



EMPLOYMENT TRIBUNALS

Claimant: Mr A Tomescu
Respondent: Metroline Travel Ltd

Heard at: Watford Employment Tribunal by CVP
On: 2 December 2025
Before: Employment Judge Andrew Clarke KC

Representation

Claimant: Mr Mike Arnold (Director, Employment Law 4U Ltd)
Respondent: Mr Sam Proffitt, counsel

JUDGMENT – REMEDY

1. The claimant is entitled to a Basic Award of £2,284.
2. The claimant is entitled to a Compensatory Award with the following elements:
 - 2.1 £3,241.84 (net) in respect of losses to 29 March 2023.
 - 2.2 £221.94 in respect of lost employer's pension contributions to that date.
 - 2.3 £500 for loss of statutory rights.

REASONS

1. The claimant was employed by the respondent as a Bus Driver. He was dismissed in October 2022 at a time when he was unfit to work due to a problem with his eyesight. I heard his claim for unfair dismissal in 2024 and found in his favour. In short, the respondent had acted unfairly towards him by not properly investigating his eye condition and its prognosis. Had they done so, they would have found his condition was likely to, and did, quickly resolve such that he was fit to drive buses again by early 2023.
2. The case has come back before me for the determination of remedy. In that regard, I have heard from the claimant himself and from Mr Wright, a manager, on behalf of the respondent.
3. The events at and after the claimant's dismissal can be summarised quite shortly.

I begin with a consideration of his earnings whilst employed and driving buses. He had a basic annual remuneration of about £33,000, but this was supplemented by considerable amounts of overtime. That led to an annual gross remuneration of between about £44,000 and £49,000 based on the documents that I have seen. The claimant's schedule of loss proceeded on the basis of his basic wage, but I consider that to be an error. I have taken the lower of the annual figures before me to reflect both his basic wage and his likely overtime. I consider that to provide an appropriate but conservative basis for the calculation of losses. That figure is £44,362.63 giving a gross daily sum of £121.54.

4. At the time of his dismissal the claimant had exhausted his right to sick pay and was receiving no earnings. Although signed off from work until 2 December 2022 he did work as an electrician from shortly after his dismissal until early January 2023 earning £5,678 gross.
5. The claimant then worked until late March 2023 for another London bus company. He was not directly employed, but engaged via an agency. In those 12 weeks he earned £361 per week gross giving a total of £4,332. The difference between his earnings to the end of March 2023 and what he would have earned with the respondent is £4,210.18 gross. Using HMRC's appropriate notional tax rate of 23% (as applicable to this case), that gives a net figure of £3,241.84.
6. Had the claimant remained employed by the respondent, he would have benefitted from employer's pension payments of £2.81 per day. Certainly, from the time he began work for the agency he would have been likely to have been driving for the respondent and that is a period of some 79 days to the end of March 2023, giving a total of £221.94. I heard evidence as to the possibility of his doing some light duties for the respondent prior to that period had he been still employed but I consider the evidence on this to be inconclusive and, in any event, it only covers the short period of December 2022.
7. From January 2023 until 29 March 2023, the claimant sought to be re-employed by the respondent. It has a scheme for re-employing drivers dismissed on health grounds where their health improves. Following a meeting on 24 March, the respondent wrote to offer the claimant immediate re-employment by letter of 29 March. This would have been on his previous grade with his acquired seniority such that he would have been on the terms and conditions that he had previously enjoyed. He would have to have satisfied certain standard conditions such as showing his right to work in the UK and so forth. Those conditions are set out in the letter and the claimant accepted that he could readily have met them. He would also have needed to demonstrate that the DVSA was satisfied that his eyesight was acceptable for public service vehicle driving. I am satisfied that he could have met that requirement. He was driving buses for another company via a reputable agency, one also used by the respondent, and the documents in the bundle show that his consultant was satisfied that his previous sight issue, resulting from a benign tumour, was resolved.
8. The claimant could have chosen to return to the respondent's employ; he could also have obtained employment on at least as favourable terms with another London bus operator. Like the respondent, all such operators were, to use the phrase adopted by both parties, crying out for drivers.

9. In fact, the claimant decided not to remain as a bus driver but to seek to qualify as a scaffolder because of the prospect of greater earnings in such a role in the long term. He told me that he has spent significant sums on training and there is some suggestion in the documents before me that, at least initially, his earnings may have fallen short of his expectations. He seeks very substantial continuing losses and the costs associated with that training.
10. In written submissions the claimant's representative put before me some nine authorities dealing with the calculation of a compensatory award. The amount of the Basic Award is agreed between the parties at £2,284 as is the sum appropriate for compensation for loss of statutory rights. The respondent's counsel suggested that I ought to approach the assessment of loss in this case on something akin to a Polkey basis, looking to see what would have happened had the claimant remained in the respondent's employ. Alternatively, he suggested that the loss that the claimant had suffered should not extend beyond the end of March 2023. I am satisfied that the appropriate basis for looking at matters in this case is not that akin to Polkey but rather to assess loss in a more traditional way of looking at what losses flow from the dismissal, subject to mitigation.
11. Two well-known fundamental principles of law can be distilled from the cases cited by the claimant.
 - 11.1 Although the claimant must seek to mitigate his losses, the respondent bears the burden of showing a failure reasonably to mitigate the same.
 - 11.2 It is not for me to seek to determine what I think that the claimant should have done to mitigate, but rather to look to see if what he did do was reasonable.
12. I consider that the claimant's efforts to mitigate up to 29 March 2023 were reasonable. In failing to accept the respondent's offer of employment, alternatively in failing to secure and accept an equivalent offer from another bus operator, I consider that the claimant was acting unreasonably. This offered a risk-free route to complete mitigation from that point in time onwards. Instead, the claimant chose to embark on another career because he believed that it offered him the prospect of significantly higher earnings. He was, of course, entitled to take that course, but I consider that, to do so in these circumstances, did not amount to reasonable mitigation. Therefore, I decline to award any loss beyond 29 March 2023.
13. It follows that the claimant is entitled to the following:
 - 13.1 A Basic Award of £2,284.
 - 13.2 A Compensatory Award with the following elements:
 - 13.2.1 £3,241.84 (net) in respect of losses to 29 March 2023.
 - 13.2.2 £221.94 in respect of lost employer's pension contributions.

13.2.3 £500 for loss of statutory rights.

Approved by:

Employment Judge Andrew Clarke KC

16 December 2025

JUDGMENT SENT TO THE PARTIES ON

17 December 2025

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/