EMPLOYMENT TRIBUNALS

Claimant: Mr Stuart Lambert

Respondent: Roof-Maker Ltd

On: 6 November 2026

Before: Employment Judge Ahmed (sitting alone)

At: Leicester (via CVP)

Representation
Claimant: In person
Respondent: Mr L Austin of counsel

CORRECTED JUDGMENT

1. The Respondent is ordered to pay to the Claimant compensation for unfair dismissal of ~~£12,626.70~~ £13,695.50 in accordance with the Schedule below;

2. The Recoupment Regulations do not apply

SCHEDULE

Basic award ……£10,817.04

Compensatory award….. ~~£1,809.66~~ £2,878.46

Total award……..~~£12,626.70~~ £13,695.50

REASONS

1. Following the liability judgment in this case, the Tribunal has gone on to consider the appropriate remedy for the Claimant's unfair dismissal.

2. At this hearing I took evidence from the Claimant and Ms Owen of the Respondent. The Claimant represented himself. The Respondent was represented by Mr Austin of counsel who did not appear at the liability hearing. In coming to my

decision I have taken into consideration the oral evidence and the submissions made by both parties to whom I am grateful.

3. The Claimant was employed by the Respondent from 3 June 2013 until his dismissal on 26 August 2025. He was born on 25 July 1967 and was aged 58 at the effective date of termination. He therefore accrued 12 complete years of service, all of which were after attaining the age of 41.

4. The Claimant worked an average of 10.5 hours a day and his gross hourly rate of pay was £14.14. The Claimant's gross weekly wage at the Respondent was £600.96, his net monthly pay was £2,476.92 (£571.59 net weekly).

5. Following dismissal the Claimant was out of work for 18 days during which time he did not claim any benefits. He found alternative employment on 22 September 2025.

6. The claimant's updated schedule of loss identifies a continuing net wage loss of £642.01 per month. He is settled with his current employer and has not sought better paid work. He only registered with one agency and he had no interviews or job offers through it. He does not seek reinstatement or re-engagement.

THE LAW

7. Section 122(2) of the Employment Rights Act 1996 ("ERA 1996") states:

"Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly."

8. Section 123 ERA 1996 (so far as is relevant) states:

"(1) Subject to the provisions of this section and sections, 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.

(2) The loss referred to in subsection (1) shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of—

(a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or

(b) any expectation of such a payment,

(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

9. The principle derived from *Polkey v A E Dayton Services Ltd* [1987] UKHL 8, states that where a dismissal is found to be unfair because of a procedural defect or some other failure by the employer, the tribunal must consider whether, and if so to what extent, the employee would have been dismissed even if a fair procedure had

been followed. If the tribunal concludes that dismissal would inevitably have occurred in any event, compensation may be reduced, potentially to nil. If the tribunal concludes that there was only a chance that the employee would have been dismissed, compensation should be reduced to reflect that percentage likelihood.

10. In *Software 2000 Ltd v Andrews & others* [2007] IRLR 568, the Employment Appeal Tribunal held that in relation to the *Polkey* issue the question is not whether the employee would probably have been dismissed, but what chance there was that the employee would have remained employed had a fair procedure been followed. Compensation should reflect the value of that lost chance.

CONCLUSIONS

11. The basic award is not in dispute (save in relation to contributory conduct on which more is said below) and is calculated as follows: 18 weeks x £600.96 = £10,817.04.

12. Before I consider the compensatory award, I shall deal with the issue of contribution under sections 122(2) and 123(6) ERA 1996. Mr Austin contends that any compensatory award should be reduced either to nil or significantly on the grounds of contributory conduct.

13. The Tribunal did not identify any culpable conduct in its liability judgment nor does it do so today. Mr Austin relies on an apparent admission by the Claimant in his oral evidence at this hearing that there was misconduct. I did not understand the Claimant to be making any such concession or admission. I would need to be satisfied that any such admission was clear and unequivocal, which it is not. The 'admitted' misconduct is said to relate to the alleged dishonesty which the Tribunal expressly decided against in the liability hearing. Mr Austin also submits that as the Tribunal found the reason for dismissal to be conduct for the purposes of section 98 ERA 1996 some misconduct must exist.

14. I do not consider that a reduction for contributory conduct is appropriate in this case. The tests under sections 98(1) ERA and 122(2) and 123(6) serve different purposes. I am not satisfied that the Claimant was guilty of culpable or blameworthy conduct of such a nature as to warrant a reduction in compensation.

Polkey reduction

15. I have considered the principles set out in *Polkey v A E Dayton Services Ltd* and *Software 2000 Ltd v Andrews*. I must assess the likelihood of the Claimant remaining in employment had the Respondent followed a fair procedure.

16. I am not satisfied that dismissal was inevitable. A fair process would have afforded the Claimant a proper opportunity to respond to the matters relied upon by the Respondent. It may also have enabled further information to be obtained and explanations or mitigating circumstances to be considered. I cannot exclude the possibility that a different decision would have been reached, particularly if another manager had been involved in the process, that a lesser sanction would have been imposed, or that the Claimant's employment would have continued for a longer period had a fair procedure been adopted.

17. Equally, I do not consider that the Claimant would have remained in employment indefinitely had such a procedure been followed. There was a substantial chance of dismissal and a substantial chance that the Claimant would have remained employed for a longer period. Making a broad assessment of future events as required by *Software 2000*, I conclude that there was a 50% chance that the Claimant would have been dismissed in any event following a fair procedure. The compensatory award is therefore reduced by 50% to reflect that chance.

Mitigation and award for loss after dismissal

18. Having considered the Claimant's experience, the length of time he has been undertaking a role in this line of work and his age, I conclude that the Claimant ought reasonably to have secured employment at a comparable level of remuneration within six months of the time that he began his new employment. The Claimant is settled in his present role. It is understandable that he does not wish to give it up for something that pays a little more but at the same time the Respondent should not be penalised for it. His net monthly loss after tax is £491.14.

Actual Losses

19. The Claimant was out of work for 18 days. There is no dispute that he is entitled to be compensated for this period. The loss of 18 days' income at £14.14 per hour on an average 10.5 hour day is £2,672.00 The net figure for the loss, after deduction of basic rate income tax is £2,137.60. After *Polkey* that comes to £1,068.80.

Loss of earnings for 6 months thereafter:

Monthly loss: £491.14

Period of loss: 6 months

Net loss of earnings: £2,946.84

Reduction of 50% for *Polkey*: £1,473.42

Pension Loss

20. I adopt the simplified approach. The Respondent's monthly pension contributions were £82.32 and the Claimant's new employer contributes £70.40 per month. The resultant shortfall is £11.92 per month. The gross loss over 6 months is £71.52 which after *Polkey* is £35.76.

Loss of statutory rights

21. The Claimant is entitled to compensation for loss of statutory rights representing the fact that the Claimant shall need to work two years to have the right not to be unfairly dismissed. One week's gross pay is appropriate. The award for loss of statutory rights forms part of the compensatory award and in my view should be reduced in the same proportion as the Claimant's other losses. The amount is £600.96 and is reduced to £300.48 after *Polkey*.

ACAS uplift

22. I have considered whether an uplift should be awarded under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. Although the dismissal was found to be unfair, and although there are potential breaches of the ACAS Code, I am satisfied that the procedural shortcomings identified in the liability judgment do not amount to an unreasonable failure to follow the Code and do not justify an uplift.

Correction of judgment

23. In the judgment sent out on 6 November I overlooked the addition of the loss of 18 days pay in the calculations. In preparing written reasons this error was identified. Under Rule 67 of The Employment Tribunal Procedure Rules 2024, a Tribunal may at any time correct any clerical mistake or other accidental slip or omission in any order, judgment or other document produced by the Tribunal. Pursuant to that rule the judgment is hereby corrected. The corrected judgment simply reflects the addition of the award which was announced in the oral reasons and is not any subsequent amendment nor does it alter the substance of the decision.

Summary

24. The compensatory award is therefore as follows:

Loss of earnings for 18 days:	£1,068.80
Loss of earnings for 6 months thereafter:	£1,473.42
Pension loss:	£35.76
Loss of statutory rights:	£300.48
Total compensatory award:	£2,878.46
Add: Basic award	£10,817.04
Total award	£13,695.50

Approved by:

Employment Judge Ahmed

Date: ~~6 November 2026~~ 11 November 2026

JUDGMENT SENT TO THE PARTIES ON

12/11/2026

J. Woolley
FOR THE TRIBUNAL OFFICE

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