Case No: 3302260/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr. G. R. Salietti
Respondent: London Underground Ltd

Reconsideration Of Remedy Judgment

JUDGMENT on remedy having been sent to the parties on 27 August 2024 and reconsideration having been requested by the claimant on 26 September 2024 that Judgment has been reconsidered without a hearing. It is varied as set out below:

The tribunal makes the following award of compensation. The figures in the table below supersede the table contained in the original judgment:

Loss of earnings 12 weeks for at CA rate (net)		£6,482.64				
Loss of earnings 12 weeks at substantive role (net)		£6,077.04				
Less pension contribution that C would have paid until 12/3/22	£365.45					
Less IHR pension paid to C up to 12/3/22 (net)	£2,857.66					
Sub total of past losses			£9336.57			
LESS benefits received by C	£2,047.00					
Total past losses				£7289.57		

Interest on past losses (510 days at 8%)				£814.83		
Basic award				£3808.00		
Loss of statutory rights				£500.00		
Injury to feelings				£25000		
Interest on Injury to Feelings (1020 days at 8%)				£5,589.04		
Total before grossing up					£43001.44	
Total after grossing up (add £3250.36)						**£46251.80**

REASONS

Introduction

1. This is a reconsideration of the tribunal's judgment on remedy dated 10 July 2024.

2. The claimant was successful in his claim for unfair dismissal, failure to make reasonable adjustments and discrimination arising from disability. At the subsequent remedy hearing on 10 July 2024 the claimant was awarded £42,476.24. Full reasons for the decision were sent to the parties on 27 August 2024. The claimant made an application for reconsideration on 26 September 2024.

3. Regrettably there has been a long delay in dealing with the application due to the parties' correspondence not being passed to me in a timely manner. Initially the parties were encouraged to agree the calculations but unfortunately that was not possible. The tribunal asked for written submissions and a bundle. The parties sent submissions and a bundle in accordance with directions given on 26 August 2025, but the tribunal have no record of receiving them. When I received a chasing letter from the claimant in January 2026, they were not on the file and the parties had to be asked to resubmit.

4. I now have the benefit of written submissions from the parties and a bundle of documents of 120 pages. References to pages in the bundle are set out

below in brackets[x].

5. On considering the submissions and bundle I decided that the reconsideration could be dealt with by me sitting alone and that it was not necessary to reconvene the panel. The parties were informed of that decision and the reasons for it by the tribunal on 27 April 2026.

6. It was necessary for me to ask the parties for further submissions. These were received in a piecemeal manner in early June 2026.

7. The issues I am to determine are agreed by the parties as 1) grossing up and 2) the net sum of ill health pension (net) which the claimant received between the date of termination of his employment and 12 March 2022 [64] (claimant's email dated 24 March 2026). That accords with my initial response to the application dated 17 October 2024 [58-63].

8. Grossing up. The claimant did not make representations about grossing up at the remedy hearing and no grossing up was carried out.The tribunal has been copied into correspondence between the parties immediately following the hearing in which the respondent agreed to pay an additional sum to the claimant for grossing up [75]. The parties are unable to agree the calculation for grossing up.

9. Ill health pension (IHR) The figure given by the claimant in the remedy hearing (£3330.06) to be deducted from his loss of earnings was the gross figure. Immediately after the hearing the claimant realised that he should have given the net figure. The respondent agrees with the principle that the sum deducted should be the net figure [64-67] but the parties are unable to agree the net figure.

Legal principles (grossing up)

10. The principle established in British Transport Commission v Gourley [1955] 3 All ER 796 is that an award should be 'grossed up' to ensure that a claimant is not left out of pocket when any tax required to be paid on the award has been paid.

11. The elements of the claimant's compensation that are subject to tax are the award for financial loss due to discrimination and the award for injury to feelings. They are taxable under sections 401 – 416 of the Income Tax (Earnings and Pensions) Act (ITEAP). Awards calculated as a gross figure such as the basic award are not grossed up.

12. Payments subject to tax under sections 401 – 416 ITEAP are only taxable to the extent that they exceed a £30,000 tax free threshold.

13. The relevant tax year for grossing up is the year the award is received by the claimant. Any adjustment to the award in subsequent tax years (e.g. upon reconsideration of a judgment) should be grossed up by reference to that subsequent tax year (PA Finlay & Co Ltd v Finlay UKEAT/0260/14).

Analysis and Calculations

14. The claimant's tax records for the tax year 2024-2025, the date when the compensation was paid, indicate that all his personal allowance would have been used up by the IHR [71-72]. Accordingly the award was expected to be taxed at the claimant's marginal rate of 20%. Any additional payment will now be made in the tax year 2026-2027 and will be treated according to his tax liability in that year. A reasonable assumption is that the claimant's tax liability is unchanged. Therefore the grossing up calculations applied to the award as set out below will apply and no further adjustment is needed.

15. Unfortunately the parties have been unable to agree the amount of tax which the claimant would have paid on the sum of £3330.06 and have therefore been unable to arrive at the net figure to be deducted. The respondent has calculated the net figure by putting the sum of £3330.06 through an online tax tool which takes account of the claimant's tax code. They have sent the claimant and the tribunal screen shots to evidence the use of the tool, the inputs applied and the resulting net figure of £2857.66. Initially the claimant agreed with this approach, but then he changed his mind. He set out alternative calculations based on his own tax records for 2020/2021. His submissions were difficult to understand and the claimant himself admitted that he was unsure of the position and invited the tribunal to make a decision.

16. The task of the tribunal at the remedy hearing on 10 July 2024 was to make an evaluative assessment of the loss that had been suffered by the claimant.

17. Having considered the submissions by both parties I have decided that the respondent's method of calculating the net figure is the most appropriate and proportionate method. I am satisfied that will put the claimant as near as possible in the same position financially as he would have been in if he had remained employed for the relevant period.

18. The calculation in the table above is accordingly varied to change the IHR pension paid to the net amount of £2857.66. The interest on past losses is recalculated.

19. The calculation, save for the grossing up is amended to the total of £43001.44.

20. The taxable part of the award is £13001.44, taking into account that the basic award of £3808 is gross and therefore should not be grossed up:

    £30000-£3808=£26,192 tax free allowance

    £43001.44-£3808 =£39193.44

. Deduct £26,192=£13001.44.

21. In order to ensure that the claimant receives £13001.44 after tax the figure should be increased to reflect the tax payable. As the claimant pays tax at 20 percent, the amount to gross up is £3250.36 (£13001.44 divided by 0.8=£16251.18-£13001.44=£3250.36).

22. The total amount to be paid to the claimant when grossed up is therefore

£46251.80.

Approved by:

Employment Judge S Matthews

Date: 11 July 2026

Judgment sent to the parties on
14 July 2026

For the Tribunal office