



EMPLOYMENT TRIBUNALS

Claimant: Mr M Skiepkó
Respondent: JBP Foods Ltd

Heard at: Watford Employment Tribunal (remote via video)
On: 29 January 2026
Before: Employment Judge L Wilson (sitting alone)

Representation

Claimant: In person
Respondent: Mr Christopher Mills (solicitor)
Polish Interpreter: Ms Beata Matusik

JUDGMENT having been sent to the parties on 19 February 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

INTRODUCTION

1. In a claim form presented on 23 July 2024 the claimant made a complaint that he was unfairly dismissed, was owed holiday pay and claimed a redundancy payment. In a response sent to the Employment Tribunal on 29 August 2024 the respondent denied the claimant's complaints contending that the claimant was not an employee of the respondent. At a Preliminary Hearing on 12 February 2025, Employment Judge McCooey made a determination that the claimant was an employee of the respondent at the relevant time. The relevant time is between 8 July 2020 and 15 February 2024.

2. On 22 April 2025 Employment Judge Findlay made an order that unless the claimant confirms to the Tribunal and respondent by the 6 May 2025 that he intends to pursue his claim for a redundancy payment, that claim will be dismissed without further order. The claimant did not do so and the claim for redundancy payment was dismissed accordingly.
3. A full merits hearing took place before Employment Judge Gumbiti-Zimuto between 15 and 17 October 2025 inclusive. In a Reserved Judgment dated 29 October 2025, EJ Gumbiti-Zimuto ruled that the claimant was unfairly dismissed.
4. In its decision on liability, the Tribunal decided that no deduction should be made for contributory fault or to reflect a chance that the claimant might have been dismissed in any event.
5. Liability having been determined, the question of remedy was adjourned to a separate hearing listed for 29 January 2026. EJ Gumbiti-Zimuto made a number of Case Management Orders for the Remedy Hearing.
6. The claimant was born in December 1975 and was aged 48 when he was dismissed on 15 February 2024.

THE EVIDENCE AND HEARING

7. The Remedy Hearing took place on 29 January 2026. EJ Gumbiti-Zimuto was not available on that date and parties agreed to it being heard by an alternative Tribunal Judge, the relevant authorisation having been granted by Regional Employment Judge Foxwell.
8. The claimant prepared an indexed and paginated bundle of 107 pages for the hearing, together with a witness statement. The claimant also relied upon an additional 40-page correspondence bundle. No agreed bundle had been filed by the respondent as directed by EJ Gumbiti-Zimuto. The respondent served a witness statement by Patryk Zojac the day before the hearing.

9. Due to the late service of Mr Zojac's witness statement, the claimant objected to its inclusion and the respondent relied upon the counter schedule of loss instead of the witness statement from Mr Zojac. The claimant was content with this and did not seek to question Mr Zojac.
10. The Tribunal heard evidence from the claimant on his own behalf and submissions by both parties, for which the Tribunal is grateful.
11. The claimant confirmed that he does not wish to be reinstated or re-engaged.

FINDINGS OF FACT

Summary of Employment and Relevant dates

12. In his reserved Judgment, EJ Gumbiti-Zimuto found that the claimant commenced employment with the respondent on 8 July 2020 as a sales representative in the wholesale food sector, working largely with Polish retail outlets. The claimant was remunerated by commission, provided with a company car and work equipment, and carried out customer visits and order-taking across a wide geographical area. His employment ended on 15 February 2024 following a telephone exchange with a manager (Ms Gruda) and a subsequent call from a director (Mr Zajac). No notice was given and no disciplinary or investigatory process was followed.
13. The claimant returned his company car, fuel card, and android device to the respondent on 18 February 2024.

Average weekly wage

14. It is agreed between the parties that the claimant was paid by the respondent on a commission only basis. This was variable and dependent on sales that the claimant was responsible for.
15. It was agreed between the parties that the claimant received the following payments in his final 12 weeks of employment, totaling £6,535.25:

- 14.1. 11th December 2023: £2,808.02
- 14.2. 18th January 2024: £1889.77
- 14.3. 15th February 2024: £1,837.46.
16. The claimant submits that his average weekly wage should be calculated by looking at the last six months rather than the past 12 weeks as a fairer reflection of his earnings overall, thus arriving at a basic award figure of £2,812.50.
17. The claimant gave evidence that the respondent took away his own customers towards the end of his employment, and so his earnings decreased through no fault of his own. The claimant said that he was making efforts to attract new customers through attending shops in various locations, leafleting and placing phone calls to prospective customers. He gave examples of where some of the customers were based, including Southampton and Luton, as well as Oxford. The respondent sought to challenge this assertion through the claimant's company vehicle telematics. However, I accept the evidence of the claimant. The telematics show that the claimant was not in Oxford as often as the respondent purported. The telematics also show that the claimant was on the move frequently, including between Oxford and Luton, which supports his contention that he was visiting customers in various locations including Luton.
18. The respondent submitted that, nevertheless, section 224 of the Employment Rights Act 1996 applies, and the claimant's payments for the last 12 weeks of his employment must be used to calculate the claimant's average weekly wage. Applying this calculation, the respondent arrived at a figure of £544.61 average weekly wage (£6,535.25 divided by 12 weeks), giving a basic award of £2,450.75.

Loss of Statutory Rights

19. The claimant submitted he should be awarded £350 to compensate him for his loss of statutory rights.

20. The respondent advanced no submissions.
21. The Tribunal is satisfied that the claimant has lost a number of statutory rights including that in new employment it will take time to accrue the right not to be unfairly dismissed and the right to a redundancy payment.
22. The respondent did not contest this, and the Tribunal is satisfied that £350 is proportionate in all the circumstances.

Duration of Loss of Earnings and Mitigation

23. In respect of loss of earnings and mitigation the claimant argued that he should be awarded £9,232.36 before uplift, calculated over a six-month period. The claimant gave evidence that he found it emotionally and logistically difficult to apply for other jobs through a combination of being mentally affected by his dismissal and not being able to give a reference to respective employers.
24. The claimant did succeed in finding a part-time position as a van driver through a friend, before finding full-time employment in November 2024. The claimant left his new full-time job in November 2025. The claimant told the Tribunal that he earned £2,735 in the period from 15 February 2024 and January 2026.
25. The respondent argued that the claimant “woefully failed” to mitigate his loss. The claimant has disclosed only 10 job applications over a period of 20 months, the dates of which are detailed in the respondent’s counter schedule of loss and at pages 51-70 of the bundle. The claimant disclosed only one job application between 15 February 2024 and 12 February 2025 (i.e. for the year following the termination of his employment), namely one application on 21 April 2024. The respondent submitted that the claimant should have taken no longer than six weeks to obtain suitable alternative employment. The respondent relied upon a number of job advertisements in support of this submission, at pages 77-170 of the bundle. The respondent’s position was that the claimant is entitled to £3,267.66 for loss of earnings (calculated as 6 weeks x £544.61).

26. The Tribunal finds that as the job advertisements relied upon by the respondent are undated, they provide limited assistance as to the state of the employment market at the relevant time. Some of the adverts appear to be based in geographical locations outside of where the claimant lived, including in Merthyr Tydfil, or requiring international travel. The respondent has not shown that it was reasonable for the claimant to apply for jobs so far away.
27. On the other hand, many of the job advertisements are Oxford based and the Tribunal is satisfied that they would have been suitable for the claimant's skill level.
28. The claimant candidly accepted in evidence that he could have taken additional steps in respect of his health, which might reasonably have improved his confidence and ability to search for work.
29. In all the circumstances, the Tribunal concludes that the claimant mitigated his losses to some extent but not by as much as he could have done, and 17 weeks is a reasonable and proportionate reflection of this period.

Company car

30. In respect of the car, the claimant argued that he should be awarded £9,568.40 for use of a company car. However, in evidence he accepted that the car was used only for business purposes and that he did not pay for it, pay for fuel or insurance, and has not suffered any depreciation losses.
31. The respondent argued that the claimant is not entitled to any sums for loss of the use of a company vehicle. It was provided solely as a tool for work purposes. It was not provided as part of the claimant's remuneration and was not available for unrestricted private use, and there was no benefit in kind declared.
32. The Tribunal finds in favour of the Respondent, particularly in light of the claimant's own concession. The company car was a business tool, not available for private use; it was not part of the claimant's remuneration, and there was no loss to him.

Acas uplift

33. In respect of an Acas uplift, the claimant argued that he is entitled to a 10% uplift arising from the respondent's failure to give an explanation for his dismissal, no disciplinary hearing took place and he was not given the opportunity to appeal the dismissal.
34. The respondent accepted the criticism levelled against them by the claimant in this regard.
35. Employment Judge Gumbiti-Zimuto found that the respondent completely failed to follow the Acas Code of Practice (Paragraph 47 of the Liability Judgment). The respondent accepted this at the Remedy Hearing.
36. The Tribunal takes the view that an appropriate uplift for the failure to follow the Acas code is 10% as requested.

Holiday pay

37. The List of Issues raised the following questions (Paragraph 54 of the Liability Judgment):

"How much of the leave year had passed when the claimant's employment ended?

How much leave had accrued for the year by that date?

How much paid leave had the claimant taken in the year?

Were any days carried over from previous holiday years?

How many days remain unpaid?

What is the relevant daily rate of pay?"

38. The parties failed to address these factual issues before EJ Gumbiti-Zimuto and the evidence and submissions before the Tribunal in the Remedy Hearing offered little assistance as to what, if any, award should be given to the claimant in respect of holiday pay.

39. The claimant asserted that he did not receive any holiday pay. He told the Tribunal that he asked for holiday, but this was not granted. He said that he felt pressured not to take holiday for fear of losing his customers. The claimant agreed in evidence that he was not aware of any official method of recording holiday pay and agreed that it was open to him to ask other employees to cover his shifts to enable him to take holiday, as he had done for colleagues.
40. The respondent aptly described the position in respect of the claimant's holiday pay as "messy". In essence, the respondent argued that the claimant is not entitled to claim any sums for accrued and untaken holiday pay because of his working pattern, which was largely self-managed, and that it was difficult to see whether days were, or were not, taken. If they were not taken, he was not prevented from doing so, but he chose not to do so.
41. The respondent relied upon GPS tracking evidence at pages 71-76 of the bundle, to demonstrate that the claimant was not working all the days that he claimed.
42. The claimant was paid on a commission basis, set his own working hours, and organised his routes independently. The claimant was not subject to fixed working hours. Typically, the claimant worked 3 days per week, averaging about 15-20 hours weekly.
43. Applying Employment Judge Gumbiti-Zimuto's findings of facts in the Liability Judgment, the claimant's leave period was the anniversary of the claimant's start date, which is 8 July, of each year (Paragraph 53 of the Liability Judgment).
44. The Tribunal does not accept that the GPS tracking evidence is demonstrative of the claimant taking holiday. A number of the dates relied on by the respondent were not, in fact, limited to Oxford, as had been suggested. Rather, the dates illustrate that the claimant was travelling to different locations in any one day, and the Tribunal accepts the claimant's evidence that this was to meet customers.
45. The Tribunal also accepts the claimant's evidence that GPS tracker data does not reflect all the work he performed, some of which he performed on the telephone, and there were occasions when he walked between customers, not shown up on the telematics data.

46. The Tribunal accepts the claimant's evidence that he did ask for holiday, but felt pressured, at times, not to take his holiday for fear of customers being removed from him. The Tribunal has had regard to the findings set out in the Liability Judgment that I have already referred to, and I do not go behind the findings of EJ Gumbiti-Zimuto.

Preparation Time

47. The claimant also applied for preparation time submitting that he has spent over 100 hours preparing this claim. The respondent submitted that the hours claimed were disproportionate.
48. The Tribunal is not satisfied that the respondent has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the bringing or of the conducting of these proceedings, or that the respondent had no reasonable prospect of success, the bar being fairly high.
49. Nevertheless, a number of Case Management Orders were made for the Remedy Hearing and they were clearly set out in the Liability Judgment that I have already referred to. In particular, the respondent was ordered to prepare the Remedy bundle and to provide an electronic copy to the claimant by a specified date. The respondent was also ordered to send an electronic copy of the Remedy bundle and witness statements to the Tribunal by the latest of 22 January 2026. That was not done. The Tribunal has seen lots of correspondence between the parties. I conclude that the respondent failed, without good reason, to prepare the bundle, leaving the claimant to do so.
50. The Tribunal has been told, and I accept, that the lawyer with conduct of the case, fell ill. However, the Tribunal was not kept informed of this and reasonable steps were not taken by the respondent to prioritise or to reallocate this work to somebody else who could do so. In the circumstances, the claimant was left to prepare the bundle and file it upon the Tribunal.

51. The claimant is unrepresented, and, as the respondent's representative candidly accepted, it would inevitably have taken an unrepresented party longer to prepare tribunal bundles than it would have taken a lawyer. I conclude that 7-hours is a proportionate reflection of reasonable preparation time.

Pension loss

52. Pension loss was raised briefly by the parties, but no evidence was given in this regard and no substantive submissions advanced. The Tribunal is unable to make any determination in respect of pension loss on the current evidence.

Reductions in award

53. In terms of any reductions in the level of award, the Tribunal does not interfere with Employment Judge Gumbi-Zimuto's Judgment that no reduction in the level of any award of compensation or a Polkey type reduction is appropriate for the reasons set out by him, principally at paragraphs 48 and 49 of the Liability Judgment.

LAW

54. By s.119 of the Employment Rights Act 1996 ("ERA") the basic award for unfair dismissal is calculated as follows:
- 54.1. half a week's gross pay (subject to the statutory cap) for each year of continuous employment when the employee was below the age of 22;
 - 54.2. one week's gross pay (subject to the statutory cap) for each year of continuous employment when the employee was below the age of 41 but not below the age of 22; and
 - 54.3. one and half weeks' gross pay (subject to the statutory cap) for each year of continuous employment when the employee was not below the age of 41.

55. By s.123(1) of the Employment Rights Act 1996 the Tribunal must make a compensatory award in such amount as it considers just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The compensatory award is based on net pay. The Tribunal should take a broad-brush approach to assessing loss: *Garage Equipment Maintenance Co Ltd v Holloway* EAT 582/94.
56. A compensatory award is intended to compensate for financial losses only and it is not to penalise the employer for its actions: *Norton Tool Company Limited v Tewson* [1973] All ER 183.
57. The Tribunal should first determine the amount of the loss actually suffered by the Claimant in consequence of the dismissal which is attributable to action taken by the Respondent. The Tribunal should determine what the Claimant would have earned had the employment continued and how long it would have continued for. A sum for loss of statutory rights may be included. Credit should be given for:
 - 57.1. sums paid to the Claimant by the Respondent as compensation for the dismissal, including any pay in lieu of notice (*Heggie v Uniroyal Ltd* [1999] IRLR 802);
 - 57.2. sums earned by way of mitigation of loss; and
 - 57.3. deductions to be made for any failure to mitigate the loss.
53. It is for the Respondent to satisfy the Tribunal on the balance of probabilities that the Claimant has failed to take reasonable steps to mitigate his loss.

Holiday Pay

54. A worker is entitled to payment in lieu of his unused holiday entitlement on termination of employment. The Working Time Regulations 1998 (“the Regulations”) provide that, where no provisions of a relevant agreement apply, all workers are entitled to 5.6 weeks’ paid holiday in each leave year, comprising 4 weeks per year under Regulation 13 and an additional leave period of 1.6 weeks a year under Regulation 13A(2). Regulation 13A(3) states that there is a maximum aggregate entitlement of 28 days.
55. Unless a worker has a contractual right to take public holidays in addition to their statutory entitlement, these are included in that entitlement.
56. Regulation 16 provides that a worker is entitled to be paid at the rate of a week’s pay in respect of each week of annual leave to which he or she is entitled under Regulation 13 (basic leave) or Regulation 13A (additional leave). Regulations 13, 13A and 14 of the Working Time Regulations give workers a right to payment in lieu for any outstanding statutory holiday entitlement upon termination.
57. Sections 221 to 224 Employment Rights Act 1996 provides the calculation method for working out what a week’s pay is.
58. In *King v The Sash Window Workshop Ltd* EUECJ C-214/16 the Court of Justice of the European Union concluded that, on termination, the worker is entitled to a payment in lieu of *all* untaken paid leave accrued during the entire period of employment in respect of which the employer unlawfully refused paid holiday.
59. In *Robinson-Steele v RD Retail Services Ltd and others* 2006 ICR 932 ECJ, it was argued that payment for annual leave must take place at the time the holiday is actually taken.

60. Arrangements to the contrary would either constitute a payment in lieu of annual leave contrary to Article 7(2) of the Working Time Directive (WTD) or be prohibited as a mechanism that imposes obstructions or restrictions on taking leave. Furthermore, the rolled-up holiday pay system discourages workers from taking annual leave at all.
61. The ECJ said that it is unlawful for an employer simply to designate part of the remuneration that a worker already receives for work done as holiday pay.
62. The sum payable to a worker in lieu of his or her unused holiday entitlement should be calculated according to the following formula:

$(A \times B) - C$ where:

A is the minimum period of leave to which the worker is entitled.

B is the proportion of the worker's leave year which expired before the termination date.

C is the period of leave taken by the worker between the start of the leave year and the termination date.

Preparation Time Orders

58. The grounds for making a preparation time order are under Rule 73(2) of the Tribunal Rules 2024. They include that a party has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the bringing or conducting of proceedings or part thereof; or the claim or response has no reasonable prospect of success; or where there has been a breach of an order, rule, or practice direction: Rule 74 ss.3.
59. All of the above grounds are discretionary, that is the Tribunal may make a preparation time order if the ground is made out but is not obliged to do so.

60. Pursuant to Rule 74(2) the Tribunal is under a duty to consider making an order when the provisions are made out.

CONCLUSIONS

61. In light of the Tribunal's findings of fact above, I make an award as set out below.

Basic award

62. Section 224 of the Employments Rights Act 1996 applies, so the claimant's payments for the last 12 weeks of his employment is used to calculate his average weekly wage. The claimant was therefore entitled to a basic award of **£2,450.75**, calculated as follows:

- a. Average weekly wage: £6,535.25 divided by 12: £544.61
- b. Three years completed service x 1.5 weeks
- c. X £544.61.
- d. Total £2,450.75

63. The figures were not in dispute between the parties, only the principles.

Compensatory award

64. The compensatory award is calculated as follows:

COMPENSATORY AWARD	
Loss of Statutory Rights	£350
Loss of Earnings and Mitigation 17 weeks x £544.61 = 9258.37 Less £2635 pay from temporary work	£6,623.37

ADJUSTMENTS	
Acas uplift @10%	£662.33
HOLIDAY PAY	
28 days holiday statutory entitlement, calculated pro-rata as 22 days	
544.61 average weekly wage divided by 5 x 22	
X 2 years	£4,792.57
PREPARATION TIME	
7 hours x £45 per hour	£315

Total Award

65. The total of the basic and compensatory awards combined, including the preparation time award, is £15,194.02.

Recoupment

66. No recoupable benefits have been received in the relevant period and so the Employment Protection (Recoupment of Benefits) Regulations 1996 do not apply to this award.

Approved by:

Employment Judge Wilson

Date: 31 March 2026

SENT TO THE PARTIES ON

9 April 2026

FOR THE TRIBUNAL OFFICE