



EMPLOYMENT TRIBUNALS

Claimant

Miss B. Doshi

AND

Respondent

Davencroft Ltd

HEARD AT: Cambridge Tribunal
(via CVP)

ON: 27 October & 24 November 2025

BEFORE: Employment Judge Douse (Sitting alone)

Representation

For Claimant: Ms R. Morgan, Counsel

For Respondent: Mr. G. Baker, Counsel

RESERVED REMEDY JUDGMENT

1. The Respondent is ordered to pay the claimant the gross sum of **£5423.10** in respect of the compensatory award for dismissal
2. The Respondent is ordered to pay the claimant the sum of **£341.34** in respect of pension loss
3. The Respondent is ordered to pay the claimant the sum of **£500** in respect of loss of statutory rights
4. **The Recoupment Regulations apply. For the purposes of the recoupment regulations:**
 - 4.1. The total monetary award made to the claimant is **£5423.10**
 - 4.2. The amount called the prescribed element is **£424**

- 4.3. The dates of the period to which the prescribed element is attributable are 16 October 2023 to 19 November 2023
- 4.4. The amount by which the monetary award exceeds the prescribed element is £4,999.10

In respect of any gross amount, the respondent can comply with this element of the award by deducting and paying any relevant tax and national insurance, and by providing evidence that this has been paid, before paying the net amount to the claimant. If this is not done, the gross amount is payable to the claimant.

Interest accrues at a daily rate of 8% from the date of judgment, unless payment is made within 14 days.

REASONS

Background

1. This hearing was listed to determine remedy on 23 October 2025, following a Rule 21 judgment issued after the Respondent failed to file a response.
2. The Respondent attended the hearing seeking the Tribunal to exercise its discretion to allow them to take part in the hearing. For reasons given orally at that hearing I did permit that.
3. On the basis that this was unexpected for the Claimant, including a need to be cross-examined, I determined that it was in the interests of justice to allow her the ability to submit further evidence in relation to mitigation of losses. The hearing was therefore adjourned to 24 November 2025.

Procedure, documents and evidence heard

4. I was provided with the following documents:
 - 4.1. 260-page electronic bundle
 - 4.2. 56-page electronic supplementary bundle
 - 4.3. Claimant witness statement
 - 4.4. 2nd Claimant witness statement
 - 4.5. Witness statement of Ian Clayton Smith
 - 4.6. 2nd witness statement of Ian Clayton Smith
5. I heard oral evidence from the Claimant and Mr. Clayton Smith.

6. Within the supplementary bundle was a witness statement from Julie Barton - she did not attend to give oral evidence. I determined that I could place no weight on this statement as there were contradictions with the documentary evidence, which could only be resolved by asking the witness questions.

Findings of fact

7. As the conclusion of unfair dismissal resulted from a Rule 21 (now Rule 22) judgment, there has been no fact-finding in relation to the specifics of substantive/procedural unfairness. In the absence of this, there are still two main matters to be considered in relation to remedy, which require findings of fact:
 - 7.1. When would the Claimant have been dismissed in any event, if a fair process had been followed (Polkey), and;
 - 7.2. To what extent has the Claimant mitigated her losses.
8. The Claimant was employed as Creative Lead for the Respondent from August 2020 until dismissal, effective 6 October 2023. Her terms and conditions included *"Hours/Holiday Entitlement/Place of work: There are no set hours or holidays and you may work at times and take time off that suit you providing the business or colleagues' work is not compromised in any way. The job assumes an average 40 hr week and you being off work 29 days (plus weekends) a year"* [172].
9. The Respondent's reason for dismissal was for redundancy [95-96]. Their policy stated [224]:

"Below is the procedure that the Company may follow should a redundancy situation arise. However, as this procedure is non-contractual, the Company is not required to follow it at all times.

Procedures Prior to Reducing Staffing Levels

In the first instance we will consider steps that might, depending on the circumstances, be taken to avoid the need for compulsory redundancies.

Examples of such steps include:

- *Reducing overtime working to an absolute minimum;*

- *Ensuring recruitment in areas that affect the redundancy situation is restricted;*
- *Considering the possibility of short-time working or lay-off;*
- *Considering inviting applications for voluntary redundancy*

Prior to making redundancies the Company will usually consult with employees as to the reasons for possible redundancies and the procedures that will be employed as well as investigating and discussing with affected employees any suitable alternative employment. However, there may be exceptions to this. The criteria used to select employees who will potentially be made redundant will be reasonable and appropriate in the circumstances. Where the Company's proposals trigger statutory collective consultation obligations, the Company will comply with these.

Redundancy Payment

Qualification for and calculation of redundancy payments will be in accordance with statute."

10. The Respondent had less than 20 employees, so a collective consultation was not required.

11. In short, the following events occurred prior to notification of dismissal on 7 September 2023:

11.1. 22 June 2023 – the Respondent sent out:

"COMPANY RE-ORGANISATION BRANDON SITE

...

*THIS WILL INEVITABLY LEAD TO THE MOVING OF
DECKCHAIRS. OVER THE NEXT 2 WEEKS THERE WILL BE A
CONSULTATION PROCESS AS A RESULT OF WHICH WE
MAY ASK YOU TO
CHANGE YOUR ROLL [sic]" [90]*

11.2. 8 August 2023 – the Respondent sent:

“PLANNING 2023 AND BEYOND

...

Most of you are aware of the major changes but if you feel you are in the dark please feel free to contact me for a chat.” [92]

11.3. 15 August 2023 – the Respondent notified staff about “*Davencroft meeting with Ian*” [93]

11.4. 18 August 2023 - The Claimant and Ian Clayton-Smith met. He says this was the consultation meeting, whereas the Claimant says this was a general meeting including other colleagues in and out during the course of that time.

11.5. 7 September 2023 – The Claimant and Ian Clayton-Smith met again. The Claimant was notified that she was being made redundant with one month’s notice.

12. The Claimant appealed the decision unsuccessfully. She received a statutory redundancy payment equivalent to 1 month’s pay.

Polkey

13. The Respondent has provided documentation justifying restructure/redundancy, by way of “DISCUSSION PAPER ON DAVENCROFT AND HOW IT CAN BETTER ADD VALUE” [116-120]. I note that whilst Mr. Clayton-Smith refers to this being produced in August 2023, this is dated in the bundle index as 5 October 2023 (that is after the Claimant was notified of her dismissal, and the day before it took effect).

14. In these proceedings, they additionally assert that there were also capability reasons in existence that would also have led to dismissal in any event.

15. In relation to capability, the terms and conditions state:

“13.1 CAPABILITY PROCEDURE

Objectives

We recognise that during your employment your capability to carry out your duties may deteriorate. This can be for a number of reasons, the most common ones being that either the job changes over a period of time and you fail to keep pace with those changes, or you change (most commonly because of health reasons) and you can no longer cope with the work. This

procedure is designed to help and encourage you to achieve and maintain standards of job performance.

As the capability procedure is non-contractual, this means the Company may take action to address capability issues (including dismissal) without first following the procedure outlined below, in circumstances it deems appropriate.

Principles

If the nature of your job changes and/or we have concerns regarding your capability with regard to your role, we will make every effort to ensure that you understand the level of performance expected of you and that you receive adequate training and supervision. This will be done in an informal manner in the first instance and you will be given time to improve.

- 16. If your standard of performance is still not adequate you will be subject to a formal capability procedure. The procedure may result in a warning that a failure to improve and to maintain the level of performance required could lead to a further progression through the capability procedure. Throughout the process, we will also consider the possibility of more suitable work if any is available.*

If we cannot transfer you to more suitable work and there is still no improvement after a reasonable time, or the standard of achievement is not maintained, you will be subject to further capability procedures that may result in your dismissal.

The meetings will normally be held by your manager. At all stages you will be advised, in writing, of the alleged unsatisfactory performance and the likely outcome if we decide after the meeting that your performance has been unsatisfactory. You will be given a reasonable opportunity to consider your response before any capability meeting.

We will also include the following where appropriate:

- A summary of relevant information gathered as part of any investigation;*
- A copy of any relevant documents which will be used at the capability meeting;*
- A copy of the outcomes from any previous capability meetings.*

Right to be accompanied

You have the right to be accompanied throughout this procedure. For further information see the section dealing with the right to be accompanied in the chapter on Disciplinary Rules and Procedure in this handbook.

The capability meeting

The aims of a capability meeting will usually include:

To set out the required standards that we believe you may have failed to

meet, and to go through any relevant evidence that we have gathered;

To give you an opportunity to state your case and present information and facts that you feel are relevant before any decision is made;

To establish the likely causes of poor performance, including any reasons why any measures taken so far have not led to the required improvement;

To identify whether there are further measures, such as additional training or supervision, that may improve performance;

To discuss targets for improvement and a time-scale for review, where appropriate;

To establish whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment, where dismissal is a possibility.

Procedure

The procedure may be implemented at any stage if your performance warrants such action.

Stage one - written warning

Following a stage one capability meeting, if we decide that your performance is unsatisfactory, we will give you a first written warning.

The warning will normally remain active for 9 months from the end of the review period, after which time it will be disregarded for the purposes of the capability procedure. Your performance will be monitored during the review period and we will write to inform you of the outcome.

Stage two - final written warning

If your performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while your first written warning is still active, we may decide to hold a stage two capability meeting. Following a stage two capability meeting, if we decide that your performance is unsatisfactory, we will give you a final written warning. A final written warning will normally remain active for 12 months from the end of the review period.

Stage three - dismissal

If your performance has not improved to the required standard or is still unsatisfactory dismissal will normally result. As an alternative to the dismissal, the manager may consider demotion, which would involve a reallocation of duties on a salary commensurate with the post, as an appropriate sanction. You will be provided, as soon as reasonably practicable following the meeting,

with written reasons for dismissal or any action short of dismissal, the date on which employment will terminate (if relevant) and the right of appeal.

The outcome

We will inform you in writing of our decision and our reasons for it, usually within one week of the capability meeting. Where possible we will also explain this information to you in person.

The warnings will set out:

The areas in which you have not met the required performance standards;

Targets for improvement;

Any measures, such as additional training or supervision, which will be taken with a view to improving performance;

A period for review;

The consequences of failing to improve within the review period, or of further unsatisfactory performance.

Review periods

Following each warning there will be a review period. At the end of this review period we will write to inform you of the outcome, which will be one of the following:

- If your performance is satisfactory, no further action will be taken;*
- If your performance is unsatisfactory, the matter may be progressed to the next stage of the capability process;*
- If there has been a substantial but insufficient improvement, the review period may be extended.”*

17. Mr. Clayton-Smith sets out a number of issues that he says the Claimant's colleagues relayed about her [ICS/WS2:16] and his own [ICS/WS2:18]. No documentary evidence relating to these concerns was provided to the Tribunal.

Mitigation

18. The Claimant was awarded Job Seeker's Allowance at a rate of £84.80 per week from 16 October 2023. This was paid for a period of six months.

19. In relation to her personal circumstances, the Claimant's witness statement said [BD/WS1]:

“33. I have had to step into a caring role since November 2023 for my elderly parents due to their deteriorating health and my sister's serious

health conditions which have temporarily put her out of action. She doesn't work so used to be able to do more.

34. It began in 2023 when my elderly father found out he had cancer and needed treatment including radiotherapy which took place in November/December that year. Since then I have been dealing with a series of medical issues within my family as a main carer as my sister has been increasingly suffering with both Clinically Isolated Syndrome and Ulcerative Colitis which limits what she can do due to fatigue and mobility issues.

35. My sister suffered a fall in July 2024 and had a lengthy recovery from a knee ligament injury. Her daughter has also been suffering with blackouts and heart palpitations and has had to have ECGs and an MRI on the brain. My father has since been dealing with the aftermath of the cancer, heart failure, pneumonia, dangerously low sodium levels, osteoarthritis (causing unsteadiness and falls) and weakness. My mother also has an autoimmune condition of the liver, severe arthritis in her knees and has problems with eating and therefore requires special meal preparation."

20. When I asked her for more specific details about this, she told me that:

20.1. The intense period was July 2024 for a period of 8 months;

20.2. Prior to that, in March/April 2024, she had to take on more household chores, and there was one month where she had to transport/accompany to daily hospital appointments that lasted the whole day

21. In relation to looking for work, the Claimant's second witness statement says:

"11. During October 2023 as previously disclosed, I updated my portfolio which required me to sift through 5 years of work created by me to ensure relevancy for today's business world. I also updated my CV. I created a LinkedIn profile and actively tried to keep up to date to view any suitable opportunities. I also had several conversations with friends and ex-colleagues in the industry at the time regarding any opportunities they may know of."

21.1. The Tribunal was not provided with any documentary evidence in relation to any of these matters.

22. She goes on to say:

“14. I have therefore been working on a potential business concept with a former Manager, Tracy Parkin...16. We started discussing the idea in early November 2023 and met in person on 15 November 2023 (please see page 6 in the supplementary bundle) with a follow up on 22 November 2023 to continue this in more detail. (please see pages 7-8 in the supplementary bundle). We exchanged ideas over email following the meeting (please see pages 9-10 in the supplementary bundle).”

23. The communications provided in relation to those discussions are minimal. The Claimant told me that she estimates that she spent a couple of hours each day working on the project.

24. The Claimant told me that she applied for a couple of jobs via Indeed/LinkedIn but had not provided evidence because she couldn't find it/didn't think it was significant. The only one she could recall was a beauty company in London.

25. The Claimant was in touch with a recruiter in early 2024 [257] but only applied for a role via them a year later [SB34].

The law

26. I reminded myself of the relevant law.

General

Employment Rights Act 1996

27. Section 112

“The remedies: orders and compensation

....

(4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126) to be paid by the employer to the employee.”

28. Section 118

“(1) Where a tribunal makes an award of compensation for unfair dismissal under section 112(4) or 117(3)(a) the award shall consist of—

(a) a basic award (calculated in accordance with sections 119 to 122 and 126), and

(b) a compensatory award (calculated in accordance with sections 123, 124, 124A and 126)."

29. Section 119

"Basic award

(1) Subject to the provisions of this section, sections 120 to 122 and section 126, the amount of the basic award shall be calculated by—

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment falling within that period, and

(c) allowing the appropriate amount for each of those years of employment.

(2) In subsection (1)(c) "the appropriate amount" means—

(a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,

(b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and (c) half a week's pay for a year of employment not within paragraph (a) or (b)."

30. Section 123

"Compensatory award.

(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.

...

(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.

...

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of

the compensatory award by such proportion as it considers just and equitable having regard to that finding.”

Polkey deduction

31. Polkey v AE Dayton Services Ltd 1988 ICR 142, HL
32. When assessing the compensatory award for unfair dismissal, Tribunals are entitled to consider whether a reduction should be made on the ground that the lack of a fair procedure made no practical difference to the decision to dismiss.
33. The Respondent also referred me to:
 - 33.1. Software 2000 Ltd v Andrews [2007] ICR 825 at 52 and 53.
 - 33.2. Zen Internet Ltd v Stobart [2025] EAT 153 at 85-109

Mitigation

34. The burden of proving a failure to mitigate is on the respondent (Fyfe v Scientific Furnishing Ltd [1989] IRLR 331)
35. If the claimant has failed to take a reasonable step, the respondent has to show that any such failure was unreasonable (Wright v Silverline Car Caledonia Ltd UKEATS/0008/16)
36. A summary of the relevant principles can be found in Cooper Contracting Ltd v Lindsey UKEAT/0184/15/JOJ
37. An employee failing to look for any jobs at all is likely to be sufficient to discharge the employer's burden of proof. It is then for the claimant to explain why such a failure was reasonable. "Where [an] employee has simply made no job applications at all, the employer is entitled to assert, at least as a starting point, that by failing to do so, she has acted unreasonably, subject to the tribunal being satisfied as to the explanation" (Hilco Capital Ltd v Harrington [2022] EAT 156)

Recoupment

38. **The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996**
 - 38.1. Regulation 3

"Application to payments and proceedings

(1) Subject to paragraph (2) below these Regulations apply -

(a) to the payments described in column 1 of the table contained in the Schedule to these Regulations, being, in each case, payments which are the subject of industrial tribunal proceedings of the kind described in the corresponding entry in column 2 and the prescribed element in relation to each such payment is so much of the relevant monetary award as is attributable to the matter described in the corresponding entry in column 3; and

(b) to payments of remuneration in pursuance of a protective award.

(2) The payments to which these Regulations apply by virtue of paragraph (1)(a) above include payments in proceedings under section 192 of the 1992 Act and, accordingly, where an order is made on an employee's complaint under that section, the relevant protective award shall, as respects that employee and to the appropriate extent, be taken to be subsumed in the order made under section 192 so that the provisions of these Regulations relating to monetary awards shall apply to payments under that order to the exclusion of the provisions relating to protective awards, but without prejudice to anything done under the latter in connection with the relevant protective award before the making of the order under section 192.

Duties of the industrial tribunals and of the Secretary of the Tribunals in respect of monetary awards

(1) Where these Regulations apply, no regard shall be had, in assessing the amount of a monetary award, to the amount of any jobseeker's allowance or any income support which may have been paid to or claimed by the employee for a period which coincides with any part of a period to which the prescribed element is attributable.

(2) Where the industrial tribunal in arriving at a monetary award makes a reduction on account of the employee's contributory fault or on account of any limit imposed by or under the 1992 Act or 1996 Act, a proportionate reduction shall be made in arriving at the amount of the prescribed element.

(3) Subject to the following provisions of this Regulation it shall be the duty of the industrial tribunal to set out in any decision which includes a monetary award the following particulars -

(a) the monetary award;

(b) the amount of the prescribed element, if any;

(c) the dates of the period to which the prescribed element is attributable;

(d) the amount, if any, by which the monetary award exceeds the prescribed element.

(4) Where the industrial tribunal at the hearing announces to the parties the effect of a decision which includes a monetary award it shall inform those parties at the same time of the amount of any prescribed element included in the monetary award and shall explain the effect of Regulations 7 and 8 below in relation to the prescribed element.

(5) *Where the industrial tribunal has made such an announcement as is described in paragraph (4) above the Secretary of the Tribunals shall forthwith notify the Secretary of State that the tribunal has decided to make a monetary award including a prescribed element and shall notify him of the particulars set out in paragraph (3) above.*

(6) *As soon as reasonably practicable after the Secretary of the Tribunals has sent a copy of a decision containing the particulars set out in paragraph (3) above to the parties he shall send a copy of that decision to the Secretary of State.*

(7) *In addition to containing the particulars required under paragraph (3) above, any such decision as is mentioned in that paragraph shall contain a statement explaining the effect of Regulations 7 and 8 below in relation to the prescribed element.*

(8) *The requirements of paragraphs (3) to (7) above do not apply where the tribunal is satisfied that in respect of each day falling within the period to which the prescribed element relates the employee has neither received nor claimed jobseeker's allowance or income support."*

38.2. Schedule – table relating to monetary awards

"Column 1

Payment

...

Payments under an award of compensation for unfair dismissal in cases falling under section 112(4) (cases where no order for reinstatement or re-engagement has been made).

...

"

38.3. Regulation 8

"Recoupment of Benefit

(1) *Recoupment shall be initiated by the Secretary of State serving on the employer a recoupment notice claiming by way of total or partial recoupment of jobseeker's allowance, income-related employment and support allowance, universal credit or income support the appropriate amount, computed, as the case may require, under paragraph (2) or (3) below.*

(2) *In the case of monetary awards the appropriate amount shall be whichever is the less of the following two sums—*

(a) *the amount of the prescribed element (less any tax or social security contributions which fall to be deducted therefrom by the employer); or*

(b)

(i) *the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which*

coincides with any part of the period to which the prescribed element is attributable, or

(ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

...

(4) A recoupment notice shall be served on the employer by post or otherwise and copies shall likewise be sent to the employee and, if requested, to the Secretary of the Tribunals.

(5) The Secretary of State shall serve a recoupment notice on the employer, or notify the employer that he does not intend to serve such a notice, within the period applicable, as the case may require, under paragraph (6) or (7) below, or as soon as practicable thereafter.

(6) In the case of a monetary award the period shall be—

(a) in any case in which the tribunal at the hearing announces to the parties the effect of its decision as described in Regulation 4(4) above, the period ending 21 days after the conclusion of the hearing or the period ending 9 days after the decision has been sent to the parties, whichever is the later; or

(b) in any other case, the period ending 21 days after the decision has been sent to the parties.

...

(8) A recoupment notice served on an employer shall operate as an instruction to the employer to pay, by way of deduction out of the sum due under the award, the recoupable amount to the Secretary of State and it shall be the duty of the employer to comply with the notice. The employer's duty under this paragraph shall not affect his obligation to pay any balance that may be due to the employee under the relevant award.

(9) The duty imposed on the employer by service of the recoupment notice shall not be discharged by payment of the recoupable amount to the employee during the postponement period or thereafter if a recoupment notice is served on the employer during the said period.

(10) Payment by the employer to the Secretary of State under this Regulation shall be a complete discharge in favour of the employer as against the employee in respect of any sum so paid but without prejudice to any rights of the employee under Regulation 10 below.

(11) The recoupable amount shall be recoverable by the Secretary of State from the employer as a debt.

(12) For the purposes of paragraphs (2)(b)(ii) and (3)(b)(ii), “earned income” has the meaning given in regulation 52 of the Universal Credit Regulations 2013.”

38.4. Regulation 10

“Provisions relating to determination of amount paid by way of or paid as on account of benefit

(1) Without prejudice to the right of the Secretary of State to recover from an employer the recoupable benefit, an employee on whom a copy of a recoupment notice has been served in accordance with Regulation 8 above may, within 21 days of the date on which such notice was served on him or within such further time as the Secretary of State may for special reasons allow, give notice in writing to the Secretary of State that he does not accept that the amount specified in the recoupment notice in respect of jobseeker's allowance, income-related employment and support allowance, universal credit or income support is correct.

(2) Where an employee has given notice in writing to the Secretary of State under paragraph (1) above that he does not accept that an amount specified in the recoupment notice is correct, the Secretary of State shall make a decision as to the amount of jobseeker's allowance, income-related employment and support allowance, universal credit or, as the case may be, income support paid in respect of the period to which the prescribed element is attributable or, as appropriate, in respect of so much of the protected period as falls before the date on which the employer complies with Regulation 6 above.

(2A) The Secretary of State may revise either upon application made for the purpose or on his own initiative a decision under paragraph (2) above.

(2B) The employee shall have a right of appeal to [the First-tier Tribunal]⁴ against a decision of the Secretary of State whether as originally made under paragraph (2) or as revised under paragraph (2A) above.

(2C) The Social Security and Child Support (Decisions and Appeals) Regulations 1999 shall apply for the purposes of paragraphs (2A) and (2B) above as though a decision of the Secretary of State under paragraph (2A) above were made under section 9 of the 1998 Act and any appeal from such a decision were made under section 12 of that Act.

(2D) In this Regulation “the 1998 Act” means the Social Security Act 1998.

(3) Where the Secretary of State recovers too much money from an employer under these Regulations the Secretary of State shall pay to the employee an amount equal to the excess.

(4) In any case where, after the Secretary of State has recovered from an employer any amount by way of recoupment of benefit, the decision given by the employment tribunal in consequence of which such recoupment took place is set aside or varied on appeal or on a re-hearing by the employment tribunal, the Secretary of State shall make such repayment to the employer or payment to the employee of the whole or part of the amount recovered as he is satisfied should properly be made having regard to the decision given on appeal or re-hearing.”

Submissions

39. The Claimant's position was that she was entitled to compensation for the full period of loss because:

39.1. If a fair procedure had been followed she would not have been dismissed at all, either remaining in her role or being engaged in an alternative;

39.2. Her losses were fully mitigated by her actions, in light of her personal circumstances

40. The Respondent's primary position was that there should be a 100% deduction for Polkey on the basis that dismissal would have occurred on the same date, even if there was a fair procedure. They put forward two alternatives:

40.1. A two-week extension to 20 October 2023 would have allowed for a fair process;

40.2. Loss must not extend beyond 17 November 2023 because from that point the Claimant's caring responsibilities took over

Conclusions

41. The suggestion that the Claimant would have been dismissed for capability reasons is not well-founded. These assertions only appear in Mr. Clayton-Smith's second witness statement (the first focuses solely on redundancy) and are not supported by any documentation. In any event, the Respondent had a clear capability process that would – on the face of it – have taken longer than any redundancy.

42. Whilst submissions were made in relation to the application of Polkey followed by mitigation, the correct order of adjustments to the compensatory award is to

adjust for mitigation first, followed by Polkey. Therefore, my conclusions and resulting calculations, are in that order.

Mitigation

43. The Claimant received JSA without interruption, indicating she was complying with the obligations from the Department for Work and Pensions. However, this is the bare minimum expected of a Claimant in terms of mitigation. As no documentary evidence was provided of engagement with the DWP tasks, the Tribunal has no information about how many jobs she may have applied for via this route.
44. Similarly, whilst the Claimant says she applied for one or two jobs via Indeed etc, that information was not provided either.
45. In the absence of evidence I have to conclude that the Claimant effectively applied for no roles until the 2025 application I was provided with.
46. On the Claimant's own evidence, whilst her caring responsibilities *increased* in October/November 2023, aside from a month of daily hospital appointments in March/April 2024, the intense period of responsibility began in July 2024. That is 9 months after dismissal. She was not prevented from working/searching for work by her personal circumstances until much longer after her dismissal.
47. In November/December 2023, she began spending *some* time exploring business options with a former colleague. She says a couple of hours a day, but there is very little evidence provided – many of the emails with ideas were in fact sent *to* the Claimant, so don't provide much assistance. Aside from one message in January 2024, this appears to go quiet until June 2024.
48. Whilst it is certainly reasonable to take stock after a dismissal, and determine how you wish to move forward (including exploring self-employment), the Claimant was largely inactive. The couple of hours work per day she put into the business idea is not significant.
49. The Claimant acted unreasonably in failing to mitigate her losses from 6 January 2024.

Polkey

50. Whilst the capability argument has no merit, it is clear that Mr Clayton-Smith's mind had been made up about the Claimant's future with the Respondent in any event. Therefore, even with a fair procedure, her employment would have ceased at some point thereafter.

51. I note that the purported consultation meeting with the Claimant was on 18 August 2023, and the dismissal notification occurred on 7 September 2023 – just under 3 weeks apart. That would have been too short for a genuine consultation period.

52. However, given the size of the company, it would not have taken a particularly long time for consultation to take place.

53. I conclude that, if a fair procedure had been followed, the Claimant would have been dismissed 6 weeks later than she was.

Calculation

Basic award

54. This is offset in its entirety by the redundancy payment of £2,893.50.

Compensatory award

55. A week's pay = £903.85 gross; £705.22 net

56. Loss of earnings = 52 weeks' pay x £903.85 = £47,000.20

57. Weekly pension = £56.89

58. Pension loss = 52 weeks' x £56.89 = £2,958.28

Deductions

59. Earnings = 0

60. Failure to mitigate = 40 weeks' pay x £903.85 (£36,154)
= £10,846.20

61. Polkey deduction = 6 weeks (£5,423.10)
= £5423.10

62. Pension loss for 6 weeks = **£341.34**

Loss of statutory rights

63. **£500** for the Claimant's loss of statutory rights following dismissal.

Recoupment

64. As the Claimant received JSA of £84.80 from 16 October 2023, 5 weeks fall within the period for recoupment.

65.5 weeks x £84.80 = £424

APPROVED BY:

Employment Judge K Douse

Dated: 8 March 2026

Sent to the parties on: 10 March 2026

For the Tribunal Office