# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Alex Colby
**Respondent:** Bracknell Printroom Limited

**Heard at:** Reading Employment Tribunal by video
**On:** 22 and 23 June 2026
**Before:** Employment Judge George

**Representation**
Claimant: Self representing
Respondent: Mr B Large, counsel

# RESERVED JUDGMENT

1. The respondent shall pay to the claimant compensation for wrongful dismissal of **£7,357.53** calculated as £7,611.24 - £253.71 = £7,357.53. This is calculated net after deduction of tax and national insurance.

2. The respondent shall pay to the claimant compensation for unfair dismissal of **£31,625.29** calculated as set out in the following table.

| | | |
|---|---|---|
| **Basic Award** | | |
| 20 X £700 | 14,000.00 | 14,000.00 |
| | | |
| **Compensatory Award** | | |
| Prescribed Element | | |
| 27 weeks @ £634.27 (incl. pension loss but net of tax and NI) p.w. | 17,125.29 | |
| Subtotal (Prescribed Element) | 17,125.29 | 17,125.29 |
| | | |
| Non-Prescribed Element | | |
| Loss of statutory rights | 500.00 | |
| Subtotal (non-prescribed element) | 500.00 | 500.00 |
| **Total Award** | | **31,625.29** |

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply. The prescribed element is £17,125.29 and the prescribed period is 21 October 2024 to 26 April 2025.

# REASONS

1. I refer to but do not repeat the liability judgment and reasons sent at the same time as this reserved remedy judgment. The claimant gave further evidence directed to remedy and was cross-examined upon it and upon the schedule of loss. In particular, I found as part of the liability judgment that the ACAS Code of Conduct is not applicable and therefore that there should be no uplift of the compensation under s.207A Trade Union and Labour Relations (Consolidation) Act 1992.

2. The following had been agreed between the parties and did not need to be determined:

    a. It was agreed that, as he was paid for the entirety of the month of July 2024, he had been paid up to 31 July 2024. He was dismissed with immediate effect on 29 July 2024. The parties agreed that compensation for wrongful dismissal would be 12 weeks £634.27 (after deduction of tax and national insurance) LESS 2 days' net pay (£637.27/5 x 2). This could be calculated as £7,611.24 - £253.71 = £7,357.53 based on the net figures. £634.27 was the figure calculated in the hearing for the claimant's weekly take home wage plus the weekly amount of his employee's pension contributions, the employer's weekly pension contributions.

    b. It was calculated as

| | |
|---|---|
| Take home from his payslip (per calendar month) | 2,554.76 |
| PLUS one month employer's pension contribution | 83.20 |
| PLUS one month employee's pension contribution | 110.54 |
| TOTAL | 2,748.50 |
| | |
| 2,748.50 X 12 ÷ 52 | £634.27 net loss per week |

    c. It was agreed that the claimant was entitled to a Basic Award and that the correct calculation was 20 weeks @ £700 p.w. (the capped weekly figure) which totalled £14,000.

    d. It was agreed that an appropriate figure for loss of statutory rights (given the claimant's length of service) was £500.

    e. It was agreed that the claimant's net loss (including loss of employer's pension contributions) but after deduction of tax and national insurance was £634.27.

3. The live issues which I needed to determine in order to calculate compensation for unfair dismissal were:

a. Whether there should be a deduction from compensation to reflect the change (the respondent would say the likelihood) that the claimant's employment would have ended in any event – applying the principles in Polkey v AE Dayton Services Ltd [1987] UKHL 8 ;

b. Whether the claimant had failed to mitigate his loss such that his losses should be taken to have ended at the point where, acting reasonably, he would have obtained employment which extinguished his loss.

c. Whether the claimant had in fact earned more sums in mitigation than he had declared in his schedule of loss (page 33).

d. The issue of whether there should be an uplift to compensation because of an unreasonable failure to follow an application ACAS Code of Conduct was decided at the liability stage.

The respondent's arguments

4. The respondent's argument in relation to Polkey were that first the Tribunal had accepted the claimant's account, including that he was told that the reason why he was being dismissed was lack of funds. They argued that the respondent was looking to make costs savings so severe that the directors had taken pay cuts (an issue explored by the claimant in evidence). No other suggestion had been made as to why the claimant may have been dismissed. There is no alternative explanation and no direct information about would have happened had he not been dismissed.

5. The respondent therefore argued that it was likely that redundancy or a business reorganisation would have led to a fair dismissal of the claimant after a period of 6 weeks consultation. The respondent had got in touch with the HR consultant or their legal team once the claimant sent the final email on 20 August and would have used external support going through a fair process. Based on the length of time such processes commonly take, they argued that this would lead to dismissal about 6 weeks after it in fact took place.

6. The compensation under s.123(1) should be that which would be just & equitable and could cover the various possible scenarios which might have occurred such as a resignation.

7. The respondent noted the claimant's evidence that, following his dismissal, he had undertaken manual labour for a friend in exchange for very basic accommodation in the house which was being remodelled. He had since qualified in the solar panel industry and worked in the catering industry.

8. His wage with the respondent had been £26,500 per annum. There was no medical evidence of a physical or mental impediment to employment. Taking account that it is a difficult step to start to look for work when one has left one's job and factoring in particular difficulties in terms of housing and his health, the

respondent nevertheless argued that the claimant could reasonably have obtained work which would have reduced his loss even if not eliminated it straight away. There was no medical evidence to the effect that he was not fit to work.

9. Mr Large argued that I should take account of the rate of the National Minimum Wage in 2024 and 2025. So in 2024 it was £11.44 per hour gross. As from 1 April 2025 it was £12.21 per hour gross of £457.88 per week.

10. They argued that, granted he was now engaged in solar panel fitting, other warehouse jobs were probably available. For example near to Henley is Reading; an industrial town with lots of warehouses. It is likely that he could have found work within weeks. They argued that the Tribunal had a discretion when assessing the compensation it would be just & equitable to award and that that principle can be of assistance in the tribunal dealing with employees in similar kinds of work. Alternatively, the solar panel industry could have provided an informal role within months. Overall it was suggested that the claimant could have obtained paid labouring work within weeks and more highly skilled or trained work in the solar panel industry or as a warehouseman within 3 months earning at least the national minimum wages. It was further argued that he had acted unreasonably not to make that attempt.

<u>The claimant's arguments</u>

11. The claimant disagreed that, had the respondent acted fairly, his employment was certain to end within 6 weeks. He based that on his performance history over 19 years saying that he had only had one written warning – which he had disputed. He argued that the respondent would not have made him redundant because there was a need for that role; someone would have needed to manage the role. I also noted Mr Harcup's evidence that the respondent was very busy.

12. As to the argument that, acting reasonably, he would have looked for work and found work earning at least national minimum wage within 3 months of dismissal he argued that did not take account of his mental health. He argued that his priority had been to focus on his mental health which was still not where it should be and stated that he was still unable to work full time. He described himself as still continuing that journey now. He also said that the delays in returning to work were to do with his housing situation and the length of time he was out of a permanent home. He claimed 12 months' loss of earnings.

13. The claimant was cross-examined about his banks statements apparently with a view to exploring whether he had in fact obtained remuneration from paid employment or self-employment which had not been disclosed. I find that the claimant gave satisfactory explanations of the entries he was asked about and that his bank statements do not show that he in fact earned income but rather that he was supported by friend.

14. He gave evidence in an understated way about a time after the end of his employment on 29 July 2024 when “I didn’t want to wake up if I’m honest” which was his explanation for not seeking work until Spring 2025. Although he accepted that there was no medical evidence as such (by which I mean a letter from a treating GP or other physician explaining the diagnosis), there is correspondence from Talking Therapies (page 47) which shows that he was referred to them on 29 November 2024 when he was still living in Henley. He was recommended to start a program of computerised CBT followed by a telephone appointment after about 2 weeks. On 26 March 2025, he was assessed as having successfully completed the programme with telephone support and his scores suggested improved mood and reduced anxiety levels – both then being within the score for the general population.

15. He had had an interview in April 2025 for a role in Wallingford. At that time (March 2025 until mid-June) he had been staying for free in the house belonging to his friend’s mother for free in exchange for help refurbishing the property (page 248). The house had no electricity or water at the time and he was knocking down walls and doing labouring work (see page 245). This arrangement was temporary. His oral evidence was that, when that came to an end, the housing provided for him meant that he was moved into Oxford in June 2025 and his mental health deteriorated. He was further away from people he knew and not in the best company with a lot of abuse in the environment the temporary accommodation provided. An email from that time approximately (page 241 on 9 June 2025) shows him reporting to South and Vale Council that he is really worried and suffering with his mental health again.

16. He has done voluntary work for Cherwell collective which he accepted had been in about August or September 2025 as a stepping stone to employment. He had been doing food preparation but said that “everything became a bit too much for me in November 2025 and I couldn’t move forward with that opportunity”. He put that down to poor mental health. He refuted a suggestion that he could have engaged with Restart program earlier than April 2025 (see their email page 65). He stated that the mental health problems and the fact that he was homeless had such a huge impact on him. Before April 2025 he had been having regular meetings with the job centre but hadn’t been referred to the Restart scheme yet.

17. He has now completed his solar panel installers course (having done so in April 2026). He is looking to find part time work potentially 2 or 3 days a week to fit around the work he is doing with Restore to start to rebuild. He accepted that there was no medical evidence before the Tribunal about his poor mental health.

18. He had been paid benefits with his first benefit payment being evidenced at page 126 on 26 September 2024.

19. The claimant also mentioned that there were personal items of his which had been stored in a shed or room in the respondent’s site. Mr Large took instructions and they were that anything originally there no longer remained, had been cleared out long since so could not be returned. In that situation I

suggested that he contact the Citizens Advice Bureau or explore making a claim in the County Court.

Law applicable to the remedy issues

20. Section 123(1) Employment Rights Act 1996 (ERA) sets out the statutory provision for calculation of the compensatory award and provides as follows:

"Subject to the provisions of this section and [sections which limit or reduce the amount of the compensatory award] the amount of 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 in so far as that loss is attributable to action taken by the employer."

21. This requires me to consider the effect of the unfair dismissal and whether the connection between that and its consequences was sufficient to found a claim that loss flows from it. If I am of the view that there was more than one cause of the loss, the respondent is only responsible to the extent that their contribution is material to the causes of the loss.

22. In Whelan v Richardson HHJ Peter Clark (page 324F to H) said as follows:

"Each case must depend upon its own facts. ... Compensation is to be assessed in such a way as to compensate the employee, not penalise the employer, in relation to the compensatory, as opposed to an additional or special award. Neither party should gain a 'windfall'. Compensation must be that which is just and equitable. Parliament has thereby granted a discretion to industrial tribunals which ought not to be placed in a straitjacket by too rigid statements of principle handed down by this tribunal in appeal decisions. However, that discretion must be exercised in accordance with clear principles, to some extent imported into this field from the common law by the words of the statute."

And then at page 325G to 326 D the EAT sets out 5 points of principle:

"(1) The assessment of loss must be judged on the basis of the facts as they appear at the date of the assessment hearing ("the assessment date").
(2) Where the applicant has been unemployed between dismissal and the assessment date then, subject to his duty to mitigate and the operation of the recoupment rules, he will recover his net loss of earnings based on the pre-dismissal rate. Further, the [employment] tribunal will consider for how long the loss is likely to continue so as to assess future loss.
(3) ... where the applicant has secured permanent alternative employment at a lower level of earnings than he received before his unfair dismissal [... h]e will be compensated on the basis of full loss until the date on which he obtained the new employment, and thereafter for partial loss, being the difference between the pre-dismissal earnings and those in the new employment. All figures will be based on net earnings.

(4) Where the applicant takes alternative employment on the basis that it will be for a limited duration, he will not then be precluded from claiming a loss down to the assessment date, or the date on which he secures further permanent employment, whichever is the sooner, giving credit for earnings received from the temporary employment.
(5) As soon as the applicant obtains permanent alternative employment paying the same or more than his pre-dismissal earnings his loss cannot be revived if he then loses that employment either through his own action or that of his new employer. Neither can the respondent employer rely on the employee's increased earnings to reduce the loss sustained prior to his taking the new employment. The chain of causation has been broken."

23. Nevertheless, the statute directs the tribunal, when deciding what is just & equitable to have regard to the loss sustained by the claimant "in so far as that loss is attributable to action taken by the employer". This is an important consideration. There may come a point where losses are no longer attributable to the action of the employer: Courtaulds Northern Spinning Ltd v Moosa [1984] ICR 218 EAT.

24. The legal principle that a claimant must take reasonable steps to mitigate their losses is found in s123(4) ERA:

"(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 of England and Wales or (as the case may be) Scotland."

25. The burden of proof in relation to an allegation of failure to mitigate loss is at all times on the respondent. The three main questions for the ET to consider are – Gardiner-Hill v Roland Berger Technics Ltd [1982] IRLR 498:

  a. What steps were reasonable for the claimant to have taken in order to mitigate their loss;
  b. Whether the claimant acted unreasonably in failing to take those steps; and,
  c. To what extent, if any, the claimant would actually have mitigated their loss if they had taken those reasonable steps.

26. Whether the claimant acted unreasonably in failing to take the steps in question is to be determined by the Tribunal with the claimant's wishes and views being one of the factors in my analysis.

27. On the authority of Polkey v A E Dayton Services Limited [1987] IRLR 503, compensation may be reduced on the basis that had the employer taken the appropriate procedural steps which they did not take then that would not have affected the outcome. In principle, this also applies to the situation where the respondent has shown that, had the unlawful action not take place, the loss would have occurred in any event. I need to carry out an evidence based

assessment of what the actual employer would or might have done had it been given the opportunity to remedy the procedural defect

Conclusions

28. The respondent argued plausibly that the claimant could have found alternative work (such as labouring work) very quickly at that time of year. Their argument that he would probably have found work earning at least the national minimum wage working full time (37.5 hours) within 3 months was based less on evidence than on inviting me to accept that in the Thames Valley area there was probably work available for an experienced warehouse manager. They have not produced evidence of what would had happened had the claimant sought work but I accept that (ignoring for a moment the claimant's explanation of why he did not seek work) had the claimant acted reasonably he would have looked for work such as that proposed by the respondent. When he started to look for work in Spring 2025, he obtained an interview.

29. I found the claimant a credible witness in his account of his poor mental health, notwithstanding that there is no medical evidence to explain the reason, diagnosis or prognosis. There is corroborative evidence in the form of letters from Talking Therapies (page 47) and the contemporaneous explanations he gave to the council when seeking temporary accommodation. I accept that he must have gone to his GP and must have been referred on – or done a self-referral. His scores on referral meant that he was recommended a course of treatment. Page 62 shows that he was prescribed Sertraline (most recently in December 2025). I accept that he had poor mental health.

30. The same week that he was dismissed by the respondent his accommodation came to an end (page 64). There had relatively recently been a family breakdown and there is some evidence in the hearing file of health problems experienced by one of his children (page 46). Although the respondent accepts that account should be given of time needed to regroup after the loss of employment, it is for them to show that the claimant (in the situation in which he found himself) acted unreasonably in failing to look for work before Spring 2025.

31. It is not simply, in my view, a question of what was the cause of the claimant's mental health problems or whether the mental health problems meant that he was not fit for work. The claimant's explanation was not simply that he was unfit for work (and such medical evidence as there is does not go that far) but that he prioritised his mental health. Given the series of disruptive life events he was contending with in the second half of 2024 I do not accept that he acted unreasonably in not looking for work before Spring 2025. The Talking Therapies assessment at page 50 causes me to date this from about 26 March 2025 which coincides with the date he obtained an interview.

32. However, after he started looking for work there were factors which then intervened and caused his mental health to deteriorate again. Sympathetic though I am to the claimant's position as someone with insecure housing, I take on board the respondent's argument that they should only be liable for loss

caused by their actions and the overriding principle is that I should award such compensation as is just & equitable.

33. There came a point in Spring 2025 where there is no medical evidence to support the claimant's evidence that his state of health remained such that he was not fit to work; he had started to look for work and stopped and there is no evidence that any limitation on his ability to work was due to the actions of the respondent. Doing the best I can, I think that the losses attributable to the actions of the respondent ceased in about April 2025. The claimant was well enough to look for work from about 26 March 2025, that would give a period of 4 weeks to find work. This is reinforced by the interview he had in April 2025 for a warehousing job. He would probably have found such work entirely mitigating his losses by the end of April 2025 had his mental health not deteriorated. From that point his losses are no longer attributable to the actions of the respondent because there is no evidence that his mental health was caused by dismissal.

34. To be clear, I am not finding that his poor mental health was caused in a legal sense by dismissal at an earlier stage but rather than he did not act unreasonably in all the circumstances in not looking for work and part of what I take into account is that, as a matter of fact, he was in poor mental health and was prioritising recovery, his housing situation, family relationships and rebuilding resilience.

35. Therefore the compensatory award will be 100% of loss from the end of his notice period to the end of April 2025. I have awarded him 12 weeks' notice pay as compensation for wrongful dismissal so there is no loss until the end of the putative notice period. That would have ended on 20 October 2024. Compensation for unfair dismissal is awarded for 21 October 2024 to 26 April 2025 (for ease of calculation) which is 27 weeks. The claimant received social security benefits so the Recoupment provisions apply.

36. In relation to the Polkey argument, here I accept the argument of the claimant. Although the respondent argues that there was the chance of a (fair) redundancy, there is scant evidence that that was necessary. Both the claimant and Mr Harcup gave evidence to the effect that there was work which needed to be done. The respondent would have to show that financial pressures would have led them to reduce staff costs. I have no information about what other staff there were. Mr Cooper was leaving and in that situation I do not think I have sufficient evidence to find that there was an identifiable chance that they would have selected the claimant, their Warehouse Manager, to dismiss as a costs saving measure.

37. The respondent also hinted at the prospect of the claimant resigning. It is true that he was struggling with the commute and he may well, in time have looked for work nearer home. However he would not have resigned a job with this length of tenure without a secure job to go to and to move from settled employment of 19 years to the insecurity of a cash in hand approach to income generation (as Mr Harcup suggested he assumed the claimant to be interested in) I consider to be extremely unlikely.

38. Overall, I conclude that it is unlikely that employment would have ended within the period covered by the loss I have awarded. Therefore I make no deduction from compensation applying the Polkey principles.

Approved by:

**Employment Judge George**

16 September 2026

JUDGMENT SENT TO THE PARTIES ON
16 September 2026

FOR THE TRIBUNAL OFFICE

**Notes**

All judgments (apart from judgments under Rule 51) and any written full 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/