



EMPLOYMENT TRIBUNALS

Claimant: Mr Joseph

Respondent: Wincanton Group Ltd

Heard at: London South (in person) **On:** 16 April 2026

Before: Employment Judge Hart, Mr Hutchings, Ms Beeston

Representation:

For the claimant: Ms Slater (lay representative)

For the respondent: Ms Mather (counsel)

REMEDY JUDGMENT having been sent to the parties on 3 February 2026 and written reasons having been requested by the claimant in accordance with Rule 60(3) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REMEDY REASONS

INTRODUCTION

1. This sets out the reasons for the remedy awarded by this Tribunal in relation to Mr Joseph's successful claims for unfair dismissal, wrongful dismissal and direct race discrimination (the decision to process the termination of his employment in the timeframe in question and / or without confirmation that he had resigned).

THE HEARING

2. The remedy hearing took place over 1 day. Mr Joseph was represented by Ms Slater (lay representative). The respondent was represented by Ms Mather (counsel).
3. For the hearing we were provided with the following documents (in addition to those provided for the liability hearing):
 - 3.1 A joint agreed hearing bundle of 355 pages; the references to page numbers in this judgment are to the pages in this bundle. The bundle contained an updated schedule of loss: **pgs 204-210**.
 - 3.2 A counter schedule of loss (redacted) of 8 pages.
 - 3.3 A witness statement from Mr McCulloch (redacted)

4. Mr Joseph gave evidence on his own behalf. The Respondent called Mr McCulloch (People Partner). On completion of the evidence both parties provided oral submissions. Oral judgment was provided the same day.
5. Mr Joseph requested written reasons on 29 April 2026.

REMEDY ISSUES

6. At the commencement of the hearing the parties agreed the list of issues contained in the Case Management Order sent to the parties on 3 February 2026: **pg 114-121** (see appendix A). Mr Joseph confirmed that he was not seeking reinstatement or re-engagement.
7. The Tribunal was informed, and agreed, that references to “without prejudice” discussions were to be disregarded. This included the unredacted versions of the counter schedule of loss and Mr McCulloch’s witness statement.

FACTUAL FINDINGS AND CONCLUSIONS

Employment with the respondent

8. Mr Joseph was an experienced HGV class 2 driver. He commenced employment with the respondent on 18 May 2021, he was dismissed on 7 May 2024. At the time of dismissal he had two full years’ service. He was aged 60 (DoB 9 January 1964).
9. The respondent had employed him on an hourly paid contract and paid £18.23 gross per hour and guaranteed pay for 170 hours every four weeks plus overtime. According to the HMRC in the financial year 2023/2024 Mr Joseph earned £44,469 gross. Employer pension contributions were 3%. Notice was two weeks. When working for the respondent Mr Joseph had usually worked 4am to 12pm and stated that he had received a rota identifying his hours of work up to a year in advance. He also worked overtime. The commute to and from work was 40 minutes.

Mr Joseph’s mental health

10. Mr Joseph had a preexisting mental health condition (stress at work), which was ongoing at the time of his dismissal. On 30 May 2024, following his dismissal, Mr Joseph was triaged to receive 4 sessions of self-guided CBT: **pg 239**. Between 24 September 2024 and around 17 December 2024 Mr Joseph attended seven therapy sessions: **pgs 269-278**. Mr Joseph provided evidence of his therapy agreement and automated emails requesting that he complete a questionnaire prior to attending his appointment. We accepted that this was evidence that he was attending the sessions since otherwise he would have been discharged. There was no medical evidence provided to us of any continuing mental health (or treatment) after 17 December 2024, or that he was unfit to work due to his mental health or otherwise medically restricted in the work that he could do.

Mr Joseph's physical health

11. Mr Joseph was 60 years old and informed us that he suffered from high blood pressure and diabetes and therefore was unable to work in a role that involved manual handling and or multiple drops. We considered that given his age and health, he was likely to be unable to work in a role that specifically required heavy lifting, but in the absence of any medical evidence to the contrary, did not consider that he was unable to work in a driving role that required manual handling or multiple drops.

Mr Joseph's caring responsibilities

12. Mr Joseph was a carer for his elderly mother. The care provided was on a daily basis and included taking her shopping, or to the doctor's and other appointments and social engagements. He was not involved in her personal care. We accepted that this meant that this imposed some restriction on the hours that he could work and noted that he preferred a fixed rota.

Mitigation

13. It is a fundamental principal that a successful claimant is expected to take reasonable steps to mitigate their losses by looking for suitable alternative work. The burden of proof is on the respondent to establish that the claimant failed to mitigate by acting unreasonably.
14. Mr Joseph sought almost seven years loss of earnings up to retirement on 9 January 2031. He had found permanent work with City Circle UK Limited as a coach / bus driver, which commenced on 1 April 2026. It was for less pay (£15 per hour, the equivalent of £37,260 pa), longer hours (207pm), required a longer commute (3 hours) and did not provide a fixed rota or consistent working pattern. He submitted that this was not suitable alternative employment. The respondent submitted that Mr Joseph should have found suitable alternative employment within a month of dismissal due to a shortage of HGV Class 2 drivers. It further submitted that due to the shortage of drivers employers were prepared to be flexible as to working hours, and in any case when working for the respondent Mr Joseph was prepared to work overtime and therefore could accommodate more flexibility than he was now prepared to work.

Search for suitable alternative employment

15. Following his dismissal, Mr Joseph did not start to seek alternative work until 30 July 2024. Between 30 July 2024 and January 2026 (over an 18 month period) Mr Joseph provided evidence that he had enquired about approximately 15 positions through "Indeed", a web-site portal advertising jobs: **pg 243-258**. In his schedule of loss Mr Joseph had stated that during periods of unemployment he was applying for approximately 10 jobs pm, through word of mouth or shop windows. However he did not provide any further details of this search either in his statement or in oral evidence. We considered that whilst he may have enquired about a couple of jobs through this route, it was not of the magnitude of 10 jobs pm. The "Indeed" evidence that he provided was limited. It showed that he enquired about ten jobs between 30 July and 25 August 2024, a further three between 22 November and 3 December 2024 and a further five between 20 March and 31 December 2025. He attended interviews for three

of these jobs (Online Roadways, Centaur Travel and City Circle). The other jobs he either did not pursue due to his mental health at the time, he was not contacted back or following enquiries they were not suitable being either lower paid, involving manual handling, involved too long a commute or the hours of work did not accommodate his caring responsibilities.

16. During this period Mr Joseph did do some work. He accepted a permanent position as coach / bus driver with Centaur Travel (£40,000 - £45,000 pa) and according to the HMRC records worked for them in the pay period ending 5 December 2024 and 5 January 2025: **pg 214**. Mr Joseph stated that he left because he was on probation, found it too stressful and pay was less than advertised (only £120 pd). For the pay period ending 31 January to 31 March 2025 Mr Joseph worked for James Burden: **pg 215**. He left because he was asked to drive to locations out of London (Southampton and Southeast). It was an early start 2-3am and sometimes he would not get back to London until 3-4pm. Between end of April and 4 July 2025 Mr Joseph worked for ELIS UK Limited: **pg 217**. His hours of work were 2pm to 10pm, therefore it accommodated his caring responsibilities, however he found the work too physically demanding since it involved emptying and filling trollies with laundry. Between 20 June 2025 and February 2026 he worked for a number of agencies: Milton Support Services, Umbrello Limited, Clipper Contracting and Kirivani Limited doing a range of temporary jobs: **pgs 218-223**. On 12 January 2026 Mr Joseph secured permanent employment as a coach / bus driver with City Circle: **pg 303**.
17. Mr McCulloch gave evidence, which we accepted, that that HGV class 2 drivers were in high demand and had been for many years. The respondent was permanently recruiting drivers to work in London and the South East and his undisputed evidence was that ordinarily it would take 1 month to find equivalent employment. In support of his evidence Mr McCulloch provided evidence of six permanent HGV class 2 jobs advertised by "Indeed" within 10 miles of Greenwich (Mr Joseph's home) that were available on a single day prior to the hearing: **pgs 324-342**. He stated that this was only a single web site and that there were "dozens" of them advertising jobs.
18. Of the posts identified by the respondent, Mr Joseph stated that the two C&S Motor positions (£38,000 - £49,000) were not suitable: **pgs 234 and 340**. He had previously worked for the company and it required 12 hour day and night shifts, and a willingness to work flexible hours. We noted that the advert was for day shifts only and therefore did not accept that on the basis of the advert that this would have been unsuitable. Mr Joseph stated that the Nationwide Platforms position (£37,500 pa) and Big K Products UK Limited position (£49,165 pa) were not suitable since he would be charged for using the Blackwall tunnel (£4 each way): **pgs 327 and 336** respectively. We did not accept that this objection was reasonable. Mr Joseph stated that Brakes (£49,169), the Big K Products UK Limited and Canugo Limited posts specifically required heavy lifting and / or flexible hours. We agreed that these positions were not suitable for Mr Joseph for these reasons. Therefore, of the posts relied on by the respondent, we accepted that four were potentially suitable. Consequently we did not consider that Mr Joseph had fully mitigated his losses.

Conclusions

19. Mr Joseph had been dismissed without warning, at a time when he was off work due to his mental health. He gave evidence of the impact on him of the dismissal, that he was devastated and sought therapeutic help. We considered that under the circumstances it was reasonable for Mr Joseph not to immediately search for alternative employment and to only start to do so from 30 July 2024 (a period of almost 3 months).
20. In terms of the length of time it would take for Mr Joseph to find suitable alternative employment, we took into account his personal circumstances. Whilst we accepted that Mr Joseph was not medically incapacitated from working we considered that his age and physical health did restrict the work he could apply for (no heavy lifting) and his mental health meant that it would take longer for him to look for work. We also took into account his caring responsibilities and that this restricted his hours of work or ability to work flexibly and that this would also restrict the work he applied for. We accepted the respondent's evidence that ordinarily an HGV class 2 driver could expect to obtain suitable alternative employment within 1 month of dismissal. However, we considered that it would take someone with Mr Joseph's personal circumstances longer. We concluded that had he taken reasonable steps to mitigate his losses he could have obtained equivalent suitable employment by 31 December 2024 (a period of five months after he started searching for employment). Therefore he was entitled to loss of earnings between 7 May 2024 and 31 December 2024, which included the 4.25% pay rise from 1 July 2024.

Pension withdrawal

21. Mr Joseph sought the sum of £15,450 withdrawn from his pension in December 2025 and March 2026, to pay for purchase of a coin prior to his dismissal and rent arrears. He had not been charged interest or subjected to charges for late payment. He did not know the consequence of drawing his pension early, and provided no evidence as to what, if any, loss had been incurred. Accordingly we were not in a position to assess any actual loss under this heading. In any event the decision to draw on his pension post-dated the date that we have determined that Mr Joseph should have been able to secure suitable alternative employment. Therefore it is not attributable to the respondent's conduct and no award is made under this heading.

Contribution

22. The basic or compensatory award may be reduced where the claimant caused or contributed to his dismissal. The respondent submitted that there should be a deduction to the basic and compensatory award of 30% because Mr Joseph had failed to send his sick certificate to HR as instructed. However we noted that the request was that he send it to a generic HR inbox. Mr Joseph did not do this because he had concerns about confidentiality and data protection. He had no objection to sending the certificate to named HR personnel and had done so in the past. He complied with the requirement to notify his line manager in accordance with the respondent's policy. He had every expectation that Mr

Wade would receive his sick note or that the respondent would investigate if not. We have set out in the Liability Judgment the enquires that we would have expected to have been conducted by a reasonable employer. We therefore did not accept that his failure to send the sick note to a generic HR inbox, in addition to the sent to his line manager, contributed to his dismissal.

23. Further, for reasons already set out in the Liability Judgment, we had found as a fact that the respondent had no genuine belief that Mr Joseph had resigned, that Mr Joseph was seen as a “thorn” in management’s side and a nuisance and that Mr Brody used the opportunity to terminate his contract. Therefore we do not consider that there should be any deduction for contribution.

Injury to feeling

24. An injury to feeling award may be awarded for subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression: *Vento v Chief Constable of West Yorkshire Police (No2)* [2003] IRLR 102). It should be compensatory not punitive, should command public respect and should bear some broad general similarity to the range of awards in personal injury cases: *Prison Service v Johnson* [1997] IRLR 162 (EAT). The focus is on the actual injury suffered not the gravity of the acts of the respondent. However, the manner in which the discrimination was carried out can be used by tribunals to ‘draw an inference of secondary fact as to the injury suffered by a claimant when... there is little else to go on.’: **Eddie Stobart Ltd v Graham** [2024] EAT. The applicable Vento bands were¹:
- a. Upper Band: £35,200 to £58,700 for serious cases, such as where there has been a lengthy campaign of discriminatory harassment;
 - b. Middle Band: £11,700 to £35,200 for serious cases that do not merit an award in the upper band; and
 - c. Lower band: £1,200 to £11,700 for less serious cases
25. Mr Joseph sought an award in the middle to upper Vento band. The respondent submitted that this was a lower band case and that £5,000 was appropriate.
26. Mr Joseph provided limited evidence of injury to feeling. In his witness statement he referred to the “sustained and ongoing impact on my mental health”. He adduced no medical evidence of any sustained or ongoing mental health condition. In oral evidence he referred to the shock of being dismissed, attending therapy and that it had led to an ongoing distrust of management. Drawing an inference of secondary fact from the manner of discrimination we considered that this was a lower Vento lower bracket. It did not concern a campaign of discrimination against him but was a single, albeit serious, act of discrimination (namely dismissal). The decision to dismiss was not accompanied by any overt act of discrimination. Nor did we find that discrimination was the only reason for the dismissal since we also found that Mr Joseph was dismissed because he was seen as a nuisance.

¹¹ For claims heard on or after 6 April 2026

27. In considering the amount to award for injury to feeling we took into account the following factors:

- 27.1 Mr Joseph's account: That he was in "shock and anger" on receipt of the respondent's letter dated 7 May 2024. That he locked himself away, felt "not alive" and sought therapeutic help. The dismissal clearly did have a significant impact on him and we would expect it to have had that impact, since he had received no warning that he was at risk of dismissal.
- 27.2 The duration: We noted that Mr Joseph was referred for therapeutic treatment and continued to receive treatment until mid-December 2024. There was no evidence of any continuing mental ill health or distress after this date. Mr Joseph accepted that his mental health had improved since his dismissal.
- 27.3 Impact on current / future work: Mr Joseph explained that he now has greater distrust of managers. Therefore we accepted there was still some residual impact
- 27.4 Impact on personal life or quality of life: Mr Joseph gave no evidence of any impact on his personal life or quality of life, other than the initial shock of being dismissed.

Taking all these factors into account we considered an award towards the top end of the Vento bracket, of £9000, was appropriate.

ACAS Uplift

- 28. Mr Joseph sought an ACAS uplift of 25%. The respondent stated a lower amount should be awarded due to Mr Joseph's failure to appeal his dismissal.
- 29. We found that the respondent failed to comply with multiple provisions in the ACAS Code. It dismissed Mr Joseph without conducting a disciplinary investigation or hearing. The dismissal letter merely stated that if Mr Joseph had any questions he could contact HR. This fell far short of providing a right of appeal. The respondent was a large employer with access to HR advice and resources. Even if the respondent had genuinely believed that Mr Joseph had resigned it should have conducted a proper investigation before terminating his employment. We have decided to award an uplift of 25%.

Holiday pay

- 30. Mr Joseph sought holiday pay during sickness absence between 12 April and 17 April 2024 of £855.20. Since Mr Joseph had not submitted a claim for holiday pay, the Tribunal had no jurisdiction to determine this issue.

Notice pay

- 31. Mr Joseph was dismissed without notice. It was not disputed that he was owed 2 weeks' notice pay amounting to £1,229.72 net. No additional award was made for notice pay since this was included in the calculation for loss of earnings.

CALCULATIONS (as at 16 April 2026)

<u>HEADS OF LOSS</u>	Sub-total	TOTAL	Notes
WRONGFUL DISMISSAL	£0.00	£0.00	1
BASIC AWARD	£2,100	£2,100	2
Basic award (1.5 weeks x 2 years x £700)			
PAST LOSS OF EARNINGS			3
Loss of earnings between 7/5/24 - 30/6/24 (8 weeks x £668.64pw)	£5,349		4
Loss of earnings between 1/7/24 - 31/12/24 (26 weeks x £697.06pw)	£18,124		
Loss of pension contribution between 7/5/24-31/12/24 (34 weeks x £22.20pw)	£755		
Loss of statutory rights	£500		5
TOTAL		£24,727	
NON-FINANCIAL LOSSES			
Injury to Feeling	£9,000		
TOTAL		£9,000	
ACAS UPLIFT			
On loss of earnings (25% of £24727)	£6,182		
On Injury to feeling (25% of £9000)	£2,250		
TOTAL		£8,432	
INTEREST			6
Interest on past loss from midpoint ($709/2 \times 0.08 \times 1/365 \times (£24,727 + £6,182)$)	£2,402		
Interest on injury to feeling ($709 \times 0.08 \times 1/365 \times (£9,000 + £2,250)$)	£1,748		
TOTAL		£4,150	
GROSSING UP		£6,916	
<u>TOTAL AWARDED</u>		£55,325	

NOTES

1) No separate award was made to avoid double recovery.

2) Basic pay calculated as: 1.5 weeks (60 yrs at EDT) x 2 (full years worked) x gross weekly pay of £855.18pw (capped at £700).

3) Loss of earnings calculated as net pay not gross pay. According to HMRC records for the financial year 2023/2024, Mr Jospheh's net weekly pay from 7/5/24 was £668.64 pw ($(£44,469 - (£6184 - £3586))/52$).

4) Net weekly pay from 1/7/24 following pay rise of 4.25% was £697.06 pw ($£668.64 \times 0.0425$)

5) The parties agreed the sum of £500.

6) Days between 7/5/24 and 16/4/26 = 709. Interest on past loss of earnings calculated from mid-point and interest on injury to feeling calculated for whole of period.

GROSSING UP CALCULATION:							
							-
Identifying amount to be grossed up:							
Total loss of earnings + injury to feeling + ACAS uplift + interest	£46,309.18						-
Minus £30,000 tax free	£16,309.18						
Applying tax rates	Other income			Taxable ET award			Notes
	gross	tax	net	gross	tax	net	
PA (0%) to £12,570	£12,570	£0		£0	£0	£0	7
Basic rate (20%) on the next £37,700 (gross)	£25,830	£5,166	£20,664	£11,870	£2,374	£9,496	
Higher rate (40%) on the next £74,870 (gross)	£0	£0	£0	£11,355	£4,542	£6,813	
TOTALS	£38,400			£23,225	£6,916	£16,309	8

NOTES

7) The tax bands and rates for the year 2026/27 are: Personal Allowance £0-12,570 (0%); Basic Rate £12,570-£50,270 (20%); Higher Rate £50,271-125,140 (40%) and Additional Rate over £125,140 (45%)

8) Mr Joseph's pay as of 1/4/26 was £38,400: **pg 305**.

Approved by:
Employment Judge Hart
Date: 17 June 2026

Sent to the parties on:
Date: 7 July 2026

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APPENDIX A:

EXTRACT FROM CASE MANAGEMENT ORDER DATED 3 FEBRUARY 2026

The Issues

The remedy issues the Tribunal will decide are set out below.

1. Remedy for unfair dismissal

- 1.1 The claimant has stated that he wishes to be reinstated to his previous employment or re-engaged to comparable employment or other suitable employment.
 - 1.1.1 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
 - 1.1.2 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
 - 1.1.3 What should the terms of the re-engagement order be?
- 1.2 What basic award is payable to the claimant, if any?
 - 1.2.1 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?
- 1.3 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 1.3.1 What financial losses has the dismissal caused the claimant?
 - 1.3.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job? If not, for what period of loss should the claimant be compensated?
 - 1.3.3 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so, should the claimant's compensation be reduced? By how much?
 - 1.3.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 1.3.4.1 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
 - 1.3.4.2 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 1.3.5 If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?
 - 1.3.5.1 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
 - 1.3.6 Does the statutory cap of fifty-two weeks' pay or £115,115 apply?

2. Remedy for discrimination

- 2.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 2.2 What financial losses has the discrimination caused the claimant?
- 2.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 2.4 If not, for what period of loss should the claimant be compensated?
- 2.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 2.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 2.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 2.7.1 Did the respondent or the claimant unreasonably fail to comply with it?
 - 2.7.2 If so is it just and equitable to increase or decrease any award payable to the claimant?
 - 2.7.3 By what proportion, up to 25%?
- 2.8 Should interest be awarded? How much?

3. Wrongful dismissal / Notice pay

- 3.1 The parties agree that claimant is entitled to 2 weeks' notice. How much should the claimant be paid for that notice period?