



EMPLOYMENT TRIBUNALS

Claimant: Mr N Walker

Respondent: Robsons (Rickmansworth) Limited

Heard at: Watford (by CVP)

On: 12 May 2025, 29
May 2025 (in
chambers)

Before: Employment Judge Reindorf KC
Ms A Telfer
Mr N Boustred

Appearances

Claimant: Mr N Robert-Nicoud (non-legal representative)

Respondents: Mr O Lawrence (counsel)

RESERVED JUDGMENT ON REMEDY

1. The Respondent is ordered to pay to the Claimant forthwith the sum of £21,411.29 in compensation for unfair dismissal.
2. The Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award.

REASONS

INTRODUCTION

3. In an ET1 presented on 16 October 2023 the Claimant brought claims of constructive unfair dismissal and direct age discrimination. The liability hearing took place on 4 to 6 February 2025. Judgment was given orally at the hearing. The Tribunal upheld the unfair dismissal complaint and dismissed the age discrimination complaint. Written reasons were sent to the parties at the Respondent's request.

The evidence and hearing

4. The remedy hearing took place by CVP on 12 May 2025. The parties relied on an agreed bundle of 203 pages. The Tribunal heard evidence from the Claimant on his own behalf and from Daniel Young for the Respondent. Both witnesses gave evidence in chief by way of written statements and were subjected to cross-examination. The Respondent produced a skeleton argument

FINDINGS OF FACT

Relevant dates and notice pay

5. The effective date of termination of the Claimant's employment by the Respondent was 8 June 2023. He received notice pay of £2,825. He began a new job with Gillespies estate agent on 15 August 2023.

Offer of reinstatement

6. The Claimant said that on 10 June 2023 he had telephoned Daniel Young of the Respondent to explore whether he could potentially get his job back. He said that he had left a message asking Mr Young to call him back, but that Mr Young did not return the call. In cross-examination the Claimant said that he was in possession of evidence that the call of 10 June had been made, but he did not produce that evidence or give any reason why he did not try to call Mr Young again after 10 June. The Tribunal does not accept that the Claimant made the alleged phone call on 10 June.

7. The Respondent maintained that it had made an offer of reinstatement to the Claimant in the course of ACAS conciliation. During the course of the remedy hearing Mr Young disclosed a relevant email from the ACAS conciliator to the Respondent's solicitor. The email was dated 20 July 2023. It stated that the Claimant had told the ACAS conciliator that reinstatement "would not be an option" because there had been a breach of trust and confidence which could not be overcome.
8. The 20 July email was sent eight weeks after the Claimant's constructive dismissal, and after the Claimant had already accepted alternative employment with Gillespies. It contained no indication that anything more than a vague intimation of reinstatement had been communicated. There was no evidence that the Respondent had ever made a serious effort to discuss possible terms of reinstatement with the Claimant. The Tribunal concluded that there was no communication from the Respondent, whether via the ACAS conciliator or otherwise, which the Claimant could reasonably have taken to amount to a concrete offer of reinstatement. Accordingly the Tribunal finds that the Respondent did not make a genuine, serious or timely offer of reinstatement to the Claimant.

Net pay

9. The Respondent asserted that the Claimant's average net pay over the last year in his old job was £4,159.78 per month, comprising basic pay of £2,166.67 and commission on a percentage basis. The Claimant said that the true figure was £4,200. The Tribunal accepts the Claimant's figure, since the Respondent's calculations were based on only 11 months of payslips and no explanation was offered for the missing month.
10. In his new job with Gillespies the Claimant received a basic wage of £2,500 per month, which was higher than his basic wage with the Respondent. However, with Gillespies he received commission of only 4—5%, which was lower than the 10% commission he had earned with the Respondent.

Pension

11. The Claimant had a pension with the Respondent, on which the employee contributions were 5% and the employer contributions were 3%. It was not disputed that his annual pension loss was £1,246.08.

Market downturn

12. The Respondent argued that in the period after the Claimant's departure its revenue had reduced by 16.8% per annum due to a market downturn, and that therefore the Claimant would have earned less commission if he had not been constructively dismissed than he had before the termination of his employment. On that basis, the Respondent calculated that the difference in

net monthly pay between the Claimant's new job and his old job was £823.09 until May 2025.

13. The Claimant argued that the reduction in the Respondent's business would not have been reflected in his commission in such a straightforward way if he had not been constructively dismissed. In the first place, he said that if he had remained in employment the company's revenue would not have been likely to reduce by so much, because he was a good performer and would have made profits for the business. He also said that when he was employed by the Respondent he was paid commission partly as a percentage of his own sales and partly as a percentage of the office's sales. He thought that his performance would have been better than that of the office generally, and so the part of his commission which was based on his own sales would not have suffered such a downturn. He also said that the figures on which the Respondent relied, which were said by Mr Young to derive from the Respondent's tax return, were unaudited and therefore could not be relied upon.
14. The Tribunal does not accept that the Respondent's figures were unreliable *per se*. However we accept that the Claimant was a good and experienced performer and was well regarded locally, and that the full extent of the downturn in the Respondent's business would not have been likely to be reflected in his commission. There was no detailed evidence by which we could compare his performance with that of others. We take the view that he would have suffered a reduction in his commission of 8.5% on average if he had not been constructively dismissed.

Mitigation of loss

15. The Respondent argued that the Claimant could have started his post with Gillespies earlier than he did and that he could have either negotiated better commission terms with Gillespies or got a better paid job elsewhere.
16. The Tribunal finds that the Respondent has not shown that the Claimant failed to take reasonable steps to mitigate his loss. The Respondent did not adduce evidence of alternative jobs which the Claimant could have obtained at the relevant time, whether locally or further afield. Mr Young said in oral evidence that if the Claimant had been willing to go into the London job market there would have been "no end of jobs" that he could have taken, but provided no evidence to substantiate this. Nor did the Respondent show that alternative jobs would have paid better than the Gillespies post. We accepted that it was reasonable for the Claimant to focus on local jobs in the immediate aftermath of his constructive dismissal, and to accept the post with Gillespies when it was offered to him. He made the best fist of what was available to him.
17. As to whether the Claimant could have started with Gillespies earlier than he did, the key issue was that the Claimant had a planned a family holiday which he took before starting the post. The Respondent argued that the Claimant

should have asked for a start date with Gillespies before the holiday and for Gillespies to give him paid leave in order to take the holiday. The Tribunal accepts the Claimant's argument that it would not have been reasonable for him to ask for paid leave in the first month of a new job. It was also reasonable for him to take the holiday, which was already booked.

Duration of loss of earnings

18. The Tribunal considers it reasonable to expect the Claimant to have fully mitigated his loss within one year after his constructive dismissal by the Respondent. Whilst he made the best of what he had at the time of his constructive dismissal, he could have continued to search for better paid employment once he had secured the post at Gillespies. He accepted that he had not done so.

Other loss

19. The Tribunal takes the view that an appropriate sum for the loss of the Claimant's statutory rights is £500.
20. The Tribunal makes no award for expenses incurred by the Claimant in searching for a new job. No documentary evidence was adduced in support of this claim.

LAW

21. By s.119 of the Employment Rights Act 1996 ("ERA") the basic award for unfair dismissal is calculated as follows:
 - 21.1. half a week's gross pay (subject to the statutory cap) for each year of continuous employment when the employee was below the age of 22;
 - 21.2. one week's gross pay (subject to the statutory cap) for each year of continuous employment when the employee was below the age of 41 but not below the age of 22; and
 - 21.3. one and half weeks' gross pay (subject to the statutory cap) for each year of continuous employment when the employee was not below the age of 41.
22. By s.123(1) ERA the Tribunal must make a compensatory award in such amount as it considers just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The compensatory award is based on net pay. The Tribunal should take a broad-brush approach to assessing loss (*Garage Equipment Maintenance Co Ltd v Holloway* EAT 582/94).

23. The Tribunal should first determine the amount of the loss actually suffered by the Claimant in consequence of the dismissal which is attributable to action taken by the Respondent. The Tribunal should determine what the Claimant would have earned had the employment continued and how long it would have continued for. A sum for loss of statutory rights may be included. Credit should be given for:
- 23.1. sums paid to the Claimant by the Respondent as compensation for the dismissal, including any pay in lieu of notice (*Heggie v Uniroyal Ltd* [1999] IRLR 802);
 - 23.2. sums earned by way of mitigation of loss; and
 - 23.3. deductions to be made for any failure to mitigate the loss.
24. It is for the Respondent to show that the Claimant has failed to take reasonable steps to mitigate his loss.
25. The statutory cap for compensation for unfair dismissal should be applied.

CONCLUSIONS

26. In light of our findings of fact above, we make an award as set out below.

Basic award

27. It was agreed between the parties that the Claimant was entitled to a basic award of £7,716.

Compensatory award

28. The compensatory award is calculated as follows:

Net pay £4,200 x 12	£50,400
Pension	£1,246.08
Subtotal	£51,646.08
Less 8.5% reduction	-£4,389.92
Subtotal	£47,256.16
Plus loss of statutory rights	£500
Subtotal	£47,756.16
Less notice pay	-£2,825
Subtotal	£44,931.16
Less earnings from Gillespies August 2023 – July 2024	-£31,235.87
TOTAL	£13,695.29

Total award

29. The total of the basic and compensatory awards combined is £21,411.29.

Approved by
Employment Judge Reindorf KC

Date: 2 September 2025

**Sent to the parties on:
2 September 2025
For the Tribunal Office**

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