EMPLOYMENT TRIBUNALS

Claimant: Mr A Albu

Respondent: London Underground Limited

Heard at: Reading (by CVP) **On:** 17 September 2025

Before: Employment Judge Baran (sitting alone)

Appearances:

Claimant: Ms A Hindley (FRU Representative)

Respondent: Ms L Whittington (Counsel)

RESERVED JUDGMENT

1. The Claimant's application for an order for reinstatement pursuant to section 114 Employment Rights Act 1996 is refused.

2. The Claimant's application for an order for re-engagement pursuant to section 115 of the Employment Rights Act 1996 is refused.

3. It is just and equitable to reduce the Claimant's compensatory award pursuant to section 123 of the Employment Rights Act 1996 by 100% to reflect the likelihood that the Claimant would have been dismissed in any event on the basis of the Polkey/no difference rule.

REASONS

A. Introduction

1. By reserved judgment with reasons sent to the parties on 24 April 2025 Mr Albu's complaint of unfair dismissal was upheld.

2. The claim was listed for a remedy hearing on 17 September 2025. Mr Albu attended to give evidence. He was again represented by Ms Hindley of the Free Representation Unit. London Underground was again represented by Ms

Whittington of Counsel. Miss Janine Lewis, Depot Maintenance Unit Area Manager, Mr Simon Reynolds, Principal Engineering Leader, Mr Ademola Owoeye, Principal Engineering Leader – Building Services and Mr Ian Rosevear, Technical Manager – High Voltage Power attended as witnesses.

B. Preliminary matters

3. At the start of the hearing, the Claimant confirmed that he sought an order for reinstatement or re-engagement as his primary remedy. Following a discussion as to the scope of the remaining issues and the evidence, I case managed to hear the witness evidence in relation to reinstatement/re-engagement and the Polkey/no difference rule in the 1 day available to the Tribunal for the hearing. I reserved judgment and have subsequently received written submissions on these issues pursuant to further case management orders. Any remaining issues of quantification of compensation following this judgment will be dealt with at a further final hearing that has been listed.

C. The Evidence and the Documentation

4. I was provided with an agreed bundle of documents for the remedy hearing running to 370 pages. This was in addition to the original 751 page bundle provided for the liability hearing. I also received witness statements on remedy from the witnesses referred to above. I read and considered the statements and the documents they referred to before the hearing started.

5. I heard oral evidence from Mr Rosevear, Mr Reynolds, Mr Owoeye, Miss Lewis and Mr Albu on oath and affirmation. All witnesses confirmed that the witness statements that they had submitted were true. I took this evidence as their evidence in chief. The witnesses were then questioned.

D. The Tribunal's Findings of Fact

6. I make the following findings of fact based on the documentary and witness evidence. I apply the civil standard of proof, namely on the balance of probabilities, considering in relation to matters in dispute what likely happened. I have confined these findings as far as possible to matters that are relevant to the legal issues that must be determined at this hearing.

7. I adopt and rely on the findings of fact I made in my previous judgment on liability in relation to the circumstances behind this dispute, leading to Mr Albu's dismissal on 17 March 2023. I note in particular the following matters:
    a. Paragraph 22 – upon initial appointment to the Plant Fitter role, Mr Albu did not hold formal qualifications minimum City & Guilds Part 1 & 2 in an electrical or mechanical discipline, as required in the relevant job description at that time;
    b. Paragraphs 32-38 – Miss Lewis' concerns around Mr Albu's qualifications for the role of Plant Fitter as discussed in April – September 2022 related to safety implications;

c. Paragraphs 39, 42-45 – Miss Lewis had reservations about the adequacy of some 2346 courses, which were shared by Mr Khan when he was asked about the 2346 Experienced Worker Route;
d. Paragraph 51 – in an email of 16 February 2023, Mr Khan expressed scepticism about whether Mr Albu could have completed a 2346 qualification in just 13 weeks, suggesting that the likely real timeframe was 12-18 months;
e. Paragraph 59-60 – Miss Lewis terminated Mr Albu's employment at a meeting on 16 March 2023 referencing safety concerns and Mr Albu's qualifications. The letter of dismissal stated explicitly that '*We cannot permit you to continue in that role due to the nature of the role being safety critical in a safety critical environment with health and safety risks for yourself, others and the business being potentially severe'*;
f. Paragraphs 67-77 – in relation to Mr Albu's appeal, Mr Elliott exchanged emails with Miss Lewis in relation to the issues arising, and took advice from Mr Khan about the adequacy of Mr Albu's paper qualifications, in error presenting Mr Khan with Mr Albu's expired May 2011 JIB Gold Card;
g. Paragraph 81 – Mr Albu was presented with the rejection of his 'new' qualifications, and the decision that they were not good enough to satisfy the job requirements for the Plant Fitter role, for the very first time in the appeal outcome letter. Whether his new 2346 and AM2E qualifications were equivalent to satisfy the City & Guilds Part 1 & 2 in an electrical or mechanical discipline requirements for the role was never discussed with him;
h. Paragraph 82 – at the time of the dismissal of his appeal, Mr Albu held qualifications equivalent to those required by London Underground for the Plant Fitter role in line with the job description as it was at that time.

8. I also refer to my observations in paragraphs 108 – 109 of the liability judgment. This Tribunal is still without evidence as to what view Mr Khan takes, or would have taken, in terms of satisfying the Table 4E and 4F requirements if the qualifications obtained by Mr Albu between dismissal and appeal, and his 'new' Gold Card, had been accurately presented to him. Mr Khan has not given any evidence at all to this hearing.

9. In addition, Mr Albu's portfolio, prepared for completion of his 2346 and AM2E qualifications, was still not included in the documents presented to this Tribunal. I was told that this was not disclosed to London Underground until 11 September 2025. This was the week prior to this hearing, and over 2 years after his appeal against dismissal was rejected. I was told that it could not be accessed by London Underground until a few days later. No documents from the portfolio were included in the agreed bundle for the hearing.

10. At this hearing, the Tribunal has however received evidence from Miss Lewis as to what she would have done had she been involved at the appeal stage based on the 2346 and AM2E qualifications. She asserted in her witness statement, and I accept, that since Mr Albu's dismissal, this 'Experienced Worker Route' to qualification has been considered by Power and Electrical ('P&E'), who own the electrical assets that a Plant Fitter would work on. In September 2024, around a year after the rejection of Mr Albu's appeal, the Plant Fitter job description was updated to accept the 2346 qualification route, but only where the candidate

could demonstrate an additional 2 years of verifiable post-qualification experience. The DMU adopted this requirement in June 2025. It now explicitly forms part of the job description for the Plant Fitter role that Mr Albu occupied prior to his dismissal.

11. In her statement, Miss Lewis speculated that if she had been involved in the appeal 'It may be that given the circumstances P&E could have brought their decision making regarding the 2346 qualification forward and the decision for acceptance of it made a lot sooner…as it was at the time of appeal, even with the 2346 and AM2E, Mr Albu would not have met the qualification requirements for the role as he lacked the two years of verifiable experience to validate the qualification'.

12. Under cross-examination, Miss Lewis maintained that the 2-year post-qualification experience requirement was 'not arbitrary at all'. She referred to the equivalent experience obtained by someone qualifying by the apprenticeship route. She considered the requirement to be a fair request as a demonstration of some form of competency.

13. Miss Lewis also asserted that Mr Albu had provided in evidence only 1 certificate in relation to the work he has performed following his AM2E qualification in the 2 years following his dismissal. This related to minor works completed on 22 September 2023. She maintained under cross-examination that there was very little evidence as to work undertaken by Mr Albu during those 2 years, save for invoices sent out by his company. There was little evidence as to the actual work he was doing to issue those invoices. Miss Lewis referenced the absence of test sheets, handover documents and electrical certificates. She remarked when questioned about reinstatement that questions remained around Mr Albu's portfolio, how his qualification was obtained and his lack of demonstrable experience.

14. In relation to work done post-dismissal, Mr Albu's evidence was that '…since starting my company on 12 May 2023 I have been working as both an Electrical Engineer and an Electrician'. He referenced jobs he had undertaken as follows:
    a. Dalkia Facilities Ltd – work between July and October 2023 as a shift electrical engineer involved in maintaining and repairing electrical installations;
    b. Cleve Hill Solar Park – work between February and June 2024 as an electrical engineer involving the installation of DC and AC low voltage cables, inverters, substations and adjacent MV transformers;
    c. Elco Tech Ltd – from June 2023, work for his own company as an electrician for domestic and public clients. Invoices have been produced for work done in June 2023, September 2023, December 2023, March 2024, June 2024, July 2025 and August 2025. This included work for Solution Rail in June 2024.

15. Mr Albu also referred to his efforts to pursue Chartered Engineer status, and a university course at City University that he was undertaking to obtain a Master of Science in Renewable Energy and Power Systems Management qualification.

16. Under cross-examination, Mr Albu accepted that he had not worked the 2 years following his dismissal fully as an electrician. He stated that he had worked as an engineer at times, covering the role of an electrician. He accepted that it was for his employer to determine the requirements for any role. He maintained that he now satisfied the 2 years post-qualification experience working as an electrician required by the new, 2025 revised Plant Fitter job description for a candidate presenting with the Experienced Worker Route Qualification.

17. In summary, Miss Lewis was of the view, in relation to the post-dismissal work demonstrated by Mr Albu in his disclosure, that 'The documentation provided by Mr Albu lacks sufficient detail and evidence to demonstrate the required level of experience and competence'. I agree with that assessment. In my judgment, Mr Albu's evidence is not comprehensive or complete. There are clearly missing invoices. There are gaps in the work history. There is no work diary or CV. There is limited documentary information to explain or to corroborate Mr Albu's explanations as to the nature of the work he was undertaking. There are few, if any, technical details and examples from certificates or other documents by reference to which Mr Albu could demonstrate work experience relevant to his suitability for any role with London Underground. It is not possible, from the documents disclosed and the evidence given, to obtain a proper sense of what Mr Albu was doing in relation to work over the entire 2 year period from his dismissal to date.

18. As a result, I find as a fact that at the time of this hearing Mr Albu has not demonstrated that he has 2 years of verifiable post-qualification work experience as an electrician following the obtaining of his paper 2346 and AM2E qualifications in May 2023.

19. Mr Albu put forward in evidence 3 alternative roles that he believed he could undertake in employment with London Underground. These were Control Systems Test Room Inspector, Project Engineer (Band 3) and Engineer (Band 3) E&M. London Underground has provided job descriptions in relation to each of these roles.

20. In the absence of specific challenge, I accept Mr Rosevear's evidence that the role of Control Systems Test Room Inspector is a highly specialised, safety critical engineering role. Errors in such a role could endanger staff safety, such as by energising a live track section that is believed to be isolated.

21. I accept Mr Rosevear's analysis of Mr Albu's qualifications and experience, and his assessment that Mr Albu would be unsuitable for such a role when assessed by reference to the job description. Mr Rosevear highlighted a lack of experience with London Underground High Voltage substations, or high voltage power systems, or control systems, including those used in London Underground substations. He also noted a limited understanding of substation automation protocols, and no relevant experience in commissioning safety critical systems. Mr Albu did not assert through questioning of Mr Rosevear that he had this specific experience. I accept Mr Rosevear's evidence that the 1-2 years required to provide training of an employee who had not come through the apprentice scheme would not be sustainable in a small team and given the safety critical nature of the role.

22. I also accept Mr Rosevear's evidence that, during Mr Albu's redeployment period, he had unsuccessfully applied for a similar Test Room Inspector role. On 6th March 2023, Mr Rosevear provided feedback following an informal discussion about the role. '…for this role, there is a lack of knowledge and experience on the High Voltage part of the role which is crucial. This includes a lack of knowledge and experience on HV substations, industrial control systems and the interface between the two'. Whilst he was challenged in cross-examination as to whether Mr Albu's experience elsewhere since dismissal from London Underground, in particular his work on the solar power project at Cleve Hill, might now satisfy such requirements, he explained that he did not consider such experience relevant to the role. Mr Rosevear maintained his position that Mr Albu was, and remained, unsuitable for recruitment into such a role.

23. In relation to the Project Engineer (Band 3) role, again in the absence of specific challenge I accept Mr Reynolds' evidence that this is a safety critical role requiring a broad range of technical, regulatory and project management competencies. I accept his analysis of how Mr Albu's qualifications and experience do not meet up to the requirements of the role set out in the job description. Mr Albu is not an Incorporated or Chartered member of the IET. He does not hold R-0046 accreditation and based on his experience he would be unlikely to pass assessment. He does not have the necessary breadth of multi-disciplinary experience. He would not be considered suitable for fail-safe authority and legal accountability. He has not followed a project engineering career pathway.

24. Finally, I accept in the absence of specific challenge Mr Owoeye's evidence as to the Engineer (Band 3) E&M role, and Mr Albu's suitability for employment in such a role. I accept Mr Owoeye's evidence that Mr Albu lacks experience in an electrical design or design assurance engineering role. He does not appear to have working knowledge of industry standards, legislation, or electrical modelling tools. His background does not provide the breadth or depth of engineering experience necessary for independent delivery of the activities required of his role. He does not possess skills required to be competent to work at Band 2 engineering level without supervision. Mr Owoeye maintained in evidence that at Band 3, London Underground would be looking for an employee to deliver work unsupervised on fairly complex activities, with a measure of experience in delivering such work. The extent of Mr Albu's experience following dismissal from London Underground, for example in relation to Cleve Hill, is not immediately obvious.

25. Overall, I find as facts that Mr Albu's present level of qualifications and the limited post-qualification experience that he can prove together mean that if he were to apply for such roles now he would be considered unsuitable for recruitment into a DMU Plant Fitter, Control Systems Test Room Inspector, Project Engineer (Band 3) or Engineer (Band 3) E&M role, by reference to the current job descriptions and in line with London Underground's current requirements for such roles. I also accept as genuine the concerns expressed by the witnesses that the requirements for these roles are influenced by their safety critical nature.

E. <u>The Law</u>

26. In relation to orders for reinstatement or re-engagement as a remedy following a finding of unfair dismissal, the relevant statutory provisions are s112 – s117 Employment Rights Act ('ERA') 1996. In particular, s116(1)-(3) provide that when considering such orders the Tribunal must in take into account:
    a. whether the claimant wishes to be reinstated/re-engaged,
    b. whether it is practicable for the employer to comply with such an order and
    c. whether the claimant caused or contributed to his dismissal.

27. When considering whether I should make either of these remedy orders, I have borne in mind the following principles from the case law:
    a. Coleman and Stephenson v Magnet Joinery Ltd [1974] IRLR 343, EAT: when deciding whether it is practicable to make a re-employment order, the Tribunal must consider whether, having regard to the employment relations realities of the situation, such an order is not merely possible, but is capable of being carried into effect with success;
    b. King v Royal Bank of Canada [2012] IRLR 280, EAT: the Tribunal should consider the issue of practicability of re-employment orders at the time of the remedies hearing;
    c. Lincolnshire County Council v Lupton [2016] IRLR 576, EAT: there is no statutory presumption of practicability that an employer is required to displace. An employer does not necessarily have a duty to create space for a dismissed employee to be re-engaged;
    d. Davies v DL Insurance Services Ltd [2020] IRLR 490, EAT: the fact that the employee might need additional training, or was not the best candidate for the roles available, was not necessarily a bar to re-engagement;
    e. Kelly v PGA European Tour [2021] IRLR 575, EAT:
        i. In considering whether it is practicable to order re-engagement in a case where the employer asserts that the claimant lacked the ability to perform the required role, the question is whether the employer genuinely believes that, if re-engaged, the employee would not be able to perform the role to the requisite standards and whether that belief is based on rational grounds;
        ii. Where a particular requirement is genuinely designated as essential to a particular job, and the claimant plainly does not meet it, it would usually be wrong for the Tribunal, based on its own view, to hold that re-engagement to the role is nevertheless practicable.

28. On the issue of the 'no difference' rule in relation to reductions to compensation, I have reminded myself of the principle in Polkey v AE Dayton Services Ltd [1987] IRLR 50, HL. An award of compensation for unfair dismissal can be reduced on a 'just and equitable' basis under s123(1) ERA 1996 to reflect the chance that an employee would have been dismissed fairly in any event in the absence of the unfairness found.

29. Once again, I have reflected on and borne in mind the principles evident from the case law where the Polkey issue has been discussed. I have considered in particular the following cases and propositions:
    a. Britool Ltd v Roberts [1993] IRLR 481, EAT: the burden of proving that an employee would have been dismissed in any event was on the employer. While it is for the employee to show what loss was suffered as a result of

the dismissal, the burden is not great as there is an assumed loss following an unfair dismissal. So long as an employee can put forward an arguable case that he or she would have been retained were it not for the unfair procedure, the evidential burden shifts to the employer to show that the dismissal might have occurred even if a correct procedure had been followed;

b. King v Eaton Ltd (No2) [1998] IRLR 686, Ct of Sess (Inner House): the determination of this issue is one of impression and judgment, so that a tribunal will have to decide whether the unfair departure from what should have happened was of a kind which makes it possible to say, with more or less confidence, that a procedural failure makes no difference, or whether the failure was such that the tribunal cannot sensibly reconstruct the world as it might have been;
c. O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615, CA: if the facts are such that a tribunal, whilst finding that an employee has been dismissed unfairly, whether substantively or procedurally, concludes that, but for the dismissal, the employee would be bound soon thereafter to be dismissed (fairly) by reason of some course of conduct or characteristic attitude which the employer reasonably regards as unacceptable but which the employee cannot or will not moderate, then it is just and equitable that compensation for the unfair dismissal should be awarded on that basis;
d. Software 2000 Ltd v Andrews [2007] IRLR 568, EAT:
    i. In assessing compensation the task of the tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal;
    ii. If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively would not have continued in employment indefinitely, it is for him to adduce any relevant evidence on which he wishes to rely. However, the tribunal must have regard to all the evidence when making that assessment, including any evidence from the employee himself. (He might, for example, have given evidence that he had intended to retire in the near future);
    iii. However, there will be circumstances where the nature of the evidence which the employer wishes to adduce, or on which he seeks to rely, is so unreliable that the tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made;
    iv. Whether that is the position is a matter of impression and judgment for the tribunal. But in reaching that decision the tribunal must direct itself properly. It must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

v. Having considered the evidence, the tribunal may determine:
   1. that if fair procedures had been complied with, the employer has satisfied it (the onus being firmly on the employer) that on the balance of probabilities the dismissal would have occurred when it did in any event;
   2. that there was a chance of dismissal but less than 50%, in which case compensation should be reduced accordingly;
   3. that employment would have continued but only for a limited fixed period. The evidence demonstrating that may be wholly unrelated to the circumstances relating to the dismissal itself;
   4. that employment would have continued indefinitely. However, this last finding should be reached only where the evidence that it might have been terminated earlier is so scant that it can effectively be ignored.

e. Hill v Governing Body of Great Tey Primary School [2013] ICR 691, EAT: the question of a Polkey reduction requires a tribunal to consider both whether the employer could have dismissed fairly and whether it would have done so. The enquiry is directed at what the particular employer before the tribunal would have done, not what a hypothetical fair employer would have done.

F. The Issues

30. In line with my case management rulings at the commencement of the remedy hearing, the issues that I must determine in this judgment are as follows:

    a. Should the Tribunal order reinstatement?

    b. Should the Tribunal order re-engagement? If so, what should the terms of the re-engagement order be?

    c. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason – and if so, should his compensation be reduced?

31. I remind myself that in my previous liability judgment I did not find that any culpable or blameworthy conduct by Mr Albu caused or contributed to his dismissal for absence of formal qualifications.

G. The Tribunal's Conclusions on the Issues

a. Reinstatement

32. For Mr Albu it is submitted that he wishes to be reinstated. He would step down from the running of his own company if he was reinstated. There is no evidence of a breakdown in trust and confidence between the parties. He could work elsewhere in the Respondent's DMU department, under a different Line Manager and Area Manager. Mr Albu submits that he satisfied the formal qualification requirements at the time of the dismissal of his appeal. He submits that he satisfies the revised requirements of the Plant Fitter role, as he has '…been using

his electrician qualification to work in the electrotechnical industry since June 2023'. The role is substantively the same as the one he completed competently prior to his dismissal, where he was able to complete his duties. Even if it is found that he lacks a required qualification, he has proven able to suitably perform his role, so should be reinstated even if some retraining is found to be necessary: Davies v DL Insurance (above).

33. On behalf of London Underground, it is submitted that Mr Albu does not meet the essential requirements for reinstatement to the role of Plant Fitter under the job description of June 2025. There is an essential requirement for the role of 2 years post-qualification experience after completion of training. This is based on an assessment of the need for a level of expertise and experience due to the safety critical aspects of the role. An updated job description was introduced following Mr Albu's dismissal once Miss Lewis became aware of the Experienced Worker Route to qualification. Mr Albu does not have the requisite experience and cannot demonstrate it. London Underground has remaining genuine concerns regarding the sufficiency of Mr Albu's qualifications for the role of Plant Fitter. If Mr Albu was reinstated there would be significant difficulties in ensuring supervision.

34. Having considered these submissions, and by applying the law to the facts as I have found them above, I refuse Mr Albu's application for an order for reinstatement. Whilst Mr Albu did not contribute to his dismissal, and wishes to be reinstated, in my judgment it is not practicable for London Underground to comply with such an order, for the following reasons.

35. I must make my assessment of practicability at the time of the hearing. Currently, the essential requirements for the Plant Fitter role require 2 years of relevant experience working as an electrician after completion of training. This is a rational requirement that has been arrived at by London Underground following consideration of the safety critical aspects of the Plant Fitter role and the expertise required to perform it.

36. I accept that London Underground, and Miss Lewis in particular, has genuine concerns about the adequacy of Mr Albu's qualifications and experience for the Plant Fitter role, notwithstanding the qualifications acquired following his dismissal but before his appeal was concluded. I accept that Miss Lewis has genuine concerns about the Claimant's ability to fulfil the role of Plant Fitter. I find that Mr Albu cannot demonstrate 2 years of verifiable post-qualification work experience as an electrician following the obtaining of his paper 2346 and AM2E qualifications in May 2023.

37. On this basis Mr Albu does not meet a genuine safety critical requirement for the Plant Fitter role. I do not therefore consider that a reinstatement order is capable of being carried into effect with success. It would be wrong in such circumstances for this Tribunal to hold that reinstatement is practicable, and impose upon London Underground an employee that it has genuinely concluded cannot satisfactorily demonstrate a requirement for experience that has been deemed necessary in the interests of safety. London Underground should not, in my judgment, be required by this Tribunal to put up with a potentially extremely unsafe system of work and state of affairs by being compelled to reinstate Mr

Albu to a role that, based on genuine and properly adopted role requirements, he cannot prove that he is suitable for.

b. Re-engagement

38. For Mr Albu, similar submissions are made in respect of re-engagement as are made for reinstatement. It is said that Mr Albu has the qualifications and suitability for the 3 roles he has identified in evidence as suitable alternatives, as required by the job descriptions. A need for retraining is no bar to an order.

39. London Underground submits that all 3 managers have considered his qualifications and consider that Mr Albu did not have the necessary qualifications or experience for the 3 roles identified.

40. I refuse Mr Albu's application for a re-engagement order. Based on the submissions, the evidence and the law, I conclude that it is not practicable for London Underground to comply with such an order. My reasons are similar to those in respect of the reinstatement order above. I accept the evidence of Mr Reynolds, Mr Owoeye and Mr Rosevear that Mr Albu lacks the necessary experience or qualifications for the roles identified as set out in the respective job descriptions. I accept their evidence on the essential requirements and necessary qualifications for the roles as being genuine and rational. I approach my assessment not by deciding whether Mr Albu could potentially fulfil such roles, but by deciding whether it is practicable to require London Underground to re-engage him in such roles where he does not fulfil the requirements for an applicant for such a role. In my judgment, it is not, given the safety critical nature of the roles and regardless of any training that might be proposed. The time it would take for such training or experience to be acquired makes it not practicable to require London Underground to re-engage Mr Albu subject to retraining.

41. Further, in my judgment it would not be practicable for this Tribunal to 'construct' a role for Mr Albu to perform without evidence that such a role exists, and impose such a situation upon London Underground where the evidence is that Mr Albu genuinely does not meet the requirements for the proposed roles he has identified.

c. Is there a chance that Mr Albu would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason – and if so, should his compensation be reduced?

42. On behalf of Mr Albu, it is submitted that no Polkey deduction should be applied, because if a fair process had been followed his appeal against dismissal would not have been rejected, and Mr Albu would not have been dismissed for any other reason at some point thereafter. On the other hand, London Underground contends for a 100% Polkey reduction to compensation, on the basis that if it had been found that Mr Albu had the requisite qualifications at the time of the appeal, the dismissal would have been upheld in any event. Steps would have been taken at that time to introduce the 2 years verifiable post-qualification experience

requirement for Plant Fitters that was ultimately introduced in September 2024 and adopted by the DMU in June 2025.

43. On this issue, the starting point is that Mr Albu's dismissal was unfair, pursuant to my previous liability decision, because London Underground based the dismissal of his appeal against dismissal on his lack of capability/qualifications. This was by reference explicitly to his paper qualifications. No reasonable employer could treat that as a sufficient reason to dismiss when, at the time of the appeal, his paper qualifications were on the face of it sufficient, and without giving him the opportunity to respond to Mr Khan's advice that his newly obtained qualifications by the time of the appeal were still inadequate.

44. In my judgment, therefore, in approaching the 'no difference' exercise I must consider what is likely to have happened had Mr Khan been properly appraised of Mr Albu's paper qualifications, in circumstances where Mr Albu was able to challenge and point out on appeal to Mr Elliott that Mr Khan's previous advice as to the sufficiency of the paper qualifications was wrong.

45. Absent any evidence to the contrary from Mr Khan, I conclude that if he had been presented by Mr Elliott with the new Gold Card and Mr Albu's AM2E (as he ought have been if Mr Albu had been given the opportunity to challenge Mr Khan's advice), Mr Khan is likely to have revisited his position. Based on my reading of the Tables 4E and 4F, and in line with my previous findings, Mr Khan is likely to have advised Mr Elliott that Mr Albu's paper qualifications were in fact equivalent to the City & Guilds Part 1 & 2 required in the version of the Plant Fitter job description applicable at that time. In my judgment it is likely that Mr Khan would have advised that Mr Albu's new qualifications were on paper sufficient for the role, as they met the Plant Fitter job description requirements at that time.

46. Faced with such advice, it is in my judgment unlikely that Mr Elliott would have dismissed Mr Albu's appeal for the reasons given at the time in his outcome letter. Because Mr Albu met the Plant Fitter job description requirements in terms of paper qualifications, the reasons for dismissal upheld by Mr Elliottt in the appeal letter would no longer be made out.

47. It would however in my judgment be overly simplistic to go on to find that Mr Albu's appeal would have been successful, and that he would have remained in employment indefinitely thereafter. If I were to do this, I would fail to engage with Miss Lewis' clear evidence on Mr Albu's unsuitability to continue in the Plant Fitter role, for reasons of his experience and qualifications to carry out such a role quite apart from his paper qualifications. This is not a case where I consider that seeking to reconstruct what might have been by considering this evidence is so riddled with uncertainty that no sensible prediction can properly be made. It is a case where the evidence, in particular in relation to Miss Lewis' views about whether Mr Albu was suitably qualified and experienced to remain in employment, is not so scant that it can be ignored. On the contrary, in my judgment Miss Lewis' evidence is of substance. I am bound to account for it when assessing what is likely to have happened in the absence of any unfairness in Mr Albu's appeal against his dismissal.

48. Although Mr Albu had, unbeknown to Miss Lewis, achieved the paper qualifications by the time of the appeal, I accept Miss Lewis' evidence as to her concerns about the adequacy and validity of the Experienced Worker Route qualification generally. She expressed those concerns in clear terms prior to the dismissal, to Mr Albu in meetings and in email exchanges with Mr Khan. In my judgment, it is unlikely that she would simply have set aside these concerns, even if Mr Khan had been asked to consider the new Gold Card and Mr Albu's 2346 and AM2E paperwork and had reported that they were equivalent to City & Guilds Part 1 & 2 on paper.

49. In my judgment, it is likely that Miss Lewis, as Mr Albu's line manager, would inevitably have had remaining concerns about Mr Albu's suitability for the Plant Fitter role, based on his lack of experience. Even if he was technically and on paper now 'qualified' by reference to the 2346 and the AM2E, Mr Albu would still not have had the level of experience that Miss Lewis would expect of a Plant Fitter to be able to fulfil a safety critical role independently and without supervision. Miss Lewis is likely to have had remaining concerns about the adequacy of the Experienced Worker Route qualification obtained by Mr Albu. These are concerns that she expressed more than once in her evidence, and which I accept as genuine. She is also unlikely to have had access to Mr Albu's portfolio, given that he did not provide access to it until September 2025.

50. The fact that the 2 year post-qualification experience requirement was implemented later for Experienced Worker Route qualified applicants for the Plant Fitter role, albeit with the benefit of hindsight, supports a finding that there were genuine concerns about the adequacy of the 2346 and AM2E route when judged against what qualities London Underground required of Plant Fitters. Such requirements are likely to have been considered absent the unfairness in Mr Albu's appeal. I cannot simply put to one side the clear evidence of Miss Lewis which I have accepted above – the 2 year post-qualification experience requirement is genuine and important in this safety critical role. It was imposed once the nature of the Experienced Worker Route qualification had been reflected upon.

51. But for the unfairness I have identified it is likely in my judgment that Mr Elliott would have referred Mr Khan's further advice back to Miss Lewis for comments. This would mirror his approach after receiving Mr Albu's comments in the appeal meeting – to exchange emails with Miss Lewis on the issues arising. In my judgment, in circumstance where Mr Khan was advising that, on paper, Mr Albu's 2346 and AM2E qualifications were now equivalent to the City & Guilds Part 1 & 2, it is also likely that Miss Lewis would have taken further steps, sooner, to consider whether Mr Albu's paper qualifications were sufficient for London Underground's purposes in the Plant Fitter role without additional appropriate and demonstrable experience in any event. I accept Miss Lewis' proposition that decision making around the adequacy of the Experienced Worker Route qualification, and the need to demonstrate post-qualification experience, is likely to have been brought forward, once Mr Albu's appeal and Mr Khan's advice had alerted London Underground to the nature of the qualification and how it fitted in to the Plant Fitter job description as it was at that time framed.

52. It is likely in my judgment that Miss Lewis would have taken earlier steps to move this process along if the circumstances were that she had the potential for Mr Albu to be employed under her management as a Plant Fitter and she had genuine safety concerns about his ability to undertake that role without supervision. Again, this conclusion is based on the evidence as to her doubts around the adequacy of Mr Albu's newly acquired paper qualifications and his apparent lack of demonstrable experience.

53. In my judgment, there is a likelihood that but for the unfairness Mr Albu would at some future point have been fairly dismissed by London Underground on ground of capability or qualifications in any event. This would not be by reference to his paper qualifications, but by reference to the (lack of) experience he could demonstrate as standing behind the acquisition of those qualifications. London Underground, and Miss Lewis in particular, is unlikely to have simply permitted Mr Albu to continue to work as a Plant Fitter where concerns which I accept were genuine remained about the 2346 and the AM2E, and where Mr Albu had failed to supply his portfolio or evidence of the experience he relied on the obtain the qualifications.

54. I therefore find that a Polkey deduction should be applied to compensation.

55. In the absence of the unfairness I have identified in the dismissal, and allowing time for:
    a. Mr Khan's advice to be discussed with Mr Albu;
    b. Mr Khan to revisit his advice considering Mr Albu's proper paper qualifications;
    c. Mr Elliott to reconsider the appeal outcome based upon it with the further input of Miss Lewis;
    d. Miss Lewis to take steps with P&E to address the position when it was found that Mr Albu had the paper qualifications to satisfy the Plant Fitter job description but not the experience considered necessary to safely perform the role;
    e. a further meeting with Mr Albu to discuss and to take his views on Miss Lewis' position;
    f. Mr Elliott to dismiss the appeal;

    in my judgment Mr Albu's dismissal is likely to have been confirmed fairly, with a fair dismissal of his appeal against the previous decision to dismiss him, within a period of around 2-3 months of the actual date of dismissal of his appeal. I base this assessment on the period of time it in fact took to process Mr Albu's original dismissal and appeal.

56. It is therefore in my judgment appropriate to make a Polkey finding that but for the unfairness I have identified in Mr Albu's dismissal he is likely to have been dismissed fairly in any event by London Underground with dismissal of his appeal fairly concluded by 9 November 2023. This would not, however, in my judgment affect Mr Albu's effective date of termination. On balance of probabilities, this would still be 17 March 2023, being the original termination date on which Mr Albu received a payment in lieu of notice.

57. The implication of my findings, therefore, is that a 100% Polkey deduction must apply in this claim. Mr Albu's dismissal with effect from 17 March 2023 is likely to have been confirmed in any event following a fair appeal procedure, albeit 3 months later than it in fact was.

Conclusions

58. In summary, I decline to make a reinstatement or re-engagement order. Based on the Polkey/no difference rule, I find it just and equitable to reduce the compensatory award by 100%, as in my judgment the unfairness that I have previously found in my liability judgment merely delayed confirmation of the original dismissal decision on appeal by a period of 3 months.

59. I would hope that the parties can now go some way to resolving the remaining issues between them in relation to remedy. A hearing will however remain listed to decide such matters and finalise the claim should they remain outstanding.

Approved by:

Employment Judge Baran

30 October 2025

Sent to the parties on:
30 October 2025
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For the Tribunal Office:

……..……..