EMPLOYMENT TRIBUNALS

Claimant: Mrs N Osborn
Respondent: Mothercare Global Brand Ltd

Heard at: Watford Employment Tribunal
On: 7 March 2025 and (deliberation) 30 September 2025
Before: Employment Judge Alliott
Ms M Harris
Ms P Barratt

Representation
Claimant: Ms Amanda Marquarite-Robinson (counsel)
Respondent: Mr Jonathan Cook (counsel)

RESERVED JUDGMENT

The judgment of the tribunal is that:

1. The respondent is ordered to pay the claimant the total sum of £67,801.88.

REASONS

The issue

1. This is a remedy hearing, judgment on liability having been sent to the parties on 27 November 2024.

The law

2. Mr Cook helpfully provided us with a skeleton argument which included submissions on the law. We record that we have read and taken into account those submissions. The submissions include the following:-

Mitigation of loss

3. Section 123(4) Employment Rights Act 1996 provides as follows:-

> "In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages

> recoverable under the common law of England and Wales…

4. In Archbold Freightage v Wilson [1974] IRLR 10, the EAT said:-

> "The dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her previous employer."

5. In Gardiner-Hill v Rowland Berger Technics Ltd [1082] IRLR 498, the EAT provided guidance to assist tribunals when considering mitigation. The ET should consider the following issues:

   5.1 What steps were reasonable for the claimant to have to take in order to mitigate his loss?

   5.2 Did the claimant take reasonable steps to mitigate his/her loss?

   5.3 To what extent, if any, would the claimant have actually mitigated his loss if he/she had taken those steps?

6. The burden is on the respondent to prove failure to mitigate. In this regard, it is not sufficient to show that there were other reasonable steps that the claimant could have taken but did not take. The respondent must show that the claimant acted unreasonably by failing to take those steps (Wilding v British Telecommunications Plc [2002] ICR 1079 CA).

7. In Savage v Saxena [1998] ICR 357, the EAT suggested the following approach:

   7.1 Firstly, identify what steps should have been taken by the claimant to mitigate her loss.

   7.2 Secondly, arrive at a date upon which taking such steps would have produced an alternative outcome.

   7.3 Thirdly, reduce the compensation by the amount of income that would have been earned.

Injury to feelings

8. In Prison Service and others v Johnson [1997] ICR 275, the EAT summarised the general principles that underline awards for injury to feelings:

   - Awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party.

   - An award should not be inflated by feelings of indignation at the guilty parties conduct.

   - Awards should not be so low as to diminish respect for the policy of the discrimination legislation. On the other hand, awards should not be so excessive that they might be regarded as untaxed riches.

- Awards should be broadly similar to the range of awards in personal injury cases.

- Tribunals should bear in mind the value in everyday life of the sum they are contemplating, and

- Tribunals should bear in mind the need for public respect for the level of the awards made.

9. The tribunal's focus should be on the effect, not gravity, of the discriminatory act(s).

Aggravated damages

10. In Commissioner of Police of the Metropolis v Shaw [2012] ICR 464, the EAT identified three types of cases where an aggravated damages award may be appropriate:

    - Discrimination done in a high-handed, malicious, insulting, or oppressive manner.

    - Where the motive for the discrimination was evidently based upon prejudice or animosity, or was spiteful, vindictive, or intended to wound.

    - Where subsequent conduct adds to the injury such as where the employer conducts subsequent ET proceedings in an unnecessarily offensive manner.

11. In Zaiwalla and Co and another v Walia [2002] IRLR 697, the EAT confirmed that aggravated damages may be awarded based on the subsequent conduct of the employer in legal proceedings.

12. As per the IDS Handbook at 37.121:-

> "The EAT stressed in Zaiwalla that its decision should not be taken as a "green light" for claimants to claim aggravated damages in respect of the alleged misconduct of proceedings as a matter of course. This was an exceptional case, and cases where an award of aggravated damages will be made in respect of such behaviour would be few and far between."

The evidence

13. In addition to the material placed before us at the liability hearing we had a remedy bundle of 153 pages. This included a witness statement from the claimant from whom we heard evidence.

14. Mr Cook provided us with a written skeleton argument for which we are grateful.

Delay

15. We apologise for the delay in reaching our conclusions and sending out this judgment. This was caused by difficulties in reconvening to deliberate due to an unforeseen funeral that a non-legal member had to attend that clashed with the original deliberation date in June 2025.

The facts

16. The claimant was dismissed with immediate effect on 3 December 2021.

17. The claimant was paid her statutory redundancy payment. Consequently, we award no basic award.

18. The claimant was paid 12 weeks PILON and PILOB which covered her salary and benefits until 25 February 2022. Accordingly, the claimant has suffered no loss for this period.

19. The claimant has advanced her loss of earnings claim on two alternative basis. Her primary submission is that she would have been appointed to the position of Head of Technical at a gross annual basic of £90,000. Alternatively, she would have continued to work in her existing role as Technical & CSR Manager on a gross annual basic of £64,387.96.

20. In paragraph 107 of our liability judgment we found that the position of Head of Technical was created by and for Chris Beeley and that it was given a higher salary in order to make it attractive to Chris Beeley.

21. We find that on the balance of probabilities the claimant would have continued in her substantive role of Technical and CSR Manager Grade M2 and would not have been appointed to the position of Head of Technical, which would not have existed at that point.

22. Accordingly, in our judgment the claimant stands to be compensated based on her existing salary.

23. The claimant started applying for alternative roles in September 2021 prior to her dismissal. Between 8 September 2021 and the end of January 2022 the claimant made six applications for alternative employment. Her CV clearly identifies her as well qualified as she was offered five interviews, one a second interview.

24. On 23 February 2022, the claimant was offered employment with Parkdean Resorts on a salary of £45,000 based on a four-day week. She began working for Parkdean Resorts on 19 April 2022.

25. The respondent accepts that it was reasonable for the claimant to accept the Parkdean role notwithstanding that it was at a materially lower salary than her role at the respondent and was a four-day week appointment.

26. It was clear from the claimant's evidence to us that the Parkdean role suited her particular circumstances with a young family. It was clear to us that working four

days a week with flexibility to work from home and in close proximity to her children's school was very desirable as far as the claimant was concerned.

27. Since obtaining the Parkdean role the claimant has not applied for alternative, better paying work in order to fully mitigate her losses. We find that that would have been a reasonable step to take to mitigate her loss.

28. The claimant gave a number of reasons why she had not looked for alternative roles. She told us that her health and confidence had been impacted by her treatment by the respondent. We have taken into account the occupational health report obtained in November 2021 (which will be referred to in the injury to feelings section) but the claimant accepted that by March 2022 onwards there was no health reason why she could not apply for alternative roles.

29. The claimant disputed that she had not been looking for a job and stated that she had just not found anything suitable. When it was suggested to the claimant that there was a high demand for her skills and expertise, she responded that there had been a momentary swamp of technical roles when she was applying in late 2021/early 2022 and that since a recession many roles had ceased to exist. She told us that her husband, who has the same role as her, was made redundant last year and it took him six months to find alternative employment.

30. The respondent has produced a number of documents illustrating roles that are presently available. Whilst the claimant rejected some as unsuitable, it does indicate to us that there are jobs available.

31. We do not accept that the job market was as bad as the claimant told us. We find that the claimant's current job with Parkdean entirely suits the claimant's work/life balance and that there has been no impetus for her to apply for and obtain work at a comparable salary to when she was working for the respondent. The respondent has suggested as an alternative that had the claimant remained in the respondent's employment she would probably have applied for flexible working with a concomitant reduction in hours and salary for family reasons.

32. We find that it would have been reasonable for the claimant to take time whilst working for Parkdean to find, apply for and secure employment at a comparable rate to that which she had with the respondent. We find that she probably would obtain a comparable salary with her skillset. We find that the claimant could and should have obtained alternative employment a year after she began working for Parkdean. Thereafter, we find that her conduct in not securing comparable employment was an unreasonable failure to mitigate her loss.

33. The respondent has accepted and adopted the claimant's figures for calculating financial loss. These are as follows:-

    33.1 The claimant's net weekly pay figure at the respondent was £923.54.

    33.2 The claimant's weekly pension contribution at the respondent was £98.79.

33.3 The claimant's net weekly pay figure at Parkdean was £715.35. This gives a net weekly loss of £208.19.

33.4 The claimant's pension contribution at Parkdean is £25.33. The net weekly loss is therefore £73.46.

34. Accordingly, we award compensation for loss of earnings and pension as follows:-

34.1 From 25 February-19 April 2022: as per the respondent's calculation £6,834.20 net salary plus pension contribution of £731.05.

34.2 We award diminution in earning capacity from 20 April 2022-19 April 2023: 52 x £281.65 = £14,645.80.

Deductions

35. The recoupment regulations do not apply to compensation for discrimination and, accordingly, the claimant must give credit for Job Seekers Allowance of £1,237.89. Although the claimant's schedule of loss gives credit for mortgage insurance received, we make no allowance for that as, under ordinary tortious principles, the tortfeasor does not get the benefit of the claimant's prudence and foresight in taking out an insurance policy.

36. The total award for loss of earnings is therefore £22,211.05 – £1,237.89, total £20,973.16.

37. We award interest at 8% from 19 September 2022 (the mid-point of loss) to 30 September 2025.

38. Three years eleven days at £1,677.85 per annum = £5,084.11.

39. In addition, we allow £500 for loss of statutory rights.

Injury to feelings

40. In our judgment, the fact that the discrimination involves the loss of the claimant's employment and career takes this case out of the lower Vento band. Further, in our judgment, given that the duration of the discrimination was relatively short at under six months so this case does not lie in the upper Vento band.

41. The claimant has sought to advance a case that the treatment of her exacerbated her pre-existing PTSD and fibromyalgia. However, the claimant has not produced any medical evidence to that effect. Nevertheless, we have taken into account the occupational health assessment report dated 9 November 2021. In the opinion and recommendation sections the following is set out:-

"Is there a health condition present, and if so, is it fluctuating, permanent or resolvable?

> The GAD-7 and PHQ-9 questionnaires indicate that Nikki is currently experiencing severe symptoms of anxiety and depression. These conditions are both treatable and are, in Nikki's case, not permanent. With the appropriate treatment i.e. medication and talking therapies the prognosis for full recovery is very good. I would recommend that Nikki commence Talking Therapies, for example, CBT as soon as possible as well as seeking more EMDR.
>
> …
>
> Nikki's fibromyalgia symptoms are currently fluctuating and are likely to continue until the issues at work come to an end.
>
> Her autoimmune inter-connective tissue disorder appears stable but as the symptoms of this are very similar to those of fibromyalgia it is difficult to differentiate between the two."

And

> "2. Is there evidence of any work-related element to the health problem, and if so, can you identify the relevant factors?
>
> It appears likely that the current stress of undergoing both a grievance and consultation for redundancy are very stressful events in life and therefore it is likely that her current health conditions are being triggered by this stress."

42. In her witness statement the claimant sets out the effect on her in terms of loss of confidence both leading up to and immediately after her dismissal. She references an increase in medication in December 2021 having a positive effect on her anxiety and her PTSD which started to settle down in February/March 2022.

43. In our judgment, an appropriate figure for injury to feelings would be towards the middle of the mid-Vento band and we assess that an appropriate and proportionate sum would be £20,000.

44. We award interest on the £20,000 from 3 December 2021 at 8%. Three years, 302 days = £6,123.86.

Aggravated damages

45. The claimant seeks an award of aggravated damages on the basis that the way the respondent conducted itself, in particular in cross examination, when it was put to the claimant that she had lied, was unnecessarily offensive. We accept that being cross-examined robustly is not a pleasant experience but on the other hand it is only to be expected in the adversarial system. In our judgment, the conduct of the hearing before us did not cross the line into an exceptional case that would warrant aggravated damages. Accordingly, we make no award under this head.

46. Consequently, we find that the claimant should recover the following sums:-

Compensation for loss of earnings: £20,973.16

Interest thereon:	£5,084.11
Loss of statutory rights:	£500.
Injury to feelings:	£20,000.
Interest thereon:	£6,123.86:
TOTAL:	£52,681.13

Grossing up

47. Given that we have found that the discrimination consisted of a sham redundancy process, so we have treated the injury to feelings as being related to the termination of employment. As such, the injury to feelings damages will be taxable.

48. The taxable element of the total award made will fall into the higher rate of taxation, namely 40%.

49. The first £30,000 will be tax free. Consequently, £22,681.13 needs to be grossed up.

    £22,681.13 ÷ .6 = £37,801.88.

    £30,000 + £37,801.99 = £67,801.88.

Approved by:

Employment Judge Alliott

31 October 2025

JUDGMENT SENT TO THE PARTIES ON

5 November 2025.....

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FOR THE TRIBUNAL OFFICE