Neutral Citation Number: [2026] EAT 121

Case No: EA-2024-001572-DXA

EMPLOYMENT APPEAL TRIBUNAL

7 Rolls Buildings
Fetter Lane, London, EC4A 1NL

Date: 7 July 2026

Before:

JOHN BOWERS, KC
DEPUTY JUDGE OF THE HIGH COURT

- -

Between:

(1) SBH WINDERMERE LIMITED
(2) MR A WILSON

Appellants

- and –

MR S NUNNS

Respondent

- -
- -

Mr Ruari Smith (Instructed by **Peninsula Business Services Ltd**) for the **Appellants**
Mr S Nunns the **Respondent** appeared in person

Hearing date: 7 July 2026

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JUDGMENT

SUMMARY

Compensation

The Tribunal reconsidered the compensation judgment because the Claimant had hit the cap on Universal Benefit and the tribunal awarded further compensation. The appellant argued on appeal that if the Tribunal was going to revisit its award by taking into account further evidence of the impact on the respondent's Universal Credit, it should also have considered evidence as to other benefits that the respondent might be able to claim. The EAT held that the tribunal should have considered whether the Respondent should, notwithstanding the £16,000 cap on benefits, have mitigated his loss by seeking either Job Seekers Allowance or Employment and Support Allowance. It thus remitted this matter of compensation to the same employment tribunal.

JOHN BOWERS KC, DEPUTY JUDGE OF THE HIGH COURT:

1. Following a liability hearing from 31 May to 2 June 2023, the Tribunal upheld several complaints of harassment against the appellants. This is the appellants' appeal against the Tribunal's reconsideration judgment dated 18 October 2024 which varied the remedy judgment of 5 April 2024 by increasing compensation from £35,656 to £43,044.

2. An email was sent to the Tribunal by Mr Nunns, the respondent, on 7 April 2024 saying:

> "A part of the remedy as stated by the judge was a total of six months' future losses and this sum was calculated as to what my wage would have been minus the Universal Credit I will receive. The thing is, as soon as the compensation clears into my bank I will be above the savings threshold for a Universal Credit claim and therefore will be losing £1,100 monthly".

3. There was a letter from the Department of Work & Pensions Universal Credit that referred to the £16,000 cap but also referred to: "New Style Job Seekers Allowance" and "New Style Employment and Support Allowance".

4. In the reconsideration judgment, the Tribunal said at paragraph 20:

> "We did not have the foresight to identify that the award made when paid would stop the Universal Credit payments which we had taken into account in our calculations".

At paragraph 21 they said:

> "The well-known £16,000 cap on benefits which the claimant would surely have been alerted to by previous decisions on his benefits, to experts on benefits such a position may have been obvious but it was not obvious to us, nor do we accept that it would be evident to the vast majority of those in receipt of such benefits".

The Tribunal therefore awarded the further amount.

5. The appellants' argument is that if the Tribunal was going to revisit its award by taking into account further evidence of the impact on the respondent's Universal Credit, it should also have considered evidence as to other benefits that the respondent might be able to claim. Only this course, they say, was compatible with natural justice and the overriding objective. Not to do so gave an unfair advantage to the respondent.

6. The skeleton argument puts it quite well, that:

> "A partial admission that opened only one door (loss of Universal Credit) while refusing to look at adjacent doors (other benefits/mitigation) subverted that standard and elevated a partial evidential picture into determinative fact".

7. I will approach ground 2 of the notice of appeal first as that is the logically prior point, namely:

> "Properly applying the principles governing fresh evidence and the importance of finality, reconsideration should have been refused".

I think that this was fresh material, not necessarily evidence, in fact. I think it is no more really than drawing an argument to the attention of the Tribunal albeit through the Universal Credit letter. It did require reconsideration of the judgment. If I am wrong about this, and it was evidence and , it did require the new evidence test to be applied, then it would comply with **Ladd v Marshall** [1954] AE 745, **Wileman v Minilec** [1988] ICR 318 and **Ministry of Justice v Burton** [2016] ICR 1128, so ground 2 fails. The tribunal were correct to reconsider the Judgment.

8. Ground 1 contends that the Tribunal erred in considering fresh evidence in a manner material and fair to the appellants by relying on the respondent's post-judgment Universal Credit position without considering whether he had entitlement to other benefits or had taken reasonable steps to claim them, and without addressing mitigation, the appellants say they were denied a fair opportunity to have the entire picture considered.

9. The appellants say amongst other things that **Burton** (above) confirms that Tribunals should avoid partial re-openings that would require fresh evidence on wider ramifications unless the interests of justice plainly warranted it. They say that it was one-sided to just consider the cap without considering whether he was entitled to other benefits. I think it is important to point out that in the skeleton argument for the respondents(sic) on reconsideration dated 10 October 2024, the appellants say at paragraph 6 at the end:

> "The proposed increase in the award is substantial…the prejudice to the claimant of losing out on Universal Credit could have been waived at the hearing and could have been mitigated by seeking to apply for alternative benefits".

That argument was clearly put before the Tribunal but they did not consider that matter.

10. So as to ground 1, I am not sure that this is technically a new evidence case at all (see reconsideration judgment at paragraph 25) because the reconsideration occurred on the basis of a legal argument, albeit arising from an after the event letter. However, I do see the force of the submission that it was against the interests of justice to consider only the issue of the £16,000 cap without considering mitigation in the wider sense. It is indeed an important principle that damages should not exceed the real loss (see **Cerberus Software v Rowley** [2001] ICR 376, paragraph 27 and also the recent statement by His Honour Judge Tayler in **Griffiths v Essex County Council** [2026] EAT 86) that there should be a robust and realistic assessment of compensation. I do not think that there was a realistic assessment because the tribunal did not consider what other benefits may have been available to the Respondent.

11. Mr Nunns attended the hearing remotely and said: "At the time of judgment I was not seeking allowance. It would have been dishonest, unethical and fraudulent to claim Job Seekers Allowance", because he was not seeking a job due to his mental ill health. This may be so, but at first sight the Employment and Support Allowance appeared suited to him and he will need to explain to the reconstituted Employment Tribunal why he did not claim this. There may be reasons for not doing so but that is a matter that I think the Tribunal should deal with.

12. So I remit this matter to the same Employment Tribunal for re-hearing. It should be a relatively short hearing because the only question to be decided is whether Mr Nunns should, notwithstanding the £16,000 cap on benefits, have mitigated his loss by seeking either Job Seekers Allowance or Employment and Support Allowance. I am not giving the appellants leeway to make any further arguments than that.