



EMPLOYMENT TRIBUNALS

Claimant: MR GARY GIBSON

Respondent: BARNSHAW SECTION BENDERS LTD

Heard at: Midlands West Employment Tribunal

On: 15-16 July 2026 (via CVP)

Before: Employment Judge Ali

Representation

Claimant: Miss Joanna Hinton (Lay Representative)
Respondent: Miss Shaniqua McKenzie (Counsel)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is:

1. The Claimant's complaint of constructive unfair dismissal succeeds.
2. The Claimant is awarded damages in the total sum of £22,969.78.

REASONS

JUDGMENT having been given orally to the parties on 16 July 2026 and written reasons having been requested on 4 August 2026 in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

Introduction

1. The Respondent specialises in metal bending including plate rolling and welding, aluminium bending, and tube and pipe braking, covering the UK and Poland. At the time of the Claimant's dismissal Miss McKenzie informed the Tribunal that the Respondent employed around 32 full-time employees and had an in-house HR and payroll officer (Mike Hoult).
2. The Claimant was employed by the Respondent as a machine operator. The Claimant commenced his employment on 20 February 1989, and resigned with notice on 14 June 2024. His employment terminated on 6 September 2024 at which point he had over 35 years of service.
3. Early ACAS conciliation started on 18 November 2024 and ended on 22 November 2024. The ET1 claim form was presented on 4 December 2024. There are therefore no time limit issues in this case for me to consider. The only claim being pursued is that of constructive unfair dismissal.
4. The Respondent submitted an ET3 response and defends the constructive unfair dismissal claim being brought.

Preliminary matters at final hearing

5. The parties were told that should they require any reasonable adjustments or breaks during the course of the hearing, or have any questions, these should be raised and the Tribunal would assist. Miss McKenzie asked if Mr Russell Barnshaw could be assisted by his son Mr Robert Barnshaw with IT matters and with turning to various documents when giving evidence. This was agreed.
6. As the Claimant was a litigant in person with a lay representative, the Tribunal took care in explaining to them how the hearing process would work and answering any questions they had.

Claims and issues

7. Some time was spent at the start of the hearing identifying a list of issues as there had not been a case management hearing in this case. The following list of issues were agreed at the start of the hearing.

Constructive unfair dismissal

- (1) Did the respondent do the following 4 things:
 - (a) On 3 May 2024 failed to pay the Claimant for compassionate leave following 3 days off work (on 24-26 April 2024) following his father's death on 20 April 2024.
 - (b) On or around 3 May 2024 the Claimant was advised by Greg North he would only get 1 days' pay for compassionate leave.
 - (c) Treated the Claimant differently to peers who had been given extended paid compassionate leave when they experienced bereavement.
 - (d) On 9 May 2024 the Claimant sent an email raising a grievance and requesting a meeting, and he discussed this on the phone on 22 May 2024 with Mike Hoult, but by 14 June 2024 this had not taken place.

- (2) Did that breach the implied term of trust and confidence? The Tribunal will need to decide:
 - (a) Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and
 - (b) Whether it had reasonable and proper cause for doing so.
 - (3) Did that breach any other term of contract? Was there an implied term of an entitlement to 3 days' pay for bereavement leave? If so, was that breached? And was any breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.
 - (4) Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.
8. The Respondent sensibly conceded there was no issue being taken on affirmation of any fundamental breach of contract, if found to have taken place. It was also noted from the pleadings that the Respondent was not otherwise suggesting any dismissal was for a fair reason.

The evidence

9. The Tribunal had before it a documents Bundle of 74 pages. All references to page numbers in this judgment are references to this Bundle.
10. The Tribunal heard oral evidence from the Claimant who had also provided a witness statement.
11. On behalf of the Respondent Mr Russell Barnshaw (the Chairman of the Respondent company) provided a witness statement and gave oral evidence.
12. Both parties provided written submissions at the conclusion of the evidence.

Findings of fact

13. A great deal of the evidence in this case is agreed.
14. The Claimant's father sadly passed away on 20 April 2024. At the time the Claimant was on annual leave until and including 23 April 2024.
15. The Claimant contacted Mr Russell Barnshaw at work on 23 April 2024 to explain what had happened and that he was not able to come into work. He then took 3 days bereavement leave on Wednesday 24th, Thursday 25th and Friday 26th April 2024 before returning to work on Monday 29th April 2024.
16. On or around 29 April 2024 the Claimant raised with his line manager Andy Tura and director Greg North as to what compassionate leave he would receive and he was told they would advise him in due course.

17. On 3 May 2024 however the Claimant collected his payslip and noted that he had not been paid anything for his 3 days of bereavement leave. When the Claimant queried this with Mike Hault (HR and payroll manager) and again with Greg North (director) on 3 May 2024 he was told he would only be paid for 1 days' bereavement leave for the day of his father's funeral. This suggests that at this point the Respondent had in fact decided the Claimant's entitlement to paid bereavement leave was just 1 day. The Claimant was very sure about his evidence in this regard, in both his witness statement and in his answers to cross-examination questions. Indeed in his oral evidence the Claimant said in his discussions with Greg North he had raised that other people had received longer periods of paid bereavement leave and that he left the discussion unhappy. I therefore accept the Claimant's evidence that he was told he would only be paid 1 days' bereavement leave for his father's funeral. I further note that there is no evidence from either Mike Hault or Greg North challenging this version of events. I note Mr Russell Barnshaw at paragraph 5 of his witness statement states, "Gary was given 1 day off at full pay to attend the funeral, whilst they considered how many days compassionate leave in total to give him". However even if this was true, I do not accept that it was ever communicated to the Claimant that he was being considered for further days of paid bereavement leave. There is simply no evidence of this. And for my part if further paid bereavement leave was being considered on or around 3 May 2024 I am at a loss to understand why no decision was communicated to the Claimant in this regard before his resignation on 14 June 2024. Indeed I am at a loss to understand why paid bereavement leave for the funeral had been decided by 3 May 2024 but any other entitlement to paid bereavement leave would require extra time for a decision to be made. That suggestion appears nonsensical.
18. From 3 May 2024 the Claimant was very upset about this situation and felt unfairly treated.
19. The Respondent has no written policy or provision setting out any entitlement to paid bereavement leave. That said it appears there was a practice to pay employees 3 days' bereavement leave. At paragraph 13 of his witness statement Mr Russell Barnshaw states, "We do not have a compassionate leave policy, but our general approach is to allow our staff 3 days off at full pay". The Respondent also provided three other examples of employees KS, JE and PW being paid 3 days' bereavement leave (pp 46-48). In his oral evidence Mr Russell Barnshaw accepted that given other employees got 3 days bereavement leave generally, it was reasonable for the Claimant to have expected the same.
20. On 13 May 2024 the Claimant submitted a grievance dated 9 May 2024. It is worth quoting from the grievance which quite candidly set out the concerns of the Claimant:

"I approached Greg North to request if it were possible I could take some compassionate leave and I was advised after referral to Robert Barnshaw that I would be allowed one day in total, with no additional time permitted for the funeral.

I am utterly at a loss as to what to say regarding the company's approach to my request. I know this has only heightened my feelings of anxiety and distress at this difficult time.

I have worked at Barnshaws for approx. 35 years. I have always been a conscientious and a dedicated worker. I think the fact I have been in post for this long only emanates this. I would not have asked for time off unless I needed

it. I expected some support from my employer in the circumstances, and not to be burdened further by (frankly) your cold and callous approach to my situation.

I have been informed there is no formal compassionate leave policy and requests are dealt with on an ad hoc basis, so therefore I am not automatically entitled to any leave. However, I consider I have been discriminated against as many of my peers have been given extended compassionate leave when they have experienced bereavement, and I can recount such occasions if needed. I feel I have not been treated equally or fairly.

I await your acknowledgement of this complaint and confirmation that a grievance meeting will be arranged as soon as possible to discuss the issue”.

21. Mike Hoult acknowledged the grievance straightaway on 13 May 2024 and stated he would get back to the Claimant in due course.
22. On the same day on 13 May 2024 the Claimant went off on sick leave and never returned to work. The Claimant was suffering with anxiety and was experiencing a deterioration in his mental health. He initially self-certified but on 20 May 2024 he provided a medical sick note signing him off work by reason of “bereavement” for 28 days.
23. On 22 May 2024 the Claimant phoned work and spoke with Mike Hoult who advised that he had not forgotten the request for a grievance meeting and he was waiting to speak with Robert Barnshaw.
24. At no point did the Respondent inform the Claimant (in writing or verbally) that it was putting his grievance on hold because of his sickness absence, or discuss with him whether or not he was happy and able to proceed with a grievance meeting whilst on sick leave.
25. The Respondent’s case is that they did not substantively respond to the Claimant’s grievance or invite him to a grievance meeting, or otherwise confirm any further entitlement to paid bereavement leave, because he was on sick leave with mental health problems from 13 May 2024 and they wished for him to return to work before picking this issue up with him. Even if this is true, I am of the view that this was an unreasonable stance to take for the following reasons:
 - (1) There was nothing stopping the Respondent notifying the Claimant of his bereavement leave entitlement at least. That would have been a very straightforward task, and the Respondent had known about this upsetting issue for the Claimant certainly from 3 May 2024.
 - (2) Indeed in his oral evidence Mr Russell Barnshaw accepted that in the 18 or so days between the 23 April 2024 (becoming aware of the bereavement) and 13 May 2023 (the date of the grievance) it would have been reasonable to have notified the Claimant of his entitlement to bereavement leave which is normally 3 days. I consider it is likely this did not happen because the Claimant had already been told by Mike Hoult and Greg North on 3 May 2024 that he was only entitled to 1 days’ paid leave for the funeral.
 - (3) There was nothing from the Claimant or from his sick note which suggested the Claimant could not attend a grievance meeting.
 - (4) If in doubt, it would have been reasonable for the Respondent’s HR officer to have queried whether the Claimant wanted to progress with his grievance or wait.

- (5) I note a meeting “as soon as possible to discuss the issue” was precisely what the Claimant had requested in his grievance on 13 May 2024, which was the same day he requested sick leave and was clearly unwell.
- (6) The Respondent had no issue with contacting the Claimant to arrange a meeting with him to discuss this issue as soon as he had resigned (without even asking if he was well enough to attend any such meeting). There is no good reason why this was not done much earlier.
26. Further I accept the Claimant’s oral evidence that he would have been able to attend a grievance meeting whilst on sick leave if he had been given sufficient notice. He explained that his poor health meant he was not safe to operate machinery and this is why he took sick leave. I see no reason why he could not attend a workplace meeting though. Miss McKenzie put to the Claimant that shortly after his resignation on 20 June 2024 he was unable to immediately meet with Mr Russell Barnshaw for a meeting and that this suggested that even at that point he could not have managed a grievance meeting. However the Claimant explained that at that particular time around 20 June 2024 he was very upset because it was around the time of Father’s Day. Father’s Day in 2024 fell on 16 June 2024. I accept that evidence.
27. Overall therefore I accept the Claimant’s evidence that had he been invited to a grievance meeting whilst on sick leave from 13 May 2024, as long as he had some notice, he would have been willing and able to attend and participate.
28. However the Claimant heard nothing further about a grievance meeting, or even anything further about any additional entitlement to bereavement leave. On 14 June 2024 he submitted his resignation giving 12 weeks’ notice and confirming his last day at work would be 6 September 2024. The resignation letter stated:
- “I am writing further to my letter of the 9 May 2024 raising a grievance regarding my treatment at work.
- I am yet to receive a formal acknowledgment from Barnshaw’s, nor have I been contacted to arrange a meeting as I had requested.
- I feel you are continuing not to treat me fairly, and are exacerbating my already fragile mental health in failing to address what is a very serious issue for me. It has now been over a month with this matter left in abeyance, with no attempt to resolve the situation on your part.
- I do not now feel there is any way back to remedy the treatment I have received from Barnshaw’s and I cannot continue to submit myself to the distress you have caused me, and continue to cause me. The 35 years of my life I have devoted to the company in loyal, faultless service is clearly meaningless to you”.
29. Following the Claimant’s resignation Mr Russell Barnshaw made contact with the Claimant and they met in person on 26 June 2024. At this meeting Mr Barnshaw apologised for the way the Respondent had handled the situation and told the Claimant that although there was no entitlement to compassionate leave, they wanted to pay him in full for 2 weeks’ compassionate leave which they did.
30. The Respondent suggested to the Claimant in cross-examination that his reason for resigning was because he was struggling with his bereavement rather than because of the Respondent’s actions. In his response the Claimant was clear that his reason

for resigning was because of the way he had been treated in the context of 35 years of service, from initially being told he would have 1 days' paid bereavement leave, to him then having to submit a grievance which he felt was virtually ignored until the date of his resignation. I accept the Claimant resigned because of the workplace issues around his lack of 3 days' bereavement pay and the subsequent handling of his grievance. This was the main and significant reason for his resignation, and he did not resign because he was struggling with bereavement.

31. The Respondent alternatively suggested to the Claimant in cross-examination that his reason for resigning was because he had set up his own DIY business. But there was no evidence to support this. In a document accompanying the Claimant's Schedule of Loss he explained that he set up his DIY business in early 2025 after he was no longer employed by the Respondent. Further in his oral evidence the Claimant denied he resigned because he had set up a DIY business, and explained that he had expected to work at the Respondent company until retirement age. I accept the Claimant's evidence in this regard noting his especially lengthy service of more than 35 years.

The law

32. An employee can lawfully resign employment with or without notice if the employer commits a repudiatory breach. Resignation can be interpreted as an election by the employee to treat himself as discharged from his contractual obligations by reason of the employer's breach. This is known as constructive dismissal and is a species of statutory unfair dismissal by virtue of section 95(1)(c) of the ERA1996.
33. In relation to the breach of contract, an employee can only claim constructive dismissal if the employer committed a repudiatory or fundamental breach of contract, the employee resigned directly because of this breach, and they did not delay their resignation (see *Sharp v Western Excavating* [1978] ICR 221).
34. A claimant can rely on implied or express terms of the contract. Express terms can be written or oral. The Claimant relied on a breach of the implied term of trust and confidence in this case as well as an implied term of being entitled to 3 days of paid bereavement leave.
35. In relation to the implied term of trust and confidence in *Malik v BCCI* [1998] AC 20 the House of Lords stated that the question was whether the employer's conduct so impacted on the employee that viewed objectively the employee could properly conclude the employer was repudiating the contract. It is not necessary to show that the employer intended to damage or destroy the relationship of trust and confidence. The employer "must not conduct itself in a manner calculated and likely to destroy confidence and trust" and it is relevant to consider whether the employer's conduct in question was "without reasonable and proper cause".
36. The particular incident which causes the employee to leave may in itself be insufficient to justify resignation but may amount to constructive dismissal if it is the last straw in a deteriorating relationship. This means that the final episode itself need not be a repudiatory breach of contract although there remains the causative requirement that the alleged last straw must itself contribute to the previous continuing breaches by the employer. See *Waltham Forest Borough Council v Omilaju* [2004] EWCA Civ 1493.

37. Therefore the claimant has to show that the matters he relies on either individually or cumulatively amounted to a repudiatory breach of contract. He then has to establish that that breach played a part in his decision to resign.
38. Section 118 of the ERA 1996 provides that where a tribunal makes an award of compensation for unfair dismissal the award shall consist of a basic award and a compensatory award.
39. Section 119 of the ERA 1996 sets out how the basic award is calculated. The Claimant's basic award is based on his weekly pay. An employee's normal working hours will usually be identified in their contractual or payroll documentation. Failing this, it may be clear from the hours actually worked. Where overtime is obligatory for the employee, but is not guaranteed by the employer, the normal working hours will not include those additional hours, they will only amount to normal working hours if the obligation to work and provide work for that period is mutual.
40. Section 123(1) of the ERA 1996 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".
41. An unfairly dismissed employee is expected to search for other work, and will not recover losses beyond a date by which the tribunal concludes the individual ought reasonably to have been able to find new employment at a similar rate of pay. The burden of proving a failure to mitigate is on the respondent. It is insufficient for a respondent merely to show that the claimant failed to take a step that it was reasonable for them to take: rather, the respondent has to prove that the claimant acted unreasonably.
42. In the case of *Cooper Contracting Limited v Lindsey* [UKEAT/0184/15/JOJ] at para 16 the EAT provided guidance on the legal principles to be applied regarding a Claimant's duty to mitigate his loss following an unfair dismissal.
43. An award for compensation can be increased or reduced, by up to 25%, if the employer/employee has unreasonably failed to comply with a relevant Code of Practice relating to the resolution of disputes (see section 207(A) TULR(C)A 1992). The ACAS Code of Practice 1: Disciplinary and Grievance Procedures is a relevant Code of Practice. When making an adjustment under these provisions, a tribunal must take account of the absolute value of a given uplift, rather than just the percentage value. The uplift does not apply to the basic award. Relevant considerations include:
 - (1) Is the claim one which raises a matter to which the ACAS Code applies?
 - (2) Has there been a failure to comply with the ACAS Code in relation to that matter?
 - (3) Was the failure to comply with the ACAS Code unreasonable?
 - (4) 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%?

Conclusions

44. The Tribunal sets out its conclusions on the claim and issues in this case below.

(1) Did the respondent do the following 4 things:

- (a) On 3 May 2024 failed to pay the Claimant for compassionate leave following 3 days off work (on 24-26 April 2024) following his father's death on 20 April 2024.**
- (b) On or around 3 May 2024 the Claimant was advised by Greg North he would only get 1 days' pay for compassionate leave.**
- (c) Treated the Claimant differently to peers who had been given extended paid compassionate leave when they experienced bereavement.**
- (d) On 9 May 2024 the Claimant sent an email raising a grievance and requesting a meeting, and he discussed this on the phone on 22 May 2024 with Mike Hoult, but by 14 June 2024 this had not taken place.**

- 45. It is agreed between the parties that on 3 May 2024 the Respondent failed to pay the Claimant for bereavement leave following 3 days off work on 24-26 April 2024.
- 46. I accept the Claimant's evidence that on 3 May 2024 he was advised by Greg North that he would only get 1 days' pay for bereavement leave to attend his father's funeral.
- 47. Given the Claimant's general approach was to allow staff 3 days' off at full pay in cases of bereavement, and the Claimant was only allowed 1 day, he was treated differently to his peers. Mr Russell Barnshaw accepted in his oral evidence that it was reasonable for the Claimant to have expected 3 days' off at full pay as this was the general practice.
- 48. And it is agreed between the parties that on 13 May 2024 the Claimant sent an email raising a grievance and requesting a meeting, but by 14 June 2024 (the day he resigned) this had not taken place. I find that this was the last straw which caused the Claimant to resign.

(2) Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

- (a) Whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and**
- (b) Whether it had reasonable and proper cause for doing so.**

- 49. This is a difficult case, and I remind myself that this question should be addressed objectively rather than from the subjective viewpoint of the Claimant. Nevertheless any objective assessment needs to consider the relevant factual and contextual circumstances. The following are particularly relevant, and would suggest the Claimant should have been treated respectfully and with sensitivity. First, the Claimant had been a long standing employee with over 35 years service, who had devoted much of his working life to the Respondent company and had never previously raised a grievance. Secondly, the Claimant had raised the sensitive and understandably emotive topic of paid bereavement leave having recently suffered a bereavement, which therefore deserved a thoughtful and prompt response from the Respondent. And thirdly, the Claimant was telling the Respondent that their actions were causing a deterioration of his mental health which should have further alerted a reasonable employer to act thoughtfully and promptly.
- 50. I conclude the Respondent did breach the implied duty of trust and confidence with the four above complaints considered cumulatively. I have regard to the following:
 - (1) In the context of the Claimant's circumstances between 23 April 2024 and 14 June 2024 the Respondent behaved highly insensitively and disrespectfully.

- (2) I have had no direct evidence as to why paid bereavement leave was not or could not have been paid to the Claimant in his wages on 3 May 2024. Had this been simply a payroll processing issue, the Claimant would not have been expecting the paid bereavement leave in that pay period as he clearly was. I note his holiday pay was included in this pay period. And there is no clear evidence before me from the Respondent as to why he was not paid bereavement leave on or around 3 May 2024. I find the lack of payment to him was deliberate on the basis that it had been decided to pay the Claimant only 1 day of paid bereavement leave for his father's funeral, as was communicated to him on 3 May 2024. This was unreasonable on the part of the Respondent.
 - (3) There was no reasonable or proper cause for not following the usual practice and giving the Claimant 3 days' paid bereavement leave, or any reasonable or proper cause for telling him he would only been given 1 days' paid bereavement leave. He was treated differently to his peers, the usual practice at the Respondent was not followed, and the Respondent has produced no evidence whatsoever to explain why this was reasonable or proper.
 - (4) Emails at pages 46-48 of the Bundle reveal that Robert Barnshaw and Michael Hoult were giving 3 days' paid bereavement leave to other employees since 2021 and on the whole authorising this fairly quickly (i.e. the same day, within 5 days, and within 14 days). This undermines any suggestion that the Respondent needed a longer period to deal with the Claimant's paid bereavement leave request and had had insufficient time to address it before the Claimant's resignation.
 - (5) As I have already found above it was unreasonable for the Respondent to not arrange the Claimant's grievance meeting between 13 May 2024 and 14 June 2024 or to not try and engage the Claimant about arranging it.
 - (6) I note that the issue raised in the Claimant's grievance was a straightforward and routine matter which could have been readily addressed, especially as the Respondent had a usual practice in operation of generally allowing 3 days' paid bereavement leave.
 - (7) The Claimant was reasonably and understandably significantly hurt and impacted by the Respondent's actions. Objectively viewed it was entirely understandable that a reasonable person in the circumstances would feel this way, and a reasonable employer should have anticipated this would be the case. I note the Claimant's witness evidence in this regard where he states:
 - (a) At para 8: "I felt completely let down by Barnshaws and very hurt that after being a loyal employee for 35 years, they were not supporting me when I needed it. I also felt there was something very wrong in the way I was being treated. Others had had, and been paid compassionate leave, and I was starting to feel resentment that I had been treated differently and very let down by an organisation I had devoted my life to".
 - (b) At para 13: "On the 14 June I decided I was not able to continue with my employment and submitted my resignation. I felt the relationship had irretrievably broken down at this point. It is difficult for me to put into words how incredibly let down and worthless I was left feeling by the situation. I appreciate I may have been vulnerable due to the death of my father but felt I was completely insignificant to the company I had devoted my life to. I felt that when I needed their support and understanding most, they simply discarded me and made me feel worthless".
51. I conclude the Respondent behaved in a way that was likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent and it had no reasonable and proper cause for doing so.

(3) Did that breach any other term of contract? Was there an implied term of an entitlement to 3 days' pay for bereavement leave? If so, was that breached? And was any breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

52. Given my conclusion that there was a breach of the implied term of trust and confidence, there is no need to determine whether there was a separate breach of any implied term that existed in relation to 3 days' bereavement pay, and if so whether that amounted to a fundamental breach of contract in this case.

(4) Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.

53. As set out in my findings of fact above the Claimant resigned in response to the breach of the implied duty of trust and confidence.
54. The Claimant therefore succeeds with his claim of constructive unfair dismissal.

Remedy

55. The Claimant's basic award is based on his gross pay. In this case the Claimant's gross pay per annum was agreed between the parties as £28,392. On the basis of his date of birth being 3 July 1965, 35 years of service, and a termination of employment date of 6 September 2024, the calculation of his basic award is agreed between the parties at £15,834.
56. The Claimant's net monthly pay is also agreed at £1,924.
57. The Claimant's employment having terminated on 6 September 2024 he chose not to apply for any other job roles. Nor did he join any job agencies. And it was not until April 2025 (around 7 months later) that he set up and started working in his own business (a DIY and maintenance business).
58. The Claimant had a sick note until 15 September 2024 and gave oral evidence that he was well enough from around this point to start looking for work and was in fact looking for work. However I find that if he had been meaningfully looking for work he would have actually applied for jobs, or joined job agencies, or set up his DIY business earlier than he did, and that he would have produced documentary evidence to support any such efforts.
59. I have carefully considered the Claimant's evidence that he was badly affected by the death of his father and his treatment by the Respondent. I note that he states that given his age and his long service in a niche industry the likelihood of him finding similar employment was low, and all advertisements for bending companies were aimed at younger trainees or apprentices with minimal starting salaries. I also take account of the fact that the Claimant could not commute very far because of his caring responsibilities and personal circumstances.
60. That said the duty to mitigate extends beyond looking for similar roles, and to looking for roles more widely in different sectors. And even in the Claimant's circumstances, I am of the view that there would have likely been full time job opportunities available to him. As already stated there is simply no documentary evidence whatsoever before me of the Claimant making any job applications, joining any recruitment

agencies, or making any effort at all to search for any employment following his dismissal. There appears to have been a complete failure to mitigate his losses. I conclude the Claimant acted unreasonably in not meaningfully seeking other work shortly after his dismissal and therefore failed to reasonably mitigate his losses.

61. The Respondent has not produced any evidence about the availability of other similarly paid or otherwise suitable roles being advertised in the Claimant's locality.
62. Doing the best I can, and taking a broad-brush approach, I conclude that had the Claimant reasonably mitigated his losses, given his long and successful work history, he would have found similarly paid employment within around 3 months from early September 2024. I note he was not paid much beyond the national minimum wage by the Respondent, and he would have had skills and a work ethic attractive to many employers. I limit compensatory losses to 3 months of losses therefore, in the sum of £5,772.
63. The parties produced no evidence in relation to employer pension contributions and advanced different figures. The Claimant had set out a claim for employer pension contributions in his Schedule of Loss at £88 per month without providing any evidence in support. The Respondent produced no evidence to counter that, and only provided on day two of this hearing their counter figure of employer pension contributions in the sum of £55.38. No disclosure was made available from the Respondent until the afternoon of day two which I did not allow in all the circumstances. In an effort to compromise and act proportionately, monthly pension contributions were assessed based on an average of the parties respective figures in the sum of £71.69. Three months of monthly pension contributions will be awarded.
64. I also award the Claimant £500 for loss of statutory rights in this case. This was the figure advanced by the Respondent, the Claimant not having advanced a figure. I take into account that the Claimant will need to accrue statutory rights, for example, he has lost the right to a lengthy statutory notice period.
65. I next considered whether there should be an uplift to the compensatory award on account of a failure to follow a relevant ACAS Code of Practice. I conclude that:
 - (1) This claim is one which raises a matter to which the ACAS Code of Practice 1: Disciplinary and Grievance Procedures applies.
 - (2) There has been a failure to comply with the Code by not dealing with the Claimant's grievance promptly and in a timely fashion. The ACAS Code provides, "Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings", and "Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received".
 - (3) The failure to comply with the ACAS Code was unreasonable. The grievance concerned a relatively straightforward matter, and notwithstanding the Claimant's sickness absence the Respondent should have proceeded to deal with the grievance straightaway.
 - (4) It is just and equitable to award an uplift because of the failure to comply with the ACAS Code. As noted in this Judgment the Claimant was seriously upset by the Respondent's failure to do so and this was a cause of his resignation from long-standing employment. That said the Respondent did not refuse to deal with the grievance but simply unreasonably delayed the process. Taking into account all the facts of this case an appropriate uplift to the compensatory award is 10%.

66. On that basis the losses awarded to the Claimant are as follows:
- (1) A basic award of £15,834.
 - (2) A compensatory award of £7,135.78 made up of:
 - (a) Loss of statutory rights in the sum of £500
 - (b) Loss of 3 months of earnings in the sum of £5,772.
 - (c) Loss of 3 months of pension contributions in the sum of £215.07
 - (d) A 10% ACAS uplift to the compensatory award of £648.71.
 - (3) I note the recoupment regulations do not apply as the Claimant did not claim any state benefits after his dismissal.

Summary

67. The Claimant's complaint of constructive unfair dismissal succeeds.
68. The Claimant is awarded damages in the total sum of £22,969.78.

Employment Judge Ali

8 August 2026

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.