



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

MS KELLY RICE

AND

Respondent

**GLOUCESTERSHIRE COUNTY
COUNCIL**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL ON: 3RD / 18TH JULY 2025

**EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)**

**MEMBERS: MS D ENGLAND
 MR C WILLIAMS**

APPEARANCES:-

**FOR THE CLAIMANT:- MR T ASHBY (TRADE UNION
 REPRESENTATIVE)**

FOR THE RESPONDENT:- MR C EDWARDS (COUNSEL)

REMEDY JUDGMENT

The judgment of the tribunal is that the amounts awarded to the claimant are:-

- i) Wrongful Dismissal / Notice Pay - £2617.65.
- ii) Unfair Dismissal (Basic Award) - £3426.00
- iii) Unfair Dismissal (Compensatory Award / Loss of Statutory Rights) £500
- iv) Disability Discrimination (Injury to Feelings) - £12,500
- v) Disability Discrimination (Loss of Earnings) - ££9588.12 + £7440.84
- vi) Disability Discrimination (Interest) – £3,625.+ = £2166.12.

vii) Total Award - **£42,853.73.**

Reasons

1. In our liability Judgment we upheld claims of constructive unfair dismissal, wrongful dismissal; discrimination arising from disability; and the failure to make reasonable adjustments. We did not, however uphold all of the claimant's claims, and in order to address the issue of the appropriate compensation it is necessary to outline the allegations we did not uphold; and in particular the specific consequences which follow or do not follow from the findings we have made.
2. Background. – In broad terms the claimant brought claims relating to three distinct factual sets of allegations (the KS allegations / the return to work allegations / the second job allegations). The factual background in respect of each as set out in the liability judgment are repeated below.

3. Allegations 1 - KS – As set out in the liability judgement:-

21. As set out above in January 2019 the claimant was appointed to Stroud fire station and KS became her mentor. In about April 2019 they began a romantic relationship. The claimant had concerns about KS which she alleges she relayed to WM Richard Basham in the summer and autumn of 2019. This culminated in messages being exchanged between the claimant and Richard Basham in January 2020 about KS. On 2nd March 2020 the claimant reported to Richard Kerry the allegation that KS had searched through her bag at the fire station and read her private journal. That same day that she ended the relationship with KS.

22. A disciplinary investigation into KS was conducted by AM Jan Morris. She concluded that there had been a number of breaches of the discipline and grievance policy SP025 by KS and in summary that he displayed behaviours that could be deemed bullying and harassment and not in line with the GCC employee code of conduct. She recommended at a disciplinary hearing set at Level 3 gross misconduct.

23. The disciplinary hearing was conducted by Mr. Roberts. He concluded that KS behaviour was:

- i) not in accordance with GFRS values;*
- ii) by way of text messages over a period of time you bullied and harassed a member of staff resulting in the workplace becoming untenable for them*

24. In the outcome letter he described this as a very serious matter and concluded that the appropriate sanction was a final written warning which would remain live for 18 months.

25. The claimant did not, and does not accept, that the disciplinary sanction that was adequate, and contends that only the dismissal of KS would have been an appropriate disciplinary sanction.

26. On the 3rd of November 2020 the claimant lodged a grievance in respect of the disciplinary outcome and sanction imposed on KS. In outline she asserted that did not believe that the investigation was fair or accurate; there was further evidence that she and/or RMc could provide; the sanction was inadequate and demonstrated in the claimant's view that the respondent regarded the behaviour as acceptable. She requested "... a full and complete review of the management of the previous grievance investigation and hearing with a written response.", and "... a fair and accurate re investigation and hearing of firefighter KS considering all the above mentioned with further evidence from myself upon questioning."

27. At a meeting with Mr Preece on 3rd December 2020, as summarised in his letter of the 15th of December 2020, the claimant was informed that it was not open to her to raise a grievance in relation to a disciplinary sanction imposed upon a fellow firefighter and her grievance went no further.

4. The claims arising from these factual allegations were:

i) Constructive dismissal - Issues 2.1.1 and 2.1.2

5. These claims were not pleaded as discrimination claims, and were not upheld as part of the constructive dismissal claim. It follows that in respect of them there is no finding of liability against the respondent and that in so far as there are consequences arising from them, as there is no liability attaching to the respondent they cannot be liable for any compensation

6. Allegations 2 - Return to work – February / March 2021 - In broad terms these were the allegations that were upheld as breaches of the implied term of mutual trust and confidence in relation to the constructive dismissal claim, and the disability discrimination claims and are dealt with in greater detail below.

7. Allegations 3 - Second Job – The allegations as set out in the liability decision were :

Working Whilst Off Sick / Disciplinary Hearing and Sanction

51. The respondent has a secondary employment policy under which Firefighters may, with express permission, undertake outside employment. The claimant had obtained permission to do outside work for Active Lifestyle Centres in May 2019; and Event Fire Solutions (EFS) and Amazon Deliveries in January 2021.

52. In May 2021 the claimant went off sick and remained off sick until her resignation in August 2022. However she carried on working for EFS and/or Amazon. In October 2021 Mr Adcock was alerted to the fact that she was continuing to work for EFS; and an investigation was undertaken. The secondary employment policy itself

contains a prohibition on carrying out secondary employment whilst off sick; and the Management of Attendance Policy (section 25) contains a prohibition to the same effect (s25.1.). However s 25.2 does permit an employee to seek advance authorisation from their line manager if they wish to work for “..therapeutic reasons or to aid recovery..”. It is not in dispute that the claimant had not sought advance permission to do so from Mr Adcock.

53. The investigating Officer was GM Richard Lockyear and the claimant was interviewed on 26th November 2021. She confirmed that she had last worked for EFS about a week previously, and that the job consisted of 24 hour shifts (6 hours on/6 hours off “waking shift”) in which she would patrol buildings to instigate an evacuation in the event of fire. She confirmed that she was not aware of the requirement to obtain separate approval to work whilst off sick under the policy until she had read it that morning. He concluded that she had, albeit unknowingly, breached the policy and that it justified a formal hearing.

54. The formal hearing was held by Ms Maria Boon on 24th March 2022. She confirmed that she was not aware of the policy until 26th November 2020, but also that she had continued to work since then without seeking permission, as she had been reduced to half pay as a consequence of her sickness absence, and expected the response to be no.

55. Ms Boon concluded that whilst there was significant mitigation, that the claimant had deliberately broken the policy and that as this had occurred during the currency of a final written warning the usual outcome would be dismissal. However she imposed a further eighteen month final written warning to run consecutively to the existing final written warning. In evidence Ms Boon stated that she had considerable sympathy for the situation the claimant found herself in. But for the fact of the existing final written warning she would have been likely to have issued a first written warning, but given that a final written warning was already in place that this was the lowest sanction she could impose.

56. The claimant appealed, and her appeal is dealt with separately below.

57. In addition she did on 25th March 2022 submit an application for permission to carry on outside work. It was dealt with by Mr Preece who rejected it. The application was for permission to work for EFS and/or Amazon Logistics and the average number of hours worked were given as “72 – variable” There was no specific assertion that the performance of the work was therapeutic or to aid recovery, and no medical evidence was supplied. Mr Preece took the view that 72 hours was excessive and not supportive of her health and well-being.

Appeal

Final Appeal- Secondary Employment / Grievance Appeal – Kevin Adcock

62. Both the claimant’s appeal against the disciplinary sanction in relation to the secondary employment, and the appeal against the grievance outcome were heard

by Mr Roberts. On 1st June 2022 Mr Ashby on the claimant's behalf expressed the view that Mr Roberts could not properly hear the claimants grievance appeal "...this is due to you having already made clear your views regarding Dr Galey's Occupational Health advice and how it has been managed by the service, something which is a key piece of evidence within the grievance, therefore Kelly will not receive an impartial appeal hearing." In addition he was not convinced by the proposal to have both appeals heard by the same person. Mr Roberts rejected these contentions on the basis that it would not have been possible to find someone with the appropriate level of seniority who had not already been involved previously in some respect.

63. The first hearing took place on 5th July 2022, and the disciplinary appeal was dealt with first. Mr Ashby accepted that the claimant was in breach of the policy but the appeal related to the sanction which he asserted was too severe. In respect the sanction the claimant relied in part on the assertion, that she had consistently made throughout, that she should never have been given the first Final Written Warning as the original managerial order ignored or was issued despite the clear recommendations of the Occupational Health reports.

64. Mr Roberts, as set out in an undated letter which we are told was sent on 21st July 2022, concluded that he did not uphold the assertion that there were procedural defects; and that the conclusion of Ms Boon was a reasonable one. He accordingly dismissed the appeal and upheld the sanction.

8. These claims were reflected in the following claims:

- i) Constructive dismissal (2.1.5 / 6 / 7)
- ii) S15 EqA – Discrimination Arising from disability (5.1.3 / 4 / 5)

9. We did not uphold any of these complaints for the reasons set out in the liability decision.

10. Allegations 2 - The allegations that we did uphold are set out in detail below.

11. RTW Meeting 22nd March 2021 – The claims which we upheld related to this issue and its consequences. The facts and our conclusions as set out in the liability judgment are:

Requirement to attend RTW meeting on 22nd March 2021 (Issue 2.1.3 / 5.1.1)

32. The background to this issue arose in 2020. From May 2020 the claimant had ceased to perform operational firefighting duties and had been temporarily employed performing other duties at Service Headquarters.

33. The claimant had a meeting on 9th November with Mr Adcock at which a return to operational duties was discussed. On 20th November 2020 she emailed James Waldron and Andy Rood saying "I have made the decision to give up my role as a

firefighter . It hasn't been an easy decision , but I do feel that it is the right one.”, together with a long explanation of what lead her to that decision.

34. As an operational firefighter the claimant was employed on Grey Book terms. If she ceased to be an operational firefighter and obtained alternative employment either with GFRS or the wider Gloucestershire County Council, that would be on Green book terms which are generally less favourable, in particular in relation to pension provision, although as a matter of fact the claimant had opted out of the Grey Book pension scheme in any event.

35. On 27th November 2020 she had a further meeting with Mr Adcock, whose evidence is that he explained that if she wanted to give up her operational firefighting role she would need to resign and apply for Green Book roles.

36. At the meeting with Mr Preece on 3rd December 2020 the situation was discussed, and is summarised in his letter of 15th December 2020:

i) The claimant has been given the option to select both the station and watch of any return to operational firefighting duties;

ii) That GFRS was not able to create a permanent non-operational firefighter role at Service Headquarters;

iii) That the claimant would only be placed on re-deployment if an IQPM advised that that he claimant was unable to perform her role on medical grounds (In fact as he confirmed in evidence this could occur on the advice of OH, not only an IQMP); If during redeployment no suitable role became available employment would cease on the basis of capability;

iv) He recommended a further referral to OH.

37. On 3rd February 2021 Mr Adcock wrote to the claimant stating that he needed to plan for a cessation of her temporary OCR role and her return to full operational duties. He annexed a proposed phased return to work programme from 15th February 2021 - 24th March 2021.

38. On 8th February 2021 the claimant wrote to Mr Adcock annexing two documents which she stated explained what she had been through and the effect it had had on her. These related to “Coercive Control” and “Complex Post-Traumatic Stress Disorder (C-PTSD).

39. There was a further meeting on 9th February which Mr Adcock describes as difficult and reaching no resolution. This led him to request the further OH advice from Dr Galey which was received on 11th March 2021.

40. Following the receipt of that advice there was a email exchange which led to Mr Preece recommending a case conference stating : “ If we come to the conclusion we have exhausted all possible options open to us, this then becomes an issue of Kelly

refusing to return to work and leads us to a point of dealing with this under capability and performance.”

41. On 12th March Mr Adcock had a meeting, with amongst others a representative from HR. This resulted in him sending a letter to the claimant on 15th March 2021. The letter states “ Whilst I accept that your experiential perceptions persist, my position remains the same in that I continue to seek a full return to operational duties....”; I have prepared a five week return to work plan..”; You are required to report at 09.00 hrs on Monday 22nd March 2021 at Cheltenham West Fire Sation..”; and, “ Please note that failure to follow this reasonable management instruction will lead to disciplinary action.”. Attached to the letter was the return to work plan which provided for a full return to operational duties on 30th April 2021 after five weeks”

42. The claimant replied on 19th March 2021 stating: “..the advice you received from Occupational Health that I was not currently fit to return. To my knowledge nothing has changed, specifically Dr Galey’s advice hasn’t changed...”; “As Dr Galey stated to you, a return to operational duties is likely to cause a relapse in my condition, you may be willing to take that risk with my health but I am not. “ In addition Mr Adcock spoke to the claimant that same day and she told him that on 22nd March she would be attending to duties at Gloucester North Fire Station, and not the return to work meeting. The claimant did not attend at Cheltenham West Fire Station on Monday 22nd March 2021.

Disciplinary hearing -Sanction (Issue 2.1.4 / 5.1.2)

43. As a result of her failure to attend on 22nd March 2021, a meeting was held at which Mr Adcock , Mr Preece and Ms Barr of HR agreed that disciplinary action should be commenced against her. On 31st March 2021 she was informed that a formal investigation would be conducted in relation to “ Failure to comply with a reasonable and legitimate instruction to report for your Return to Work programme at Cheltenham West Fire Station on 22nd March 2021.”

44. During evidence Mr Adcock was at pains to assert that all he was requiring the claimant to do was attend the meeting to discuss the return to work programme, not necessarily to participate in the programme itself if she was not able to do so. The respondent accepts, however, that this is not what the letter or the return to work programme states, and the disciplinary investigation was explicitly commenced for a her failure to report for the Return to Work Programme. In any event the position is difficult to understand as, as the claimant herself had already pointed out, the respondent had received explicit advice from OH that she was not fit to return to operational duties.

45. On 12th May 2021 Neil Scott, the Investigating Officer, held a meeting with the claimant. She reiterated that as she was aware there had been no change in the Occupational Health advice and that she was not fit to return to operational duties. . She stated that she understood the instruction but had no intention of complying with it because of the advice that do so would be detrimental to her health. In addition she

challenged the underlying proposition that it was a legitimate and reasonable managerial instruction based on the OH advice and that it was putting her at risk.

46. Following Mr Scott's investigation a decision was made that the claimant should be subject to a Level 3 disciplinary hearing. The hearing was carried out by Clive Webber on 26th July 2021. During the hearing the claimant relied on the Occupational Health reports, including that of 8th July 2021 which had by this time been received. In addition Mr Webber referred the claimant's email of 20th November 2020, and she stated that nothing had changed. Mr Webber's conclusion was that the failure to follow the instruction was substantial misconduct within the GFRS disciplinary policy, and that a sanction of an eighteen month final written warning was appropriate. In addition he stated that the sanction was dependant on the claimant agreeing to attend a further return to work meeting and undergo a return to work programme.

47. On 31st July 2021 the claimant appealed against the disciplinary outcome setting out an alleged procedural breach, but also asserting that no explanation was given as to how the decision was reached, that the sanction was not appropriate, and the condition attached is unachievable and setting her up to fail.

48. The appeal was heard on 20th September 2021 by Mr Roberts. Once again the substantive issue raised by the claimant related to the OH reports, as it was put by Mr Ashby on her behalf, " This is a capability issue, as KR was incapable of returning to work." And " This is not a conduct issue, but a capability issue, whereby FF Rice is trying to protect her health".

49. In relation to this in his witness statement Mr Roberts says the following: " Ms Rice was not at his stage, saying that she could not return to the role of an operational firefighter; that was not brought up by Ms Rice until the later appeal of a subsequent disciplinary against her in 2022. She did raise that she had been having a number of difficulties relating to her mental health and personal life , but not related to the role into which GFRS was attempting to return her. What came across was that the best option was for Ms Rice to return to her substantive role and to have the support that would come with that. GFRS had created a full programme for her return to work and Ms Rice had refused to engage with it. "

50. He dismissed the appeal concluding that the sanction was appropriate.

12. Our conclusions were that we upheld the following allegations in relation to these factual allegations:

- i) Constructive Unfair Dismissal (2.1.3 / 4 / 5/ 7)
- ii) Failure to make reasonable adjustments (in the failure to consider / implement re-deployment)
- iii) Discrimination arising from disability (5.1.1 / 2 / 5)
- iv) Wrongful Dismissal (Notice Pay).

Remedy

13. We will set out first the points where the parties agree, or where the disagreement is very narrow :
- i) Wrongful Dismissal / Notice Pay - £2617.65
 - ii) Unfair Dismissal – Basic Award - £3426.00
 - iii) Unfair Dismissal – Compensatory Award – Loss of Statutory Rights - £500 (Claimant) / £350 (Respondent) – We have accepted the claimant's figure of £500.
14. The points on which they disagree, and our conclusions are set out below.
15. Injury to Feelings – The parties positions are :
- i) Claimant – Middle Band Vento (£12,100 - £36, 400) - £36,000.
 - ii) Respondent – Middle Band Vento (£9,900 - £29, 600) - £11,200
16. Both parties are agreed that the award should fall into the middle Vento band, the claimant at the top and the respondent at the bottom. We agree with the respondent that the correct figures for the band at the dates of the acts of discrimination is £9,900 - £29,600 and that the claimants assessment of £36,000 actually puts the award in the upper bracket for the relevant time. Although we are not bound by either parties assessment we agree that the award should fall within the middle band and that the financial parameters are those set out by the respondent.
17. The respondent submits, correctly in our judgement, that the tribunal has to be careful not to over-compensate the claimant by taking into consideration either the acts or the consequences of the acts for which they have not been found to have any legal liability. This is particularly significant as the claimant has not attempted in her own Schedule / witness statements to draw any distinction between the consequences of allegations which were or were not upheld.
18. The first point to make is that the allegations upheld commence in February /March 2021. It follows that any injury to feelings / psychiatric injury that had occurred prior to that date is not something for which the respondent bears any liability. All of the allegations relating to KS and the failure in her view to impose any adequate disciplinary sanction had concluded before that date; and they were not made as allegations of disability discrimination in any event. Secondly, there was a further prolongation and exacerbation of those effects by reason of the events surrounding the issue of the second job allegations, which were also not upheld.
19. We, therefore, have the task of disentangling the injury to feelings caused by the acts which we have upheld from the pre-existing causes, and the subsequent allegations and their consequences which we have not upheld. The task is not an easy one, especially given that the claimant has not in her witness statements or Schedule of Loss attempted to disentangle or draw any distinction between, or

make any apportionment between the consequences for which the respondent is liable, and those for which it is not; and has not adduced any medical evidence.

20. We, therefore, have the task of disentangling the injury to feelings caused by the acts which we have upheld from the pre-existing causes, and the subsequent and the subsequent allegations and their consequences which we have not upheld.

21. The claimant herself in her witness statement describes the effect on her as :

“The failure to listen, disregarding advice from occupational health practitioners and neglecting to put in place much needed and requested reasonable measure, further exacerbated depressive symptoms and clearly demonstrated negligent infliction of emotional distress..... The behaviours I received have resulted in my having to seek support from counsellors, therapists, and doctors and I'm undergoing hypnotherapy to cope with the emotional trauma... I have found it difficult to concentrate both in my work and personal life due to the situation causing stressful thoughts and memories and the duration of the ordeal. This has at times affected my ability to perform even the simplest tasks. I have lost my sense of self- worth and the confidence I once had in my abilities has been shattered this is not only impacted my career progression but has also strained my relationships with family and friends”.

In addition she describes:

Sleep Disruption – I have been unable to sleep properly due to anxiety and recurring thoughts about incidents .

Social Isolation - I have and do still find it difficult to engage in social situations, even with close friends, as my confidence has been deeply undermined.

Physical Health – The stress and anxiety caused the treatment have also had physical repercussions, including headaches , fatigue and head and neck pain, for which I have had to receive treatment from a chiropractor.

22. Pre-Existing Effects – As set out above the starting point is to attempt to identify the effects of the KS events, which occurred prior to any of the upheld allegations of discrimination. There is no new medical evidence but the evidence before us as summarised in the liability decision was:

15. The second report was completed by Dr Stuart Galey, dated 24th December 2020. By that point the outcome of the disciplinary investigation into KS was known and the grievance in respect of Richard Basham had been resolved. Dr Galey expresses the views of the claimant that:

” She feels that justice has not been served by the outcome and that returning to active firefighting duties because of her perceptions would simply result in further issues with her mood and anxiety.” (The claimant accepted in evidence that the “outcome” referred was that in relation to the disciplinary sanction imposed on KS)

“... she would be happy to continue with GFRS if she could have a non-operational role but this is something that you tell me is not possible. To return to active firefighting duties would likely result that given her past experiences and perceptions of relapse and therefore sickness absence.”

“Kelly appears to have recovered well off operational duties and working in HQ from what appears to have been quite a deep depressive episode. She continues to take medication which is helping but her decision not to return to active firefighting duties appears well founded and thought through from her perspective and has been a liberation in terms of her mental health...”

“if an adjustment could be made for Kelly to keep her away from active firefighting duties I would think that the long term prognosis would be good. Without this I doubt return to active firefighting duties could be undertaken without risk of relapse to her mental health. In my opinion she is fit for meetings and reliable service would depend on her non active participation in service life.”

Recommendations

“Kelly has made an active decision not to return to the frontline of firefighting. As an autonomous individual she obviously has this capacity and this appears to have been therapeutic. As mentioned above if continued services required a non-active role would likely to be protective of her future health.”

Summary

“Kelly appears to have been traumatised by her experience of the investigation and its outcome and has made a decision not to return to active firefighting duties. What may be possible after that is down to management to decide.” (Again the claimant accepted evidence that he reference to being traumatised by the investigation and its outcome is a reference to the disciplinary investigation/outcome in relation to KS)

16. On 31st December 2020 Dr Galey answered three questions posed by Mr Adcock:

- i) *Is Kelly currently unfit to return to work as a firefighter?*
- ii) *Is Kelly able to return to work as a firefighter on a phased return to work programme (likely to be four to six weeks)?*
- iii) *Is Kelly able to return to work as a firefighter immediately?*

17. Dr Galey's answers were:

- i) *Although Kelly is physically fit her perceptions are such that a return to active firefighting duties will likely result in further sickness absence and relapse in her depression. She is therefore in my opinion unfit.*

ii) No

iii) No

18. On 11th March 2021 Dr Galey answered three further questions from Mr Adcock. Both the questions and Dr Galey's response are set out below:

Q 1- in your opinion and bearing in mind your position that although physically fit her perceptions are such that a return to active duties will a likely result in further sickness absence and relapse in her depression, is there any indication of how long these perceptions are likely to persist? Will they diminish over time, if So what is the likely timeframe?

R1 - I think the issues with Kelly's perceptions remain undimmed because she believes that the evidence that she has presented has not been listened to. This is an issue of control and as such unless she feels that her concerns and worries are directly addressed and listened to the perceptions will continue. It is evident that her history is such that untying the knot caused by what she believes to be unfair treatment is not going away in the foreseeable future.

Q2 - Is there any additional support that we need to consider? You'll be aware that Kelly is receiving counselling support through the OHU team - is there anything further we can do to help?

R2 - Active listening and acknowledgement of her feelings is likely to be the best way to proceed but she feels that being forced from her current role back into service is likely to expose her to the culture which she thinks is the cause of the problem in the first place.

Q3 - Is there the potential that Kelly might not be able to return to full operational duties? If this is the case we need to start thinking about alternative options.

R3 - Unless she starts to feel a sense of control and being listened to a return to operational duties as noted before is likely to cause a relapse in her condition. In many ways it seems that she feels the culture in the fire service is such that she has no control and above all is not listened to.

23. In addition to the medical evidence; the claimant relies in her witness statement on a description given by her mother in an email of 31st October 2020:

"It has broken our hearts to see all the confidence and zest for life knocked out of her and to see the person she has now become who has to rely on antidepressants to get her through each and every day and endless counselling sessions to give her back the smallest bit of confidence that has been repeatedly been knocked out of her".

24. As set out in the medical evidence, the claimant had by November 2020 already resolved to cease to be an Operational Firefighter; and contended, in an allegation of the failure to make reasonable adjustments which we upheld, that the respondent should have considered re-deploying her from Grey Book (operational) terms to Green Book (non -operational) terms which would have included jobs within Gloucestershire CC outside the Fire Service.
25. It follows that in our judgment that prior to the acts of discrimination we upheld, that the injury to feelings and psychiatric injury had in very large part already occurred; and to the extent that they were prolonged or exacerbated, they were prolonged or exacerbated in part by events for which the respondent is liable, and in part by events for which it is not liable.
26. Conclusions - Doing the best we can, in our judgement the award should necessarily fall within the middle band as it arose from a series of discriminatory acts- firstly in the requirement to attend for operational duties; secondly in commencing and upholding disciplinary action for her failure to do so, and thirdly in the dismissal of the appeal. It clearly did have the effect of prolonging and exacerbating in part the pre-existing consequences of the KS events. However , in our judgement we have to bear in mind that the claimant's description of the effect on her of all of the events is strikingly similar to her mother's description of her before the events with which we are concerned. In our judgement it follows that the effect of the allegations we have upheld was to prolong the pre-existing consequences which might have resolved (although have to exercise some caution as there is no medical evidence in support of this contention) more rapidly had they not taken place. We bear in mind also that in the description set out above the claimant is describing the events surrounding and including the KS and the second job allegations; and not simply the claims we upheld. Whilst there is no straightforward arithmetical link between three set of allegations only one of which we have upheld, and the injury to feelings award, if we had upheld all of the claimants allegations we would have certainly made an award towards the top of the middle bracket. However given that we are attempting to reflect the potential prolongation and exacerbation of pre-existing events and their consequences, and that a part of the prolongation and exacerbation was caused by events in respect of which we have not upheld the allegations in our judgment the appropriate award for injury to feelings is at the lower end of the middle bracket in the sum of **£12,500**.
27. Loss of Earnings – There are a number of different elements of the loss of earnings claim. We have dealt with all of them as compensation for discrimination and so there is no separate award in relation to unfair dismissal.
28. Pre- Dismissal Losses - The claimant was absent due to disability related sickness from May 2021. She has produced a Schedule of earnings which combines her income from the respondent, full pay to November 2021, half pay until May 2022, nil pay from May - August 2022, and from her outside earnings giving a monthly average up to November 2021 of £4,528.14. She has then subtracted her actual earnings between November 2021 to August 2022 to give her disability related losses. We accept that this is a valid method of calculation, and it has not been

challenged, either in principle or in relation to the figures by the respondent. This gives a pre-dismissal loss of £9588.12.

29. Post – Dismissal Losses – In her Schedule of Loss the claimant claims for losses for 102 weeks following dismissal (until 31st July 2024), being £620.07 x 102 = £63,247.14. From this she has deducted her actual earnings leaving a gross loss of £43,837.17. During the course of the hearing she accepted that this was not a sustainable method of calculating her losses, as she had obtained alternative employment extinguishing any ongoing loss from 4th December 2023 with FCS Live. In our judgment the concession must be correct and it follows that the losses are limited to this period at the maximum.
30. The respondent submits that there has been a failure to mitigate which should limit the period for which any future loss is awarded should to twelve weeks (12 x £620.07 = £7,440.84). The respondent asserts the following as indicating a failure to mitigate:
- i) As set in the Schedule of Loss and accompanying mitigation documents the claimant applied for only four roles between August 2022 and December 2023, and all were specifically fire safety related roles; in addition to which she set up her own company in November 2022 to provide event fire safety at football stadiums and horse racing venues.
 - ii) She has applied for no roles outside fire safety related roles; but an explicit part of her claim which was upheld by the tribunal was that she should as a reasonable adjustment have been placed on the redeployment register which would have made available to her all available roles within Gloucestershire CC; and that part of the reason she contended that that was a reasonable adjustment was that she had not elected to join the Firefighter's pension scheme, and that in fact Green Book terms were not in her case significantly disadvantageous in comparison with Grey Book terms. It follows automatically that post dismissal she can reasonably have been expected to apply for non-fire related roles, as that is precisely her contention as to what the respondent should have made available to her.
 - iii) It follows that artificially limiting her job searches/applications contradicts her own primary case, in respect of which she succeeded, and is therefore necessarily a failure to mitigate.
31. In our judgement the respondent is fundamentally correct. The case before us, which we upheld was that it was a reasonable adjustment to make available redeployment to Green Book roles across Gloucestershire CC. It follows automatically in our judgement that it was not reasonable for the claimant to limit herself to applying for roles solely related to fire safety, as it undermines her whole claim before us. Neither party has placed any specific evidence before us as to the availability of such roles in the latter part of 2022, but doing the best we can the claimant's last day of employment was 12th August 2022. Her notice pay is five weeks, to which an additional twelve weeks makes a total of seventeen weeks in which to obtain alternative employment. Looked at another way this takes the period to shortly before Christmas 2022 and would effectively

give her just less than the rest of the year in which to find alternative employment. On the basis of the extremely limited information before us this is in our judgement a reasonable estimate, and results in a award for post dismissal loss of earnings of £7440.00.

32. Overall Awards -

- i) Notice PA / Wrongful Dismissal - **£2617.65.**
- ii) Unfair Dismissal (Basic Award) - **£3426.00**
- iii) Unfair Dismissal (Compensatory Award / Loss of Statutory Rights) - **£500**
- iv) Discrimination- (Injury to Feelings) - **£12,500;**
- v) Discrimination – (Pre dismissal loss of earnings) - **£9588.12**
- vi) Discrimination – (Post dismissal loss of earning) - **£7440.84**

33. Total - **£37062.61.**

34. Total with interest (See below) - **£42,853.73.**

35. Interest – Injury to feelings - The period of the discrimination which we upheld was March 2021 to August 2022, one year and five months / seventeen months. Taking the midpoint as approximately December 2021 (so as to neither over or undercompensate the claimant) gives a total period of three years 7.5 months over which to calculate the interest payment giving 29% ($8\% / 12 \times 43.5$) giving a total of **£3,625.**

36. Interest – Financial losses – The losses were incurred between November 2021 and December 2022 (thirteen months) and total £17 328.96. Again taking the midpoint gives 6.5 months and a further thirty one months from December 2022 to July 2025 giving a total of 37.5moths. Dividing that in half so as to compensate from the midpoint as we are required to do, gives 18.75 months; giving interest of ($8\% / 12 \times 18.75 = 12.5\%$) 12.5% .The total is $£17328.96 \times 12.5\% =$ **£2166.12.**

EMPLOYMENT JUDGE CADNEY

Dated: 19th September 2025

**Judgment entered into Register
and copies sent to the parties on
22 October 2025**