

    18.1 the days that he worked, which in turn depended on his caring responsibilities for his wife, the availability of work and other factors such as the weather;

    18.2 the payments that SS received from the plots where SS worked (which were released depending on the stage of work, rather than the amount of work done).

19. The claimant had a Construction Industry Scheme card as a sole trader and was paid via Mitchell & Urwin who deducted tax at 20% from his payments. We note that the claimant earned a total of £28,936.80 net during the period from 18 February 2022 to 5 April 2024 (approximately 111 weeks). This was equivalent to around £260 per week net. However, during the weeks that the claimant worked he frequently earned over £300 per week. We note that the claimant did not work, for example, during the Christmas shutdown period in late December 2022 and late December

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2023. This is consistent with the Tribunal's experience of the Christmas shutdown period in that industry.

20. The respondent's representative cross-examined the claimant regarding his mitigation of loss. They questioned why the claimant did not:

    20.1 seek work before February 2022;

    20.2 work full time from February 2022 onwards;

    20.3 apply to work for local companies, including two named by the respondent in their counter-schedule of loss; and

    20.4 apply for jobs where he could have used his forklift truck licence.

21. The Tribunal accepted the claimant's evidence that he was too ill to work from 9 November 2021 to February 2022. The claimant provided medical evidence by way of his fit notes provided dating from 20 September 2021 onwards covering this period which stated that he was suffering from 'stress related problems'.

22. The claimant obtained further fit notes from his doctor as set out below (no fit notes were provided in relation to the period from 19 August to 5 December 2022):

Dates of fit note	**Reason for sickness**	**Doctor's recommendations**
17/2/22 – 16/5/22	stress related symptoms and carer for wife	altered hours – reduced hours due to ongoing stress at home
16/5/22 – 18/8/22	stress related symptoms and carer for wife	altered hours – reduced hours
6/12/22 – 5/4/23	stress related symptoms and carer for wife	altered hours – restricted hours of work, no overtime

23. The claimant also provided the DWP's Work Capability Decision letter regarding his Universal Credit claim dated 22 July 2022. This letter stated:

    "Following your Work Capability Assessment, we have decided that you have limited capability for work.

    …

    If you are under State Pension age

    You will not have to look for work, , but you will need to meet with your work coach to take steps to prepare for work in the future. We call these work-related activities.

    Work-related activities could include learning how to write your CV or going on training courses to learn new skills. These activities will help you to start thinking about the types of work you could do.

    Your work coach will talk to you about the extra support that could be available to help you prepare for work.

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How we made this decision

We have used all the information we have about you, including:

- *your capability for work questionnaire, if you filled one in*
- *information provided by the Health Assessment Advisory Service following your Work Capability Assessment*
- *any other information you have sent us*

If you want a copy of your full assessment report, or need more information, call us on 0800 328 5644.

What happens next

You do not have to send us any more statements of fitness for unless your condition changes.

We may ask you to attend another Work Capability Assessment in the future. We will contact you at the time to tell you what you need to do.

…"

24. The claimant said that he filled in a form to apply for a Work Capability Assessment, but that he did not keep a copy of the form. He said that he did not provide any medical evidence with the form. The claimant said that he was assessed by a nurse on behalf of the DWP before the decision was issued. The claimant also stated that the DWP's decision was due to be reviewed in August 2024, but that no review had taken place due to the DWP's backlog. He said that he had regular contact with the Job Centre by telephone and/or face to face meetings throughout this period and that they had not raised any issues regarding his work status.

25. We concluded that in relation to the claimant's own health:

    25.1 he continued to suffer from stress related symptoms throughout 2022 and up until April 2023, as evidenced by his doctor's fit notes;

    25.2 his mental health fluctuates and that affected his ability to work during that period.

26. We also accepted the claimant's evidence that:

    26.1 he had worked for the respondent since he was 24 years old and his length of service totalled over 24 years. He had planned to work there until retirement, having worked his way up to the role of Production Supervisor;

    26.2 he does not drive. At present, when he is working he travels for two hours (each way) on public transport;

    26.3 he is a carer for his wife, who has not worked since her resignation from her employment with the respondent in 2021;

    26.4 his wife's health condition has varied from 2022 to date – during certain times he feels unable to leave her in the house alone during the day and feels that he is only able to work if his wife's mother is able to attend to her;

    26.5 he is still unable to leave his wife alone at night, which made it difficult to seek work involving shift work;

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26.6 he and his wife are in joint receipt of Universal Credit, however when he is working, the amount of Universal Credit benefit reduces depending on his level of earnings.

27. The claimant said that the two local companies named by the respondent carried out injection moulding, which was a different industrial process to the cast moulding that his work with the respondent had involved.

28. The claimant also stated that he did not wish to return to work in the plastics and polymer industry because of 'gossip' about the circumstances under which he and his wife left the respondent.

29. The respondent noted that the claimant had a forklift truck licence. The claimant accepted that he could have asked his solicitors to request a copy of the licence from the respondent. However, he said that he would have struggled with shift work because he could not leave his wife at night time.

30. The claimant stated that he did not want to name the respondent as a reference. However, he accepted that he did not consider requesting a reference from the previous owner of the respondent's business (whom he worked for until the last three years of his employment).

31. The claimant's work with SS ended in April 2024 when SS retired. We accept the claimant's evidence that SS had originally planned to retire in September 2024 and that he brought this date forwards because he was unhappy with the agent at the plots where he worked.

32. The claimant did not work again until 30 June 2024. He stated that this was because his wife's father died in Spring 2024 and that his wife's health was poor during this period. The claimant also said that he only felt able to work for family or friends, because he needed the flexibility to care for his wife and manage his own health.

33. The claimant then started working for a family friend (J) on an ad hoc basis from 17 June 2024, carrying out landscaping and bricklaying. The claimant's pay rate was initially £115 per day, but increased to £120 per day by November 2024.

34. There were significant gaps in the claimant's work record from 17 June to 17 March 2025. He earned a total of £3740 net during this period, which worked out as an average of around £96 per week. This is because the claimant did not work at all on many of the weeks during this period or did not work full time when he was working. The claimant stated in his oral evidence that he had worked for J since March 2025, most recently around five weeks ago. However, he did not provide any details of his earnings since March 2025.

35. We concluded that for the period from April 2024 to 14 July 2025:

35.1 the claimant should have taken action to obtain regular work after SS retired in April 2024;

35.2 it must have been apparent to the claimant after he worked for J during the Summer of 2024 that he would not be able to obtain regular work with J. This was particularly the case in the run up to the Winter months of 2024/2025, given the weather dependent nature of the work;

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35.3 taking a broad brush approach, our view is that the claimant could have obtained regular bricklaying work by January 2025 (allowing for the Christmas shutdown period in the construction industry). Our view is that the claimant would have earned around £120 per day and could have worked an average of three days per week, totalling around £360 per week. (We note that the claimant earned a total of £1440 in November 2024, equivalent to around £320 per week).

Future loss of earnings

36. The claimant claimed for 12 months' future losses, following the date of the remedies hearing (i.e. for the period from 14 July 2025 to 13 July 2026).

37. We concluded, taking a broad brush approach, that the claimant should be able to continue obtaining regular bricklaying work from 14 July 2025 for a further 12 months, earning around £360 per week.

RELEVANT LAW AND SUBMISSIONS

38. The Tribunal has considered the legislation and caselaw referred to below, together with any additional legal principles referred to in the parties' submissions which we have not reproduced in full in the interests of brevity.

Mitigation of loss

39. The burden of proof in showing that the claimant has failed to mitigate his loss lies on the respondent. Mr Justice Langstaff summarised the key principles at paragraph 16 of his judgment in *Cooper Contracting Limited v Lindsey* (UKEAT/0184/15) and stated that:

39.1 it is for the employer to show that the claimant has acted unreasonably in failing to mitigate their loss – there is no duty on the claimant to 'take all reasonable steps';

39.2 in a case where it might be reasonable for a claimant to have taken a better paid job, this fact does not necessarily satisfy the test: it is simply important evidence that might assist the tribunal to conclude that the employee has acted unreasonably.

Just and equitable – compensatory award

40. Section 123(1) of the Employment Rights Act 1996 states that:

123 Compensatory award.

(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.

41. This is a highly unusual case. In most cases where the parties submit that the Tribunal should consider whether an award is just and equitable, they are referring to either the claimant's conduct and/or *Polkey* reductions (i.e. where a failure to follow a fair procedure may still have resulted in dismissal). The respondent did not raise any issues relating to the claimant's conduct or any *Polkey* reduction.

Past/future losses and mitigation of loss

42. In terms of mitigation of loss, we note that:

    42.1 the burden of proof is on the employer to show that the claimant has failed to mitigate his loss;

    42.2 the claimant does not need to show that he took 'all reasonable steps' to mitigate his loss – the Tribunal has to consider whether the claimant acted 'unreasonably'.

43. The respondent in this claim did not provide any documentary or witness evidence regarding their contention that the claimant failed to mitigate his loss. They suggested that he could have applied to two local companies, however they did not provide evidence that either of those companies have advertised any vacancies since November 2021. In any event, we accepted the claimant's evidence that those two companies carried out injection moulding, whereas he was experienced in cast moulding.

44. We concluded that the claimant did not act unreasonably in the steps that he took to mitigate his loss from November 2021 to April 2024.

45. We concluded that for the period from April 2024 to 14 July 2025:

    45.1 the claimant should have taken action to obtain regular work after SS retired in April 2024;

    45.2 it must have been apparent to the claimant after he worked for J during the Summer of 2024 that he would not be able to obtain regular work with J. This was particularly the case in the run up to the Winter months of 2024/2025, given the weather dependent nature of the work;

    45.3 taking a broad brush approach, our view is that the claimant could have obtained regular bricklaying work by January 2025. Our view is that the claimant would have earned around £120 per day and could have worked an average of three days per week, totalling around £360 per week. (We note that the claimant earned a total of £1440 in November 2024, equivalent to around £320 per week).

46. The claimant claimed for 12 months' future loss from the date of the remedies hearing. We concluded, taking a broad brush approach, that the claimant should be able to continue obtaining regular bricklaying work from 14 July 2025 for a further 12 months, earning around £360 per week.

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47. We also concluded that the claimant suffered loss of his employer weekly pension contribution throughout his period of past and future loss because he obtained self-employed work and was likely to continue in that work for a further 12 months.

Loss of statutory rights and/or long notice period

48. We note that the claimant was a longstanding employee with over 24 years' service and have concluded that he should be awarded £500 in respect of his loss of statutory rights.

49. The claimant also claimed in his schedule of loss for loss of his long notice period. The claimant did not cite any cases relied on for this part of his remedy. We concluded that the other components of the claimant's award (including the £500 award for loss of his statutory rights) take into account his loss of long notice period and it is not just and equitable to make a further award in respect of any such loss.

Just and equitable/loss attributable to conduct of employer

50. The respondent submitted that it would be just and equitable to reduce the claimant's compensatory award to zero on the basis that:

    50.1 the Tribunal has the ability to reduce a compensatory award to zero if it would be unjust or inequitable for employee to receive a compensatory award (citing examples of zero compensatory awards made in *Polkey v AE Dayton Services Ltd 1988 ICR 142, HL* and *Devis W Devis and Sons Ltd v Atkins 1977 ICR 662, HL*);

    50.2 it is important to distinguish the findings that the Tribunal made and any losses which flow from that, as opposed to losses that could flow from any finding of rape;

    50.3 the Tribunal found that there was a breach of mutual trust and confidence on the basis that the respondent's owner/Managing Director engaged in sex with the claimant's wife;

    50.4 the claimant did not suffer any loss as a result of the respondent's actions. He resigned and suffered any ill health because his wife alleged that she had been raped by the respondent's owner/Managing Director.

51. The claimant objected to these contentions. The claimant submitted that:

    51.1 the Tribunal concluded that the implied term of mutual trust and confidence was breached (viewed objectively) when the respondent's owner/Managing Director engaged in sex with the claimant's wife during a business trip;

    51.2 the respondent's contention that the Tribunal did not conclude that the sex was non-consensual is misguided;

    51.3 the claimant intended to work for the respondent until retirement;

    51.4 the claimant and his wife's health difficulties both flowed from what occurred on the night of 14/15 September 2021;

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51.5 when a Tribunal considers an employee who has long service, part of what they have lost is the support that they may have enjoyed from their employer when suffering from ill health (*Wood v Mitchell*).

52. We noted that our key conclusions in the Liability Judgment relating to the claimant's claim were as follows were set out at paragraph 158 and the first part of paragraph 159 of that judgment:

158. We concluded that there was insufficient evidence to suggest that Y raped X on 14/15 September 2021, for the reasons set out above. We note that Y admitted that he engaged in sexual intercourse with X. We therefore have to consider whether this was sufficient to breach the implied term of trust and confidence between the Company and Z.

159. We concluded that Y's conduct (viewed objectively) was likely to destroy or seriously damage the implied term of trust and confidence for the following key reasons:

159.1 Y was the sole owner and Managing Director of a small company, with a staff of eight people (including Y, X and Z). X and Z reported directly to Y. Z had worked for the Company for around 25 years, during the last three of which the Company was owned by Y;

159.2 we considered the conduct objectively and concluded that it was untenable for Z to continue working for A Ltd, given the size of the business, the close working relationship between Z and Y. Our conclusion is supported by the fact that Y (on his own evidence) did not want his wife to find out about the events on the night of 14/15 September 2021 and only discussed these with his wife after he had been arrested. In addition, X's evidence is that she did not initially tell Z what had happened and instead called DH and later her father and stepmother, who later persuaded X to tell Z;

159.3 we accepted Z's evidence that it he resigned from his employment because he concluded that it was untenable for him to continue working for the Company, even if X and Y had taken part in consensual sexual intercourse, because the relationship between Z and Y was damaged irretrievably;

..

53. We concluded that there should not be a reduction in the compensatory award, contrary to the respondent's submissions. The key reasons for this conclusion are:

53.1 we accept that the Tribunal may in its discretion reduce a compensatory award to zero if it would be unjust or inequitable for employee to receive a compensatory award;

53.2 the respondent referred to cases relating to misconduct of which the employer was not unaware at the date of dismissal (*Devis*) and where a 'fair procedure' would have still resulted in dismissal (*Polkey*). They do not assist the Tribunal further in the circumstances relating to this claim where neither of those reasons was relied on by the respondent;

53.3 we concluded at paragraphs 158 and 159 of the Liability Judgment that when Y (the respondent's owner/Managing Director) engaged in sexual intercourse with X, this amounted to conduct which breached the implied term of trust and confidence between the respondent and the claimant;

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53.4 we did not find that the claimant resigned because of his wife's allegation that she had been raped by Y. We stated at paragraph 159.3 that we accepted the claimant's evidence that he resigned from his employment because he concluded that it was untenable for him to continue working for the respondent, even if the sexual intercourse had been consensual;

53.5 the claimant stated during his evidence at the remedies hearing that he still believed that his wife had been raped by the respondent's owner/Managing Director. However, it is possible for the claimant to believe that his wife had been raped and to have concluded that it would be untenable for him to continue working for the respondent, even if the sexual intercourse had been consensual;

53.6 the claimant's losses therefore flowed from the respondent's conduct (there being no dispute that the respondent was vicariously liable for the conduct of Y in relation to the events that were the subject of this claim).

CONCLUSIONS

54. We have awarded the claimant the amounts set out in the table below:

Award type	**Amount**	**Calculations**
Basic award	£11,020.09	Service dates: 1.1.97-9.11.21 DoB: 7.2.73 Length of service: 24 Multiplier: 23.5
Compensatory award		
Past losses to 9.11.21 – 11.2.22	£5255.69	(£398.31 net weekly pay x 13.5 weeks) *[NB claimant was not working during this period]*
Past losses 11.2.22 to 5.4.24	£14,761.30	(£398.31 net weekly pay x 110 weeks - £28,062.80 earnings) *[NB claimant working for SS and paid via Mitchell & Urwin during this period for two weeks in arrears]*
Past losses 5.4.24 – 31.12.24	£11,003.44	(£398.31 net weekly pay x 38.5 weeks)

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Award type	**Amount**	**Calculations**
		[NB claimant working for J during this period on an ad hoc basis]
Past losses from 1.1.25 to 14.7.25	£820.68	(£398.31 net weekly pay x 28 weeks) – (£360 (see conclusions on mitigation of loss) x 28 weeks)
Future losses from 14.7.25 to 13.7.26	£1524.12	(£398.31 net weekly pay x 52 weeks) – (£360 (see conclusions on mitigation of loss) x 52 weeks)
Loss of statutory rights	£500	
Loss of long notice period	N/A	
Sub-total	£33,865.22	
Cap applied	£25,116.52	£468.94 (gross weekly pay) + £14.07pw (employer pension contribution) x 52
Total compensatory award	**£25,116.52***	
TOTAL UNFAIR DISMISSAL AWARD	**£36,136.61***	

NB we have not carried out the gross up calculation for tax because the claimant's net compensatory award is already higher than the compensatory award cap of £25,116.52

RECOUPMENT

55. The Recoupment provisions apply to this judgment. Please see the recoupment notice in the Annex to this judgment.

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Employment Judge Deeley
Dated: 21 July 2025

Judgment sent to the parties on:
27 August 2025
……
For the Tribunal:

……

All judgments (apart from those under rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

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Annex – Recoupment

Claimant: Z

Respondent: A Ltd

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.