



EMPLOYMENT TRIBUNALS

Claimant: Mr G Jeffery

Respondent: Givaudan UK Limited

Heard at Ashford

On: 18 June 2024, 15 & 17 July 2024

Before: Employment Judge Corrigan

Representation

Claimant: Mr I Rees Phillips, Counsel

Respondent: Mr D Northall, Counsel

REASONS

For Judgment not to order reinstatement or re-engagement dated 19 July 2024

Note: The claimant had requested written reasons within time and then the tribunal received notification that there was full settlement at ACAS of the claim. The Employment Judge's understanding was that a COT3 settlement with ACAS brought the proceedings in a particular claim and all outstanding applications relating to it to an end. These reasons are provided following the decision by the EAT dated 28 July 2026. The Employment Judge was not working over the summer and returned to work on 7 September 2026.

1. I heard evidence on the issue of re-employment from Ms K Clapworthy, Mr I Messenger and Ms S Leigh on behalf of the respondent and the claimant on his own behalf.
2. The law in respect of whether or not to order re-employment following an unfair dismissal is set out in s113 and s116 Employment Rights Act 1996 as follows:

"113 The orders

(1) An order under this section may be _

- (a) an order for reinstatement ...
- (b) an order for re-engagement...
as the tribunal may decide.

...

116 Choice of order and its terms

- (1) In exercising its discretion under section 113 the tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account-

- (a) whether whether the complainant wishes to be reinstated,
- (b) whether it is practicable for the employer to comply with an order for reinstatement, and
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just....

3. The law in respect of re-engagement is in similar terms at s116 (2) –(3).
4. s116 (5) states that “where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining...whether it is practicable to comply with an order for reinstatement and re-engagement. S116(6) states the exception to this is where the employer shows that it was not practicable for him to arrange for the dismissed employee’s work to be done without engaging a permanent replacement, or that the employer engaged the replacement after a reasonable period without having heard from the employee that he wished to be re-employed and when he engaged the replacement it was no longer reasonable for the employer to arrange for the dismissed employee’s work to be done other than by a permanent replacement.
5. I exercised my discretion and did not order re-employment of either type for the following reasons.
6. I accepted the claimant strongly wanted re-employment with the respondent. The claimant had worked there 27 years on terms that are difficult to replicate.
7. I also accepted that the respondent strongly did not wish to employ the claimant again and had thrown everything they could (including their HR professionals’ experiences/stances and an issue with a boating knife) at resisting it.
8. The claimant was dismissed on 20 December 2019. The respondent replaced the claimant on 3 July before notice was received of the claim form and the claimant’s wish for reinstatement. It is a business critical role. S116 (b) (i) applied. The respondent had had another vacancy after dismissal and after they knew the claimant wanted reinstatement but this was not covered by s116(5). I decided that at some point it was reasonable for the respondent

- to fill the vacancy (5 years had passed) but proceeded on the basis this was not necessarily the case before the claimant informed the respondent of his desire to be reinstated. I was not satisfied s 116 (b) (ii) was satisfied and therefore I should not consider the fact that there was a permanent replacement when considering practicability.
9. The respondent remain in reliance on agency workers who are long-term agency workers. The respondent consistently employs permanent and agency workers doing the relevant work. I progressed on the basis that re-employment was possible to the relevant role if either the claimant's replacement was dismissed or agency workers could be given short notice to leave. We also discussed the possibility of future vacancies.
 10. However practicability should be considered to mean whether the re-employment can be implemented with success- which includes the claimant's relationships with others and his working satisfactorily with the team. This is not a case where the claimant was working well and getting on with his team before a one off incident leading to unfair dismissal. The team had had years of issues which included the claimant's own conduct. The altercation with his colleague occurred in the context of a collective grievance against the claimant, to which I have also found the claimant contributed.
 11. Although the individual involved in the altercation has left his employment and moved on, the other person involved as a witness remains in employment. With the exception of the recruitment referred to it otherwise remains the same team as when the claimant was employed. The team has successfully moved on from what was years of issues. They no longer have the problems within the team that they had.
 12. I referred back to paragraph 21 of the liability reasons and that in 2018 the respondent had found "systemic and high level of inappropriate behaviour that had persisted for many years...; an unacceptable level of animosity between members of the team including the claimant". There were a significant number of specific allegations that involved the claimant. These included that that he could be frustrating, difficult to work with and provocative. At paragraph 26 of the liability reasons I found that the claimant had referred to his colleagues as 8 bullies and that they wanted him to "bite the bait". The claimant had been given the advice recorded at paragraph 27 of the reasons.
 13. Following that in February 2019 there was disappointment that improvement in team relations had not been sustained. The claimant's conduct in monitoring colleagues was criticised. Unpleasant incidents against the claimant were also recorded. On 29 May 2019 there was a collective grievance against the claimant, as described in paragraphs 34 and 35 of the reasons. A number of those colleagues said they wanted the claimant removed. Para 41 of the reasons shows the team manager's assessment. At paragraph 43 – 44 of the reasons the respondent found fault on both sides

and proposed mediation saying all parties needed to be committed to it working. The claimant himself was having counselling as a result of the treatment by his colleagues.

14. The respondent went through those that the claimant was critical of in these proceedings. He seemed to backtrack from some of his criticism though he had maintained his position until the hearing. I asked the claimant if there is anything he wants to say to reassure the respondent. He referred to being “vindicated” (though he did at least acknowledge it would be undiplomatic to refer to this to his colleagues), wanting a fresh start and repeated the wording from the disputed advice he was given in 118. There was nothing spontaneous or heartfelt, or convincing, that he would be able to put things behind him and return to fit in well with the team.
15. I was not satisfied it would be possible to reinstate the claimant with success, namely with harmony amongst the team and avoiding a return to the involvement of HR to the degree that had been the case.
16. It is not a case where there were no issues save for the incident leading to the unfair dismissal. There had been problems in that team for years, the claimant played a role in them, and even now cannot take responsibility for that in a way that offers reassurance of a change in attitude.
17. Although I discount the replacement in terms of whether there is a vacancy that it is practicable to re-employ into, I do not consider re-employment can be implemented with success, whether or not, but especially not, in circumstances where, after such a long period without issues, a now long term colleague will have to have their relationship terminated for the claimant to return. It is against common sense to put the team back in that position with the aggravation that someone would have been dismissed to make way for the claimant.
18. In any event I also found the claimant contributed to the dismissal and in all the circumstances it would not be just and equitable to order reinstatement. Nearly 5 years had passed at the time of the remedy hearing. Everyone had moved on (including the claimant) and I did not find it just and equitable to put the respondent (or indeed the claimant) back into the same position again that they have successfully moved on from. Although it took some time the claimant had now found alternative work. He himself was having counselling because of the situation at the respondent.
19. I addressed some of the other particular matters that had been raised by the parties.
20. The respondent had raised concerns about training being required. In my view this was not insurmountable in and of itself, but would mean the claimant

would have training like a new starter after 27 years. This was not of itself a reason not to re-employ.

21. I heard about some HR professionals' refusal to work with the claimant. I also heard evidence about particular incidents involving Ms Clapworthy and Ms Leigh. I accepted that there were occasions where the claimant caused Ms Clapworthy to feel uncomfortable, whether or not he had a genuine reason for driving/cycling in the same direction as her. She acknowledged it was difficult to be certain whether there was anything untoward about the claimant's behaviour but I accepted she genuinely found his driving/cycling sufficiently unusual to be concerned, but she also accepted there had been no further incident since. I accepted the claimant's account that he regularly cycles up and down the particular cycle path.
22. I accepted that Ms Leigh's experience was no more than being uncertain why the claimant was driving in her direction and she took the same precautions she might take in respect of avoiding any colleague knowing where she lived, though she was sufficiently concerned that she did mention it to colleagues at the time. The claimant has made much of the fact nothing can be proven in relation to these incidents but in the case of Ms Leigh offered no explanation about why he might have been going in the same direction. There is an absence of reassurance in respect of both colleagues' concerns. They were questioned somewhat aggressively whereas one might expect someone who had inadvertently caused discomfort to colleagues to seek to reassure or restore the situation.
23. The claimant himself brought up during these proceedings an issue with Ms Leigh being his notetaker due to events many years previously. I accept he was not expecting to be asked questions about it but nevertheless it was striking that the basis he mentioned was that she had asked him once "is that Gary" and he felt she was in places he did not think she needed to be.
24. The knife may have just been a boating knife but when the respondent expressed concern over the knife being legal he did not reply, but in circumstances when the respondent had opened the locker. The respondent has raised concerns over whether it should have been there at all and the claimant has robustly sought to defend his actions in respect of this.
25. I did not take account of these incidents per se as reasons not to order re-employment but they all show the level of mistrust and strength of feeling that endures between the parties and also how long the claimant continues to bring up historic issues against colleagues. I also noted that the issues are not limited to the particular team that the claimant worked in but have also involved HR and the head of the factory.

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Employment Judge Corrigan
16 September 2026

Notes

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.

Recording and Transcription

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>