



EMPLOYMENT TRIBUNALS

Claimant: Mr Sobiech

Respondent: Lyons Seafood Ltd

Heard at: Southampton **On:** 2025

Before: Employment Judge Scott
Tribunal Member Earwaker
Tribunal Member Goddard

Representation

Claimant: Ms Pankowski
Respondent: Mr Chadwick

JUDGMENT

1. The respondent shall pay the claimant the following sums:
 - a. Compensation for injury to feelings of **£10,500**;
 - b. Interest on compensation for injury to feelings calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996 of **£2828.38**.
2. The respondent shall pay the claimant the following sums:
 - a. A basic award of **£2,978.28**.
 - b. A compensatory award of **£13,278.74**.
 - c. Compensation for loss of statutory rights of **£500**
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply:
 - a. The total monetary award (i.e. the compensatory award plus basic award) payable to the claimant for unfair dismissal is **£16,757.02**
 - b. The prescribed element is **£16,257.02**.

- c. The period of the prescribed element is from **18 April 2023 – 13 November 2025**.
- d. The difference between (a) and (b) is **£500**.

REASONS

Introduction

1. By a Judgment dated 11 April 2025, the claimant succeeded in his claims of constructive unfair dismissal, harassment and victimisation. This hearing follows the liability hearing heard on 7 – 11 April 2025 and has been listed to decide remedy.

The hearing

2. The parties provided an agreed bundle of 407 pages and the claimant provided a witness statement with 5 numbered paragraphs over 3 pages.
3. The Claimant also provided an employment contract dated 27 July 2023 for Apetito, his new employer, as late evidence. The respondent did not object to the admission of this document and the Tribunal found that the contract was relevant to the matters to be decided. The Tribunal admitted the document in line with the overriding objective.
4. The claimant gave evidence about his mental health and its effect on his ability to seek and retain alternative employment since leaving the Respondent. The claimant provided a witness statement, a schedule of loss, medical records and bank statements.
5. The respondent provided a counter schedule of loss running to 3 pages that was not included within the bundle.

Findings of fact

6. The Claimant commenced employment with the Respondent as an agency worker in 2016, and was constructively dismissed on 18 April 2023, his effective date of termination (EDT).
7. The parties dispute the Claimant's salary for the purposes of calculation of remedy. The Claimant's salary was variable according to the shift pattern he worked and the overtime that he completed.
8. The Claimant asserts that his average annual salary was £30,000, and his monthly gross salary was £2500 (schedule of loss p246). Unfortunately, the schedule of loss did not explain how this amount was calculated, and it differs from the figures in his ET1 (p18) which provides a figure of £2300 per month. Ms Pankowski was unable to assist the Tribunal with a calculation that provided the figures within the schedule of loss.
9. The Respondent asserts that the Claimant's salary was based on an hourly rate of £13.01, and that his weekly standard hours were 35 hours a week,

providing for an annual salary of £23,678.20.

10. In relation to overtime, the Respondent provided a calculation sheet which calculates the average pay over a period of time from 1 April 2022, until the week commencing 21 July 2022, as a period where the Claimant did not take sick leave. The Respondent has then taken an average of the gross salary and increased that amount to his final hourly rate of £13.01, giving a gross weekly salary of £496.38.
11. The tribunal was provided with the following documents from which to make these findings of fact:

P60

Date	Gross pay	Tax deducted	Bundle page
5 April 2019	25,695.53	2767.00	353
5 April 2020	28317.18	3253.40	354
5 April 2021	24719.05	2441.80	355
5 April 2022	32272.05	3938.40	356
5 April 2023	16265.96	737.20	327
5 April 2024	20173	2634.60	289
5 April 2025	9167	430.40	290

Payslips

14/04/22	1083.27	244.89	301
28/04/22	400.37	17.81	302
12/05/22	1202.80	284.73	303
26/05/22	1071.58	241.14	304
09/06/22	1292.53	334.62	305
23/06/22	1102.00	251.17	306
07/07/22	1138.62	249.65	307
21/07/22	1048.21	219.47	308
04/08/22	986.73	199.12	309
18/08/22	584.87	65.47	310
01/09/22	1094.99	235.07	311
15/09/22	906.22	172.45	312
29/09/22	919.11	176.56	313
13/10/22	198.70		314
27/10/22	129.30		315
10/11/22	248.38		316
24/11/22	248.37		317
08/12/22	200.35		318
22/12/22	199.14		319
05/01/23	198.70		320
19/07/23	998.70	172.46	321
02/02/23	218.22		322
16/02/23	198.70		323
02/03/23	198.70		324
16/03/23	198.70		325
30/03/23	198.70		326

12. The payslips provided accurately reflect the calculations that the Respondent has detailed in providing its calculation of a gross weekly salary, albeit recorded with slightly different dates, corresponding to the date of earnings rather than the date on the payslip itself.
13. However, the P60 documents indicate that the year ending 5 April 2023, resulted in considerably lower overall earnings than the P60 from 5 April 2022, which resulted in £32,272.05, considerably higher than the gross weekly salary of £496.38 would generate (which would give a gross annual salary of £25,811.76).
14. The Claimant has confirmed in evidence that the payslips and values from 14 April 2022 onwards are accurate. The Claimant confirmed that when he was well enough, he would work more, and then would earn more. There is no indication from the Claimant that he was required to undertake overtime, nor that the overtime was guaranteed.
15. The Tribunal is without evidence relating to the clear number of hours the Claimant worked each week, nor the shift work that he undertook. The evidence available shows only a number of hours of pay. The Tribunal is without pay slips for any of the period until 5 April 2022, however, on the claimant's own evidence the additional pay appears to be voluntary overtime.
16. Accordingly, the Tribunal accepts the Respondent's proposed gross weekly salary as £496.38.
17. The Claimant says he had periods of ill health as a result of his treatment, which caused his mental health to deteriorate significantly, resulting in additional losses. It is clear that there have been significant periods where the Claimant has received statutory sick pay. The Tribunal accepts that these losses were consequential on the discriminatory treatment that he received.
18. The Claimant and Respondent agreed the figures for earnings as a result of sickness absence.
19. The Tribunal heard evidence from the Claimant that his salary at Apetito was £2200, and that this included pension contributions. This is also reflected in the contract provided within late evidence. In light of that contract, the Tribunal also accepts that his employment commenced on 31 July 2023.
20. The Claimant gave evidence in relation to the impact of his treatment on his mental health. The Claimant accepted in evidence that he had not sought treatment for his mental health problems following his resignation from Lyons Seafood, he did not take medication for his depression. It was his evidence that he believed he was getting better. The Claimant also confirmed that he felt an improvement in his life after starting at Apetito.
21. The claimant says he later started to have suicidal thoughts, and started to self harm. The Tribunal was shown evidence that from April 2024, the Claimant alleged that he suffered harassment at Apetito (p151 medical records).

22. The Claimant in his schedule of loss claims he should receive compensation during the period of his employment with his new employer from 30 July 2023, to 11 October 2024. The Claimant explained that he worked for 9 months, and then had 6 months off sick, with mental health problems. The Claimant said it was a direct result of what had previously happened to him, while working for the Respondent, and because staff started to mistreat him due to his homosexuality.
23. In the Claimant's oral evidence was that his coworkers were laughing at him, because of his mental health problems and that he complained to his new employer, Apetito. He explained that the staff at Apetito knew what had happened to him at Lyons Seafood and that they were talking about it and were influenced by it.
24. The Claimant's remedy statement did not mention the events at Apetito or detail the impact of the events on his mental health.
25. The Claimant was found to have poor credibility at the liability hearing. The Tribunal finds again that he is not a reliable witness. The Claimant was inconsistent in his evidence regarding his mental health following the end of his employment with the Respondent, saying both that he had mental health problems throughout, but also stating that he took a break from medication and improved. The Claimant's medical evidence shows that he did not have medical intervention prior to his employment at Apetito. The Tribunal therefore accepts that his mental health was improving.
26. The Tribunal also accepts that the salary the Claimant received at Apetito was higher than his wage at the Respondent.
27. The Tribunal was not persuaded on the balance of probabilities that the periods of sickness absence at Apetito, were related to the Claimant's experiences at the Respondent nor that the end of his employment at Apetito was due to the same. The Claimant has not provided evidence to show that this was the case. Accordingly, the Tribunal finds that the Claimant is entitled to compensation for loss of earnings until 31 July 2023.
28. The Claimant says in his remedy statement that the harassment and victimisation he experienced resulted in a severe impact on his mental health and dignity. He says that he has suffered from depression and anxiety and that he has engaged in self-destructive behaviours.
29. His medical evidence shows that on 27 January 2023, the Claimant had a depressed mood, and that he reported being scared of the dark, and having suicidal thoughts. This records he has reactive depression. The Tribunal accepts that the Claimant experienced depression and low mood and suicidal thoughts. However, by 24 March 2023, he reports that he will move to Winchester in May, and will have a good support system and that he required no further support. .
30. The Tribunal was provided with a letter dated 25 July 2024, (p185 bundle) from the B&NES acute mental health liaison in which his attendance in Accident and Emergency is detailed. Within that letter, it states that the Claimant has been expressing suicidal ideation, following a wellbeing

meeting at his employer (Apetito at this time). The precipitating factors are listed as harassment and bullying at work, feeling broken, family unaccepting of his sexuality and historical trauma. The letter also confirms that the Claimant had had no prior contact with mental health services.

31. The Claimant's GP records demonstrate no entries relating to his depression or mental health difficulties after February 2023 until 30 July 2024 (p142). In this entry, it refers to him experiencing homosexual abuse and a desire to apply for a new job.
32. The Tribunal accepts that the treatment the Claimant experienced at the Respondent had an impact on the Claimant's mental health and resulted in him experiencing depression. The Tribunal also accepts that at the time of his dismissal, his mental health had improved. The Tribunal further accepts that in July 2024, the Claimant experienced a significant deterioration of his mental health. The Tribunal accepts that the reason for that deterioration was his historic experiences of homophobia, of which the discrimination he experienced at the Respondent was one factor.

The Law.

Unfair dismissal

33. Section 118(1) of the Employment Rights Act 1996 ('ERA') 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 the statutory formula at ss.119-122 and 126 ERA, and a compensatory award.
34. Section 123(1) ERA provides that 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 insofar as that loss is attributable to action taken by the employer."
35. The loss must flow from the dismissal itself and not the manner of dismissal, and compensation is restricted to financial loss not injury to feelings: *Johnson v Unisys* [2001] ICR 480; *Dunnachie v Kingston upon Hull City Council* [2004] ICR 1052.
36. The Claimant has a duty to mitigate there losses. Under s.124(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 ..."
37. The duty to mitigate loss referred to in that subsection means the Claimant is expected to take reasonable steps to minimise the losses suffered because of the unfair dismissal. The burden of proof lies with the Respondent to show that the Claimant has unreasonably failed to take steps he ought to have taken to mitigate his losses: *Wright v Silverline Car Caledonia Ltd* UKEATS/0008/16.
38. Where a Tribunal finds that a dismissal was unfair, it must go on to consider the chance that the employment would have terminated in any

event, had there been no unfairness: *Polkey v AE Dayton Services Ltd* [1987] IRLR 50. A compensatory award for unfair dismissal can be increased by up to 25% has unreasonably failed to comply with a relevant code of practice relating to the resolution of disputes (see s207(A) and sch. A2 Trade Union and Labour Relations (Consolidation) Act 1992). The Tribunal will consider (per *Rentplus UK Ltd v Coulson* [2022] ICR 1313):

- a. Is the claim one which raises a matter to which the ACAS Code applies?
- b. Has there been a failure to comply with the ACAS Code in relation to that matter?
- c. Was the failure to comply with the ACAS Code unreasonable?
- d. Is it just and equitable to award an uplift because of the failure to comply with the ACAS Code and, if so, by what percentage, up to 25%?

39. The compensatory award can be adjusted in the following order;
- a. to deduct any sum the Tribunal concludes the Claimant would have earned by taking reasonable steps, to reflect failure to mitigate under s.123(4) Employment Rights Act 1996;
 - b. Percentage increase up to a maximum of 25% to reflect an unreasonable failure by the employer to comply with and applicable ACAS code (s207A TULR(C)A);
 - c. Apply the statutory cap under s.124 Employment Rights Act 1996 of (in this case) 52 weeks' gross pay.
40. In relation to the calculations of pay, a weeks pay is specified in s220 – 229 and s234 Employment Rights Act 1996.
41. In relation to overtime, where overtime is obligatory for the employee but is not guaranteed by the employer, the normal working hours will not include those additional hours. According to *Tarmac Roadstone Holdings Ltd v Peacock* [1973] ICR 273.
42. In relation to shift workers, where normal working hours vary from week to week and so remuneration varies week from week. According to s222, a period of 12 weeks by reference to the average hourly rate multiplied by the average number of normal weekly hours.
43. Where the Claimant has received state benefits which are potentially recoupable from a Tribunal award by the Secretary of State for Work and Pensions, the Tribunal is obliged under reg.4(3) of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 to record the following information:
- a. the monetary award;
 - b. the amount of the prescribed element, if any;
 - c. the dates of the period to which the prescribed element is attributable;
 - d. the amount, if any, by which the monetary award exceeds the prescribed element.

Discrimination

44. The Tribunal reminds itself that the remedy for discrimination as set out by section 124 (2) Equality Act 2010 includes a declaration as to the rights of the complainant, an order that the respondent pays compensation, and /or an appropriate recommendation.
45. In *Ministry of Defence v Cannock* [1994] IRLR 509 the EAT set out the aim that the applicant must be put into the position he would have been in but for the unlawful conduct.
46. In regards to injury to feelings, in *Prison Service and ors v Johnson* 1997 ICR 275, the EAT set out the general principles for making such an award as follows:
- a. Awards should compensate the injured party fully, but not be punitive.
 - b. An award must not be inflated by indignation at the parties conduct.
 - c. Awards should not be so low as to diminish respect for the policy of discrimination legislation, but must also not be so excessive that they are untaxed riches.
 - d. Awards should be similar in range to personal injury cases
 - e. Tribunals should bear in mind the value in everyday life of the sum they are contemplating and
 - f. Tribunals should bear in mind the need for public respect for the level of the award made.
47. The Tribunal has had regard to the Presidential Guidance on Employment Tribunal awards for injury to feelings and psychiatric injury and the principles as set out in *De Souza v Vinci Construction (UK) Ltd* [2017] 15 EWCA 879 and *Vento c Chief Constable of West Yorkshire Police (No. 2)* 2003 IRLR 102. It is accepted by the parties that the claim form was submitted in the 2022/2023 tax year, and therefore, the relevant Vento bands are; £990 - £9900 (less serious cases), £9,900 - £29,600 (cases that do not merit an award in the upper band); and an upper band of £29,600 - £49,300 (the most serious cases).
48. The Tribunal has also had regard to the decision of *Eddie Stobart Ltd v Graham* 2025 EAT 14, in particular, that there must be some evidence of injury to feelings before an award could be made. Where evidence is sparse, the manner of discrimination could be a useful guide to infer the level of injury, including;
- g. Whether the discrimination was 'overt'
 - h. The existence of ridicule or exposure, and particularly that discrimination played out in front of colleagues or others might well cause greater harm.
 - i. Whether the discrimination reflects or exposes an asymmetry of power influence and information, leading to worry or isolation.
49. The Tribunal has had regard to s207A of the Trade Union and Labour Relations (Consolidation) Act 1992, that the Tribunal may increase an award by up to 25% if it is just and equitable to do so, and where the employment tribunal find that;
- j. The claim to which the proceedings relate concerns a matter to which

a relevant Code of Practice applies

- k. The employer has failed to comply with that Code in relation to that matter
- l. That failure was unreasonable

50. Similarly, s207A (3) provides that an award may be reduced by 25% where an employee has unreasonably failed to comply with the ACAS code, in the equivalent circumstances.

Conclusions

51. In terms of a basic award, it is accepted that the claimant was at all times above the age of 22 and below 41. It is accepted he had 6 years service at the time of his resignation.

52. In terms of basic award, the Claimant is therefore entitled to:

$$6 \times 496.38 = £2,978.28$$

53. In relation to loss of earnings for sickness absence during the time he was working at the Respondent's employment, the Respondent has calculated this as £5833.04. The Claimant accepted that the amount of underpayment was correct, and therefore, as the Tribunal has accepted a weekly gross salary of £496.38. the Tribunal accepts that this is the appropriate figure for losses related to his ill-health.

54. In relation to the Claimant's claim for lost earnings for the period after his employment with the Respondent, the Tribunal accepts that he is entitled to £496.38 until the commencement of his employment at *Apetito*.

55. The Claimant resigned on 18 April 2023, therefore this period of unemployment is fifteen weeks.

$$15 \times 496.38 = £7445.70$$

56. The total amount for past financial losses is therefore £16,257.02. This is an award for past loss as a result of his constructive unfair dismissal under the Employment Rights Act 1996 and accordingly, interest can not be applied.

57. The Respondent accepts the Claimant's claimed £500 for loss of statutory rights and the Tribunal awards the same.

58. The Claimant did not within his schedule of loss seek a figure for future financial loss, however the Claimant did seek 52 weeks pay under the heading 'Notice Pay' together with pension contributions for 6 years. This was not adequately explained during the Tribunal hearing. In any event, the Tribunal is not satisfied that there should be any payment for future loss. The Claimant was able to secure a better paying job at *Apetito* on 31 July 2023. The Tribunal is not persuaded that compensation should be awarded after that date.

59. The Claimant has claimed £29,800 for injury to feelings. The Claimant lodged two claim forms, on 14 November 2022 and 18 May 2023. The Presidential Guidance relating to Employment Tribunal awards for injury to feelings confirm that the relevant bands to be taken into account for claim forms lodged on or after 6 April 2022 as follows;
- a. A lower band of £990 to £9900 for less serious cases, a middle band of £9900 to 29,600 for cases that do not merit an award in the upper band, and an upper band of £29,600 - £49,300.
60. The Respondent argues that this is a less serious case, and the Claimant should be awarded compensation within the lower band because the Claimant bore some culpability, and there was no intent to hurt the Claimant. Furthermore, that the Claimant brought numerous unfounded claims and was an unreliable witness.
61. The Tribunal has concluded that the Claimant should be awarded a figure of £10,500. This is a figure at the lower end of the middle band. The reason for this is that the Tribunal has upheld the Claimant's complaint in relation to a number of different individuals at the Respondent. Firstly, he was harassed by Mr Cristea, and subsequently he was also harassed by Mrs Marzena. He was then subjected to victimisation having followed a grievance procedure.
62. Subsequently and as a result of his grievance not being upheld he was constructively dismissed. The Tribunal has found therefore that he experienced discriminatory treatment from more than one person, and that the Respondent failed adequately to support him.
63. Furthermore, there was evidence of the impact of this experience on the Claimant's mental health and ability to work. The Tribunal also accepts that having experienced this treatment in the workplace, will have some longer term implications. The Claimant has spoken about his feelings that his sexuality will not be accepted within the Polish Community and that he believes his treatment at his second employment was related to his treatment at Lyons Seafood Ltd. Whilst the Tribunal does not accept that the Respondent is liable for any ending of his employment at *Apetito*, given the Claimant has provided no evidence to indicate that this is the case, or explain the end of his employment at *Apetito* at all, the Tribunal does accept that the Claimant's worries in this regard were honestly held. Further, this figure takes account of the Claimant's need to undergo counselling and therapy in 2024.
64. The Tribunal did not accept that the injury to feelings award should be at the middle or higher end of the middle band because the Claimant was able to improve his mental health relatively quickly after stopping working for the Respondent, without ongoing medical treatment.
65. In addition, the Tribunal found that the mistreatment he experienced was over a very short period.
66. In terms of interest, the relevant date of the discriminatory act is the date for interest. The Claimant complained of a series of discriminatory behaviours from January 2022 to July 2022, however he was unable to give a clear

indication of the date for any of those incidents, save the final incident. The Tribunal does not consider it to be just to award interest from January 2022 given this lack of clarity regarding the incidents. A grievance was raised on 4 July 2022, which is the same date that Mrs Marzana harassed the Claimant by telling Mr Cristea about his complaint. The Tribunal therefore considers it appropriate and just to calculate interest from this date.

67. The Tribunal takes the relevant date of the discriminatory act as 4 July 2022. The number of days between the discriminatory date and the calculation date of 13 November 2025 is 1229 days inclusive.

68. Interest is therefore calculated as follows:

$$1229 \times 0.08 \times \frac{1}{365} \times 10500 = 2828.38$$

69. The Tribunal therefore awards the Claimant £2828.38 in interest.

70. The Claimant received Universal Credit from 1 January 2023. The Tribunal was not provided a letter from Universal Credit notifying the end of the claim, and therefore consider that this claim continued until 31 July 2023, when the Claimant commenced his new employment.

71. In relation to recoupment, the Tribunal has identified that the monetary award payable to the Claimant for unfair dismissal is £16,757.02. The prescribed element is the amount payable to the Claimant under section 123 in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings, as set out in the Employment Protection (Recoupment of benefits) Regulations 1996.

72. This does not include monies paid for loss of statutory rights, accordingly, the prescribed element is £16,257.02.

73. In submissions, the Claimant sought aggravated damages, but did not identify the basis on which those damages should be paid. The Tribunal was not satisfied that the discriminatory conduct was done in an exceptionally upsetting or highhanded way, such that the Claimant is not properly compensated through the injury to feelings award made by this Tribunal. Accordingly, the Tribunal does not award aggravated damages.

Approved by:

Employment Judge Scott

13 November 2025

JUDGMENT SENT TO THE PARTIES ON
4th December 2025

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FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any 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:

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