



EMPLOYMENT TRIBUNALS

Claimant: Dmitrij Jakubovschij

Respondent: Adugs Foods Ltd

Heard at: Cambridge Employment Tribunal
(By video)

On: 6 January 2026

Before: Employment Judge Taft

REPRESENTATION:

Claimant: Mr Sadygov (Apprentice Solicitor)

Respondent: Mr Jugdaohsingh (Consultant)

REMEDY JUDGMENT

1. The respondent shall pay the claimant **£2,100.00** as damages for breach of contract. This figure has been calculated using gross pay to reflect the likelihood that the claimant will have to pay tax on it as Post Employment Notice Pay.
2. The respondent shall pay the claimant the following sums as damages for unfair dismissal:
 - (a) A basic award of **£2,100.00**.
 - (b) A compensatory award of **£9,409.82**.

Note that these are actual the sums payable to the claimant after any deductions or uplifts have been applied.

3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:

- (a) The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is **£11,509.82**
 - (b) The prescribed element is **£9,009.82**.
 - (c) The period of the prescribed element is from **16 August 2024 to 6 January 2026**.
 - (d) The difference between (a) and (b) is **£2,500.00**.
4. When the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars. It is just and equitable to make an award of an amount equal to four weeks' gross pay. In accordance with section 38 Employment Act 2002 the respondent shall therefore pay the claimant **£2800.00**.

REASONS

Introduction and Issues

1. In a liability judgment on 7 November 2025, the Tribunal found that the Claimant was unfairly dismissed and wrongfully dismissed in breach of contract. The Tribunal further found that the Respondent was in breach of its duty to provide the Claimant with a written statement of employment particulars.
2. The remedy hearing was heard on 6 January 2026. Oral judgment and reasons were given at that hearing. Before the written judgment was promulgated, the Respondent requested written reasons, which are now provided.
3. Remedy for the breach of contract claim was agreed by the parties at £2,100.00.
4. As far as the unfair dismissal claim is concerned, the Claimant was not seeking re-instatement or re-engagement. The basic award was agreed by the parties at £2,100.00.
5. As for the compensatory award, the Claimant claimed loss of statutory rights and loss of earnings for the period from his dismissal until 6 January 2025. The Respondent disputed entitlement to loss of statutory rights on its Counter Schedule of Loss. The Claimant further claimed injury to feelings, though abandoned the claim to an uplift for breach of the ACAS Code during the hearing.
6. The amount of net pay claimed was in dispute because the Claimant suggested an average of the 3 months ending with the dismissal should be the method of calculation, whereas the Respondent suggested that it should be an average of pay in 2024. There was a further dispute over whether the Claimant had adequately mitigated his loss. The Claimant confirmed that he had received qualifying benefits during his period of loss.

7. The Claimant also claims compensation under Section 38 Employment Act 2002 for the Respondent's failure to provide a written statement of particulars. The Claimant suggested that this should be compensated by 4 weeks' pay whereas the Respondent suggested that there should be no award, or in the alternative it should be 2 weeks' pay.
8. The Tribunal heard evidence from the Claimant. An 11-page bundle containing the Schedule of Loss and Counter Schedule of Loss was provided alongside a further bundle of 55 pages. Both parties made submissions.

The law

9. Section 123 Employment Rights Act 1996 provides that
 - (1) Subject to the provisions of this section and sections 124, 124A and 126, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
 - (2) The loss referred to in subsection (1) shall be taken to include—
 - (a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and
 - (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.
 - (3) ...
 - (4) 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 or (as the case may be) Scotland.
10. In *Dunnachie v Kingston upon Hull City Council* [2004] ICR 1052, the House of Lords confirmed that the phrase "just and equitable" in Section 123(1) did not give the Tribunal freedom to make an award for non-economic loss so a Claimant could not recover compensation for injury to feelings.
11. It follows that employees who are unfairly dismissed are compensated for actual financial loss they have suffered by no longer being paid by their employer, subject to mitigation. The onus is on the employer to show a failure of mitigation - *Fyfe v Scientific Furnishings Ltd* [1989] ICR 648. It is for an employer to prove that a Claimant has acted unreasonably; what is reasonable or unreasonable is a matter of fact - *Cooper Contracting Ltd v Lindsey* [2016] ICR D3.
12. The Recoupment Regulations provide that where a Claimant has claimed qualifying benefits during the period from dismissal to the date remedy is decided, the judgment must set out the prescribed element (that is the compensation for loss of earnings) and the prescribed period (that is the period from dismissal to the date of the hearing at which remedy is decided).
13. Awards for loss of statutory rights date back to the National Industrial Relations Court's decision in *Norton Tool v Tewson* [1973] 1 WLR 45. They compensate a Claimant for the loss of those rights they enjoyed by reason of their length of service with the Respondent, rights that they will take time to build up with a new employer. The amount of such an award is not an exact science.

14. Section 1 Employment Rights Act 1996 provides that

where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.

15. Section 38 Employment Act 2002 provides that

- (1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.
- (2) ...
- (3) If in the case of proceedings to which this section applies—
 - (a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and
 - (b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by a worker) under section 41B or 41C of that Act, the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.
- (4) In subsections (2) and (3)—
 - (a) references to the minimum amount are to an amount equal to two weeks' pay, and
 - (b) references to the higher amount are to an amount equal to four weeks' pay.
- (5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

16. Schedule 5 includes a claim for unfair dismissal.

Findings of Fact

17. The Claimant was dismissed on 16 August 2024. He had been in his role as Sales Manager since January 2024. His pay fluctuated.
18. Shortly after his dismissal, he sought work with UAB Virauda, a company working in the same field as the Respondent. He met with representatives of Virauda on 28 August 2024. A template Referral Agreement was sent to him on 5 September 2024. The agreement confirms that the "Referrer" (which would be the Claimant) is an independent contractor, not an employee. It provides for 3% commission and fuel costs.
19. The Claimant told the Tribunal that he did some data analysis before deciding whether to take up the offer because he wanted to be satisfied about whether Virauda were delivering on time and how they work with shops. He said that he wanted to be satisfied because of his previous experience with the Respondent. He said that he did not sell anything for Virauda and was not paid by them.
20. The Respondent cross-examined the Claimant on payments out of his bank statements to a savings account, pointing out that statements for those accounts were not disclosed. I take judicial notice of the fact it is unlikely that payments for work done from Virauda or indeed an employer would be made to a savings account. I therefore find that if the Claimant did receive payment for any work done after his dismissal, it would likely have been paid into one of the two current accounts for which statements were contained in the bundle.

21. I therefore accept the Claimant's evidence on this point. There is no provision in the template agreement for payment for data analysis and no evidence presented either that the Claimant made any sales for Virauda or that Virauda made him any payments. Notably, there were no payments made into either bank account for which statements were in the bundle.
22. Those statements show that the Claimant received payments from various individuals over the period for which he claims losses. He said they were for repayment of loans made to close family and friends. He said that he asked for repayments due to being out of work without an income. He claimed that repayments were also made whilst he was still employed by the Respondent. Whilst the statements contained within the bundle largely relate to the period after his dismissal, there are some payments from some of the individuals into his Nationwide account in July. I therefore accept the Claimant's evidence about this and find that none of these payments were for work done.
23. The Claimant said that he did not pursue the opportunity with Virauda because the Respondent's owner/director Eduards Livmanis began speaking to suppliers and customers in the industry about him. He said that Mr Livmanis threatened both him and Virauda with legal proceedings for breach of a restraint of trade. I accept the Claimant's evidence about that because it is consistent with the Respondent's attempt to bring a contract claim on its ET3.
24. The Claimant then did a day's training with Amazon, for which he received £54.50. Before he could pursue that, he accepted self-employment with Hercules. He is paid under the CIS scheme for that. Statements are contained within the bundle. Until 6 January 2025, he was receiving less than he had been paid by the Respondent. He was paid a total of £3,841.50 up to that date.

Conclusions

25. I have found as a fact that the only payments the Claimant received for work done during the period of loss were the £54.50 for Amazon training and £3,841.50 from Hercules.
26. It is for the Respondent to prove a failure to mitigate loss. I do not accept that the Claimant not pursuing the opportunity with Virauda was a failure to mitigate: there was a good reason because the Respondent threatened action for breach of restraint of trade. It was therefore reasonable not to pursue an opportunity that could lead to expensive and risky High Court proceedings.
27. I find that the Claimant did take reasonable steps to mitigate his loss – initially pursuing self-employment within the same industry and then employment in different industries after the Respondent threatened proceedings for restraint of trade.
28. Taking all that into account, I find the Claimant's efforts to mitigate his loss were reasonable but even if they were not, the Respondent has not discharged its burden to show that he would have found alternative work before he did. His losses flow from the dismissal.

29. For a compensatory award, the Tribunal does not look to the calculation of week's pay in the Employment Rights Act, but what the Claimant would likely have been paid by the Respondent in the period of loss. I agree that the appropriate way to calculate that is to look at what he was paid in the sales manager role from January 2024. However, it is not appropriate to consider his August payslip because he was only employed for part of that month.
30. The Claimant's total net pay contained on his payslips covering the period January 2024 – July 2024 is £18,886.57. That is a period of 30 weeks. His net weekly pay was therefore £629.55. The period of loss claimed is 16 August 2024 to 6 January 2025 - 20.5 weeks. $£629.55 \times 20.5 = £12,905.82$. Credit must be given for the earnings since the dismissal. The Claimant earned £3,896.00 during that period (£54.50 + £3,841.50). His total loss of earnings was therefore £9,009.82.
31. That sum represents the prescribed element for recoupment purposes. The prescribed period is set by the Recoupment Regulations as the date of dismissal (16 August 2024) to the date of hearing (6 January 2026).
32. It is now trite law that it is appropriate to award a Claimant compensation for loss of statutory rights. The Claimant claims £400.00. I agree that is an appropriate amount. Calculation of the award is not an exact science.
33. The Claimant sought to distinguish *Dunnachie* on the basis that in that case the Claimant sought compensation for the manner of his dismissal but here the Claimant seeks compensation for the fact he is not able to continue in his prior field, i.e. matters occurring after his employment ended. But *Dunnachie* is clear that Section 123(1) doesn't allow any non-economic loss. It matters not that the Claimant is seeking non-economic loss for a different reason than that in *Dunnachie*: the principle is the same. In any event, the Claimant did not adduce any evidence in respect of hurt feelings.
34. To award no compensation for a breach of the duty to provide written particulars, there would need to be exceptional circumstances which would make an award unjust or inequitable. I do not consider that there are such exceptional circumstances. The minimum amount is 2 weeks. If it is just and equitable, I may award 4 weeks. I take into account a total failure here: a period of 3 years in which no written particulars were provided whatsoever. I therefore consider it just and equitable to award 4 weeks. $4 \times £700.00 = £2,800.00$.
35. Total compensation is therefore £2,100.00 (agreed) for breach of contract; £2,100.00 is agreed for the basic award; £9,409.82 is awarded for the compensatory award, of which the prescribed element is £9,009.82; and £2,800.00 is awarded for breach of the duty to provide written particulars.

Approved by:

Employment Judge Taft

30 January 2026

Judgment sent to the parties on:

16 February 2026.....

For the Tribunal:

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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.

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