EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001652/2024

Held in Chambers in Glasgow on 1 September 2025

Employment Judge C McManus
Tribunal Member J Smillie
Tribunal Member G McKay

Mr R Scott — **Claimant**
Represented by:
Ms W Govan -
Claimant's mother

Tillicoultry Quarries Limited — **Respondent**
Represented by:
Mr G McQueen -
Solicitor

RECONSIDERATION JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The Judgment of this Tribunal dated, entered in the register and copied to parties on 1 May 2025, is reconsidered in terms of Rules 70 to 72 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, on the application of the respondent's representative, only in relation to remedy and the two points made in the respondent's representative's letter to the Tribunal of 13 May 2025. On reconsideration:

    - The financial award will be recalculated on the claimant's net loss, based on the net income from the National Minimum Wage at the applicable rate, plus calculated interest on that loss.

    - The injury to feelings award is confirmed.

REASONS

Introduction

1. The Judgment dated 1 May 2025 was that the claimant's complaints of disability discrimination under section 15 and section 21 of the Equality Act 2010 ('EqA') were successful. The claimant was awarded:

- A total gross compensatory award of £22,366.54, subject to lawful deductions by the respondent in respect of tax and national insurance, on production of a valid confirmation to the claimant of proper receipt of those deductions.

- A total injury to feelings (solatium) award of £7,466.67 (bring an injury to feelings award of £7,000 and calculated interest of £466.67). .

Grounds of Reconsideration Application

2. The respondent seeks reconsideration in the interests of justice, only in relation to remedy, on the grounds set out in the respondent's representative's correspondence to the Tribunal of 13 May 2025, being:-

    - That the compensatory award payment would fall within the £30,000 tax-free band under section 402C of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003') and should accordingly have been calculated on the basis of net loss of earnings, without the respondent having to account for deductions to His Majesty's Revenue and Customs ('HMRC') re tax and National Insurance.

    - That, on the evidence before the Tribunal, the award made for injury to feelings of £7,000 is excessive.

3. This reconsideration is considered under Rules 68 – 70 of the Employment Tribunal Procedure Rules 2024 ('the Procedure Rules'). Following correspondence sent to representatives under Rule 70(3) of the Procedure Rules, the claimant's representative's position was *that 'the claimant was awarded a fair amount for the distress and damage caused by Tillicoultry Quarries"* and requested that further proceedings take place *'by correspondence',* without a further hearing.

4. The respondent's representative was content for the reconsideration to be on parties' written submissions. It was determined that in the circumstances a hearing on the reconsideration was not necessary in the interests of justice. The representatives were directed to exchange written submissions on the reconsideration points and any calculations they sought to rely on by specified dates. Written submissions were then produced by both representatives, with the opportunity given for them to comment on the other party's submissions.

Reconsideration Decision

(1) Consideration of whether the wage element of the compensatory award should be net or gross.

5. For reasons set out in paragraph 81 of the Judgment, the financial loss was calculated based on the claimant's wage at the applicable National Minimum

Wage rate. That rate is a gross rate i.e. pre tax and NI deductions. The compensatory award was calculated as a gross compensatory amount. At paragraph 88 of the Judgment dated 1 May 2025 it is stated:

"The respondent is entitled to deduct from that gross compensatory amount of £20,968.64 appropriate amounts in respect of National Insurance and tax deductions."

The intended effect was that the claimant be awarded compensation based on his net wages from the respondent, not that the claimant receive the gross amount.

6. We accepted the respondent's representative's submissions that the compensation payment awarded to the Claimant should be treated by the Employment Tribunal as falling within the £30,000 tax-free band under section 402C of ITEPA (Earnings and Pensions) Act 2003 ("ITEPA 2003"), on the basis that the compensation payment was awarded to reflect the Claimant's financial loss arising from the discriminatory treatment. We accepted the respondent's representative's submission that the compensatory award should accordingly have been calculated as a 'net' figure rather than a higher 'gross' earnings figure.

7. The respondent's representative provided their calculations of the net sum considered by them to be payable to the claimant in respect of the wage loss element of the compensatory award. Their position was that on a gross figure of £22,366.54, deductions would be due for PAYE tax of £1,957.40 and National Insurance Contributions of £783.72, leaving a net payment after these tax and NI deductions of £19,625.42.

8. The gross figure of £22,366.54 includes interest calculated on the gross financial loss figure. For the reasons set out in paragraphs 80 – 88, the claimant's gross financial loss was calculated to be £20,968.64. As set out in paragraph 94, interest of £1,397.90 was calculated on the financial loss, giving a total gross financial award of (£20,968.64 + £1,397.90) £22,366.54 (subject to deductions for tax and NI).

9. The Tribunal did not hear evidence on the claimant's net income while with the respondent. It is required to ascertain the net payment to the claimant from the gross sum of £20,968.64, not on the gross figure of £22,366.54. Interest should then be calculated on that net payment figure.

10. In the circumstances, the respondent is directed to inform the Tribunal and the claimant's representative of their position on the net payment to the claimant from a gross sum of £20,968.64. That net figure should be provided to the claimant's representative within 7 days of the date of this Judgment. The claimant's representative's position on that net figure is then be provided

to the Tribunal and the respondent's representative within a further 7 days. The financial loss will then be calculated as set out in paragraphs 80 – 87 of the Judgment, based on the applicable net figure, as determined by the Tribunal based on the parties' positions.

11. The claimant's representative's submissions raised that the compensation award did not take into account income from overtime or extra hours and should have been calculated in respect of a longer period, although also stating that that the award was '*made within the correct legal framework, based on sound reasoning'* . The financial award was calculated on the basis of the evidence heard, for reasons set out at paragraphs 78 – 88. That included consideration of the wage against which the compensatory award should be made (particularly at paragraphs 80 – 81) and the period of time in respect of which it was appropriate to calculate the compensatory award (particularly at paragraphs 82, 85 and 86). The scope of this reconsideration does not extend to reconsideration of the basis of the compensatory award.

(2) Consideration of appropriateness of Injury to Feelings Award

12. The reasons for the award for Injury to Feelings are set out in paragraphs 89 – 91. Consideration was given to guidance from Lord Justice Mummery in ***Vento v Chief Constable of Yorkshire Police (No. 2) [2003] IRLR 10*** and from the EAT in ***Prison Service and ors v Johnson 1997 ICR 275 EAT, Komeng v Creative Support Ltd EAT 0275/18*** and ***Eddie Stobart Ltd v Graham [2025] EAT 14.***

13. We now also note the position in ***Cowie and others v Scottish Fire and Rescue Service [2022] IRLR 913***, ***Harvie v Scottish Ambulance Service Board [2023] 6 WLUK 667*** and ***Fubara v Certus Recruitment Limited ET/2211329/2022,*** as relied upon by the respondent's representatives in their submissions.

14. The principles that apply to assessing an appropriate injury to feelings award, set out by the EAT in ***Prison Service v Johnson [1997] IRLR 162***, para. 27, are:

- Injury to feelings awards are compensatory and should be just to both parties. They should compensate fully without punishing the discriminator. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award;

- Awards should not be too low, as that would diminish respect for the policy of the anti- discrimination legislation. Society has condemned discrimination and awards must ensure that it is seen to be wrong. On the other hand, awards should be restrained, as excessive awards could be seen as the way to untaxed riches;

- Awards should bear some broad general similarity to the range of awards in personal injury cases – not to any particular type of personal injury but to the whole range of such awards;
- Tribunals should take into account the value in everyday life of the sum they have in mind, by reference to purchasing power or by reference to earnings;
- Tribunals should bear in mind the need for public respect for the level of awards made.

15. We have taken into account that in ***Vento*** (paragraphs 50 – 51) the Court of Appeal recognised that *"translating hurt feelings into hard currency is bound to be an artificial exercise"* and

"Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury. In these circumstances an appellate body is not entitled to interfere with the assessment of the employment tribunal simply because it would have awarded more or less than the tribunal has done. It has to be established that the tribunal has acted on a wrong principle of law or has misapprehended the facts or made a wholly erroneous estimate of the loss suffered. Striking the right balance between awarding too much and too little is obviously not easy."

16. We took into account the Court of Appeal's guidance in ***Vento*** in identifying three broad bands of compensation for injury to feelings, with guidance that:-

1) Sums in the range of 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 ground of sex or race.

2) The middle band should be used for serious cases, which do not merit an award in the highest band;

3) Awards in the lower band are appropriate for less serious cases, such as where the act of discrimination is an isolated or one- off occurrence.

Within each band there is considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.

17. We have taken into account the guidance from the EAT in ***Eddie Stobart Ltd v Graham [2024] EAT 14***, particularly at paragraphs 39 – 41:

> *"39. First, there can be no award of compensation is there is no evidence of injury. As the EAT said at paragraph 90 of Cannock , an award "is not automatically to be made whenever unlawful discrimination is proved or admitted". There must be some evidence of injury to the non-exhaustive range of feelings discussed in Vento . The EAT's judgment in Cowie and others v Scottish Fire and Rescue Service [2022] IRLR 913 (at paragraph 91) provides an example of an appellate conclusion that it was permissible for a tribunal to make no award where the claimants had "failed to adduce evidence of any injury to feelings such as would warrant an award under this head". (Further, at paragraph 92 of that judgment, the EAT accepted that "upset" was "the best evidence of any injury to feelings", albeit that it was unrelated to the conduct complained of in that case.)*
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> *40. Second, while tribunals should avoid making assumptions, it can properly be borne in mind that in every kind of discrimination case a claimant will usually suffer some injury to feelings. As the EAT put it in London Borough of Hackney v Adams [2003] IRLR 402 (at paragraph 11) , with my added emphasis:*
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> *"Sometimes such injury will be the almost inevitable concomitant of the discrimination having occurred. For example, it can readily be assumed where someone has suffered an act of race or sex discrimination that will by its very nature have caused injury to feelings: it is demeaning to the individual and offensive to his or her dignity to be so treated. A tribunal will readily infer some injury to feelings from the simple fact of the discrimination having occurred. Such injury may of course be compounded by the particular manner in which the discriminatory conduct itself is made manifest . For example, harassment over a lengthy period will plainly result in more considerable distress than a single act of discrimination and should be compensated for accordingly. There will, however, have to be evidence of the nature of the discriminatory conduct."*
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> *41. The above suggests that the manner of discrimination can provide a basis for inferring the level of upset it has caused. This brings me to my third point: so long as the tribunal does not lose sight of the fact that it is compensating a claimant for the injury suffered, rather than the manner of the discrimination, the latter can be a useful guide to inferring the former when evidence is otherwise sparse. Of course the tribunal must take care not to allow its feelings of indignation to inflate the award, but having regard to the manner of discrimination can*

> *provide a control mechanism. I think this is what the EAT had in mind in an important footnote to its judgment in Commissioner of Police of the Metropolis v Shaw [2012] IRLR 291 , when it said this (with my emphasis):*
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> *"Practice is in our experience variable as to the extent to which claimants in discrimination cases give explicit evidence about the injury to their feelings. In principle they should certainly be asked to do so: it is wrong that tribunals should be asked to make assumptions … the fact remains that even when such evidence is given, it is often difficult to assess objectively because so much depends on the idiosyncrasies of the particular witness, including their articulacy and their levels of stoicism or self-awareness. Some degree of standardisation is realistically inevitable."*

18. With regard to the guidance in paragraphs 370- 52 of the EAT's Judgment in ***Eddie Stobart Ltd v Graham [2025] EAT 14***, our considerations included the evidence from the claimant on how he felt and the effect on his current, past and future work. We have sought to assess the actual impact on the claimant. There was evidence that the claimant had suffered distress from his treatment by the respondent. It was taken into account that the discrimination was not a one-off, isolated incident, with the claimant's upset being from the respondent's contact over a period of time and a series of meetings. Nonetheless, as set out in paragraphs 90 – 91 of the Judgment, the injury to feelings award was made within the lower band (on the applicable revised figures (£1,200 - £11,700) updated in accordance with Presidential Guidance). In this reconsideration we have considered the notes on the evidence heard. The claimant's evidence was that he felt '*Gutted. Absolutely gutted*", that he had '*Enjoyed working there*" and that the respondent's site was '*8 minutes from the house'*, which is in a rural area. We heard evidence on the lack of available jobs in the area and that travelling to another workplace while the claimant did not have his driving licence was *'unmanageable'*, but that the claimant could have got a lift to the respondent's workplace. We were careful to consider the evidence on the effect on the claimant and not to make the award based on punishment of the respondent.

19. As set out in the final sentence of paragraph 91, the award for injury to feelings was made on the evidence heard. We were careful to ensure that the award for injury to feelings was based only on the evidence heard. The sentence in paragraph 91 *"The claimant did not give evidence of any underlying condition which would exacerbate the effect of the treatment"* is in relation to discussions which took place with representatives in relation to a further medical report which was produced by the claimant's representative. As the claimant's representative's position was that the claimant did not wish to give

evidence on that medical report it was agreed that that medical report would not be relied upon and it therefore has not been taken into consideration when making the award.

20. On reconsideration, it is confirmed that the award of £7,000 for injury to feelings, together with interest on that award of £466.67, as set out in paragraph 95, is considered to be in line with the guidance referred to. That award is considered to be fair, reasonable and just compensation in the particular circumstances of the case, on the basis of the evidence heard and findings in fact made. It is not manifestly excessive.

Date sent to parties **04 September 2025**