Case: 6002518/2025

EMPLOYMENT TRIBUNALS

Claimant: Mr P Bray-Menezes

Respondent: Systra Limited

AT A REMEDY HEARING

Heard at: **Leeds by CVP video conferencing** **On: 9th April 2026**
Before: **Employment Judge Lancaster**

Representation
Claimant: In person
Respondent: Mr L Nacif, counsel

JUDGMENT

The Respondent is ordered to pay compensation to the Claimant in the sum of £325.00

REASONS

1. At the liability hearing on 27th November 2025, I held that the dismissal for redundancy was procedurally unfair because there was no evidence that either the dismissing or the appeal manger had properly applied their own mind to the question of whether the Claimant should have been in a pool for section with his Birmingham based colleague. The failure to place him in such a pool meant that the claim for unfair dismissal succeeded.

2. As the Claimant has already received a statutory redundancy payment there will, however, be no basic award for unfair dismissal. The only issue still to be determined, in the absence of any agreement on this point, is the level of the compensatory award.

3. I made it clear in my oral judgment that there would, therefore, necessarily be a reduction in the amount of any compensation awarded to take account of the possibility that even if he had been so pooled the Claimant would still have been selected for redundancy.

4. The award is to be made in accordance with section 123 of the Employment Rights Act 1996:

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.

(3)The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a)any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b)any expectation of such a payment,

only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same 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.

5. The Claimant was given oral notice of dismissal on 9th October 2024, confirmed in writing on 28th October 2024. The expiry of his notice was to be on 1st January 2025. By agreement the effective date of termination was brought forward to 15th November 2024 to enable the Claimant to start in a new job on 18th November 2024.

6. The Claimant has remained continuously in that alternative employment with an employment agency on successive assignments until the date of this hearing. That is some 17 months, Although the last such assignment was specified to be from 9th March 2026 until 10th April 2027 6 (the day after this hearing) there has been no evidence of his employment coming to an end. The Claimant's own financial predictions are all predicated upon an assumption of continued employment.

7. Although the Claimant has sought to argue that he has somehow in reality suffered a reduction in income taking into account the alleged differences in terms and conditions, I find this not to have been the case.

8. Under his contract with the Respondent the Claimant was on a salary which equated to £1475.86 gross per week. Under his contract this was on normal working hours of 37 per week (though in the ET1 the Claimant says he worked 37 ½ hours) but with an expectation that he might work additional hours as required at the same salary, that is without overtime. He signed the opt out of the maximum 48 hours per week. He was entitled to 25 days holiday plus bank holidays (33 days).

9. Under his contract with his new employer the expected hours of work on any assignment were stated to be between 35 to 40 per week, though the Claimant asserted it was always 40. He similarly opted out of the maximum 48 hour week. His holiday entitlement was the minimum 5.6 weeks per annum (28 days) , but contrary to the Claimant's assertion this was not simply unpaid, there was provision for "rolled up holiday pay".

10. Had the Claimant remained in the Respondent's employ at the same rate of pay (£1475.86) to date he would have received a total of £107,737.78 gross.

11. From the pay slips in his new employment over the same period from commencement until 22nd March 2026 (the lase payslip produced) the Claimant received £118,693.23 gross. Extrapolating his pay between then and the date of hearing from the terms of the most recent assignment (3 days per week at £507.22 per day) the Respondent calculates his total gross pay to be £122,497.38. That is £14,759.60 gross more than he would have received had he not been dismissed. For much of the latter part of that period, that is from 19th October 2025 the Claimant's weekly gross income, though reduced from what it had been earlier in this new employment was still consistently £1686.61 – still in excess of his final salary with the Respondent. The average over the last 12 weekly pay slips (totalling £19.141.40) is still £1598.12 gross.

12. It must follow, on these figures, that he will not have suffered any reduction in net income. He has not therefore sustained an actual financial loss in consequence of the dismissal but has in fact been able to earn more.

13. Even taking into consideration all the additional elements of his remuneration package with the Respondent the Claimant still has not sustained a loss to date. It is accepted that the Claimant would have continued to receive a non-contractual bonus of £3,000.00 per annum. The difference in the amount of employer's pension contributions paid as between the old and the new employment is calculated at £281.96 per month, or £3,383.52 per annum. The Claimant had private health insurance provided by his employer equating to a monthly cost of £57.98, or £695.76 per annum. Although membership of the Institute of Civil Engineers (ICE) was not a requirement of his employment the Claimant's professional fees (currently about £400.00 per annum) were reimbursed by the Respondent, presumably as expenses. If the Claimant continues to pay these fees himself, it will no doubt however be tax-deductible.

14. On a pro-rata apportionment, over the 17 months the gross value of the bonus would have been £4250.00, the difference in pension contributions would have been £4793.32, the value of the PHI would have been £985.66 and the value of the ICE subscription £566.66. That is £10,595.64. The excess in gross income received in new employment in this period is therefore still £4163.96.

15. I find that in these circumstances that the Claimant's leaving before the expiry of his notice period in order to secure permanent employment at a higher level of remuneration breaks the chain of causation. There is no loss in fact sustained to date and if hypothetically the new employment were to terminate or to attract a lower level of remuneration that would in all probability have to be ascribed to a subsequent change in market circumstances: it would not then flow from the dismissal by the Respondent.

16. Whilst I find that, had he not been dismissed, the Claimant would have remained in employment with the Respondent until his anticipated retirement age of 65 he is not entitled to career-long losses where the chain of causation has already been broken prior to that date. This situation is totally different to that in Davidson v National Express [2005] EAT 151, upon which the Claimant seeks to rely.

17. Having concluded that the chain of causation was broken by the obtaining of higher-paid employment that necessarily means that the entire remuneration package, including pension rights, is to be offset against those increased earnings. I have no evidence that would enable me to make any complex calculation of pension loss as at the date of retirement, and so must use only the simple method of comparing the rate of contributions but the principle in Aegon UK Corp Services Ltd. v Roberts [2009] EWCA 932 still applies, per Lord Justice Elias at paragraphs 17 to 19 (this case is cited in the Employment Tribunal Principles on the calculation of pension loss to which the Respondent has referred in written submissions):

17 "The starting point for a tribunal when assessing what compensation should be awarded under Section 123 is to determine what financial loss flows from the dismissal. In the context of this case, this required the tribunal to determine whether Aegon should continue to be liable for losses occurring after the dismissal by Just Retirement. After carefully considering the facts in the light of the Dench decision, they concluded that the new employment had broken the chain of causation. They accepted that the consequence was that as far as all aspects of remuneration other than pensions were concerned, Aegon's liability was crystallised at that stage. Of course, Aegon will have remained liable for any shortfall in Ms Roberts' remuneration package with Just Retirement when compared with her Aegon package and that would have continued until the age of 50, which is when the tribunal found that she would have left Aegon in any event. But in this case there was no shortfall and therefore no loss. The tribunal's finding on causation meant that Aegon were not to be liable for the loss of remuneration continuing after the contract with Just Retirement came to an end.

18 “The tribunal chose not to apply this same principle to the pension loss. I do not think that they could legitimately fail to do so by carving out pensions for this special treatment. With all due respect to the Employment Tribunal and the EAT, I do not accept that pensions have some special status in this calculation. The pension is simply part of the overall remuneration package- in essence deferred remuneration- albeit an important part, and must be assessed accordingly. Nor do I accept the observation of the EAT that having the benefit of a final salary pension scheme is an unquantifiable benefit which justified pension loss being treated differently. The tribunal cannot avoid translating pension values into money terms. It is not possible to make any assessment of loss otherwise. That is admittedly often a difficult and highly speculative exercise, but it is one that must be undertaken nonetheless.

19 “Had the Employment Tribunal applied the Dench principle to the whole of the remuneration package, they would necessarily have concluded that there was no loss arising out of the change in pension arrangements. Even taking account of the pension loss, the overall package with Just Retirement was more favourable than it had been with Aegon. No doubt it would have been open to the tribunal to find that Ms Roberts’ period with Just Retirement did not break the chain of causation. Had they reached that conclusion then on the assumption that any future employment would be on Aegon rather than Just Retirement terms, the future loss would indeed have been measured principally by the loss of pension plus the loss incurred during the period of unemployment following termination of the contract with Just Retirement. But that was not their conclusion, and in my judgment they were not entitled to apply different principles of causation to different aspects of the remuneration package.”

18. Whilst I sympathise with the difficult situation the Claimant found himself in when facing the prospect of redundancy whilst seeking to move house, his claimed losses in respect of removal costs, storage, travel and those expenses incidental to his moving into his second property at Whitby having decided to go through with the sale of his main residence whilst not yet being in a position to proceed with his proposed move, are simply not recoverable. That is irrespective of whether these sums are properly calculated as they do not, for instance, take account of the reduced mortgage costs or the interest on the sale price of his house

19. These alleged losses are not attributable, as they must be in order to be recoverable, to the consequences of the dismissal which took effect on 15th November 2024. They predate not only that effective date of termination, but even the date of giving notice.

20. On the question of any “Polkey” reduction, I do not, however, accept the Responent’s contention that the Claimant would necessarily have been selected for redundancy when scored against his colleague in Birmingham. His line manager, Mr James Haigh, has given evidence before me that on a reconstruction of the scoring exercise as he believes it would have been caried out in 2024, the claimant would have scored 84 as against 125.

21. Whilst the selection matrix would have been that agreed with the trade unions and applied consistently across the whole redundancy process, I consider that the way it has retrospectively been applied to the Claimant is suspect. In nearly all the categories there is a high degree of subjectivity with the assessment being based on the opinion of mangers who had knowledge of the candidates, rather than upon any objective criteria. On the scoring based upon the most recent annual appraisal the Claimant came out higher, being marked at “above expectations” whereas his comparator only scored “meets expectations“ in his performance PDR. Yet the examples referred to in that PDR appear to be duplicated in the further categories relating to competencies and technical skills where there have been taken as evidence of his meriting a maximum score, as opposed to the Claimant. It is hard to see how examples of work which were contemporaneously only regarded as earning a mark of “meets expectations£ should not be relied upon to show that performance was “well above expectations”. I also observe that whilst the score based on PDRs was expressly limited to the previous year, there is no similar restriction on the time frame within which to evaluate evidence of skills or competencies, yet Mr Haigh has ruled out historic experience on the part of the Claimant.

22. It is clear that both candidates were highly qualified and experienced, and that the selection would not therefore have been easy. Had the Claimant been involved in a proper selection process at the time he would have been able effectively to challenge any questionably low scores in a way that is not now possible so long after the event. I conclude therefore that the proper level of reduction 50 per cent. There is, of course, a real risk that the Claimant would indeed have been selected, but the outcome was nby no means certain as the Respondent now argues.

23. However, the only sum that falls to be assessed by way of compensation is the conventional award for the loss of statutory rights. I consider the appropriate sum in this respect to be £650.00. Reduced by 50 percent that is £325.00

EMPLOYMENT JUDGE LANCASTER

DATE 13th April 2026

oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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