



EMPLOYMENT TRIBUNALS

Claimant: Victoria Barker
Respondent: Orange Care-Grange Lea Ltd
Heard at: Bristol Employment Tribunal (by Cloud Video Platform)
On: 26 September 2025
Before: Employment Judge Hallen

Representation

Claimant: Mr B. McElderry- Executive Director – The Chefs Union
Respondent: Mr A. Farooq- Litigation Consultant

RESERVED REMEDY JUDGMENT

The Claimant is awarded damages for wrongful dismissal in the sum of £1,470.80. In respect of her unfair dismissal, she is awarded a sum of £1,428.00 in respect of a basic award and a compensatory award of £982.00 after a 25% uplift for the Respondent's failure to follow the ACAS code of practice. The total award is £3,880.80.

REASONS

Background

1. This remedy hearing was arranged by me on 6 June 2025 following a substantive hearing on 27 to 28 May and 6 June 2025 in which the Claimant succeeded in her claim for wrongful and unfair dismissal. I found that the Claimant was unfairly dismissed for substantive reasons and did not find that she would have been dismissed if the Respondent had followed a fair procedure. Furthermore, I found that the Claimant did not contribute to her dismissal by reason of her conduct. I sent out directions to the parties in respect of preparation for today's remedy on 10 June 2025.

2. I had before me an agreed remedy bundle made up of 328 pages, a remedy witness statement from the Claimant made up of 4 pages, written submissions from the Claimant related to remedy and a written skeleton argument from the Claimant. The Respondent did not call witness evidence, and I heard from the Claimant alone who gave evidence and was cross-examined and was asked questions by me. I heard oral submissions from the parties and reserved my judgement.

Facts

3. The Claimant commenced employment with the Respondent on 25 May 2019. Her effective date of termination was 6 June 2024. She was employed as Head Chef at the Respondent's care home. The Claimant's basic hours were 24 per week. Her age at the effective date of termination was 40. Her continuous service with the Respondent was 5 years. Her gross annual salary was £14,851.20. Her gross weekly wage was £285.60. The employer contributed to a pension scheme for the Claimant. The employer's contributions to the pension scheme were 3 per cent of her weekly gross wage of £285.60 making a weekly contribution of £8.56.

4. The Claimant was entitled to five weeks statutory notice based on her five years continuous service. At the weekly wage of £285.60, this would mean that she was entitled to the sum of £1,428.00. She was dismissed without payment of this five week statutory notice payment. She would also have accrued 5 weeks pension contributions in the sum of £42.80. Had she been paid her 5 weeks statutory notice she would have been compensated for her losses from 6 June 2024 to 11 July 2024.

5. After the Claimant was dismissed, she mitigated her losses very quickly by obtaining alternative employment as a chef at the Palace Hotel in Paignton, Devon. She gave evidence that this job was a full-time position subject to a probationary period and was at a greater monthly salary than she enjoyed with the Respondent. Her monthly income with the Respondent amounted to £1,228.08 gross as stated above. With respect to her employment as a chef with the Palace hotel, for the four weeks that she served, she received a net payment of £1,701.83. She worked for three weeks in the new higher paid position but voluntarily gave up the job after three weeks and was paid a week in lieu of notice making a total payment of £1,701.83.

6. She confirmed that the decision to leave the better paid job at the Palace hotel was entirely her own as she felt that she had returned to work too quickly. She was not dismissed from her employment. She said the termination from this employment was by reason of mutual agreement.

7. The Claimant gave up the job at the Palace hotel as she could not cope with the stress of continuing with her Employment Tribunal claim that she had commenced against the Respondent. She said that this stress arose because of having to deal with ACAS, the Respondent and her representative. She also gave evidence that she suffered from alcoholism whilst working for the Respondent which led to her taking some time off work towards the end of her employment with the Respondent. Whilst she sought to persuade me that the alcoholism was solely due to the stress that she had to deal with whilst working for the Respondent, she did not produce any medical report to confirm the same. The only medical evidence produced by her referring to alcoholism was a fit note that referred to alcoholism from November 2024 some 5 months after her dismissal. I did not

accept that her alcoholism was solely caused by the Respondent. She was a single mother with childcare responsibilities working part-time with the Respondent. I find that the alcoholism was likely due to her personal circumstances as well as stress at work. This was a condition that she admitted herself predated her dismissal and did not prevent her from getting a better paying job with the Palace hotel on a permanent basis from approximately 17 July 2024.

8. I noted from her fit certificates produced for the remedy hearing that she was signed off work due to stress from when she left the job at the Palace hotel until November 2024 in which there was a first reference to alcoholism. She is still signed off work at the date of the remedy hearing due to stress and was not working. She said she was not able to work but when the Tribunal process was completed, she could get a job very quickly as there were many jobs for a chef in her locality. The Respondent produced a number of examples of suitable positions for chefs in her locality and the Claimant did not dispute that she could obtain one of these positions but felt that she could not do so because she was suffering from stress related to her Employment Tribunal claim as well as ongoing problems related to alcohol.

Law

9. Damages for wrongful dismissal are based on the notice pay that the Claimant should have received had she not been wrongfully dismissed. Pursuant to section 86 of the Employment Rights Act 1996, the notice is the greater of the statutory or contractual notice otherwise due to the Claimant had she not been wrongfully dismissed.

10. Compensation for unfair dismissal consists of a basic award and a compensatory award. The basic award is calculated in the same way as a redundancy payment and is a statutory formula based on age, length of service and gross weekly wages. (section 119 Employment Rights Act 1996).

11. The compensatory award for unfair dismissal has two aspects – immediate losses (that is, losses from the date of the dismissal to the date of the remedy hearing) and future losses (that is, losses from the date of the remedy hearing to a point in the future when the claimant can be said to have mitigated her losses in full), section 124 Employment Rights Act 1996.

12. A Claimant is under a duty to mitigate her losses and must show, on the balance of probabilities, that she has done so, irrespective of whether her efforts in securing alternative work have been successful or not. Securing a permanent position with equivalent or higher wages can mean that a Claimant has no substantial loss beyond the date the new job started and will not be in a position to recover further compensation. Accordingly, on securing permanent employment, the original employer's ongoing liability to the Claimant may cease and the causal link between the dismissal and future loss may be broken. If a Claimant secures but then loses a permanent position that would have mitigated their loss, the Tribunal is obliged to consider whether the Claimant's losses after losing that position can still be said to be "attributable" to the original dismissal (**Dench v Flynn and Partners [1998] IRLR 653**).

13. Where a Tribunal has identified a failure on the part of a Respondent to comply with the ACAS Code of Practice on disciplinary and grievance procedures, the Tribunal ought to consider whether to increase the Claimant's compensatory award by up to 25% (section 124A Employment Rights Act 1996). This is a penal sanction against the Respondent and reflects failures of good practice on their part.

Tribunals Conclusions

14. The damages for wrongful dismissal were wrongly stated by the parties in their respective schedules of loss as it was limited to one-month contractual notice. However, in this case, the Claimant had five years continuous service, so section 86 of the ERA applied. She was entitled to five-week wages at £1,428.00 plus 5 weeks pension contributions from the employer of £42.80. Therefore, the damages for wrongful dismissal are £1,470.80.

15. The basic award in this case is not controversial and is made-up of five years continuous service at 1 week for each year of service multiplied by the Claimant's gross weekly wage of £285.60. This would make the basic award in this case of £1,428.00.

16. So far as the compensatory award was concerned, I noted that the Claimant with the award of damages for wrongful dismissal will be compensated for her financial losses by the notice payment which will take her through to 11 July 2024. She obtained a position with the Palace hotel based on her own merits a week later meaning that she had one weeks loss of pay between 11 July and 17 July 2024 when she secured the alternative position.

17. The Claimant confirmed that due to her skills, experience and abilities she managed to secure this relatively quickly and that this was at a greater salary than the wages that the Respondent paid to her. Although she did not tell me what the gross monthly salary was, she confirmed that she received £1,701.83 for 4-weeks net pay. She confirmed that she worked for three weeks and decided to leave her employment voluntarily by mutual agreement. She was paid an extra week by the Palace hotel making four weeks net pay in total.

18. The Claimant's evidence to me was that she left the job because she was suffering from stress after leaving her employment with the Respondent and had moved into alternative employment too quickly. I did not accept her evidence in this regard. She confirmed that her alcoholism predated her dismissal by the Respondent and was partly due to the stress that she had because of her job. I noted that she was a single parent and had childcare responsibilities as well as holding down a part-time job. She could not produce any medical evidence to indicate how her alcoholism arose and what were the causes of it. In the absence of such evidence, I had to conclude on balance that this was due to a number of factors in her personal life as well as stress at work.

19. Despite the difficulties the Claimant faced after the termination of her employment, she managed successfully obtain an alternative better paying position with the Palace hotel. The Claimant freely admitted that she voluntarily left this permanent job that had a long-term future for a reason that I could not fully understand. Her evidence to me was that she left because she was suffering stress dealing with her Employment Tribunal complaint against the Respondent that she herself had initiated. I did not accept this

explanation as being a valid one. It seemed to me that she could continue in pursuing her complaint and seeking justice in the Employment Tribunal for her unfair dismissal whilst continuing in the better paid employment with the Palace hotel. She stated that she wished to seek justice in the Employment Tribunal for her unfair dismissal and that this is what she was doing. However, at the same time, she told me that she could not continue with the job at the Palace hotel due to stress whilst still pursuing a claim for unfair dismissal. I found this explanation contradictory and unconvincing. Her evidence to me was that she could get an alternative position quite quickly whilst suffering from stress and pursuing a claim for unfair dismissal but that she could not continue in that job because of the stress of pursuing the Tribunal claim. Furthermore, when evidence was produced by the Respondent of quite a number of current alternative positions in her locality, she indicated that she would have no difficulty in obtaining those positions but was waiting for the outcome of this Tribunal hearing albeit she was still suffering from stress.

20. I was not convinced by her explanation for giving up the permanent position at the Palace hotel. I find that on balance, her reasons for leaving the permanent position were not reasonable. It was more likely that she left the job due to her alcoholism rather than because of the Employment Tribunal claim causing her stress. This medical condition was not solely attributable to the Respondent and was a medical condition that predated her dismissal. It was also a condition that was due to several factors in her personal life not attributable to the actions of the Respondent. These related as I say above to her being a single parent with childcare responsibilities with a need to hold down a part-time position. All of these factors undoubtedly caused her stress that impacted upon her alcohol related problems.

21. In this case, I find that as the Claimant secured and then voluntarily gave up her permanent position with the Palace hotel, her ongoing financial losses after giving up this permanent alternative role were not "attributable" to her original dismissal from the Respondent for the reasons I have stated above. As a consequence of my above findings, I conclude that by obtaining suitable alternative employment or around 17 July 2024 for a month to around 18 August 2024, the chain of causation was broken and that the Respondent should not be liable for ongoing financial losses after this date. Accordingly, I award a compensatory award with respect to loss of wages limited to one week from 11 July to 17 July made up of £285.60.

22. In relation to loss of statutory rights, the Claimant will have to work for another two years to accrue unfair dismissal protection and therefore I award an amount of £500 for the loss of these rights. The total compensatory award is therefore £285.60 plus £500.00 making a total of £785.60.

23. I have previously found in the liability hearing that the Respondent failed to follow the ACAS code of practice in that it failed to properly investigate the allegations of misconduct against the Claimant and therefore failed to give the Claimant a proper opportunity to put her case following such investigation. This was a contravention of paragraph 4 of the ACAS code of practice on disciplinary procedures. The Respondent's failure was not inadvertent in that it had access to legal advice to ensure that it was legally compliant before taking discipline action against the Claimant. Furthermore, it was a reasonably sized employer employing some 40 employees many at relatively low incomes. In such circumstances, I have decided to uplift the compensatory award of £785.60 by 25% making a total of £982.00.

24. The Claimant is awarded £1,470.80 for wrongful dismissal, a basic award of £1,428.00 and a compensatory award of £982.00 for unfair dismissal. The total award is £3,880.80.

Employment Judge Hallen
Date: 1 October 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
Date: 23 October 2025

FOR THE TRIBUNAL OFFICE