EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr Bartosz Moscichowski	**- V -**	Open House London Ltd

Heard at: London Central (CVP) **On**: 4 September 2025

Before: Employment Judge Baty

Representation:

For the Claimant: Representing himself
For the Respondents: Ms A Singh (solicitor)

JUDGMENT

1. The claimant's application for reconsideration of the tribunal's judgment on liability is refused.

2. In relation to the claimant's successful complaint of victimisation, a total remedy award of £5,475 is made, payable by the respondent to the claimant. This comprises:

a. £5,000 for injury to feelings (payable free of tax); and

b. £475 (subject to any tax and national insurance contributions payable) for loss of earnings.

REASONS

Background

1. By a claim form presented to the employment tribunal on 10 October 2022, the claimant brought complaints of direct race discrimination and victimisation. The respondent defended the complaints.

2. The claimant was employed by the respondent from 2 August 2021. He gave notice of resignation on 29 September 2022, with his employment terminating on 6 October 2022.

3. He commenced ACAS early conciliation on 9 September 2022. This concluded on 28 September 2022 and he presented his claim on 10 October 2022.

4. The issues of the claim were agreed between EJ Emery and the parties at a preliminary hearing for case management purposes on 12 May 2023. Those issues are incorporated into EJ Emery's record of that preliminary hearing. The issues comprised 11 complaints of direct race discrimination (on the basis of the claimant's Polish nationality), including a complaint of constructive discriminatory dismissal; and one single complaint of victimisation, specifically that because of the claimant's written complaint of 2 September 2022, the respondent reduced the claimant's working hours (in relation to his last two working weeks, which began respectively on 19 September 2022 and 26 September 2022). There was no victimisation complaint relating to dismissal.

5. A liability hearing took place over five days on 2-8 October 2024, before a tribunal panel comprising EJ Anthony, Mr Williams and Dr Weerasinghe ("the original tribunal"). There was no change to the issues agreed at the preliminary hearing and these were the issues which the tribunal determined. The decision of the tribunal was that all of the complaints of direct race discrimination failed; but that the claimant succeeded in his victimisation complaint. The tribunal's decision was given orally with reasons at the hearing. The tribunal's written judgment was sent to the parties on 21 October 2024.

6. Both parties subsequently requested written reasons for the decision on liability. These were duly produced and sent to the parties on 19 December 2024. In these written reasons for this remedy hearing, references to "the judgment" or to "paragraphs in the judgment" are, unless otherwise stated, references to the written reasons from the liability hearing and to paragraphs in those reasons.

7. A remedy hearing was listed, originally for 3 February 2025. This was, however, postponed at the claimant's request. The remedies hearing was relisted for 4 September 2025.

Panel composition

8. Since the liability hearing, EJ Anthony had ceased to sit as an Employment Judge. Furthermore, Dr Weerasinghe was unavailable for the remedy hearing on 4 September 2025. Under the tribunal's rules on panel composition and the Presidential Guidance on panel composition, there is no requirement that a hearing of this nature must be before a full tribunal panel rather than a judge sitting alone.

9. The day prior to the hearing, therefore, EJ Glennie, the Acting Regional Employment Judge, wrote to the parties to explain that the remedy hearing would

be heard by EJ Baty sitting alone. He did so for the reasons set out above. He explained that he had concluded that the most effective way for the matter to proceed was before a judge alone.

10. At the start of the hearing, I reiterated this to the parties. Neither party raised any objection to the hearing proceeding before me sitting alone.

Claimant's reconsideration application

11. An 85 page bundle for this hearing had been provided to me, which I read in advance of the hearing. This included reading the pleadings, the case management orders from EJ Emery's preliminary hearing, and the judgment and written reasons of the original tribunal.

12. In addition, I reviewed in advance those documents which were available on the tribunal's electronic file. During the course of this, I had noticed references to a reconsideration application brought by the claimant, although there was no copy of such an application on the tribunal file. At the start of the hearing, Ms Singh confirmed that the respondent had not received any copy of a reconsideration application either.

13. I had also noticed subsequent correspondence on the tribunal's electronic file from the claimant referencing a reconsideration application and suggesting that that should be dealt with before issues of remedy be dealt with. It appeared from the file that there had been no response from the tribunal about these matters.

14. There was then an extensive conversation between myself and the claimant about the reconsideration application. The claimant eventually confirmed that he had made the application on 30 October 2024. This would have been after the tribunal issued its written judgment on liability but before the tribunal issued its written reasons on liability. Such an application would, therefore, in accordance with rule 69 of the Employment Tribunal Rules 2024 ("the Rules"), have been presented in time, within the 14 day period prescribed by rule 69.

15. The claimant explained that he had not copied the respondent in on his reconsideration application and that he had done this deliberately. This was because the application related to allegedly forged signatures on four documents and he was concerned about actions which he thought the respondent might take in relation to these documents if the respondent was supplied with the reconsideration application.

16. I acknowledged that it was quite possible that the claimant's reconsideration application had been sent to the tribunal but either not received or, if it was received, not put on file or referred to a judge, and I apologised, had that been the case, for any subsequent delay. However, I said that I agreed with the claimant that it was appropriate that any such application should be determined before going on to deal with issues of remedy. However, I explained that I would need to see the application and asked the claimant to forward it to

my clerk. I also asked the claimant if he was happy at this stage to forward it to Ms Singh for the respondent. The claimant said that he was not.

17. As I will come to, I noted that the first stage in considering an application for reconsideration (under rule 70(2)), is for the tribunal to consider whether or not there is any reasonable prospect of the judgment being varied or revoked and, if there is not, to refuse the application at that point. I noted that no input was required from the other party for the tribunal to carry out this part of the process. I therefore suggested that, notwithstanding that the claimant should have copied his original application to the respondent, the claimant should at this stage forward the reconsideration application to the tribunal only for me to consider under rule 70(2); but that, having carried out that exercise, the application would then need to be forwarded to the respondent. Neither the claimant nor Ms Singh objected to this approach.

18. The claimant therefore duly forwarded the reconsideration application to my clerk, and she forwarded it to me. The date on the application did indeed indicate that it had been made to the tribunal on 30 October 2024, as the claimant had said, and I accept that the application was indeed made to the tribunal on that date.

Reconsideration - the law

19. Under Rule 68 of the Rules, the tribunal may reconsider any judgment where it is necessary in the interests of justice to do so.

20. Under Rule 70(2) of the Rules, an application for reconsideration is to be refused, without the need for a hearing, if the tribunal considers that there is no reasonable prospect of the original decision being varied or revoked, and the tribunal must inform the parties of the refusal.

21. Rule 69 of the Rules provides that, except where it is made during the course of a hearing, an application for reconsideration must be made in writing setting out why reconsideration is necessary and must be sent to the tribunal within 14 days of the later of the date on which the written record of the judgment sought to be reconsidered was sent to the parties or the date that the written reasons were sent, if these were sent separately.

22. I summarised these legal provisions to the parties during the hearing.

23. As already noted, the claimant's reconsideration application was submitted within the time limit set out above.

Consideration of the claimant's reconsideration application

24. I then adjourned the hearing for around 20 minutes in order to consider the reconsideration application under rule 70(2).

25. When the hearing reconvened, I informed the parties that I considered that there was no reasonable prospect of the liability judgment being varied or

revoked; accordingly, I refused the reconsideration application and informed the parties of this.

26. I did this for the following reasons.

27. The application itself was self-contained and related to one particular issue only, specifically the allegation of direct race discrimination at issue 2.1.2 of the list of issues (where the alleged detrimental treatment was the claimant's demotion in August 2021). The original tribunal had accepted that the claimant was demoted at that time but found that there was nothing to indicate that the demotion was due to the claimant's nationality; rather, it specifically found that the demotion was entirely due to the feedback on the claimant's ability to perform in his original role (paragraph 33 of the judgment).

28. During the liability hearing, the respondent had disclosed late four documents which it maintained were signed by the claimant using an electronic signature; these included the claimant's contract for the "Barback" role, into which he was demoted. In his reconsideration application, the claimant maintained that the signatures were forged and that the respondent's witness who gave evidence about them at the tribunal had therefore perjured himself; his application purported to include evidence that they were forged, by reference to the properties of the documents disclosed by the respondent at the liability hearing.

29. However, the original tribunal addressed issues regarding the authenticity of these documents at paragraphs 35-37 of the judgment (which I cross-refer to in full). It is clear from the start of paragraph 37 that the tribunal did look at the "properties" of those documents. The tribunal went on, having analysed this evidence, to conclude that: *"We do not accept the claimant's evidence that the documents were manipulated and that the signature was not his electronic signature"*. The original tribunal had therefore dealt with these arguments already. The claimant's application for reconsideration was therefore an attempt to re-litigate matters which either were raised during the liability hearing and were considered during that hearing, or which could have been raised during that hearing; that is not the purpose of a reconsideration application; there needs to be finality to litigation, which would not be the case if parties were, through the reconsideration process, given indefinite opportunities to have further bites at the same cherry.

30. Secondly, I do not consider that there is anything in the reconsideration application which provides any evidential basis that the signatures were forged; this is merely the claimant's assertion.

31. Thirdly, I note that, at paragraph 34 of the judgment, the tribunal records that *"The claimant stated in his second grievance letter dated 2 September 2022 that he was coerced into signing the new contract by Walter Carta and Joao Palma"*; in other words, in his own grievance, the claimant accepted that he did sign the new contract, albeit allegedly under duress; that is obviously inconsistent with his assertion now that he didn't sign the contract and that the respondent forged his signature.

32. Finally, even if it were the case that the signatures on the documents were forged, there is still no evidence that the demotion (which was the alleged detrimental treatment for the purposes of this allegation) was because of the claimant's Polish nationality; by contrast, the tribunal made a very clear finding that it was for other reasons. Therefore, even if the documents were forged, allegation 2.1.2 would still not have succeeded.

33. For these reasons, therefore, there is no prospect whatsoever of the judgment or any part of it being varied or revoked. It followed, that I must refuse the application and I duly did so.

34. Having done so, I explained to the parties that, as I indicated prior to considering the reconsideration application, I would for completeness instruct my clerk to forward a copy of the reconsideration application to the respondent. There was no objection to this and I instructed my clerk to do so.

Continued disputation

35. Notwithstanding my decision, the claimant continued to dispute and to try and re-argue his reconsideration application on this point about signatures. In doing so, he appeared not to have taken into account most of the findings which I had made in my consideration of the application. He simply continued to maintain that he thought the signatures were forged. It was a further attempt to try and relitigate the issue.

36. I explained that that was the end of the matter and that the claimant was simply trying to relitigate the topic further.

37. The claimant continued to dispute.

38. I reiterated what I had said and told the claimant that the matter was dealt with and that we had to move on. At this point we did so.

Remedy issues

39. We then considered the issues of remedy which were the purpose for which this hearing had been listed.

40. I began, for the claimant's benefit, by summarising the law in relation to issues of remedy for successful victimisation complaints. I explained that the tribunal could award financial compensation and make recommendations. The claimant said that he was seeking financial compensation only.

41. I reiterated that the claimant had been successful only in his victimisation complaint; therefore, in terms of financial compensation, he could only seek compensation which arose from that complaint; he could not seek compensation in relation to the other complaints which he had brought but which had not succeeded.

42. I said that it seemed to me that, in relation to the successful victimisation complaint, there were two types of potential financial compensation: specifically, an award for injury to feelings and compensation for the loss of hours (and payment for those hours) to the claimant as a result of the respondent reducing the claimant's working hours (in relation to his last two working weeks, which began respectively on 19 September 2022 and 26 September 2022).

43. The parties did not disagree with this.

Loss of hours

44. I suggested to the parties that it should be possible to agree the figures for the claimant's losses in relation to his loss of working hours for that two-week period, and we proceeded to try and do so.

45. It was agreed that the claimant had worked 13.5 hours in the first of those weeks and 16.5 hours in the second of those weeks (30 hours in total over the two weeks); and that the claimant's hourly rate at the relevant time was £9.50.

46. Ms Singh had already done a set of calculations, based on average working hours per week of 35 hours (which was what was set out by the claimant in his own claim form); she then subtracted the 30 hours actually worked by the claimant; this gave a total figure of around £380 (gross - in other words subject to tax and national insurance).

47. Notwithstanding what was in his claim form, the claimant stated that he did not agree with this analysis. His objection was about the average number of hours which he said he generally worked and which should, therefore, operate as the starting point from which the hours he actually worked in those last two weeks should be subtracted to leave what was due to him. He stated that he worked on average between 40 and 50 hours a week rather than 35 hours a week. He said that an average set of hours of 45 hours per week should therefore be used.

48. At this point, therefore, I took the parties through some of the many payslips which had been provided in the bundle in relation to the hours worked by the claimant over the course of his employment. It was clear from them that 45 hours per week was too high and that the average looked to be somewhere between 35 and 40 hours per week. Ms Singh, very pragmatically and in view of the relatively small financial difference which this would entail, said that the respondent was prepared to accept an average of 40 hours per week. The claimant agreed to this.

49. Therefore, using an average of 40 hours per week, the claimant worked 26.5 hours below average in the first week and 23.5 hours below average in the second week; in other words, he worked 50 hours less than the average over the course of the two weeks. 50 multiplied by £9.50 is £475. As noted, that represents a gross payment, before tax and national insurance.

50. Both parties therefore agreed that the payment in relation to the lost hours should be £475 (subject to any tax and national insurance payable). I therefore made a judgment, by agreement, in that sum.

Injury to feelings

51. I outlined the law in relation to injury to feelings awards for the benefit of the claimant.

The law

52. Compensation is calculated under the principles of tort law, which provide for the tribunal making an award of damages. The measure of damages is to put the claimant in the position he would have been in had the victimisation not taken place.

53. An award of damages may include compensation for injured feelings (whether or not it includes compensation on any other basis). Awards for injury to feelings are compensatory. They should be just to both parties and they should compensate fully without punishing the tortfeasor.

54. In Vento v Chief Constable of West Yorkshire Police (No. 2) [2003] IRLR 102 the Court of Appeal identified three broad bands of compensation for injury to feelings (which have subsequently been revised upwards over the years). The applicable bands are those in place at the time the claim was presented. The figures set out in the paragraph below therefore reflect the levels of the bands in place at the time the claimant's claim was presented on 10 October 2022.

55. The top band should normally be between £29,600 and £49,300. Sums in this range should be awarded in the most serious cases such as where there has been a lengthy campaign of discriminatory harassment on the ground of, for example, sex or race. The middle band of between £9,900 and £29,600 should be used for serious cases which do not merit an award in the highest band. Awards of between £990 and £9,900 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general awards of less than £990 are to be avoided altogether as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

Submissions

56. Both parties then made submissions about the appropriate level of an injury to feelings award.

57. I then adjourned to consider my decision. When the hearing reconvened, I gave the parties my decision and the reasons for it orally.

Decision

58. I decided that the injury to feelings award should be £5,000.

59. First, I considered that the award should be somewhere in the lower Vento band. Only a single complaint out of the many complaints brought by the claimant had succeeded; he was successful in relation to one single complaint of victimisation, namely the decision to provide him with lower hours over a two-week period. This was an isolated occurrence; a one-off act of victimisation.

60. The claimant had not provided any medical evidence of the impact of the successful victimisation complaint on his health.

61. The claimant maintained that he had suffered hurt feelings and depression and I was prepared to accept that he had. However his focus in his submissions, in terms of what caused this suffering, was not on the act of victimisation but on the alleged acts of race discrimination which were not found to have been proven by the tribunal. As I had previously made clear to the parties, I could not take those into account when assessing the injury to feelings award. Even if the actions which were the basis for those unproven allegations of discrimination had genuinely caused him suffering, I could not take that into account when assessing injury to feelings based on the impact of the successful allegation of victimisation.

62. I consider that the impact on the claimant of the hours reduction was far less than what claimant perceived the impact of the other allegations of discrimination was. I noted that the claimant had already contacted ACAS to get the employment tribunal claim ball rolling on 9 September 2022, before the act of victimisation had even taken place, so it was not a key reason for his bringing the proceedings. Furthermore, the reduction in hours was not even set out in his claim or the agreed list of issues as being an alleged reason why he resigned. There, again, the emphasis was on the (unproven) allegations of race discrimination. If the reduction in hours had indeed been a major cause of any suffering on the part of the claimant, it is far more likely that he would have included it as an alleged reason for his resigning.

63. Having said that, I did consider that it was a pretty nasty and unpleasant action to reduce someone's hours because he complained (and I invited Ms Singh to relay my view in this respect to her client). I am further mindful that awards of injury to feelings should not be so low as to render them meaningless. I therefore considered that the award for injury to feelings should be around the middle of the lower band.

64. I therefore made an award of £5,000 for injury to feelings. I reminded the parties that no tax was payable on awards of injury to feelings which are not related to dismissal (as is the case in relation to this successful allegation of victimisation).

Written reasons

65. Having given my reasons orally, I then asked the parties if they wanted written reasons for my decision.

66. The claimant said that he wanted the written reasons and specifically asked that they should include my reasons for refusing his reconsideration application. These reasons have duly been produced.

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Employment Judge Baty

Dated: 23 September 2025

Judgment and Reasons sent to the parties on:

1 October 2025
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For the Tribunal Office