Case No: 3301452/2024

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr. J. Linden	v	Norfolk Fire and Rescue Service / Norfolk County Council

Heard at: Norwich **On:** 30th January 2026

Before: Employment Judge: Mr. A Spencer
Mrs. A. Buck (non-legal member)
Ms. J. Nicholas (non-legal member)

Appearances:

For the Claimant: In person (assisted by Ms. K. Grand)
For the Respondent: Mr. G. Baker (counsel)

RESERVED JUDGMENT

It is the unanimous judgment of the tribunal that:

1. **The respondent shall pay to the claimant a basic award of compensation for unfair dismissal assessed at £3,938.25 after applying a 75% reduction pursuant to section 122(2) Employment Rights Act 1996 (ERA)**

2. **The compensatory award for unfair dismissal shall be assessed by the tribunal later (if not agreed between the parties). The compensatory award shall be calculated to include deductions and increases as follows:**

   (a) A “Polkey reduction” pursuant to section 123(1) ERA of 80%.

   (b) A deduction for contributory conduct pursuant to section 123(6) ERA of 75%.

   (c) An increase pursuant to section 207A Trade Union and Labour Relations (Consolidation) Act 1992 of 15%

REASONS

Introduction

1. These reasons relate to the tribunal's decision on issues of remedy only.

2. Judgment and reasons for our decisions on liability were given in writing in a reserved Judgment sent to the parties on 10 October 2025 ("the Liability Judgment")

3. The claimant's complaint of unfair dismissal was successful. His other complaints were dismissed.

4. The case was listed before us today for a remedy hearing.

5. We considered the contents of a remedy bundle, skeleton arguments/written submissions from both parties and oral submissions from both parties.

6. Two difficulties arose at the outset of the remedy hearing. They were:

   (a) The claimant prepared his calculations for loss of earnings based on gross rather than net figures. The respondent had not addressed this error in their counter schedule of loss, and the parties had not sought to agree net figures before the hearing. There were issues about pay increases and insufficient evidence before us to make findings about final figures; and

   (b) The claimant did not include sums in his schedule of loss for future losses despite indicating that he sought compensation based on future losses. Again, the respondent had not addressed this in their counter schedule of loss. At the hearing, the respondent accepted that the claimant could seek compensation assessed with reference to future losses. However, they said that they were prejudiced by the lack of figures and may need to provide further evidence in opposition to such a claim once those figures are available. They had not produced such evidence as the claimant's Schedule Loss did not include any claim for future loss.

7. We expressed disappointment that the parties had not communicated with each other before the hearing in relation to these issues. The tribunal's task was hindered by that lack of communication and cooperation. We remind the parties that they have a duty to assist the tribunal in furthering the overriding objective of dealing with cases fairly and justly. This requires them to communicate and cooperate with each other to ensure that their case is properly prepared for a hearing. That was not done here.

8. The parties agreed that we should make decisions on some of the issues of substance in the expectation that this will enable the parties to resolve any remaining remedy issues by agreement. This enabled some use to be made of today's hearing.

9. Consequently, this decision relates to:

    (a) The assessment of the claimant's basic award.

    (b) The issue of "Polkey" reduction of the compensatory award.

    (c) The issue of reduction of the basic and compensatory awards for contributory conduct; and

    (d) The issue of any increase to the compensatory award for failure to comply with an applicable ACAS Code of practice.

10. Any remaining issues will need to be determined at a further remedy hearing unless the parties can resolve the dispute by agreement. The decisions set out herein significantly narrow the disputed issues. The tribunal reminds the parties that they have a duty to seek to resolve any remaining disputes "out of court" and they must actively seek to do.

<u>Our Decisions</u>

11. The claimant confirmed that he does not seek reinstatement or reengagement. He seeks compensation for unfair dismissal only.

12. Compensation for unfair dismissal consists of two elements (s118 Employment Rights Act 1996 (ERA). These are: –

    11.1 A basic award assessed in accordance with section 119 ERA; and

    11.2 A compensatory award assessed in accordance with section 123 ERA.

13. We deal separately with each element as follows: –

<u>Basic Award</u>

14. The claimant's basic award of compensation is calculated in accordance with section 119 ERA and is assessed at £15,753.05 based on the claimant's details below:

Age at dismissal on 15/09/23:	50 years (Date of birth 30th November 1972).
Length of service on 15/09/23:	32 complete years
Gross weekly pay at 15/09.23:	£1189 (capped at £643)

15. The appropriate calculations are set out in the claimant's updated schedule of loss and are agreed by the respondent.

16. The respondent invited us to reduce the basic award on the grounds of the claimant's conduct before dismissal. Such a reduction may be made where '*the tribunal considers that any conduct of the complainant before the dismissal …………. was such that it would be just and equitable to reduce*

or further reduce the amount of the basic award to any extent' — S.122(2) ERA.

17. The proper approach is set out in Steen v ASP Packaging Ltd 2014 ICR 56, EAT, it is for the tribunal to:

    (a) identify the conduct which is said to give rise to possible contributory fault.
    (b) decide whether that conduct is culpable or blameworthy, and
    (c) decide whether it is just and equitable to reduce the amount of the basic award to any extent.

18. We made findings in our Liability Judgment that:

    (a) The claimant grabbed Mr. Evan's phone and threw it away during the index incident. We refer to our full findings in this regard.
    (b) that was misconduct and was so serious that it was gross misconduct; and
    (c) The respondent was entitled to summarily dismiss the claimant.

19. The respondent seeks to rely on that misconduct in support of a reduction in basic award.

20. The respondent also seeks to rely on the claimant's alleged dishonesty throughout the disciplinary process. They assert that the claimant knew he had thrown Mr. Evans' phone away and dishonestly denied it throughout the disciplinary process. We made findings in our Liability Judgment that the respondent had reasonable grounds to reach that conclusion. However, we did not go as far as making our own finding of dishonesty. We must do so now given the respondents' submissions. The conclusion reached by the majority of tribunal panel is that the claimant knew he took and threw away Mr. Evan's phone (or ought to have known once saw the video footage) However, he maintained throughout that he had not taken phone and thrown it away. This was not honest or truthful conduct on the part of the claimant.

21. We find that the claimant's conduct was culpable and blameworthy. Furthermore, that conduct contributed towards the dismissal.

22. We consider that it is just and equitable to reduce the amount of the basic award.

23. The size of the reduction is a question of judgment and requires an assessment of the circumstances, including whether the employee's actions could be categorised as gross misconduct.

24. In the circumstances, we find that it is just and equitable to make a reduction of 75% to the basic award. We consider that the conduct concerned was gross misconduct. The claimant was employed in a senior capacity as Station Manager. He was a role model for others. His behaviour was particularly culpable and blameworthy and was compounded by his dishonesty. However, against this, there are some mitigating factors. In particular, the claimant's actions were in the face of challenging behaviour

from Mr. Evans, the claimant had PTSD which made it more challenging to deal with such aggressive and provocative behaviour. Furthermore, his length and quality of service are significant mitigating factors.

25. Applying a deduction of 75% to the claimant's basic award of £15,753.05 reduces basic award (after adjustment) to £3,938.25. We award this sum.

The Compensatory Award

26. To calculate the compensatory award, it is first necessary to ascertain the employee's total loss in consequence of the dismissal, as far as that loss is attributable to the employer's actions — S.123(1) ERA.

27. The objective is to award what the tribunal considers to be a 'just and equitable' amount. The award must be compensatory and not punitive.

28. When assessing what the employee has lost as a consequence of being unfairly dismissed, the tribunal looks at the net remuneration that the employee would have continued to receive if the dismissal had not occurred.

29. We are unable to undertake this exercise today for the reasons given at paragraph 6 above.

"Polkey" Reduction

30. The respondent invites us to make a finding that, had the dismissal been procedurally fair, the claimant would have been dismissed in any event (i.e., any unfairness made no difference). They invite us to find that either the compensatory award should be nil or should be limited to only a brief period on the basis that the procedure would have been very slightly prolonged had the procedural failings we identified in our Liability Judgment not happened.

31. The respondent's counsel referred us to the recent Employment Appeal Tribunal (EAT) decision in *Zen Internet Limited v Stobart [2025] EAT 153*. This contains a useful review of the authorities concerning so called "Polkey" reductions. The Judgment in that case draws from the EAT's decision in the case of *Software 2000 Limited v Andrews and Others [2007] ICR 825* in which Elias P. set out the range of options open to a tribunal when determining such an issue as follows:

(7) Having considered the evidence, the tribunal may determine:

(a) that …the dismissal would [certainly, or almost certainly] have occurred when it did in any event: [whilst the dismissal remains unfair, the employee has not suffered any loss of earnings in respect of which compensation falls due];

(b) that there was a chance of dismissal…, in which case compensation should be reduced accordingly [by the appropriate percentage];

(c) 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, as in O'Donoghue v Redcar and Cleveland Borough Council [2001] IRLR 615;

(d) 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."

32. The procedural failings on the part of the respondent are set out at paragraphs 93 to 103 of our Liability Judgment. After hearing further submissions today, we considered what difference it would have made had those failings not occurred. Taking them in turn:

    (a) We have already found in our Liability Judgment that the inappropriate comments in the Chief Fire Officer's email dated 15 June 2023 did not affect the decision making of any of the key decision makers and made no difference to the outcome.

    (b) Regarding the failure to interview other members of staff, none of them witnessed the index incident and so would not have been able to provide useful evidence about the incident itself. Their evidence would have been limited to the context (i.e., to what happened before and after the incident between the claimant and Mr. Evans). Their evidence would have provided valuable context and was likely to have been useful to some extent as mitigation. For example, by confirming how difficult Mr. Evans was to deal with and how challenging his behaviour was.

    (c) Regarding not seeking a statement from Mr. Evans - we had the benefit of seeing the transcript of the phone log for his complaint, which gives a good indication of what he would have said if a statement had been sought and he had provided one. It is very unlikely that Mr. Evans would have given statement supporting the claimant. However, obtaining such a statement would have given the disciplinary investigator an opportunity to see how challenging Mr. Evans could be. It would also have been an opportunity for the investigator to put to Mr. Evans the question of whether he had a knife or something else that the claimant may have mistaken for a knife once the claimant raised this. Alternatively, if Mr. Evans had refused to provide a statement, it would have enabled appropriate inferences to be drawn from that refusal.

    (d) Regarding failing to provide still photos taken from the video footage – this made no difference. The claimant had access to the video itself.

    (e) Regarding asking Mr. Evans for a full copy of his video footage – this would not have provided any extra evidence of the index incident itself. The footage of the incident itself was complete. However, the full footage (if provided by Mr. Evans) was likely to have shown what happened before and after the index incident. Again, it would have provided valuable context and potential mitigation. Mr. Evans clearly chose not to put the entire footage online. He curated what was disclosed. That is likely to be because the missing footage did not show him in a positive light. Again, the footage was likely to have provided further mitigation for the claimant. Alternatively, if Mr. Evans had refused to provide the footage, it would have enabled appropriate inferences to be drawn from that refusal.

(f) Regarding seeking medical evidence - less speculation is required of us on this point. We have benefit of medical evidence produced in these proceedings. Something similar would have been obtained had the respondent sought it. If it had been obtained it would have presented some mitigation for the claimant. It would have confirmed that he had PTSD and difficulty dealing with conflict/aggression. It would not have shown that his behaviour was caused by his PTSD. It would have been something that the claimant could have relied on in mitigation.

(g) Regarding the delay in the disciplinary procedure – the claimant would have been dismissed at an earlier stage had the procedure been timelier. The substantive outcome would have been no different.

(h) The inadequate venue for the disciplinary hearing and the failure to obtain copies of the call recordings both made no material difference to the outcome.

(i) Regarding the respondent's failure to put dishonesty to the claimant as a separate disciplinary allegation, the majority of the tribunal panel concluded that this would have made no difference. The claimant would still have maintained the same approach in response to the allegations and the outcome would have been the same.

33. In conclusion:

(a) This is not a case where we can be certain (or almost certain) that dismissal would have occurred either at same time or shortly thereafter had the respondent not made the relevant failings.

(b) This is a case where there was a chance of dismissal had the respondent not made the relevant failings. Had the respondent not made the procedural failings, they would still have concluded that the claimant took the phone and threw it away. Further, they would still have concluded that the claimant had been dishonest. However, in these circumstances more mitigating evidence was likely to be available to such an extent that we cannot be certain (or nearly certain) that the respondent would have dismissed the claimant. There is, however, a strong likelihood of the claimant having been dismissed anyway and to reflect that strong likelihood we assess the appropriate “Polkey” reduction at 80%.

Contributory Conduct

34. We also assess the appropriate reduction to the compensatory award for contributory conduct at 75% for the same reasons as with the basic award.

Increase or reduction (adjustment) of up to 25 per cent where the employer or employee failed to comply with a material provision of the Acas Code of Practice on Disciplinary and Grievance Procedures — S.207A TULR(C)A.

35. The claimant invites us to increase the compensatory award for the respondent's failure to comply with the applicable ACAS Code of Practice. Section 207A TULCRA states:

207A Effect of failure to comply with Code: adjustment of awards

(1)This section applies to proceedings before an employment tribunal relating to a claim by an employee under any of the jurisdictions listed in Schedule A2.

(2)If, in the case of proceedings to which this section applies, it appears to the employment tribunal that—

(a)the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies,

(b)the employer has failed to comply with that Code in relation to that matter, and

(c)that failure was unreasonable,

the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25%.

36. This requires us to consider various matters:

(a) Is there an applicable Code of Practice? Both parties accept that this was a conduct related disciplinary matter, and that the disciplinary parts of the ACAS Code of Practice on Disciplinary and Grievance Procedures (“The Code”) are applicable.

(b) Have there being failings on the part of the respondent to comply with the Code (and if so, what are they)? These failings are drawn from our Liability Judgment. They are (paragraph references refer to the Code):

(i) Paragraph 5 – failure to carry out necessary investigations.
(ii) Paragraph 9 - failure to put the allegation of dishonesty to the claimant in writing.
(iii) Paragraphs 5 and 11 – failure to conduct the investigation and disciplinary process without unreasonable delay.

(c) We consider that such failures were unreasonable. The respondent is a large organistaion with substantial resources available to them. It was unreasonable to fail to comply with such requirements.

(d) We consider that in the circumstances, it is just and equitable to increase the compensatory award and that a 15% increase reflects the number of breaches, the severity of the breaches and the size and administrative resources of the respondent.

Approved by Employment Judge: Mr. A Spencer on 5th February 2026
Judgment sent to the parties on
13 February 2026
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For the Tribunal office