EMPLOYMENT TRIBUNALS

Claimant: Mrs S Gwiazda
Respondent: Royal Mail Group Limited

Heard at: **London Central via CVP in public** **On:** **7 August 2025**

Before: **Employment Judge Clark**

Representation
Claimant: In person
Respondent: Mr A Burgess – Paralegal

RESERVED JUDGMENT

The claimant is awarded £3,700.77 in compensation in relation to the respondent's unreasonable postponement and prevention of the claimant's parental leave.

REASONS

1. This hearing was listed over 3 hours to consider remedy for the claimant's claim related to the handling of her request for unpaid parental leave in the summer of 2024. This hearing was fixed following the making of a judgment by consent by Employment Judge J Burns on 21 May 2025 in the following terms:

   "*the respondent unreasonably postponed and prevented the claimant taking parental leave over two weeks in August 2024...*"

   The judgment contained a note clarifying the basis of the concession by the respondent, namely, that contrary to the requirements of paragraph 6 in Schedule 2 of the Maternity and Paternity Etc Regulations 1999, it failed to serve a counternotice within 7 days of the claimant's notice given on 19 February 2024. The claimant had originally made a sex discrimination claim under the Equality Act 2010 in addition to her claim related to parental leave, but this was withdrawn by the claimant at the case management hearing on 21 May 2025.

2. For the purposes of this hearing, the Tribunal had regarded to the contents of a joint bundle of documents running to 238 pages, which included a schedule of loss and a witness statement from the claimant dated 10 June 2025. The claimant gave evidence at the hearing and was cross-examined on that evidence.

3. In her schedule of loss the claimant claimed a total of £219,412.50 in compensation, which included injury to feelings, personal injury, aggravated damages and a 25% uplift for breach of the ACAS Code. The Tribunal explained at the start of the hearing that the parties would need to address the question as to whether the Tribunal has the power to make awards of injury to feelings, personal injury and aggravated damages, as well as the ability to uplift any sums awarded under section 207a of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).

4. There was insufficient time for the Tribunal to hear oral closing submissions. In consultation with both parties, 5 September 2025 was fixed as the date by which written submissions should be sent to the Tribunal at the claimant's request in order that she did not have to work on her submissions during the school holidays. As it happens, the claimant's written submissions were received on 6 September 2024 due to technical problems she had. She provided an apology to the Tribunal and requested that her submissions be taken into account nonetheless. The claimant had the resultant advantage of being able to respond to the respondent's written submissions. This was a very marginal advantage, which is not outweighed by the fact that the respondent is professionally represented. The respondent could have written to the Tribunal to object to the admission of the claimant's written submissions, but did not do so. The Tribunal suspects that this was a pragmatic response to the circumstances and a sensible approach by the respondent.

5. Given the short delay in receipt of the claimant's submissions and the fact that she is conducting these proceedings herself (in a second language), the Tribunal has no hesitation in taking account of her written submissions. The Tribunal is guided by the overriding objective in the Employment Tribunal's Procedure Rules 2014 to ensure a fair hearing and justice would not be achieved without taking the claimant's closing submissions into consideration.

<u>Factual Background</u>

6. The claimant has been employed by the respondent since 19 June 2006 doing postal deliveries at a salary of £27,790 a year. She has three children, two of whom are under 18. In January 2024, the claimant approached her line manager, Mr Tanveer, informally and asked if she could take some parental leave in August 2024 on top of her annual leave. She had two weeks' annual leave approved for 19 August – 1 September 2025 on 10 January 2024. She wished to extend that leave to 4 weeks with the two prior weeks being unpaid parental leave. After some reminders, Mr Tanveer indicated verbally that her proposed absence would affect the units ability to deliver its service obligations (USO), so he did not agree it.

7. On 19 February 2024 the claimant submitted a formal written request to Mr Tanveer for 2 weeks' parental leave from 5 – 18 August 2024. She was concerned that her line manager had not understood the nature of her verbal request. She received no reply, so sent a follow up request on 6 March 2024. Mr Tanveer responded to this by email dated 8 March 2024. Whilst he did not provide an outcome to the request, he explained to the claimant that her request would put the unit over the agreed annual leave ceiling for that period (ie a maximum of 6 members of staff having annual leave at one time).

8. On 28 March 2024, Mr Tanveer wrote to the claimant refusing her request for parental leave from 5 – 18 August, offering her 3 alternative dates in September and October 2024 (all during school term time). On 9 April 2024 the claimant responded explaining that she would be unable to take her children out of school, whereas the August dates would enable her and her children to spend a month in Poland visiting relatives by her preferred mode of travel (car).

9. On 11 April 2024 Mr Tanveer responded stating that he understood the claimant's reasoning and offered instead 4 alternative dates in October/November 2024, one week of which would include the school half term.

10. On 27 April 2024 Mr Tanveer offered the claimant (via her Union representative) 1 week's parental leave in the week commencing 5th August 2024. The claimant rejected this offer, as it would have meant returning to the UK to work in the middle of her holiday.

11. The claimant raised a grievance concerning the proposed postponement of her parental leave, which led to a grievance meeting on 11 June 2024. Her grievance was rejected in a decision in writing dated 21 June 2024. The claimant appealed against this outcome on 25 June 2024. Whilst the appeal outcome acknowledged that there had been a delay in dealing with her request for parental leave (the respondent had not replied within the 7-day window), the decision itself was substantively sound, as the unit could not cover the Universal Service Obligation (USO). The claimant's appeal was not upheld except to the extent that the respondent accepted that a member of HR had mischaracterised unpaid parental leave as being for "*unforeseen reasons*".

12. Through negotiations with her colleagues who had booked holiday in early August, the claimant managed to add an additional week of annual leave to the two weeks she had already booked, such that she was able to spend 3 weeks visiting her relatives in Poland. On her return to the UK, the claimant was absent from work on sick leave from 3 September 2024 to 12 December 2024 with anxiety and depression. The medical evidence suggests that the claimant was experiencing some mental health symptoms prior to her request for parental leave, some of which she attributed to other work-related issues between September 2002 and January 2024. The refusal of her request for parental leave and the subsequent dispute with the respondent in relation to it contributed to a further decline in her health in the course of 2024.

<u>The Law</u>

13. The amount of compensation for a breach of the parental leave requirements is set out in section 80(4) of the Employment Rights Act 1996, as being, "*such that the tribunal considers just and equitable in all the circumstances having regard to (a) the employer's behaviour and (b) any loss sustained by the employee that is attributable to the matters complained of*."

14. There appear to be no appellate authorities on how this subsection should be interpreted, although, the respondent has referred the Tribunal to the first instance case of McDonald v Royal Mail Group plc case number 2602058/03 in which an award of £850 was made for the unreasonable postponement of a week's parental leave. As this was a first instance decision, it does not bind the Tribunal, although provides an indication of the approach of another Employment Tribunal. The value of such an award would be close to £2,000 today.

15. The IDS Handbook suggests that decisions concerning the test under regulation 30 of the Working Time Regulations 1998 can be applied to that under section 80(4) of the Employment Rights Act 1996. The statutory language is very similar, albeit instead of a need to have regard to "the employer's behaviour", the 1998 Regulations refer to the "employer's default in refusing to permit the worker to exercise his right." The EAT addressed the matters which a Tribunal should take into account in an award under regulation 30 of the 1998 Regulations in *Miles v Linkage Community Trust Ltd* [2008] IRLR 602, being: the period of time during which the employer is in default, the degree of default and the amount of the default (in hours).

16. The Court of Appeal considered whether the analogous wording in regulation 30(4) of the Working Time Regulations 1998 gave rise to a potential claim for injury to feelings in *Santos Gomes v Higher Level Care Ltd* [2018] EWCA Civ 418. The relevant regulation provides for rests breaks where a worker's daily working time exceeds 6 hours. The Court of Appeal concluded that a breach of regulation 30(4) cannot attract an award of injury to feelings, observing that such a breach is more akin to a breach of contract than an act of unlawful discrimination or something analogous to it. Regulation 30(4) provides for compensation to be "*such as the tribunal considers just and equitable in all the circumstances having regard – (a) the employer's default in refusing to permit the worker to exercise his right, and (b) any loss sustained by the worker which is attributable to the matters complained of."*

17. In reaching the conclusion that an award of injury to feelings could not be made, the Court of Appeal referred to the House of Lord's authority of *Dunnachie v Kingston Upon Hull City Council* [2002] UKHL, which held that injury to feelings are not available in an unfair dismissal claim and *Johnson v Unisys Ltd* [2001] UKHL 13, which came to the same conclusion concerning wrongful dismissal. In his judgment in *Santos*, Singh LJ explained that the "*just and equitable*" phrase in itself does not confer a power on a Tribunal to award injury to feelings and that the established cases where it does have such a power are either cases of unlawful discrimination or those akin to it (such as detriment for trade union activities).

18. Whilst the Tribunal has the power to make an award of aggravated damages, it can only do so in the context of an injury to feelings award. It would do so in a case where the employer's conduct has been "*high-handed, malicious, insulting or oppressive*" (*Alexander v Home Office* [1988] ICR 685). Such awards are rare in practice as the bar is a relatively high one.

19. The power of the Tribunal to award an uplift to compensation to reflect a parties' unreasonable failure to comply with an ACAS grievance or disciplinary procedure derives from section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 207A sets out that this applies to "*proceedings before an employment tribunal relating to a claim by an employer under any of the jurisdictions listed in Schedule A2."* Schedule A2 includes a list of six types of claims under the Employment Rights Act 1996 which are covered (such as unfair dismissal and detriment claims), but a claim under section 80 of the 1996 Act relating to parental leave is not included.

The parties' submissions

20. In her closing submissions, the claimant urged the Tribunal to make an award of injury to feelings in the upper Vento band of £56,200 with a personal injury element of £25,000. She seeks aggravated damages of £15,000 and an ACAS uplift on all compensation of 25%. She also seeks to recover some of the cost of her holiday in Poland and the travel costs and time she has spent attending health therapies and preparing her case. It is her case that the respondent's failure to comply with the 7-day timetable to respond to her request means that it did not have the right to postpone her leave. Further, she invites the Tribunal to award compensation for a breach of section 47C of the Employment Rights Act 1996. The claimant understood from the Judge at the case management hearing in May 2025 that she would be entitled to make a claim for injury to feelings for a prevention of unpaid parental leave. The Tribunal notes that on 3 September 2025 the claimant applied for a reconsideration of the judgment of Employment Judge Burns, which remains outstanding. It is the claimant's case that she withdrew her sex discrimination claim on the understanding that injury to feelings would be recoverable pursuant to section 80(4) of the Employment Rights Act 1996. Neither party has suggested that the application for reconsideration of the judgment should delay this decision on remedy.

21. The respondent submits that the Tribunal must confine itself to awarding compensation for its delay in responding to the claimant's request for parental leave only. The basis for its concession was a narrow one. The Tribunal has no power to make an award of injury to feelings (or aggravated damages) or to uplift compensation for a failure to comply with an ACAS Code of Practice. At best, it is submitted, the Tribunal should award £1,000 - £2,000 as any default on the part of the respondent was minor.

Conclusions

22. Whilst the Tribunal appreciates that the respondent's concession at the liability stage was limited to its failure to serve a counternotice within 7 days of the claimant's notice, the Tribunal agrees with the claimant that its ability to postpone her parental leave relied on compliance with all of sub-paragraphs

6(a) – (e) of the Maternity & Parental Leave etc Regulations 1999 Schedule 2. Thus, whilst the respondent did genuinely consider that the operation of its business would be unduly disrupted if the claimant took leave during the period she identified in her notice (paragraph 6(b)) and it did permit her to take a two week period of leave within six months of the requested leave (paragraph 6c) and that it gave the claimant notice in writing which stated the reasons for the postponement (paragraph 6(d)), there is an important, "and" before paragraph 6(e), which provides that the notice has to be given to the employee not more than seven days after the employee's notice was given to the employer.

23. In circumstances where the claimant was entitled to the parental leave she requested and the respondent was not permitted to postpone her leave as a result of its non-compliance with paragraph 6(e) of Schedule 2 of MAPLE 1999), the wording of the judgment accurately represented the substantive nature of the respondent's breach. The claimant was prevented from taking the parental leave in August 2024 to which she was entitled. Whilst it may well be the case that the respondent had cogent grounds to postpone the claimant's parental leave given the number of members of staff who were absent over the school summer holidays, it lost the right to do so in light of its delay in responding to her request. It is on that basis that the Tribunal makes an award of compensation.

24. As the respondent had no right to postpone the claimant's parental leave given its delay in responding to her notice, the Tribunal does not need to determine whether the operation of the respondent's business would have been "unduly disrupted" by the claimant's taking two week's unpaid parental leave in August 2024. However, in light of the parties' on-going relationship and the potential for future disputes about unpaid parental leave, the Tribunal would observe that levels of staff absences during an identified period (whether due to holidays, sickness or other reasons) is likely to be a proper consideration for an employer in its decision making about the timing of parental leave. Further, the fact that an employer has not met business targets in the past (or, the USO in the case of this respondent), does not mean such targets are irrelevant in a decision about the timing of parental leave. An employer has competing obligations – to the business and its need to deliver a service/make a profit, to the needs of an applicant for parental leave and also to those of an applicant's colleagues who might be impacted by the timing of their proposed absence.

Injury to Feelings

25. The Tribunal considers that the reasoning of the Court of Appeal in *Santos Gomes* concerning an award of injury to feelings applies to an award under section 80(4) of the Employment Rights Act 1996. In *Santos Gomes* there was a logical form of compensation, because the effect of the breach in that case was that a worker was required to do work for longer than that for which they were paid. This meant an award of the equivalent pay could be made by way of compensation. To that extent, a case of breach of the right to unpaid parental leave is different from the claim being considered by the Court of Appeal. However, they are both regulatory rights which are granted during the currency of employment. An employee's livelihood is not generally threatened by a breach of either provision and they are not in the nature of a discrimination

claim in the manner of Employment Rights Act 1996 detriment claims. Further, a refusal of unpaid parental leave will not routinely have as severe or long-term consequences on employees as an unfair dismissal. In circumstances where it is clear that an award of injury to feelings is not available for unfair dismissal, the Tribunal considers it would be inconsistent for such an award to be available for the denial of an in-work right to time off work absent unlawful discrimination. Had Parliament intended such an award to be available for the breach of the 1999 Regulations, section 80(4) of the Employment Rights Act 1996 would have made express provision for it. For these reasons, the Tribunal is satisfied that it does not have the power to make an award for injury to feelings, aggravated damages or personal injury. As such, it was not necessary for the Tribunal to make findings about the extent to which the claimant's ill health can be attributed to the fact that it delayed responding to her request for parental leave and ultimately prevented her from taking it.

26. The Tribunal notes that the claimant understood from Employment Judge J Burns at the preliminary hearing that she would be able to make a claim for injury to feelings. This is not recorded in the Judge's record of the case management hearing and the respondent's recollection of it differs from that of the claimant (albeit Mr Burgess was not present at the hearing, so was feeding back his colleague's recollection of what was said). The Tribunal is not in a position to determine what was said at the case management hearing beyond that which is recorded in the record of the hearing. For the purposes of this hearing, Employment Judge Burns did not decide the issue of remedy, but listed it for determination at a separate hearing, so, if there were any suggestion that injury to feelings could be claimed or even might be recoverable, that cannot affect the legal determination that this Tribunal has to make. It is understandable that the claimant has argued that an award for injury to feelings should be made, as it is her case that was the primary negative impact on her of the respondent's decision. Having heard legal argument and considered the case law above, the Tribunal has formed the view that it does not have the power to make such an award.

ACAS Uplift

27. The Tribunal does not have the power to award any uplift to an award of compensation made for compensation related to parental leave under section 80(4) of the Employment Rights Act 1996, as it is not included in the jurisdiction list in Schedule A2 of the TULRCA 1992.

Section 47C claim

28. There is no claim before the Tribunal from the claimant alleging that she was subjected to a detriment by her employer on the basis that she took or sought parental leave for the purposes section 47C of the Employment Rights Act 1996. The Tribunal is, therefore, unable to award compensation for such a claim.

The Claimant's Losses

29. Section 80(4) directs the Tribunal to consider the claimant's losses "attributable to the matters complained of". As the Tribunal explained in the hearing, an example of a financial loss where parental leave is denied might be the cost of commercial childcare for the relevant period. The claimant and her family were taking a holiday in Poland in August 2024 regardless of the refusal or grant of parental leave, so the costs associated with that trip generally are not attributable to the respondent's breach.

30. The claimant suggests (in the context of her claim for aggravated damages) that having to book the ferry and accommodation at the last minute (in early August 2024) meant that the costs of the holiday were higher. Her delay in booking was because of the uncertainties about her permitted leave dates and so can be attributed to the respondent's breach. The claimant has not specified by how much the costs were increased and it would be difficult for her to do so without having gone through the process of booking accommodation and a ferry back in February 2024. Her fuel costs would not have been affected, but the Tribunal takes judicial notice of the fact that booking accommodation on the journey and a ferry within a few weeks of a holiday rather than five months' in advance tends to cost more (as the claimant indicated to her employer at the time). Doing the best it can without evidence of what accommodation would have been available and what it and the ferry would have cost if booked in February 2024 as opposed to August 2024, the Tribunal estimates that the late booking of the outward journey of the claimant's family holiday would have cost an additional £200.

31. As well as the higher cost of accommodation, the claimant "lost" a week's paid annual leave, which she had to use to extend her trip to Poland rather than use that paid leave at her time of her own choosing. The Tribunal represents this loss by the payment of £500.77 (the claimant's gross weekly salary).

<u>The Respondent's Behaviour</u>

32. There was a significant delay in responding to the claimant's written request for parental leave (38 days rather than 7 days) – more than 5 times as long as is provided for in the legislation. As set out above, the effect of that was that the respondent unlawfully denied the claimant the unpaid parental leave to which she was entitled. The Tribunal acknowledges that the respondent took steps to try to reach a compromise with the claimant and that it might well have been able to justify postponing the claimant's parental leave had it complied with the notice requirements of paragraph 6 of Schedule 2 of the 1999 Regulations.

33. The approach in *Miles* (paragraph 15 above) dealing with rest breaks, does not precisely translate to a denial of unpaid parental leave. Parental leave is generally measured in weeks not hours and the period of time during which the respondent was in default in this case was from 26 February 2024 (7 days after the claimant's notice of her period of proposed leave) until 18 August 2024 when the parental leave to which she was entitled would have ended. In that time the respondent had the opportunity to correct its error during the grievance and appeal process, but failed to do so. The respondent is a large organisation with a dedicated HR function. The claimant provided her manager with a link to the government's own guidance on parental leave, which set out the 7-day

time limit for a response, so there is really no excuse for the delay, still less a complete failure to respond to her first email.

34. Neither the claimant's line manager, nor the respondent's HR department, offered any apology to the claimant for the delay in dealing with her request. This lack of any apology was replicated in the grievance and the appeal. The claimant's first point of appeal was that her "*manager did not respond to her request within 7 days*". The outcome of the appeal "*acknowledged that there was a delay in Sylwia receiving a response from [her manager*]", but as it was believed that the manager had "*followed policy by taking advice on parental leave*" this point of the appeal was not upheld. This exacerbated the respondent's default in the Tribunal's judgment.

35. Section 80(4) requires an award of compensation to be just and equitable in all the circumstance having regard to the two factors above. The claimant's job was not at risk and her personal integrity or reputation were not impugned by the respondent's decision. The claimant suggests that the respondent's staff were deliberately making things difficult for her, for instance, in offering her unpaid parental leave for one week, but not continuously with her pre-booked holiday. The Tribunal does not consider this was the case. It was an attempt to reach a compromise based on the respondent's incorrect understanding that it was entitled to postpone the claimant's leave. The respondent's behaviour was not "outrageous", but equally it was not a minor or technical breach of the regulations as it seeks to suggest in closing submissions. The respondent prevented the claimant from exercising a right to two week's parental leave and then acted defensively through the grievance and appeal process, rather than acknowledge and apologise for its own default. In addition to the £700.77 set out above, representing the claimant's losses, the Tribunal considers that the further sum of £3,000 reflects the respondent's default.

36. In reaching this figure and deciding whether it is just and equitable overall, the Tribunal has borne in mind the levels of award for other types of employment claims. For instance, an award for an employer's failure to provide a written statement of main terms and conditions to an employee is between 2 and 4 weeks' pay (Employment Act 2002) and an award under section 80I of the Employment Rights Act 1996 (for breach of contract variation/flexible working provisions) is a maximum of 8 weeks' pay. The Tribunal does not suggest that such claims are directly comparable to a prevention of parental leave, but it gives some idea of scale for a regulatory default in contrast to, say, the £12,000 (approximately) to which the claimant would be entitled as a basic award for unfair dismissal, given her length of service. The purpose of the latter is to compensate for a loss of job security following dismissal, which is likely to have longer term negative consequences for an employee than an isolated denial of parental leave. The Tribunal has attempted to reach a figure which is proportionate and considers that a single act of prevention of two weeks' parental leave figure should attract a figure closer to the former examples (ranging between £1,000 and £4,000 for an employee earning around £500 per week gross) than the latter. This means a total sum of compensation is payable to the claimant of £3,700.77.

Employment Judge H Clark

23 September 2025

JUDGMENT SENT TO THE PARTIES ON

10 October 2025

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