EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002264/2025

Held in Glasgow on 13 April 2026

Employment Judge L Wiseman

Ms K Murray	**Claimant** **Represented by:** **Ms G Duffy - Solicitor**
Target Healthcare Limited	**Respondent** **Represented by:** **Ms H MacLean - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The tribunal decided, having accepted the respondent's concession that the claimant was unfairly dismissed, that the respondent shall pay to the claimant compensation in the sum of £16,696 (being a basic award of £5033 and a compensatory award of £11,663).

REASONS

1. The claimant presented a claim of unfair dismissal to the Employment Tribunal on 18 September 2025.

2. The respondent entered a response in which it accepted it had dismissed the claimant for reasons of gross misconduct, but denied the dismissal was unfair.

3. The respondent, at the commencement of the final hearing, confirmed they wished to concede the dismissal had been unfair and according today's hearing would be confined to determining remedy in circumstances where the claimant's Schedule of Loss was opposed by the respondent.

4. Ms Duffy accepted this accurately reflected the position but she invited the tribunal to adjourn until 2pm to give time for the claimant to prepare an application for strike out of the response. Ms Duffy made reference to alleged witness interference as being the basis for the application.

5. The Employment Judge refused the application but allowed a period until 11am, at which time the application for strike out of the response could be made.

Claimant's submission regarding strike out of the response

6. Ms Duffy submitted the claimant was concerned about the respondent cross examining her and the application for strike out was based on all that had gone before in terms of late documents being produced and unreasonable and vexatious conduct.

7. Ms Duffy submitted the manner of the conduct of proceedings had been unreasonable and vexatious because the respondent had:

   (i) issued a costs warning to the claimant after she approached ACAS to put forward a settlement figure;

   (ii) challenged the relevance of documents rather than prepare the documents as ordered;

   (iii) made an application for postponement of the final hearing in order for the issue of whether there was a protected conversation to be determined at a preliminary hearing;

   (iv) presented a joint folder of documents for the hearing which did not include all of the documents the claimant wished to include and

   (v) sent through an amended counter schedule of loss at 9.43pm on the night before the start of the hearing.

8. Ms Duffy considered it was no longer possible to have a fair hearing and the respondent should not be given the chance to cross examine the claimant on the issue of remedy, given their behaviour.

Respondent's submission regarding the application for strike out of the response

9. Ms MacLean objected to the application made by the claimant and categorically denied there had been unreasonable behaviour on the part of the respondent or their representative. Ms MacLean agreed a costs warning had been sent to the claimant but explained this had been done because the claimant, having provided a schedule of loss in December, then put forward a settlement figure in excess of the amount in the schedule of loss.

10. Ms MacLean considered she had complied with the case management order regarding documents and production of a joint folder of documents. The claimant's documents had been included, but on the 18th March the claimant's representative advised that a further large volume of documents

was to be included and, in order to avoid confusion, these would be placed in a supplementary folder. The respondent did question the relevance of these documents, but received no reply.

11. The claimant's representative, just prior to the Easter break, had sent 200-300 pages of documents for inclusion in the folder. These were all regulatory documents which had not been referred to during the disciplinary hearing. The respondent questioned the relevance of these documents in the circumstances. Ms MacLean noted only 68 pages had in fact been produced for this hearing and from this she concluded the remaining documents must have been irrelevant.

12. Ms MacLean apologised for the late submission of the revised counter schedule of loss but confirmed that the only change to the previous version was the fact the figures for weekly pay, including commission, had been agreed.

13. Ms MacLean submitted a fair trial was still possible.

Decision regarding claimant's application for strike out of the response

14. The tribunal refused the claimant's application for strike out of the response. The tribunal acknowledged there had clearly been a dispute between the parties regarding the production of documents for the hearing, but that considered should have been addressed by either inserting the disputed documents at the back of the joint folder, or by placing the documents in a supplementary folder. There appeared to be no dispute regarding the fact the claimant had produced a supplementary folder of documents and had also reduced the number of documents they wished to produce. I considered the important factor to be that the parties had an opportunity to produce all of the documents they considered relevant, and had then produced all of those documents for this the hearing (which would now be limited to a hearing on the issue of remedy).

15. The tribunal considered the issuing of a costs warning to be part and parcel of litigation. The fact the claimant proposed settlement for a sum greater than the schedule of loss and the respondent responded with a costs warning, did not appear to be unreasonable.

16. The tribunal acknowledged there had been an application for postponement of the final hearing to allow the preliminary issue of whether there was a protected conversation to be determined. The parties were advised there was no opportunity to have this listed prior to the final hearing. The Employment Judge then issued a letter to both parties confirming the preliminary issue would be reserved and determined as part of this hearing.

17. The tribunal noted the respondent's apology for sending very late documents, but the only change in the documents was to agree the claimant's figure for wages in the schedule of loss. In those circumstances there cannot be said to have been any disadvantage to the claimant.

18. The tribunal decided there had not been any unreasonable or vexatious conduct on the part of the respondent or their representative. Issues were now limited to remedy and a fair hearing on this matter was still possible.

Remedy

19. The tribunal heard evidence from the claimant and was referred to a number of documents relevant to the issue of remedy. The tribunal, on the basis of the evidence before it, made the following material findings of fact.

Findings of fact

20. The claimant commenced employment with the respondent on 11 December 2017.

21. The claimant was summarily dismissed with effect from 13 May 2025.

22. The claimant earned a gross weekly pay (inclusive of commission) of £1,117.23 per week. This equated to a net weekly pay of £823.14.

23. The claimant was a member of the respondent's pension scheme and the employer's pension contribution was £25.85 per week.

24. The claimant commenced alternative employment with Core Pharmaceuticals Ltd on 2 June 2025. Her net weekly pay was £529.62.

25. The claimant resigned from that employment with effect from 15 July 2025. The claimant resigned because she and her mother look after her father who is extremely unwell. The claimant realised, after taking the new job (which is based in Liverpool) that she was not going to be at home enough to help her mother care for her father.

26. The claimant had been contacted by Ethigen just after she started employment with Core, and was aware they wanted to speak to her regarding employment. Ethigen contacted the claimant again on the 31st July and arrangements were made to meet to discuss employment.

27. The claimant commenced alternative employment with Ethigen on 25 August 2025 and accepted her losses ended upon taking up this new role.

28. The claimant had, in her schedule of loss, included pension loss for a period of 2 years.

29. The claimant also sought payment for equipment which she had purchased whilst working with the respondent. The claimant had not, during the disciplinary process, been allowed access to the respondent's systems. The claimant purchased a laptop so that documents regarding the investigation and disciplinary hearings could be sent.

30. The claimant also sought payment for a work desk.

31. The claimant included in the schedule of loss her fuel costs of driving to Liverpool to attend for interview, and her fuel costs whilst in Liverpool. She also claimed living expenses whilst working in Liverpool.

32. The claimant also included the sum of £550 for a contribution to her phone bill. The claimant had used her mobile phone for work whilst with the respondent. The respondent agreed to pay the sum of £49 per month towards this.

Claimant's submissions

33. Ms Duffy referred the tribunal to the case ***of Dench v Flynn & Partners 1998 IRLR 653*** where the chain of causation had not been broken by the employee leaving alterative employment. Ms Duffy submitted the chain of causation had not been broken in the claimant's case and the claimant was entitled to recover all losses flowing from the dismissal as detailed in the schedule of loss.

Respondent's submissions

34. Ms MacLean submitted the claimant's losses ended when she took up the employment at Core. The claimant had given evidence regarding the reasons for her resignation from Core, but she had not produced her letter of resignation. It was submitted that the issue with the claimant's caring responsibilities existed prior to her taking up employment with Core. Ms MacLean further submitted that if the tribunal was not with her on that point, then only loss of wages should be awarded and not the additional expenses claimed by the claimant.

35. The claimant had purchased the laptop prior to dismissal, so this was not something that flowed from the dismissal. The claimant had not produced proof of purchase of cost. The claimant still had the laptop provided by the respondent and the cost of this should be offset against any award.

36. The claimant sought two years' pension loss but provided no explanation for this.

37. The claimant had not provided any proof that the claim in respect of the contribution to the phone bill was a genuine work expense. The agreement

for the contribution was made in 2021 and there was no evidence regarding exactly what the agreement had been.

38. Ms MacLean accepted an uplift of 25% should be made to the compensatory award for breaches of the ACAS code of practice.

39. Ms MacLean submitted the claimant had been summarily dismissed and therefore no payment for notice was due to the claimant. Further, the claimant, notwithstanding the claim for holiday pay included in the schedule of loss, had accepted that she had in fact been paid for holidays.

Discussion and Decision

40. The tribunal firstly had regard to section 118 Employment Rights Act (ERA) which provides that "where a tribunal makes an award of compensation for unfair dismissal … the award shall consist of a basic award (calculated in accordance with sections 119 to 122 and 126) and a compensatory award (calculated in accordance with section 123, 124, 124A and 126).

41. The tribunal also had regard to section 123 ERA which provides that 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 claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The loss shall be taken to include any expenses reasonably incurred by the claimant in consequence of the dismissal. The compensation awarded by the tribunal must only cover loss that flows from the unfair dismissal.

42. The tribunal next had regard to the fact the claimant was unfairly dismissed by the respondent for reasons of gross misconduct and is entitled to an award of compensation.

Basic award

43. The representatives agreed the calculation of the basic award was 7 weeks x £719 gross per week (subject to the statutory cap). I agreed with this calculation. The claimant is entitled to a basic award of £5033.

Compensatory award

44. The heads of compensation normally used by tribunals are:

- immediate loss of earnings – that is, loss between the dismissal and the hearing at which the tribunal decides on compensation;
- future loss of earnings;
- expenses incurred as a consequence of dismissal;

- loss of statutory employment rights; and
- loss of pension rights.

45. The tribunal, in calculating immediate loss of earnings, should calculate the loss incurred between the effective date of termination of the contract of employment and the date when the tribunal assesses the loss. The effective date of termination of employment was 13 May 2025. The final hearing was 13 April 2026. The parties had, however, agreed the claimant's losses ended on 24 August 2025 when she commenced employment with Ethigen at a higher salary.

46. The main dispute between parties was whether the claimant's losses ended when she took up new employment with Core. The respondent's primary position was that this employment broke the chain of causation and therefore the claimant's losses were limited to the period between her employment ending and the new employment starting.

47. The tribunal, in considering this submission, had regard to the case of ***Whelan v Richardson 1998 ICR 318*** where the EAT set out a number of propositions to be applied when assessing an employee's losses. It was said that the assessment of loss must be judged on the basis of the facts as they appear at the date of the remedies hearing. There was also a distinction to be drawn between new permanent employment and temporary employment.

48. The tribunal acknowledged that when the claimant commenced employment with Core, she anticipated that it would be a permanent position, however that proved not to be the case. The tribunal accepted that judging matters on the basis of the facts as they appeared at the final hearing, the claimant had a short period of alternative employment where she earned less than she had previously with the respondent. Accordingly, the tribunal considered the correct approach to calculating immediate loss was to calculate the claimant's loss of earnings in the period from the effective date of termination of employment (13 May 2025) to the date the claimant commenced alternative permanent employment with Ethigen (25 August 2025). The tribunal adopted this date because the parties had agreed the claimant's losses ended as at that date.

49. The tribunal calculated the claimant's immediate losses to be £11,524 (being 14 weeks from 13 May to 24 August x £823.14 net per week).

50. The claimant obtained alternative employment on 2 June 2025 and was employed until 15 July 2025. The claimant, during this period, earned £529.62 net per week. The claimant was employed for a period of 14 weeks and during this time she earned £3178 net. This sum falls to be deducted from the loss of earnings.

51. The tribunal calculated that in relation to immediate loss, the claimant's loss was £8346 (being £11524 less £3178).

52. The claimant has also lost employer's pension contributions during this 14 week period, and the tribunal calculated this to be £362 (being £25.85 x 14 weeks).

53. The claimant is also entitled to an award in respect of loss of statutory employment rights and I award the sum of £400 for this.

54. The above awards produce a total of £9108 (being £8346 + £362 + £400).

55. The tribunal next turned to consider the claimant's claims in respect of working from home expenses (laptop and desk), expenses when she was in Liverpool for her job with Core, travel expenses whilst working with Core and the contribution towards her phone bill.

56. The tribunal understood the claimant's access to the respondent's systems had been frozen whilst the disciplinary investigation/process was being undertaken. The claimant bought herself a laptop to use and to receive documents from the respondent relating to the disciplinary process. The tribunal could not accept this was a loss which arose in consequence of the dismissal and I say that because the dismissal had not yet taken place. This was not a loss which flowed from the dismissal.

57. I made the same decision in relation to the purchase of a desk. There was very little evidence regarding this purchase: there was, for example, no vouching for the purchase and no evidence when it was purchased.

58. The claimant also claimed the loss of the contribution of £49 per month made by the employer towards her phone bill. There was, again, very little evidence regarding the basis upon which it had been agreed this would be paid. The claimant did produce a text message from a Director, sent in 2021, agreeing to make payment because a personal phone was being used for work.

59. I accepted the claimant used her personal phone for work purposes, however I concluded that "work purposes" stopped when the claimant's employment with the respondent came to an end (if not earlier). The reason why the respondent was making the contribution towards the cost of the phone ceased and, I concluded that any onus on the part of the respondent to make a contribution towards the cost of the phone also ceased upon the termination of the claimant's employment.

60. The claimant claimed fuel costs which included not only the costs of driving to Liverpool for interview, but also fuel expenses once she accepted employment. I accepted that in terms of section 123 ERA, as set above, it expressly states the assessment of loss shall be taken to include any

expenses reasonably incurred in consequence of dismissal. I further accepted that sums reasonably spent in looking for a new job, for example, the cost of attending for interview, may be recovered.

61. I accepted the submission that the claimant's fuel costs for attending for interview in Liverpool formed part of her immediate loss. I also accepted the claimant's calculation of mileage and fuel costs for this which amounted to £223 (being 406 miles x 55 pence per mile).

62. I could not accept that the costs incurred by the claimant whilst employed by Core (fuel costs and general expenses) were expenses recoverable as part of immediate loss reasonably incurred in consequence of the dismissal. The claimant had moved on from dismissal and had started alternative employment. The expenses relate to that new employment and how the claimant chose to travel and live whilst carrying out that employment. I did not accept these expenses fell within the category of expenses reasonably incurred in consequence of dismissal.

63. I lastly considered the claimant's claim for pension loss for the period of 2 years. I have (above) made an award of pension loss for the period of the immediate loss. The claimant gave no explanation why she considered pension loss of two years was just and equitable: this was particularly so in circumstances where the claimant accepted her losses ceased as at 24 August 2025.

64. The claimant sought an uplift of 25% for breaches of the ACAS code of practice. The respondent conceded this uplift should be applied. I accordingly uplifted the compensatory award of £9108 + £223 for the fuel expenses incurred in attending interview by 25%, to produce a figure of £11,663.

65. I decided the respondent shall pay to the claimant total compensation in the sum of £16,696. This figure comprises a basic award of £5033 and a compensatory award of £11,663.

Date sent to parties 24 April 2026