



EMPLOYMENT TRIBUNALS

Claimant: Mr C Mateo

Respondent: British Airways PLC

Heard at: Reading Employment Tribunal by video (CVP)

On: 4 September 2026

Before: Employment Judge Macey

Representation

Claimant: Mr Marshall, litigation friend – non-practising counsel

Respondent: Miss Kendrick, solicitor

RESERVED REMEDY JUDGMENT

1. The respondent shall pay compensation to the claimant of **£29,195.69** made up as follows:
 - a. A basic award for unfair dismissal of £1,924.96.
 - b. A compensatory award for unfair dismissal of £25,024.48.
 - c. An award for wrongful dismissal of £2,246.25. This is a gross sum.
2. The recoupment provisions do not apply.

REASONS

ISSUES

1. The issues that were agreed by the parties at the start of the liability hearing (11-13 May 2026) that remained outstanding for this remedy hearing are as follows:
 1. **Remedy for unfair dismissal**
 - 1.1 Does the claimant wish to be reinstated to their previous employment?

- 1.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?
- 1.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 1.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.
- 1.5 What should the terms of the re-engagement order be?
- 1.6 If there is a compensatory award, how much should it be? The Tribunal will decide:
 - 1.6.1 What financial losses has the dismissal caused the claimant?
 - 1.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
 - 1.6.3 If not, for what period of loss should the claimant be compensated?
 - 1.6.4 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
 - 1.6.5 Did the respondent or the claimant unreasonably fail to comply with it?
 - 1.6.6 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
 - 1.6.7 Does the statutory cap of fifty-two weeks' pay apply?
- 1.7 What basic award is payable to the claimant, if any?

2. Wrongful dismissal / Notice pay

- 2.1 How much should the claimant be awarded as damages?

PROCEDURE

2. The form of this hearing was a remote hearing by video (CVP).
3. There was a bundle of documents from the liability hearing and a bundle of documents for the remedy hearing. The numbers in square brackets refer to pages within the bundles. In respect of pages within the remedy bundle the numbers are preceded with "RB".
4. There were written witness statements and oral evidence for the remedy hearing from the claimant and Ms Wignall (cabin crew policy and support

partner) for the respondent. The claimant produced a schedule of loss and the respondent produced a counter-schedule of loss.

FACTS

5. The relevant facts are as follows. Where I have had to resolve any conflict in evidence, I indicate how below.
6. The claimant was employed by the respondent as a cabin crew, operating out of London Heathrow airport from 21 September 2018 until 8 July 2024 (the claimant was summarily dismissed on 8 July 2024 [212-216]. The claimant was 37 years old at the effective date of termination.
7. Prior to his dismissal the claimant had a clean disciplinary record at the respondent. The claimant had never had any warnings or spent warnings. The claimant has also previously received commendations for good service from the respondent.
8. The claimant's written contract of employment [54-65] contained the following clause on pay (clause 9):

"Your full-time equivalent basic annual salary is £13,283.

In addition you will be paid non-contractual variable pay known as elapsed hourly rate in accordance with Company arrangements in force from time to time."
9. Clause 10 of the written contract of employment stated the following about hours of work:

*"You may be required to work for up to 2000 hours a year (**Working Time**). Of this Working time, up to 900 hours may be block flying time. Block flying time has the definition given to it in the Civil Aviation (Working Time) Regulations 2004 (the **Regulations**), or any successor to the Regulations.*

You will be rostered for duties in accordance with the statutory and Company regulations in place from time to time..."
10. At the effective date of termination the claimant's basic annual salary was £21,833 gross per annum. His gross basic pay per week £419.86. His net weekly pay was £370.02.
11. There was an element of non-contractual variable rate known as elapsed hourly rate which included duty allowance, short-haul duty allowance and bar commission.
12. The claimant accepted in cross-examination that duty-allowance and short-haul duty allowance were payments for operating on the flight in question.

These allowances were only payable when the claimant was rostered to fly and carried out flying duties.

13. The claimant did not accept that bar commission was entirely dependent on what was sold by the particular employee during the flight. In cross-examination the claimant said that even if an employee was not working on the flight (i.e. they were present on the flight due to rostering but not carrying out flying duties) they still received a part of the bar commission.
14. The claimant did accept, however, that there was no guarantee which flight an employee could be working on and that it was possible that an employee could be scheduled on "off days" (not working or present on any flights) for an entire month.
15. The claimant also accepted that being rostered onto a flight was conditional on which flights were being operated by the respondent at the relevant time.
16. Daily overseas allowance and subsistence allowance were also paid to the claimant while he was on route to enable him to purchase food and drink while he was working or abroad (down route) on a work pattern. Daily overseas allowance and subsistence allowance were only payable when the claimant was rostered to fly and carried out flying duties or down route due to a work pattern.
17. The claimant was also a member of the British Airways Pension Plan. Employer's weekly contributions at the effective termination date were £29.39.
18. The claimant was entitled to receive notice. Clause 28 of his written contract states:

"Following the end of your probationary period you may terminate your employment by giving one months' notice to the Company.

The Company may terminate your employment by giving you the following period of notice:

***Length of Complete Continuous Notice
Service***

Up to a year

Over one year

1 week

One week for every completed year of service up to a maximum of 12 weeks."

19. The claimant did not receive the non-contractual variable rate, subsistence allowance or bar commission while he was suspended. This is in accordance with the respondent's policy on Managing Conduct [39] which states "...You will continue to receive basic pay during suspension."

20. The claimant's gross pay for January 2024 [243 and RB107] included £1,775 for basic pay and £227.70 for holiday pay and £8.11 for bar commission. Other allowances in January 2024 were £1,246.36 in total. The claimant's net pay for January 2024 was £2,801.56.
21. The claimant's pay for February 2024 [244 and RB108] included £1,775 for basic pay and 0.78 for bar commission. Other allowances in February 2024 were £1,407.02 in total. The claimant's net pay for February 2024 was £2,731.90.
22. The claimant's pay for March 2024 [245 and RB 109] included £1,775 for basic pay and £12.68 for bar commission. Other allowances in March 2024 were £1,358.24 in total. The claimant's net pay for March 2024 was £2,658.36.
23. The claimant's pay for April 2024 [246 and RB110] included £1,775 for basic pay and £15.06 for bar commission.
24. The claimant was on unpaid leave in May 2024 (that had been arranged prior to his suspension) [247 and RB111] and only received £25 in basic pay after the unpaid leave had been taken into account.
25. The claimant's pay for June 2024 included £1,819.42 for basic pay [248 and RB112].
26. The claimant's pay for July 2024 included £469.53 for basic pay, holiday pay crew of £84.88, holiday pay commission of £4.56 and annual leave of £89.72 [249 and RB113].
27. Following the claimant's suspension from the respondent on 2 April 2024 he flew to the United States on a tourist visa to be with his wife (who was working as a postdoctoral research fellow at New York University (NYU) at that time). The claimant did not want to be in a different country to his wife and describes himself as being mentally unwell at that time (there is no supporting evidence of any diagnosed mental health condition in the bundles).
28. However, on the balance of probabilities given the nature of the allegations against him it is more likely than not that he was experiencing some level of distress in both April 2024 following his suspension and after his employment had been terminated in July 2024.
29. After the claimant's employment was terminated he returned to the United Kingdom to make an application to be added to his wife's United States visa as a dependent. The claimant cannot remember the exact date of this application.

30. The claimant did not claim benefits in the United Kingdom at any point and he says that he could not afford to live in the United Kingdom without an income. The claimant also says that he could not afford to commute to New York to visit his wife when he did not have an income. The claimant did not apply for any jobs in the United Kingdom.
31. The claimant's visa [RB70] was issued on 6 August 2024 and was due to expire on 29 June 2026. This was a "J2" visa which meant he could not work in the United States on this visa unless he then applied for a separate work permit. He flew back to the United States some time in August 2024 after he was issued with this visa.
32. After the claimant received his visa he was then allowed to apply for a work permit. He was informed by the United States immigration staff that he should not apply for any jobs in the United States until he received his work permit. He was granted his work permit from 15 November 2024 until 29 June 2025 [RB69]. The claimant says that this work permit cost him USD520.
33. The claimant had checked the websites for various airlines operating out of the United States (including American Airlines and Delta) and airports within the United States including JFK and LaGuardia (and one other). They all required any applicants for any role (whether ground based or otherwise) to have the legal right to live in the United States indefinitely and to have the legal right to work in the United States indefinitely.
34. During cross-examination the claimant stated that he had doubted that the respondent would have given him a positive reference and that it was possible a different airline would have been informed by the respondent about the reason for the claimant's dismissal. The claimant never made any enquiries with the respondent whether they would provide the claimant with a reference on request (or what such a reference would include).
35. Between 2 December 2024 and 10 February 2025 the claimant applied for a variety of roles outside of the airline industry. There is supporting evidence of his applications and covering letters [250-297].
36. The claimant worked from March 2025 to 29 June 2025 as a facilities and event staff at The Ukrainian Institute of America (a non-profit organisation based in New York which aims to promote Ukrainian culture and heritage). He was paid by bank transfer. He received USD16.50 per hour (approximately £12.77) gross. He worked 35 hours a week. In total the claimant received USD7,163.01 gross from the Ukrainian Institute of America.
37. The claimant's wife's contract at NYU finished at the end of June 2025. His wife then took a one year contract at Harvard University (originally to end of June 2026) and they both moved to Massachusetts in July 2025.

38. The claimant's second work permit was issued on 3 November 2025 and expired on 29 June 2026 [RB69]. The claimant says that this work permit cost him USD520.
39. On 14 October 2025 the claimant was informed by TaskRabbit that his background check was complete [80].
40. On 16 October 2025 the claimant's application to Home Depot was acknowledged [RB74].
41. On 6 November 2025 the claimant applied to work at AMC Theatres [RB81].
42. On 30 November 2025 the claimant applied for a job role with Apple Retail [RB77].
43. On 8 December 2025 he was informed by Deliveroo that his application had been unsuccessful [RB73].
44. On 18 December 2025 the claimant applied to Kush Groove Dispensary [RB83].
45. On 11 January 2026 his application to Whole Foods Market was acknowledged [RB75].
46. The claimant also applied for a number of different jobs through Indeed between 18 December 2025 and 12 January 2026 [RB76].
47. On 12 January 2006 the claimant applied to Lexus of Watertown [RB82].
48. On dates unknown the claimant applied for 11 job roles at Costco [RB78-79] but was unable during his evidence to confirm the date of the screenshot of the dashboard for those jobs.
49. The claimant worked for the Harvard Ukrainian Research Institute Books ("HURI Books") between 4 and 7 March 2026 at the AWP Conference. He charged HURI Books USD25 per hour gross [RB71]. The total invoice was USD656.25 gross [RB71].
50. The claimant also worked for HURI Books between 26 and 31 May 2026 at the ASN Conference. He charged HURI Books USD25 per hour gross [RB72]. The total invoice was USD1057.50 gross but this invoice also included parking of USD4 and USD347.25 for driving at USD0.75 per mile [RB72].

51. There is no bank statement in the bundle demonstrating the amounts received by the claimant into his bank account for these two pieces of work for HURI nor his work for the Ukrainian Institute of America.
52. There is no evidence about the amount of tax that the claimant paid to the United States Government for these two pieces of work for HURI or for the Ukrainian Institute of America. The claimant and his wife made a joint submission in respect of the 2025 tax year and all the information is on her tax portal. No submissions has been made for the 2026 tax year at the date of this hearing.
53. The claimant returned to the United Kingdom on or around 12 or 13 August 2026 (his wife's contact for Harvard was extended slightly to encompass summer school at Harvard University). The claimant's wife now has a new position in Copenhagen starting in October 2026.
54. In cross-examination the claimant confirmed that he had not applied for any jobs in the United Kingdom on his return to the country because he was awaiting the outcome of this hearing.
55. The respondent is currently recruiting for cabin crew to join its talent pool [RB 84-96]. The recruitment process for cabin crew positions (including mainline Heathrow, Gatwick Euroflyer and CityFlyer) has moved to the talent pool, this means that cabin crew roles are no longer publicly advertised. The current talent pool recruitment campaign [RB84-96] is for Heathrow. It is expected that applicants in the talent pool will be invited to join the live recruitment campaign (where they will attend assessment activities) in September 2026 with an expected start date in the first quarter of 2027.
56. The respondent had a genuine belief that the claimant had made a reference to the "mile high club" in a conversation with the complainant while she was on a rest break, that he also did purposely touch the complainant's leg while she was on a rest break and that he did tell the complainant stories of a sexual nature regarding two ladies.
57. The respondent says that it did and it still does concern it that the claimant did this whilst he was positioning on a flight (not operating as a member of the crew).
58. The respondent says it is also concerned that at the liability hearing the claimant maintained that his behaviour was acceptable and did not offer any remorse.
59. The respondent says that they have lost trust in the claimant and would not be comfortable having him back in its business.

60. The claimant in cross-examination said that he no longer trusts the respondent at all in managing people but that he loved his job (and wants it back) and that is why he wants to be reinstated.
61. During the respondent's investigation into the allegations against the claimant Ms McEvoy [114-118] reported that when the complainant had finished her break she had looked tired and had said about the conversation with the claimant *"I was just trying to be nice, but I need to learn how to be blunt with people"* and further that the complainant had said she had not wanted to have a conversation with the claimant while she was on her break and that she told Ms McEvoy *"no, I just wanted to go on my break"*. Ms McEvoy also reported during the investigation that it was only after service had finished that the complainant had said that it was quite uncomfortable.
62. Ms Hines reported to the investigation [160-165] that she had put her head through the curtain to check on the complainant after the claimant had left and that the complainant told Ms Hines, *"he just asked me if I want to be part of the mile high club"* and Ms Hines reported that the complainant was laughing as if he quite shocked.
63. Ms Paton (in-flight manager) first reported to the respondent on 30 March 2024 [70-71] that the complainant during the flight had told Ms Paton (in respect of the allegations against the claimant) that she was very uncomfortable and did not like what happened and knew it was not right and Ms Paton also reported that the complainant was upset and emotional.
64. The complainant reported to the respondent on 30 March 2024 following the flight that, *"I was made to feel extremely uncomfortable, and my privacy was totally invaded"* [69 and RB10].
65. The complainant reported to the investigation [147-153 and RB 11-17] that after her break she went straight into second service, and that she did not mention the allegations to the in-flight manager straightaway as she was still trying to think what would be the right thing to do. The complainant also stated during the investigation [147-153 and RB11-17] that she went to speak to the in-flight lead ("IFL") at the back of the aeroplane to get some advice and that the IFL had said, *"if you really don't want to report it, I will not force you, however this is a serious matter and he can't be doing this."*
66. The complainant also reported to the investigation [147-153 and RB 11-17] that after she had spoken with the in-flight manager she was moved to work at the back of the aeroplane because she had got really stressed out and a little upset.

67. Ms Miles interviewed the complainant too [207-209 and RB18-20] and during that interview the complainant said, *"I am concerned I don't want to be rostered on a flight with him"*.
68. The complainant still works for the respondent as cabin crew. The respondent does have a process called a "no fly" restriction. If a "no fly" was placed on the complainant's roster then this would mean that the system would not roster the complainant and the claimant (if he returns to work at the respondent) to operate on the same flight. Ms Wignall stated during cross-examination that the "no-fly" process was to prevent crew working together when there were personality clashes it was not there to prevent sexual harassment.
69. Even with a "no-fly" on the complainant's roster there would be no guarantee that there would be no future interactions between the complainant and the claimant if he returned to work for the respondent. They could still see each other on the crew bus from the car park, in the crew report centre (CRC) and in the airport terminal. The "no-fly" process also would not prevent the complainant and the claimant being rostered on duties to the same destination (but on different flights). The crew members on the different flights could then be staying in the same hotel at the destination.
70. During cross-examination Ms Wignall confirmed that in any one day the respondent has 660 flights either arriving or departing Heathrow and that each of those flights could have 8 cabin crew onboard. That means approximately 5,280 cabin crew are passing through Heathrow in one day. Ms Wignall also confirmed during cross-examination that the CRC at Heathrow is large and that the cabin crew report there and meetings are held there.
71. The claimant presented his complaints to the Tribunal on 7 October 2024.
72. The liability hearing took place on 11 May 2026, 12 May 2026 and 13 May 2026. Judgment on liability with oral summary reasons was given on 13 May 2026. A written Judgment on liability was promulgated in June 2026 [3-4].

LAW

Unfair dismissal

Reinstatement and reengagement

73. Section 113 of the Employment Rights Act 1996 ("ERA") states:
- "An order under this section may be—*
- (a) an order for reinstatement (in accordance with section 114), or*
- (b) an order for re-engagement (in accordance with section 115),*
- as the tribunal may decide."*

74. Section 114 of the ERA states:

“(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) On making an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

(b) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and

(c) the date by which the order must be complied with.

(3) If the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) In calculating for the purposes of subsection (2)(a) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement by way of—

(a) wages in lieu of notice or ex gratia payments paid by the employer, or

(b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.”

75. Section 115 of the ERA states:

“(1) An order for re-engagement is an order, on such terms as the tribunal may decide, that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment.

(2) On making an order for re-engagement the tribunal shall specify the terms on which re-engagement is to take place, including—

- (a) the identity of the employer,*
- (b) the nature of the employment,*
- (c) the remuneration for the employment,*
- (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of re-engagement,*
- (e) any rights and privileges (including seniority and pension rights) which must be restored to the employee, and*
- (f) the date by which the order must be complied with.*

(3) In calculating for the purposes of subsection (2)(d) any amount payable by the employer, the tribunal shall take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of re-engagement by way of—

- (a) wages in lieu of notice or ex gratia payments paid by the employer, or*
 - (b) remuneration paid in respect of employment with another employer,*
- and such other benefits as the tribunal thinks appropriate in the circumstances."*

76. Section 116 of the ERA states:

"(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 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 to order his reinstatement.*

(2) If the tribunal decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement and, if so, on what terms.

(3) In so doing the tribunal shall take into account—

(a) any wish expressed by the complainant as to the nature of the order to be made,

(b) whether it is practicable for the employer (or a successor or an associated employer) to comply with an order for re-engagement, and

(c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and (if so) on what terms.

(4) Except in a case where the tribunal takes into account contributory fault under subsection (3)(c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

(5) 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, for the purposes of subsection (1)(b) or (3)(b), whether it is practicable to comply with an order for reinstatement or re-engagement.

(6) Subsection (5) does not apply where the employer shows—

(a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement, or

(b) that—

(i) he engaged the replacement after the lapse of a reasonable period, without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and

(ii) when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

77. The requirements of section 116 of the ERA are mandatory to the extent that tribunals must take the factors listed in section 116 of the ERA into account when considering whether to grant a re-employment order. However, tribunals are not limited to these considerations and they have a 'general discretion' to consider a wide range of other factors.

78. 'Practicability' is by far the most important factor for tribunals to consider when determining whether to make an order for re-employment. It is a question of fact for the tribunal, which has discretion to decide whether to make a re-employment order.
79. The EAT has stated that, when assessing practicability, tribunals should not attempt to analyse in too much detail the application of the word 'practicable' but should look at the circumstances of each case and take a 'broad common sense view' (**Meridian Ltd v Gomersall and anor 1977 ICR 597, EAT**). *Practicable* in this context means more than merely possible, but rather 'capable of being carried into effect with success' (**Coleman and anor v Magnet Joinery Ltd 1975 ICR 46, CA**). The test is one of 'practicability' not 'expediency'.
80. There are two stages at which a tribunal may have to assess the question of practicability. The first arises when it considers whether to make an order for reinstatement or re-engagement at the remedies hearing, having found the employer liable for unfair dismissal. The second arises later but only if the employer refuses to comply with a re-employment order, in which case a second remedies hearing will be necessary.
81. A lesser emphasis on practicability is required at the first stage, when the tribunal has only to take the question of practicability into account and does not need to make a final determination on the issue (**Timex Corporation v Thomson 1981 IRLR 522, EAT**).
82. This was endorsed by the Court of Appeal in **Port of London Authority v Payne and ors 1994 ICR 555, CA**, where it stated that at the first stage, prior to making an order, the tribunal need only make a provisional determination or assessment on the evidence before it as to whether it is practicable for the employer to reinstate or re-engage the employee. It is only at the second stage, where the employer has not complied with the order and seeks to show that it was not practicable to do so, that a tribunal must make a final determination on practicability.
83. There is no statutory presumption of practicability (**First Glasgow Ltd v Robertson EATS 0052/11/)** that an employer is required to displace.
84. The date at which the practicability of an order for re-engagement is to be considered is when such re-engagement would take effect. In practice, this will often mean the date of the remedies hearing.
85. The personal relationship between the employee and his or her colleagues is clearly a relevant factor that will affect the question of practicability and/or the tribunal's exercise of its discretion.

86. A breakdown of trust and confidence between employer and employee may be sufficient to render re-employment impracticable. In **Wood Group Heavy Industrial Turbines Ltd v Crossan 1998 IRLR 680, EAT**, for example, the employer genuinely believed that the claimant had been dealing drugs at work and the EAT held that this was enough to present a barrier to re-engagement. In that case, the EAT acknowledged that it may seem incongruous that, where a tribunal categorises the employer's investigation into the belief of guilt as being unfair or unreasonable, that original belief can nevertheless form the foundation for a decision that re-employment is impracticable. Per Lord Johnston,

"it is inevitable to our way of thinking that when allegations of this sort are made and are investigated against a genuine belief held by the employer, it is difficult to see how the essential bond of trust and confidence that must exist between an employer and employee, inevitably broken by such investigations and allegations, can be satisfactorily repaired by re-engagement or upon re-engagement."

87. The question of a loss of trust and confidence must be approached from the perspective of the employer in question, not that of another employer, still less that of the tribunal (**United Lincolnshire Hospitals NHS Foundation Trust v Farren 2017 ICR 513, EAT**).
88. In **Kelly v PGA European Tour [2021] EWCA Civ 559** Lord Justice Lewis reasoned that where the employer asserts that the employee's conduct renders re-engagement impracticable, the question is whether the employer had a genuine, and rational, belief that the employee had engaged in conduct which had broken the relationship of trust and confidence between the employer and the employee.
89. Furthermore, lack of trust on the employee's part may also make re-employment impracticable. In **Nothman v London Borough of Barnet (No.2) 1980 IRLR 65, CA**, the Court of Appeal held that the employee's allegations of a long-standing conspiracy by colleagues to oust her from her job made it impracticable to order reinstatement.
90. The employee's conduct during the litigation may be relevant but tribunals should be wary of assessing an employee's attitude solely from his or her performance during the litigation (**Cruickshank v London Borough of Richmond EAT 483/97**).
91. Tribunals are required to consider whether it would be just to make a reinstatement or re-engagement order where the employee caused or contributed to some extent to the dismissal. Contributory conduct will also be highly relevant to the question of practicability e.g. where the employee's misconduct has soured the working relationship and thus diminished trust and confidence.

92. In the case of re-engagement, tribunals must also take contributory conduct into account when considering the terms of the order. In **British Airways plc v Valencia 2014 ICR D29, EAT**, the EAT explained that the correct approach under this provision is first to consider whether re-engagement would be just in light of the conduct, and only then go on to consider the effect the conduct should have on the order's terms.

Compensation

93. An award of compensation is assessed under two heads: the basic award and the compensatory award (section 118 of the ERA).
94. The statutory provisions relating to the compensatory award are set out in section 123 ERA:

123 Compensatory award

(1) ... the amount of the compensatory award shall be such amount as the tribunal consider 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.

(2) The loss referred to in subsection (1) shall be taken to include-
(a) any expense reasonably incurred by the claimant in consequence of the dismissal,
and
(b)... loss of any benefit which he might reasonably be expected to have had but for the dismissal.

...

(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 ...

95. Section 124 of the ERA states:

(1) The amount of –

...

(b) a compensatory award to a person calculated in accordance with section 123 shall not exceed the amount specified in subsection 1ZA.

(1ZA) the amount specified in this subsection is the lower of –

- (a) [£115,115 - for dismissal in 2024/2025], and*
(b) 52 multiplied by a week's pay of the person concerned.

96. Section 220 of the ERA states:

“The amount of a week’s pay of an employee shall be calculated for the purposes of this Act in accordance with this Chapter.”

97. The relevant chapter that section 220 is referring to is chapter II of Part 14 of the ERA.

98. A compensatory award is intended to compensate for loss actually suffered and not to penalise the employer for its actions. Furthermore, where a loss of earnings would have been taxable in a claimant’s hands, loss must be calculated net of tax and national insurance (see **British Transport Commission -v- Gourley [1956] AC 185**). The relevant questions are: whether the loss was occasioned or caused by the dismissal; whether it is attributable to the conduct of the employer; and whether it is just and equitable to award compensation.

99. Permissible heads of loss include: past and future loss of earnings, loss of pension and fringe benefits, expenses incurred in looking for other work, and compensation for loss of statutory employment rights. The award for loss of statutory employment rights reflects the fact that the dismissed employee will have to work for 2 years in new employment to reacquire the right not to be unfairly dismissed.

100. Loss is assessed by reference to the net pay that the employee would have earned but for the dismissal. It is normally the salary attached to the employee’s position at the time of dismissal that is relevant for these purposes.

101. Remuneration for these purposes is not limited to basic pay but can cover any regular bonuses or fringe benefits that an employee may have been receiving in the job. This is not restricted to benefits that are explicitly authorised by the contract: what counts is take-home pay, plus other contractual or non-contractual benefits that the employee would expect to receive in the period under review.

102. Expenses are included in the remuneration, provided these are regular, but only to the extent that they represent a profit or ‘perk’ in the hands of the employee over and above what is spent purely on the employer’s behalf.

103. Where the question of what the employee could expect is unclear, the tribunal is entitled to assess loss according to the likelihood, in its view, of entitlement to payment being established. Appropriate evidence of company policies, scheme rules and the circumstances in which payments have been made in the past, together with evidence of how the employee qualifies under the relevant criteria, will need to be made available to the tribunal. However, if the

entitlement to remuneration is disputed, the tribunal will obviously use the contract as the main means to identify the employee's rights.

104. An employee who has been unfairly dismissed must mitigate his loss by taking reasonable steps to reduce his losses to the lowest reasonable amount. This does not mean he has to take "all possible" steps. The burden of proving a failure by a claimant to mitigate lies on the respondent.
105. The duty to mitigate in accordance with section 123(4) ERA does not arise unless and until the employee has actually been dismissed.
106. In **Gardiner-Hill v Roland Berger Technics Ltd 1982 IRLR 498, EAT**, the EAT said that where there is a substantial issue as to failure to mitigate, an employment tribunal should ask itself:
 - (i) what steps were reasonable for the claimant to have to take in order to mitigate his or her loss;
 - (ii) whether the claimant did take reasonable steps to mitigate loss; and
 - (iii) to what extent, if any, the claimant would have actually mitigated his or her loss if he or she had taken those steps.
107. While these three questions are logically distinct, they are linked, and the evidence that bears upon them overlaps. The burden of proof is on the employer in respect of all three.
108. When calculating the compensatory award, the calculation should initially be based on the assumption that the employee has taken all reasonable steps to reduce his or her loss. If the employee in fact failed to take such steps, the compensatory award should be reduced so as to cover only those losses that would have been incurred even if the employee had taken the appropriate steps. A useful approach to this matter was suggested by Sir John Donaldson in **Archbold Freightage Ltd v Wilson 1974 IRLR 10, NIRC**: the dismissed employee's duty to mitigate his or her loss will be fulfilled if he or she can be said to have acted as a reasonable person would do if he or she had no hope of seeking compensation from his or her previous employer.
109. In **Cooper Contracting Ltd v Lindsey 2016 ICR D3, EAT**, Mr Justice Langstaff (then President of the EAT) summarised a number of principles drawn from the earlier case law to guide tribunals when considering whether there has been a failure to mitigate loss. He observed that there were considerable dangers in approaching the matter as though the duty to mitigate required the taking of all reasonable steps to lessen loss. Such an approach risked diverting focus away from the legal principles that applied to mitigation and might lead erroneously to the conclusion that if the employer could show a single reasonable step that was not taken it would inevitably succeed in its submission that there had been a wholesale failure to mitigate. To avoid such

a mistake, it was imperative that the following guidance be firmly borne in mind:

- the burden of proof regarding a failure to mitigate is on the wrongdoer. A claimant does not have to prove that he or she has mitigated the loss,
 - if evidence as to mitigation is not put before the employment tribunal by the wrongdoer, it has no obligation to look for that evidence or draw inferences. This is how the burden of proof works in this context: responsibility for providing the relevant information belongs to the employer,
 - the employer must prove that the claimant has acted unreasonably. The latter does not have to show that what he or she did was reasonable (**Ministry of Defence v Mutton 1996 ICR 590, EAT**). What is reasonable or unreasonable in this regard is a question of fact, to be determined after taking into account the wishes of the claimant as one of the relevant circumstances, although it remains the tribunal's own assessment of reasonableness — not the claimant's — that counts,
 - the tribunal should not apply a standard to the claimant that is too demanding. He or she should not be put on trial as if the losses were his or her fault, given that the central cause of those losses was the act of the employer in unfairly dismissing the employee,
 - the relevant test can be summarised by saying that it is for the wrongdoer to show that the claimant has acted unreasonably in failing to mitigate,
 - in a case where it might be reasonable for a claimant to have taken a better paid job, this fact does not necessarily satisfy the test: it is simply important evidence that might assist the tribunal to conclude that the employee has acted unreasonably.
110. Where an employee is found by an employment tribunal to have failed to mitigate his or her losses, it should not simply reduce the whole compensatory award by a percentage. Instead, it should attempt to estimate from the available evidence exactly when the employee should have got a suitable job. The tribunal should then take into account the earnings that it thinks would have been earned from that point onwards and reduce the compensation accordingly. Though in a situation where the evidence is uncertain a percentage reduction may be applied when it is not possible to engage in a more precise assessment.
111. Whether an employee has done enough to fulfil the duty to mitigate depends on the circumstances of each case and is to be judged subjectively. But it is not the case that the tribunal should simply accept the subjective view of the claimant; while this certainly has to be taken into account, the tribunal's task is to consider all the circumstances in deciding whether the claimant has acted unreasonably in failing to find fresh employment or some alternative means of mitigating the losses as a result of having been unfairly dismissed.

The test is an objective one with a strong subjective element, in that it requires an answer to the question: was it unreasonable for the claimant to make the choices he or she did in his or her particular circumstances?

112. As a general principle, a claimant who has been unfairly dismissed is entitled initially to seek work at a reasonably comparable salary and status, and within a reasonable geographical range of where he or she previously worked. If the job hunt is unsuccessful, there must come a point when the claimant can reasonably be required to seek work at a lower salary or status, or in a wider geographical area.
113. Expenses are usually expenses incurred when looking for new employment but they can include any expense provided it can be evidenced that it is both reasonably incurred and arose as a consequence of the dismissal.
114. An award for loss of statutory rights is to reflect the fact that a claimant will have to acquire a period of continuous employment to qualify for certain statutory rights. The sum awarded is at the discretion of the tribunal.
115. The provisions relating to the basic award are contained in ERA sections 119 to 122 and in section 126. The award is calculated according to a formula based on age, length of service and gross weekly pay. A week's pay is subject to a statutory maximum.
116. A week's pay is defined by chapter II of Part 14 of the ERA. Section 224 of the ERA provides a method for calculating "a week's pay" in circumstances where there are no normal working hours. It is specifically designed for determining average remuneration and is not intended to be a catch-all provision for quantifying all types of wage-related claims.
117. Section 224(2) of the ERA provides as follows:

"The amount of a week's pay is the amount of the employee's average weekly remuneration in the period of twelve weeks ending -

(a) when the calculation date is the last day of the week, with that week, and

(b) otherwise, with the last complete week before the calculation date."
118. A week's pay includes employer pension contributions (**University of Sunderland -v- Droussou UKEAT/0341/16**).
119. Contractual bonuses and allowances are normally treated as part of an employee's remuneration for the purposes of sections 221-227 of the ERA. An attendance allowance or 'fixed bonus' payable to workers who turned up

and completed a full week's work amounted to remuneration in **May Gurney Ltd v Adshead and ors EAT 0150/06**.

120. Where a bonus or allowance is described as discretionary but is, in fact, paid to employees on a regular basis, it *may* be deemed to be a contractual payment. A 'regular bonus' payable to an employee for undertaking additional duties should be included in the calculation of a week's pay if by reason of regularity of payment and the implied intention of the parties, a bonus or allowance is deemed to have become contractual and therefore part of the employee's normal remuneration to which the employee is entitled. However, just because a bonus or allowance is paid regularly does not necessarily mean that it has become contractual. If a payment remains genuinely *ex gratia*, it will not be included in the calculation of a week's pay.
121. Commission counts as remuneration for the purposes of calculating a week's pay under section 224 where it is a regular part of the employee's earnings.
122. Benefits in kind do not count as remuneration for the purposes of calculating a week's pay.

Wrongful dismissal

123. An employer will be in breach of contract if they terminate an employee's contract without the contractual notice to which the employee is entitled, unless the employee has committed a fundamental breach of contract which would entitle the employer to dismiss without notice. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in section 86 of the ERA.
124. The aim of damages for breach of contract is to put the claimant into the position they would have been in had the contract been performed in accordance with its terms. Damages for breach of contract are, therefore, calculated on a net basis, but may need to be grossed up to take account of any tax that may be payable on the damages. Damages relating to notice pay are subject to tax.
125. In respect of damages for breach of contract for loss of opportunity to earn non-contractual allowances His Honour Judge Burke QC in **Lucy & Ors v British Airways Plc UKEAT/0033/08/LA** said:

"There is an obvious and fundamental difference between basic wages or salary payable periodically to an employee who works or is ready, willing and able to work if no work is provided e.g. he is on "gardening leave" and remuneration which is only earned if specific tasks are carried out, such as commission from sales, allowances for flying or allowances for overnight stays (this is by no means an exhaustive list). The latter

form of remuneration, in my judgment, can only become payable to the employees if the applicable task is carried out. For example a lorry driver who is entitled, if he is on the road overnight, to a meal allowance (whether he actually incurs the cost of a meal or not) is not owed such allowance in a period in which he is not driving by reason of his employer's breach of contract (such as in a period while he is under a suspension which the employer is not lawfully entitled to impose)."

126. Instead, His Honour Judge Burke QC held in **Lucy** that these are damages for loss of the opportunity to earn the allowances claimed or of the chance of earning them.

CONCLUSIONS

Unfair dismissal

Reinstatement or re-engagement

Does the claimant wish to be re-engaged to comparable employment or other suitable employment

127. The claimant wishes to be reinstated to the same position that he held at the respondent prior to his dismissal, this is despite the fact that he has lost all trust in the respondent's ability to manage people.

Should the tribunal order reinstatement – is it practicable?

128. Firstly, during the oral summary reasons in the liability hearing on 13 May 2026 I did explain to the parties that my conclusions were that the respondent had a genuine belief that the claimant had done the following:
- 128.1 made a reference to the "mile high club" in a conversation with the complainant while she was on a rest break,
 - 128.2 purposely touched the complainant's leg while she was on a rest break, and
 - 128.3 told the complainant stories of a sexual nature regarding two ladies.
129. Further, I explained to the parties on 13 May 2026 that my conclusions were that the respondent's genuine belief was based on reasonable grounds.
130. I concluded that the dismissal was substantively unfair because of the failure to conduct a reasonable investigation due to the respondent interviewing the claimant before it had taken a full version of the events from the complainant and the lack of in-depth questioning by the respondent of the complainant concerning her allegation that the claimant had touched her knee.
131. I also identified other issues with the investigation that were not fundamental flaws on their own.

132. In respect of contributory conduct my conclusions were that the claimant in disturbing the complainant while she was on a rest break behind a privacy curtain for a conversation that was not work-related was blameworthy conduct and that this blameworthy conduct did contribute to his dismissal.
133. The respondent submitted that reinstatement would not be appropriate in this situation. Miss Kendrick submitted that the respondent's genuine belief was rational. Further, that I should follow Crossan and that I should not disregard the respondent's genuine and rational belief because it was founded on a flawed investigation. Further Miss Kendrick submitted that the respondent has lost trust and confidence in the claimant and that this impacted the practicability of reinstatement as:
- 133.1 It would not be entirely possible to ensure that the claimant and the complainant did not cross paths with one another;
- 133.2 The only job available for the claimant at the present time is one based at Heathrow;
- 133.3 The respondent would fail to trust that such behaviour would not be repeated again and this would put the respondent at risk of failing to provide a duty of care towards other employees of the respondent; and
- 133.4 The claimant being reinstated may impact other employees' willingness to report harassment in the future.
134. Mr Marshall submitted that the respondent's genuine belief was based on an insufficient investigation (particularly in respect of the allegation of the touching of the knee) and that it was not credible to allege that trust and confidence was broken to such an extent that the claimant could not be re-employed into a workforce of 12,000.
135. Mr Marshall also invited me to focus on the fact that I had applied a 20% reduction for contributory conduct which meant the claimant was 80% not culpable. Further that the complainant had not been present at either the liability hearing or, the remedy hearing and that it was her word against the claimant's.
136. Mr Marshall also submitted that the matter is not as serious as the respondent seeks to make it because it was not a physical altercation, theft or violence at work.
137. Mr Marshall also submitted the respondent's suggestion that there was a risk of the behaviour being repeated was ridiculous and this has not been put to the claimant during cross-examination.
138. At this stage I only need to take practicability into account and I do not need to make a final determination and the respondent does not have the burden of proving that it would be impracticable to reinstate the claimant.

139. I am satisfied that the respondent does have a genuine belief that trust and confidence has irretrievably broken down based on its genuine belief that the claimant committed the allegations made by the complainant that have been outlined above.
140. The next question is whether that belief is rational. I cannot substitute my own view and I need to look at the question from the respondent's perspective. The respondent's management did interview and question the complainant in person prior to the claimant's dismissal (which I did not have the opportunity to do). The respondent's management believed the complainant over the claimant. The questioning during the process was not sufficiently detailed in respect of the allegation of touching but that was not the only allegation against the claimant.
141. **Crossan** is binding authority on the tribunal that a flawed investigation does not prevent the respondent from relying upon its genuine belief that the claimant committed the misconduct and that it has lost trust and confidence in the claimant.
142. There was a rational basis for the respondent's genuine belief from the investigation and enquiries that it did make prior to dismissing the claimant.
143. These are serious allegations of harassment of a sexual nature (I do not agree with Mr Marshall's submission that the allegations are not serious). The respondent has a genuine and rational belief that the claimant committed the allegations and its loss of trust and confidence is sufficient on its own to prevent re-employment because it is not practicable.
144. No order for reinstatement is made.
145. Further, I concluded at the liability hearing that the claimant had disturbed the complainant while she was on her break behind a privacy curtain to conduct a non-work related conversation with the complainant. I concluded that this was blameworthy conduct. It was an invasion of the complainant's privacy and I agree with Ms Wignall that it was strange behaviour.
146. It is also clear from the various statements made by the complainant to the investigation and most of her colleagues to the investigation that the complainant felt uncomfortable, that her privacy had been invaded, that she had not wanted the conversation and that she was concerned about being rostered to work with the claimant again. The only positions available at the respondent at the present time are based out of Heathrow. The complainant currently works out of Heathrow. Although the respondent can place a "no-fly" restriction on the complainant's roster (so the complainant and the claimant would not be on the same flight together) it cannot guarantee either

that the claimant and the complainant will not cross paths at Heathrow or, be on different flights to the same destination and then possibly staying in the same hotel at the destination.

147. Considering that the respondent has 5,280 cabin crew going through Heathrow every day I conclude there would be a low chance of the complainant and the claimant crossing paths at the CRC or on the crew bus. The fact, however, that the respondent does not have a system in place to prevent the claimant and the complainant flying to the same destination (on different flights) and then staying in the same hotel leads me to the conclusion that there is a real risk that they could cross paths if the claimant was reinstated.
148. This is a secondary (but not the main reason) reason why it is not practicable for the respondent to reinstate the claimant.
149. There is insufficient evidence for me to conclude that the claimant would repeat either the allegations the respondent genuinely believes that he committed or the blameworthy conduct that I concluded he had committed. This was not put to the claimant during his evidence.
150. I also conclude that it is speculative to state that if the claimant is reinstated that will deter other employees from raising harassment with the respondent. Again, no evidence has been presented to substantiate this assertion.
151. As I have decided that it is not practicable to order reinstatement I do not need to go on to consider whether it would be just to order reinstatement.

Should the tribunal order re-engagement – is it practicable?

152. For the same reasons that I have explained above it is not practicable to order re-engagement.
153. As I have decided that it is not practicable to order re-engagement I do not need to go on to consider whether it would be just to order re-engagement.

Compensation

What basic award is payable to the claimant, if any?

154. A week's pay is subject to a statutory maximum which, at the time of the claimant's dismissal stood at £700.
155. As the claimant was aged 37 when he was dismissed the relevant rate of pay is one week's gross pay for each full year of service.
156. The claimant in his schedule of loss has included various duty allowances, bar commission and subsistence allowance in his calculation of a week's pay.

157. The respondent in its counter of schedule of loss has calculated the claimant's gross week's pay by reference to the basic salary.
158. The first step is to ascertain whether the claimant has normal working hours. Neither party presented any submissions on this point. The claimant's contract of employment does not set out normal working hours but rather a maximum number of hours per annum and a maximum limit on block flying time. I conclude that the claimant does not have normal working hours and that section 224 of the ERA applies.
159. The claimant had been employed for at least 12 weeks at the time of his dismissal. Therefore the week's pay will be calculated by averaging all the sums earned by the employee in the previous 12 weeks to the effective date of termination in which he received pay. Any week that he was on unpaid leave will not be included in the calculation.
160. Which sums should be included? Bar commission as a commission payment will be included in the calculation if it is a regular payment to the claimant. Reviewing the claimant's payslips between July 2023 and July 2024 bar commission was a regular payment to the claimant. The fact that there was no guarantee that the claimant would be rostered onto a specific flight or any flight at all is irrelevant for the purposes of section 224 of the ERA (when the employee does not have normal working hours), he was in fact being regularly paid this bar commission. I conclude that bar commission should be included in the calculation of a week's pay.
161. The other allowances that were paid to the claimant are specified as being non-contractual in the claimant's written contract of employment [54-66]. To be part of the calculation for a week's pay the claimant would need to be paid these regularly and I would need to conclude that it was the implied intention of the parties that these payments were contractual. Although the claimant was regularly paid daily oversea allowance, duty pay allowance, subsistence allowance, subsistence top up and short haul duty allowance no evidence has been presented to me that it was the implied intention of the parties that these payments were in fact contractual. The fact that they were paid regularly is not sufficient evidence of the parties' implied intention.
162. The written contract of employment [54-66] specifies that these payments are non-contractual. Further all these allowances were dependent on the claimant being rostered onto a flight and undertaking flight duties. The respondent did not guarantee to the claimant the number of flights that he would be rostered to work on in any month. Taking both facts into account I find that these additional allowances were not contractual.
163. I, therefore, conclude that they should not be included in the calculation of a week's pay for the purposes of section 224 of the ERA.

164. As the claimant was on unpaid leave in May 2024 the appropriate period to calculate the claimant's average week's pay under section 224 is from 2 March 2024 to 29 June 2024.
165. I conclude that the total amount that the claimant received between 2 March 2024 and 29 June 2024, including employer pension contributions of 29.39 per week, was £5,774.84.
166. £5,774.84 divided by 12 equals £481.24. I conclude that the claimant's week's pay for the purposes of section 224 of the ERA was £481.24 and that this should be the figure that I use to calculate the claimant's basic award payment (see the calculation below).
167. The basic award is also subject to a reduction by 20% for the conduct of the claimant before his dismissal.

How much should the compensatory award be - what financial losses has the dismissal caused the claimant?

168. The claimant's schedule of loss has calculated his financial losses by taking his average earnings (including all non-contractual elements) for the period from January 2024 to March 2024 (which was the period of three months prior to his suspension).
169. The respondent's counter schedule of loss has calculated the claimant's financial losses by reference to his basic salary of £21,833 and the employer pension contributions of £29.39. Miss Kendrick submitted that this was because the respondent did not guarantee to the claimant that he would be rostered onto any specific flight or onto any flight at all. The other sums in the claimant's payslips were sums that would only be earned if the claimant was rostered to work on a flight.
170. Mr Marshall further submitted that the costs of acquiring the temporary work visas should be included within the compensatory award.
171. In respect of the compensatory award I have more discretion to include sums that are non-contractual and that are, in fact, regularly received by the claimant. Reviewing the claimant's payslips between January 2024 and March 2024 the non-contractual allowances and bar commission were regularly paid to the claimant when he was not on a period of suspension. I am not excluding these payments simply on the basis that they theoretically were not guaranteed by the respondent. That is not the test for the compensatory award.

172. In respect of those payments that were for subsistence these fall within expenses that are regularly paid and represent a profit or “perk” in the hands of the claimant.
173. I have concluded that for the loss of earnings calculation for the compensatory award the non-contractual variation payments, the subsistence allowances and the bar commission should be included in the calculation of the claimant’s net weekly pay.
174. In respect of the compensatory award I also have discretion to look further back than the claimant’s period of suspension and I can assess what his earnings would have been if he was not suspended from his duties.
175. I have, therefore, taken the period between January 2024 and March 2024 to calculate the claimant’s average net weekly earnings. The claimant’s average net monthly earnings between January 2024 and March 2024 was £2,730.61. This means that the claimant’s average net weekly earnings per week were £630.14.
176. The claimant’s loss of earnings and benefits per week comprised:
- 176.1 Net loss of earnings of £630.14; and
176.2 Gross employers’ pension contributions of £29.39.
177. The claimant also paid USD520 for each work permit to be able to search for jobs within the United States. This meant that the claimant paid USD1,040 in total for the two work permits. The claimant has stated on his schedule of loss that in GBP this cost was £779.50 in total.
178. I have concluded below (in more detail) that it was reasonable for the claimant to initially be searching for employment in the United States. I, therefore, conclude that the cost of applying for the work permits was reasonably incurred.
179. The cost was incurred because the respondent had dismissed the claimant who was searching for employment within the United States. I therefore conclude that the cost did arise as a consequence of the dismissal.
180. The claimant’s compensatory award will include the cost of the two work permits of £779.50.
181. The tribunal also has a discretion to make an award for loss of statutory rights. The claimant in his schedule of loss has suggested that I award £750 and the respondent in its counter schedule of loss has suggested that I award £350.

182. Taking into account that the claimant had five complete years of service with the respondent when he was dismissed and that it will take him two years with a new employer in the United Kingdom to accrue the right to a statutory redundancy payment and five years to accrue the same statutory notice period with an employer in the United Kingdom the claimant is awarded £500 in total for loss of his statutory rights.

Compensatory award – has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

183. The claimant received USD7,163.01 gross from the Ukrainian Institute of Books and USD1,362 gross from HURI Books (excluding mileage and car parking costs which are pure expenses and not a perk or profit in the claimant's hands).
184. In GBP these gross payments equal £5,711.76 in total.
185. There was no evidence presented to me as to what tax had been deducted or what tax would be deducted from this gross sum in the United States.
186. I have, therefore, decided to deduct 20% (£1,142.35) from this gross figure as a rough calculation to achieve a net figure to be deducted from the claimant's loss of earnings. This net figure is £4,569.41.
187. Miss Kendrick submitted that the claimant has not taken reasonable steps to replace his lost earnings because firstly, the claimant did not remain in the United Kingdom when he was dismissed to claim benefits and instead moved to the United States, secondly, the claimant did not apply for any jobs in the airline industry (despite his nearly 6 years of experience with the respondent), thirdly, that because the claimant was in the United States on a temporary visa with a temporary work permit he would have been subject to background checks for any role that he applied for within the United States which was bar to the claimant meaningfully mitigating his losses.
188. Fourthly Miss Kendrick submitted that there was nothing in the bundle regarding the outcome of the claimant's job applications for most of the positions that he had applied for, and finally, that he has not searched for any jobs in the United Kingdom when he returned on 12 or 13 August 2026. The respondent submitted that a reduction of 20% should be applied to the compensatory award for the claimant's failure to mitigate.
189. Mr Marshall submitted that the respondent's suggestion that the claimant and his wife should have lived apart after he was dismissed by the respondent was an outrageous assertion. Mr Marshall drew my attention to the lack of evidence concerning what jobs would have been available in the airline industry in the United States and/ or the United Kingdom from July 2024 onwards.

190. Mr Marshall explained that the lack of evidence of rejections in the bundle was because the potential employers did not write to the claimant informing him that his application had been rejected. Finally, Mr Marshall submitted that the reason why the claimant had not searched for any jobs on his return to the United Kingdom in August 2026 was because his wife was due to start a job in Copenhagen and the claimant was planning to move to Copenhagen with her. Mr Marshall submitted that there should be no reduction for failure to mitigate.
191. There is no medical evidence in the bundle of demonstrating that the claimant had a diagnosed mental health issue after he had been dismissed and that it was ongoing. I did find on the balance of probabilities above that he would have been distressed by his dismissal by the respondent, particularly given the nature of the allegations.
192. It is reasonable to want to be close to your spouse when the vicissitudes of life cause you distress. I conclude that it was reasonable for the claimant to decide to be with his wife following the initial aftermath of his dismissal in July 2024.
193. It was also reasonable, initially, to search for a job in the United States and to be able to do that the claimant did require a work permit. I conclude that this was a reasonable step to take as opposed to staying in the United Kingdom to claim state benefits.
194. It was not, however, reasonable to limit the search for available jobs to just within the United States indefinitely and to not widen the search to include jobs within the United Kingdom, including within the airline industry.
195. Firstly, there is no medical evidence in the bundle demonstrating that the claimant's distress or impact on his mental health was ongoing. Although, of course, he would prefer to be with his spouse there comes a point when it does become unreasonable not to conduct a wider search.
196. Secondly, it was unreasonable for the claimant to assume that the respondent would either refuse to provide a reference for the claimant at all or that the respondent would inform other airlines about the reason for the claimant's dismissal. The claimant should have checked with the respondent whether it would provide a reference and whether it would have included information about the allegations against the claimant in that reference.
197. The claimant was issued with the work permit in the United States from 15 November 2024. I conclude that it was reasonable for the claimant to limit his search to jobs within the New York area of the United States for the first six months after he had received his work permit.

198. In respect of looking for work within the airline industry the claimant was not going to be employed by a United States based airport or an airline operating out of the United States because he was resident on a temporary visa with a temporary work permit. The airports with the United States and the airlines operating out of the United States required job applicants to have the right to live and work indefinitely within the United States.
199. From 15 May 2025 I conclude that the claimant should have widened his search for employment to jobs within the United Kingdom where he would not face the same restrictions and background checks. I conclude that this should have included jobs within the airline industry.
200. There is, however, a lack of evidence in the bundle about what jobs would have been available in the United Kingdom (including the airline industry from 15 May 2025 onwards). The burden is on the respondent to prove that the claimant has failed to take reasonable steps to mitigate his loss. It is, therefore, not possible for me to conclude with any certainty when (after 15 May 2025) the claimant would have secured another position at the same or higher earnings than what he had received from the respondent.
201. The respondent has highlighted the lack of rejections in the bundle. I conclude that this is because the potential employers did not write to the claimant confirming that his application had been rejected.
202. In respect of the claimant not applying for any jobs within the United Kingdom on his return on 12 or 13 August 2026 I do conclude that this was not reasonable. Deciding not to apply for any jobs because the claimant was awaiting the outcome of this hearing is not reasonable. Deciding not to apply for any jobs in August 2026 in the United Kingdom because his wife was due to start a new position in Copenhagen in October 2026 is not reasonable.
203. Taking into account all of the above I am firstly limiting the claimant's net loss of earnings and loss of pension contributions to 13 August 2026.
204. The compensatory award for unfair dismissal overlaps with the award for wrongful dismissal (see below) by 5 weeks. There are a further 105 weeks of loss of earnings and loss of pension contributions to 13 August 2026.
205. Secondly, I am applying a percentage reduction of 15% to the net loss of earnings and loss of pension contributions for not widening the search to the United Kingdom following 15 May 2025. This is because there is not enough evidence before me for me to sensibly assess when the claimant would have secured employment within the United Kingdom with the same earnings and benefits as his previous employment with the respondent.

206. In my Judgment following the liability hearing I decided that a 30% reduction in the compensatory award would be made under the principles in **Polkey - v- A E Dayton Services Limited 1988 ICR 142.**

Did the ACAS Code of Practice on Disciplinary and Grievance Procedures ("the Code") apply?

207. The Code did apply to the claimant's dismissal because it was by reason of conduct.

If so, did the respondent or the claimant unreasonably fail to comply with it?

208. The claimant in his schedule of loss has requested an uplift of 25%. The claimant relies on the respondent's failure to carry out a reasonable investigation and its failure to arrange to hear the claimant's appeal within a reasonable period of time.

209. The respondent in its counter-schedule of loss referred to the oral summary reasons that I provided during the liability hearing that there was no breach of the Code by either the claimant or the respondent in respect of the appeal hearing. The respondent in its counter-schedule of loss stated that the claimant's reference to a failure to carry out a reasonable investigation was vague and that they had not specified a specific clause of the Code that had been breached.

210. Firstly, in my oral summary reasons I did explain that I had concluded that neither the claimant nor the respondent had breached the Code in respect of the appeal hearing.

211. Secondly, even when a party has failed to specify a particular clause of the Code that has been breached the tribunal does still need to assess whether there has been a breach of the Code.

212. No submissions were made by either party on this issue.

213. Part of clause 4 of the Code states:

"Employers should carry out any necessary investigations, to establish the facts of the case."

214. Clause 5 of the Code states:

"It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing."

215. In my oral summary reasons during the liability hearing I identified two issues with the investigation that together meant that the dismissal was substantively unfair. I also identified other failings in the investigation which were flaws in the investigation but not fatal to the fairness of the dismissal on their own.
216. The most relevant failure for the Code was the respondent interviewing the claimant during the investigation before it had taken a full version of the allegations from the complainant (and there were differences between the complainant's initial statement and the information that she then provided at the investigation interview). This was not rectified by the respondent at the disciplinary stage because although Miss Miles did ask the claimant questions about the complete version of the allegations (as provided by the complainant in the investigation interview) her questioning was not as thorough as the investigating officer had been when he interviewed the claimant.
217. So, although an investigation was carried out, it was flawed and this is a breach of clause 4 of the Code and it is also implicit from clause 5 of the Code that the employee needs to know the case against him before he answers it.
218. In respect of this breach of the Code I am applying a 10% uplift to the compensatory award.
219. In my Judgment following the liability hearing I decided that a 20% reduction in the compensatory award would be made because the claimant had contributed to his dismissal.

Does the statutory cap of 52 weeks' pay apply?

220. The limit of 52 weeks' pay on the compensatory award is calculated by using the definition of a week's pay that is found in chapter II of part 14 of the ERA.
221. I have concluded above that a week's pay for the claimant under section 224 of the ERA was £481.24.
222. If this figure is multiplied by 52 the sum is £25,024.48.
223. I conclude that if the statutory cap does apply it will limit the claimant's total compensatory award to £25,024.48.

Wrongful dismissal

How much should the claimant be awarded as damages?

224. Neither the claimant nor the respondent has quantified this award in their schedule of loss and counter-schedule of loss. Neither party made any submissions about this award in the remedy hearing.
225. The claimant was entitled to receive five weeks' notice under clause 28 of his written contract of employment.

226. His damages are limited to what he would have been contractually entitled to receive under his contract of employment. This means he is only entitled to five weeks' worth of basic pay plus five weeks' worth of employer pension contributions.
227. His gross basic pay per week was £419.86. His net weekly pay was £370.02.
228. His contractual damages would therefore be five times his net weekly pay and five times employer pension contributions of £29.39.
229. An award for notice pay is subject to deductions for tax and national insurance.
230. This award would need to be grossed up to reflect that or in the alternative it is sometimes better to calculate the award using gross figures which I conclude is the better option in the case as the pay slips provided by the parties show tax and national insurance deductions not only for the basic pay but also in respect of the other allowances too.
231. The claimant in his witness statement also referred to the fact that he only received his basic salary during his suspension. Firstly, a claim for breach of contract due to this action by the respondent was not included in the list of issues agreed by the parties at the start of the liability hearing.
232. Secondly, the claimant has not included this claim in his schedule of loss. Thirdly, the respondent in its Managing Conduct policy has stated that during suspension employees will only be paid their basic salary [39].
233. Finally, following Lucy this claim would be a claim for loss of opportunity to earn the additional allowances and bar commission. Nothing has been presented to me in evidence or submissions that would allow me to quantify such a claim.

Calculation

Award under ERA for unfair dismissal

(1)	Basic award for unfair dismissal		
(2)	5 x £481.24 =	£2,406.20	
(3)	20 % reduction for contributory conduct	(£481.24)	
		Total	£1,924.96
(4)	Immediate loss of net earnings <u>9 August 2024 to 13 August 2026 (105 weeks)</u>		
	105 x £630.14	£66,164.70	
(5)	Immediate loss of employer pension contributions		

	<u>9 August 2024 to 13 August 2026 (105 weeks)</u>		
	105 x £29.39	£3,085.95	
(6)	Credit for sums received between 9 August 2024 to 13 August 2026	(4,569.41)	
		Sub-total	£64,681.24
(7)	15% reduction on sub-total above for failure to mitigate	(£9,702.19)	
(8)	Expenses reasonably incurred as a result of the dismissal	£779.50	
(9)	Loss of statutory rights	£500	
		Sub-total	£56,258.55
(10)	30% reduction on sub-total above for Polkey	(£16,877.57)	
		Sub-total	£39,380.98
(11)	10% uplift on sub-total above for increase under section 124A ERA (ACAS Code)	£3,938.10	
		Sub-total	£43,319.08
(12)	20% reduction on sub-total for contributory fault under section 123(6) of the ERA	(£7,088.58)	
		Sub-total	£36,230.55
(13)	Apply statutory cap of 52 weeks' pay to the sub-total (£481.24 x 52)	Total	£25,024.48

Award for wrongful dismissal

(14)	Gross basic pay for 5 weeks £419.86 x 5 =	£2,099.30	
(15)	Employer pension contributions for 5 weeks £29.39 x 5 =	£146.95	
		Total	£2,246.25

Final award

234. For the reasons set out above I award the claimant total compensation of £29,195.69, comprised as follows:

234.1 A basic award for unfair dismissal of £1,924.96

234.2 A compensatory award of £25,024.48

234.3 Compensation for wrongful dismissal of £2,246.25 (which will be subject to deductions for tax and national insurance).

Approved by:

Employment Judge Macey

17 September 2026

JUDGMENT SENT TO THE PARTIES ON

22 September 2026

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/