Case No: 3305633/2020

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Knight	v	247 West London Ltd

Heard at: Watford (in public; by video)

On: 12 September 2022 and in chambers 23 September 2022

Before: Employment Judge Quill; Ms A Telfer; Mr N Boustred

Appearances:
For the Claimant: Ms S Johnson, Counsel
For the Respondent: Mr S Hoyle, consultant

REMEDY JUDGMENT

1. The award for injury to feelings is £12,000 (of which £1000 represents aggravated damages.

2. The award for interest on the injury to feelings is £2527.56.

3. The basic award for unfair dismissal is £3228.00.

4. The Claimant did not act reasonably to mitigate his losses. Had he acted reasonably then he would have been able to obtain a job which matched the salary and pension he had with the Respondent by 19 February 2021.

5. The award for financial loss is £13,761.74

6. There is no Polkey reduction and no reduction for contributory fault.

7. The Recoupment Regulations apply (see annex)

8. For the purposes of the recoupment provisions:

    a. The total monetary award is £31,517.3
    b. The prescribed element is £13,761.74
    c. The period to which the prescribed element relates is 19 May 2020 to 19 February 2021
    d. The balance is 17,755.56

REASONS

Law

1. The purpose of compensation is to provide proper compensation for the wrong which we found the Respondent to have committed. The purpose is not to provide an additional windfall for the Claimant and is not to punish the Respondent.

2. For financial losses, we must identify the financial losses which actually flow from complaints which we upheld. We must take care not to include financial losses caused by any other events, or losses that would have occurred any way.

3. For injury to feelings, we must not simply assume that injury to feelings inevitably flows from each and every unlawful act of discrimination. In each case it is a question of considering the facts carefully to determine whether the loss has been sustained. Some persons who are harassed may feel deeply hurt and others may consider it a matter of little consequence and suffer little, if any, distress.

4. When making an award for injury to feeling, the tribunal should have regard to the guidance issued in *Vento v Chief Constable of West Yorkshire Police (No 2) [2003] EWCA Civ 1871*, *[2003] IRLR 102*, *[2003] ICR 318, CA*, and taking out of the changes and updates to that guidance to take account of inflation, and other matters. Three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury, were identified:

    a. The top band was (at the time) between £15,000 and £25,000. Sums in the top band should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment.

    b. The middle band was, initially, £5,000 and £15,000. It is to be used for serious cases, which do not merit an award in the highest band.

    c. The lower band is appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. Awards in this band must not be so low as to fail to be a proper recognition of injury to feelings.

5. In *Da'Bell v NSPCC* (2009) UKEAT/0227/09, [2010] IRLR 19 the Employment Appeal Tribunal revisited the bands and uprated them for inflation. In a separate development in *Simmons v Castle* [2012] EWCA Civ 1039 and 1288, [2013] 1 WLR 1239, the Court of Appeal declared that - with effect from 1 April 2013 - the proper level of general damages in all civil claims for pain and suffering, would be 10% higher than previously. In *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879, the Court of Appeal ruled that the 10% uplift provided for in *Simmons v Castle* should also apply to Employment Tribunal awards of compensation for injury to feelings and psychiatric injury.

6. There is presidential guidance which takes account of the above, and which is updated from time to time. This claim is one which was issued in June 2020. The relevant guidance applicable to this claim is the third addendum which states:

> *In respect of claims presented on or after 6 April 2020, the Vento bands shall be as follows: a lower band of £900 to £9,000 (less serious cases); a middle band of £9,000 to £27,000 (cases that do not merit an award in the upper band); and an upper band of £27,000 to £45,000 (the most serious cases), with the most exceptional cases capable of exceeding £45,000..*

7. There can be an award for aggravated damages where the necessary factors have arisen. Where it arises, it is part of the overall award of compensation for injury to feelings. The award is made as a recognition that the existing injury to feelings has been aggravated further by factors which are in some way related to the act of discrimination but may not necessarily form part of the statutory tort itself.

8. In Alexander v Home Office [1988] 2 All ER 118, the court said:

> *compensatory damages may and in some instances should include an element of aggravated damages where, for example, the defendant may have behaved in a high-handed, malicious, insulting or oppressive manner in committing the act of discrimination.*

9. In Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT, the EAT undertook a review of aggravated damages. It stated that it may be appropriate to make an award of aggravated damages based on analysis of
    a. The manner in which the discrimination was committed and/or
    b. The motive of the discriminator and/or
    c. The discriminator's subsequent conduct.

10. An analysis of these things might determine that there has been conduct which is capable of being "aggravating". However, the purpose of analysis is not to determine whether the discriminator acted so badly that they deserve some sort of punishment; it is to consider whether, because of the manner of the conduct, some further injury has been caused to the claimant.

11. Section 123 of the Employment Rights Act 1996 ("ERA") provides tribunals with a broad discretion to award such amount as is considered just and equitable in all the circumstances, having regard to the loss sustained by the claimant because of the unfair dismissal. However, compensation for unfair dismissal under s.123(1) cannot include awards for non-economic loss such as injury to feelings (see the House of Lords decision in Dunnachie v Kingston upon Hull).

12. As part of the assessment, the tribunal might decide that it just and equitable to make a reduction following the guidance of the House of Lords in Polkey v AE Dayton Services [1987] IRLR 503. For example, the tribunal might decide that, if the unfair dismissal had not occurred, the employer could or would have dismissed fairly; if so, the tribunal might decide that it is just and equitable to take that into account when deciding what was the claimant's loss flowing from the unfair dismissal.

13. In making such an assessment the tribunal, there are a broad range of possible approaches to the exercise.
    a. In some cases, it might be just and equitable to restrict compensatory loss to a specific period of time, because the tribunal has concluded that that was the period of time after which, following a fair process, a fair dismissal (or some other fair termination) would have inevitably taken place.
    b. In other cases, the tribunal might decide to reduce compensation on a percentage basis, to reflect the percentage chance that there would have been a dismissal had a fair process been followed (and acknowledging that a fair process might have led to an outcome other than termination).
    c. If a tribunal thinks that it is just and equitable to do so, then it might combine both of these: eg award 100% loss for a certain period of time, followed by a percentage of the losses after the end of that period.

14. There is no one single “one size fits all” method of carrying out the task. The tribunal must act rationally and judicially, but its approach will always need to be tailored specifically to the circumstances of the case in front of it. When performing the exercise, the tribunal must also bear in mind that when asking itself questions of the type “what are the chances that the claimant have been dismissed if the process had been fair?”, it is not asking itself “would a hypothetical reasonable employer have dismissed”? It must instead analyse what this particular respondent would have done (including what are the chances of this particular respondent deciding to dismiss) had the unfair dismissal not taken place, and had the respondent acted fairly and reasonably instead.

15. Section 123(4) ERA requires that tribunals apply 'the same rule concerning the duty of a person to mitigate his loss as to damages recoverable under the common law'. Where the employee has mitigated, a tribunal should give credit for sums earned.

16. When assessing the amount of deduction for the employee's failure to mitigate their loss, the tribunal does not reduce the compensatory award that it would otherwise make by a percentage factor. The correct approach is to make a decision about the date on which the Claimant would have found work had they been acting reasonably to seek to mitigate their losses, and then make an assessment of what income they would have had from such work.

17. So the approach is:
    a. Consider what steps it would have been reasonable for the claimant to have had to take to mitigate their loss;
    b. Ask if the claimant failed to take reasonable steps to mitigate their loss;
    c. Decide to what extent would the claimant have mitigated their loss had they taken those steps

18. It is for the Respondent to prove that the Claimant has unreasonably failed to take appropriate steps, and that – on balance of probabilities - had those steps been taken, then the losses would have been mitigated.

19. Where the employee has mitigated their loss by setting up a business, the reasonableness of so doing can be considered. This might include, amongst other things, consideration of how much demand there was for that type of business, what contacts and experience the Claimant had in that line of work, and how much the Claimant could reasonably have expected to earn from the self-employed business.

20. Provided starting a business was a reasonable step to have taken the Claimant will be entitled to compensation to reflect the costs incurred as a result. So the correct approach is to assess the loss of remuneration over the relevant period plus the expenses incurred in setting up the new business.

21. Setting up and beginning a new business might mean that there is a period in which the Claimant's income is low, or zero. This is one of the factors to be taken into account when deciding on whether there was a failure to mitigate losses. However, the mere fact that – in retrospect – the claimant spent a lot of money setting up the business, and it did not work out (or that it took a long time before generating significant income) does not, in itself prove that there was a failure to act reasonably to mitigate. At the time of starting the self-employed business, the Claimant might have reasonably expected things to turn out much better than they actually did.

Facts

22. As noted in paragraph 31 of the liability reasons, the Claimant's employment ended on 19 May 2020. This was a resignation which we found to be a constructive unfair dismissal.

23. The Claimant had been contracted to work 42 hours per week at £15 per hour. His gross weekly earnings at 247 West London were £630.00 and the net weekly amount was £498.40.

24. He had already started doing some self-employed work as a driver prior to the end of his employment with the Respondent. He continued to do this (and sought to increase it) after his employment with the Respondent ended.

25. The case management orders for this hearing required the Claimant to provide a break down of income week by week. This was not done. It is not our finding that the Claimant was being deliberately obstructive or that he was trying to conceal his actual income by failing to break it down week by week.

26. At the end of the liability hearing, there had been a discussion about what evidence of earnings the Claimant was obliged to supply, and the

circumstances in which he might need to supply bank statements, and the redactions that he might make to the documents and the redactions that he must not make.

27. We are satisfied that the Respondent had the documents long enough before the hearing that it had the opportunity to liaise with the Claimant if it objected to the redactions in the supplied documents. We have not been persuaded that the Claimant had dishonestly redacted any income from his self-employed business. We are satisfied that we can rely on the disclosed documents for the Claimant's earnings.

28. At the time his employment ended, the UK was in the first wave of the pandemic. While this did not create a legal barrier to a person commencing new employment, it did create several practical difficulties. Various sectors were closed down, which both directly meant that new jobs in those sectors were not available, and indirectly led to persons displaced from those sectors seeking whatever work actually was available.

29. The Claimant commenced employment with Amazon/PMP Recruitment around 1 June 2020 and continued until around 24 July 2020. He left this employment as he found the job physically demanding, and was struggling due to the nature of the work. The payments for this are shown as being from Cordant. He estimates it as £1735.99 net, which is consistent with the P45 (gross £2016.99 and tax of £281) at page 69 of the bundle. Some of the bank statements are hard to read, but he appears to have received net payments of:

    a. £328.56 on 11 June

    b. £262.34 on 18 June

    c. £262.34 on 25 June

    d. £95.63 on 2 July

    e. £185.56 on 9 July

    f. £192.76 on 25 July

    g. £273.96 on 30 July

30. This adds to £1601.15. There is therefore approximately £135 that the panel could not find shown on the bank statements, but do not find that shows dishonesty by the Claimant. We have no indication of the number of hours

or the hourly rate. This was almost immediately after leaving the Respondent.

31. The Claimant started a job as an employee at Morrisons in August 2022. We are not persuaded that he could reasonably have been expected, in all the circumstances, to have obtained work as an employee any earlier than that after leaving Amazon/PMP (Cordant).

32. The work was not as amenable to the Claimant as his work with the Respondent. It was largely night work. The Claimant had expressed willingness (or at least interest) in potentially taking the job of night controller for the Respondent as an alternative to dismissal by reason of redundancy. However, he was not actually working nights regularly while working for the Respondent. The Morrisons job also paid significantly less than he had earned with the Respondent.

33. The Claimant resigned his employment with Morrisons because he found that it was not to his liking, and he did not think there was a likelihood that he would be able to move to more amenable shifts in the near future.

34. His P45 shows that his last day of employment was 13 September 2020 and that his gross earnings had been £1297.47, with tax of £259.40.

35. His bank statements show payments from Morrisons of

    a. £287.61 on 28 August 2020
    b. £336 on 21 September 2020
    c. £389.61 on 25 September 2020

36. So the aggregate according to the bank statements is £1013.22 (for net sums).

37. The only payslip we have is the one showing £389.61. That is, for the final payment. It is consistent with the P45, showing gross aggregate of £1297.47 and PAYE of £259.40 and NI of £24.85. So £1013.22 net.

38. The payslip seems to indicate that the last time the Claimant actually did shifts was in the week commencing Monday 31 August 2020. We infer that Morrisons had work available for the Claimant that would enable him to do around 32 hours per week on average. (We have only got information for 2 weeks, and he worked 31.18 and 33.65 respectively in those weeks). His basic rate of pay was £8.80 per hour gross for those, and he also got (in that payslip) night supplement and location supplement aggregating to £200 gross. If these were based on number of hours, then that was around £3.10 gross per hour. So this work paid around £11.90 per hour gross, compared to the £15 per hour he had earned from the Respondent.

39. In the bundle for the original hearing, at page 275, there was the Claimant's tax return for 2020/2021. His income for his self-employed earnings was shown as being £12638 gross. His allowable expenses were £7753. This left his declared profit from his business as being £4885 for the whole of the tax year. So below the rate at which he would pay tax.

40. We have compared the job information in the bundle for the various courier and delivery companies for which the Claimant was doing this self-employed work. We are satisfied that the information in the tax declaration is sufficiently reliable in that the earnings declared by the Claimant seem likely to be accurate and the expenses appear reasonable (they certainly do not appear to be unreasonable to the extent that we should doubt them).

41. It follows that the Claimant was earning, on average over the year, around £94 per week profit from his self-employed work.

42. We have noted that there are several gaps in which the Claimant did no work at all for any of the various companies. We think it unlikely that none of them would have had any work at all in these periods, and so we infer that there were some periods in which the Claimant was not actively seeking assignments. In itself, it is not unreasonable for a self-employed person to take some time off, in the same way that an employee might use holiday during the course of a year. However, even allowing for the fact that the Claimant was not necessarily seeking work all the time, and even allowing for the fact that he had periods as an employee with Cordant and Morrisons, we are satisfied that it must have been obvious to the Claimant within about 6 months of leaving the Respondent that he was not going to be able to make enough money from the self-employed work to support himself, or to match the income he had had from the Respondent. It does not matter whether the reason for that was that there were jobs available which he was choosing not to do because he did not consider them suitable, or whether it was because there was simply no work at all available. Either way, our finding of fact is that, having decided to leave two jobs as an employee because they were not amenable, it would have been obvious to the Claimant by no later than around mid-November 2020 that his self-employed business was not going to work out.

43. In the bundle, there are no application forms or other similar evidence of the Claimant actively seeking work as an employee. He did commence some employment in March 2021 for the civil service. However, he has not supplied evidence of how long he was looking for such work before he was appointed to this, or of how many (if any) unsuccessful applications he made for jobs as an employee. The Claimant was on a 3 month temporary contract. There was the possibility of more work, but the Claimant did not consider it suitable because of the need to travel and have overnight stays away from home.

44. In November 2021, he commenced permanent work in which he was still employed.

45. Throughout the latter jobs, he has continued to seek to do self-employed work.

46. When the Claimant was employed by the Respondent, it contributed around £18.90 per week to a pension fund to which he also contributed.

47. The Claimant was significantly upset by the harassment outlined in the liability decision. He felt that he had been humiliated. He also thought that – at the time he first raised it – the immediate response was inappropriate (accusing him of threatening the business). As per our liability findings, the Respondent did, in fact, appoint someone to hear his grievance, and then the grievance appeal. We commented on what was written in those reports in our liability decision. The Claimant did receive an apology from one of the individual colleagues, but not from the others, or from the business.

48. He saw his GP because of the remarks. On 16 April, he went to hospital because he had taken an overdose of 8 paracetamol tablets. He was reviewed by the psychiatry team and then later taken on fly a local NHS Surrey Mind Matters for symptoms of anxiety and depression. He also briefly took some antidepressants.

49. At the first hearing, the Respondent's representative had sought to put questions to the Claimant on the basis if he had been seeking to kill himself then he would have taken more tablets. The panel ruled that an inappropriate question and told the witness he did not need to answer it. It was argued at this remedy hearing that it had been an appropriate question, because it went to remedy (and, in particular, to the issue of whatever had happened on 16 April, the Claimant had not been suicidal as a result of the Respondent's harassment). The panel is, however, satisfied that the question had been asked with a view to attacking the Claimant's credibility and, in particular, as part of the strategy for suggesting that the Claimant had not genuinely been offended by what had been said, but was seeking to gain improper leverage to avoid redundancy. In the same vein, the Respondent had sought to introduce inadmissible evidence which it suggested it would have liked to rely on to show that the Claimant had a degree of fortitude that was not consistent with his claims to have been offended by the homophobic comments.

50. The Claimant had counselling through NHS Mind matters because of the way in which he had been treated by the Respondent. He attended three sessions of CBT based on self guided help.

51. His treatment was reviewed in September 2020. He was still affect four months after leaving the Respondent/ He was placed on a waiting list for higher intensity treatment. He was experiencing panic attacks. It was agreed that he would attend for a further four sessions of Cognitive Behavioural Therapy. He was discharged from their care on 26 November 2020. This was around 6 months after leaving the Respondent and more than 9 months after the incidents.

52. We have not been persuaded that the incidents have caused the Claimant to be diagnosed with post traumatic stress disorder.

Analysis and conclusions

53. This was a one day remedy hearing conducted by video. There was only one witness, the Claimant. Some time at the start of the hearing was taken up with the addition of documents to the bundle which the Respondent had asked to have added, and hearing the Respondent's comments on redactions included in some documents which had been submitted to it around May 2022. We were therefore in a position to discuss the hearing timetable at around 10.50am.

54. Taking account of the need for pre-reading, the need for submissions, and the need for deliberation time and to read out the decision, we announced that we planned to start the evidence at 11.30am and to give the Respondent's representative one hour to cross-examine the Claimant. This was a timetable which we thought would enable us to start reading out our decision and reasons at around 3.30pm.

55. The Respondent's representative asked for 4 hours to cross-examine the Claimant. It was our decision that that was not reasonable, as it would make it impossible for the hearing to be concluded within the one day that had been set aside for it. That one day allocation had been agreed with the parties at the end of the liability hearing, and there had no application from the Respondent to extend the hearing.

56. Having dealt with other matters, the Claimant was sworn in around 11.45am, and the cross-examination could commence at 11.48am. We informed Mr Hoyle that he had 60 minutes from then, so to 12.48pm, to conclude his cross-examination. We gave some reminders of this deadline during the cross-examination (noting Mr Hoyle's repeated comments that he did not think it was long enough). We told him when he had reached the hour mark, and asked him to finish quickly. After he had had 75 minutes (so just after 1pm), we asked him to finish within the next 2 minutes. He made an application to the panel, which alleged that the Claimant had been giving long-winded and/or irrelevant answers. The panel deliberated and decided that we would give a 10 minute guillotine. In other words, he would then have had had a total of 85 minutes. We had told the parties to come back straight away so that we would continue. The Claimant had misunderstood, and so we did not, in fact, resume until 2pm.

57. We gave our reasons for allowing only a strict 10 further minutes at 2pm. This took until about 2.03pm. We informed the parties that we were still satisfied that 60 minutes had been long enough. We said that while there had been some occasions on which we had had to remind the Claimant to answer the question, or to re-phrase the question, that was only normal, and we had allowed for that when setting 60 minutes. We rejected the assertion that the answers had been unnecessarily long-winded. The Respondent

therefore had from 2.03pm to 2.13pm. Mr Hoyle asked for these remedy reasons to include written reasons for restricting him to 85 minutes for cross-examination, and those are the reasons set out above.

58. Following the panel's questions, and re-examination, to the Claimant, Mr Hoyle was given permission to ask a follow up question. Submissions then started around 2.20pm, and finished shortly after 3pm. We asked the parties to come back for 4pm. However, the 55 or so minutes were not long enough for us to make all the decisions we needed to make, and so we told the parties that we had decided to reserve our decision. We reconvened in chambers on 23 September 2022 to finish those deliberations.

59. As per the judgment, we had found that the Claimant was constructively dismissed and that the dismissal was unfair, but it was not a contravention of the Equality Act. Thus there is no injury to feelings in relation to the dismissal.

60. As per the judgment, we had found there were acts of harassment. Our award for injury to feelings relates to those incidents and those incidents only. There is no financial loss as a result of that harassment.

61. Our decision is that there was more than one incident of harassment, and they continued even after the Claimant had asked for it to stop. He was left with the belief that it would continue, given the reaction from the Respondent, and the rejection of his grievance.

62. He felt humiliated at the time, continued to suffer a significant amount of injury to his feelings for months afterwards. He required medication and other treatment.

63. This is not a case in which an award in the lowest Vento band would do justice. The injuries to the Claimant are greater than those for which the lowest band would be applicable.

64. The Respondent's representative argues that since the Claimant sought £12,000 for injury to feelings in his schedule of loss prepared before the liability decision, and since he did not succeed on all his claims, then it must follow that the award we make must be less than £12,000.

65. We do not agree with that logic. It is certainly true that, when assessing the injury to the Claimant's feelings, we must take care not to compensate him for the wrongs which he might have perceived were done, but which were not found, by the Tribunal, to be contraventions of the Equality Act 2010. However, that does not require us to take the Claimant's suggested £12,000 figure and apply a discount to it.

66. In fact, however, for the serious injury to the Claimant's feelings, we would not have made an award in the highest Vento band in any event (whether the Claimant had succeeded on all his complaints or not). For the serious injury to his feelings, we believe an award in the middle band (between £9,000 and £27,000) is most appropriate. Taking account of the fact that the incidents were fairly close together, though separate, and taking account of the fact that the Claimant was able to work (albeit for other employers, not for the Respondent) we believe an award of somewhere around the centre of the bottom quarter of the middle band (£9000 to £13,500) would be appropriate. Without aggravating factors, we would have been likely to award £11,000.

67. However, there was also injury to feelings caused by the aggressive way in which the Respondent conducted the litigation, including alleging that he was effectively presenting a false case to the Tribunal by pretending to have been offended when he was not, and of exaggerating what had happened on 16 April 2020. There was also the attempt to introduce inadmissible evidence which we would have been likely to have deemed to be irrelevant even if it had been otherwise admissible, and which seemed to us to have been an attempt to attack the Claimant's character in a manner which was not an appropriate defence to the claims which the Claimant had brought in the tribunal.

68. We therefore award a total of £12000 for injury to feelings, including the component to reflect the additional injury to feelings cause by the manner in which the liability hearing was conducted

69. We award 8% per annum interest on that from 6 February 2020 to 23 September 2022. This is 961 days. So £12,000 x 0.08 x 961/365 = £2527.56.

70. For unfair dismissal, the parties agree that the basic award is found by taking the applicable cap on a week's pay (£538 at the time) and multiplying by 6 to give £3228.

71. The panel's decision is that it was reasonable for the Claimant to try out doing self-employed work. He seems to have made himself available to several different providers of driving/delivery work (not necessarily all at the same time). It was not necessarily unreasonable to resign from the Cordant Recruitment work and the Morrisons work, if it was the Claimant's expectation that the delivery work would be more amenable to him, and more profitable.

72. However, it should have quickly become apparent to the Claimant that this delivery business was not going to work out well for him. As we said in the findings of fact, it is unclear from the evidence whether he was actually making himself available to do driving work all the time (eg to match the 42 hours per week that he did for the Respondent, say). He probably was not doing so, and probably would have got more jobs had he been available more often. However, the end result is the same whether the reason for his low income (about £94 per week) was because he was not logging onto the apps

to look for jobs, or because he was logging on but did not like the available jobs, or because he was logging on and there was literally nothing available. Either way, it must have been apparent by no later than November that his self-employed business could not support him.

73. So, by not doing more to find work in the first 6 months, we do not find that the Claimant was acting unreasonably. He tried out 2 jobs as an employee (Cordant and Morrisons) and did not like them. He tried out the self-employed work and was unable to generate enough income (from work which he found suitable, at least).

74. By not applying for (enough) full-time employee jobs after mid-November, the Claimant was not acting reasonably, and had unreasonably failed to mitigate his losses. He has not provided evidence that he was actively looking for work in this period. Given how quickly he was able to get the Cordant job after leaving the Respondent, and how quickly he was able to get the Morrisons job after leaving Cordant, there was work available, even while he was trying to run his self-employed business at the same time.

75. His work for the Respondent was reasonably well-paid, but it did not require specific skills. We are satisfied that if the Claimant had started putting in sufficient efforts to find work from no later than mid-November 2021, he would have been able to start work in a full-time job, working day shifts, with an income which matched that which he had had from the Respondent, including pension contributions. We accept that to do this he would have had to give up the self-employed work (given that he might have had to work as an employee for up to 42 hours per week), but his duty to mitigate his losses would require that (or, at least, to scale it back to the levels it was at when working for the Respondent).

76. Although there is limited evidence (at best) presented by the Respondent of what actual work was available, we have taken into account, as an industrial jury, the fact that there was a labour shortage at the time.

77. We are therefore going to award the Claimant losses for 39 weeks.

78. His net earnings from the Respondent would have been 39 x £498.40 = £19437.60.

79. His loss of employer pension contributions was 39 x £18.90 = £737.10.

80. His employed earnings (from Cordant and Morrisons respectively) were £1735.99 + £1013.22 = £2,749.21.

81. We estimate his earnings from his self-employed work at 39 weeks x £4885/52 = £3,663.75.

82. His financial loss was therefore £19437.60 + £737.10 - £2,749.21 - £3,663.75 = £13,761.74.

83. The Claimant has been in receipt of universal credit and the recoupment regulations apply.

Employment Judge Quill

Date: 11 December 2022.

Judgment sent to the parties on

12 December 2022

For the Tribunal office

ANNEX TO THE JUDGMENT (MONETARY AWARDS)

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The Tribunal has awarded compensation to the claimant, but not all of it should be paid immediately. This is because the Secretary of State has the right to recover (recoup) any jobseeker's allowance, income-related employment and support allowance, universal credit or income support paid to the claimant after dismissal. This will be done by way of a Recoupment Notice, which will be sent to the respondent usually within 21 days after the Tribunal's judgment was sent to the parties.

The Tribunal's judgment states: (a) the total monetary award made to the claimant; (b) an amount called the prescribed element, if any; (c) the dates of the period to which the prescribed element is attributable; and (d) the amount, if any, by which the monetary award exceeds the prescribed element. Only the prescribed element is affected by the Recoupment Notice and that part of the Tribunal's award should not be paid until the Recoupment Notice has been received.

The difference between the monetary award and the prescribed element is payable by the respondent to the claimant immediately.

When the Secretary of State sends the Recoupment Notice, the respondent must pay the amount specified in the Recoupment Notice to the Secretary of State. This amount can never be more than the prescribed element of any monetary award. If the amount is less than the prescribed element, the respondent must pay the balance to the claimant. If the Secretary of State informs the respondent that it is not intended to issue a Recoupment Notice, the respondent must immediately pay the whole of the prescribed element to the claimant.

The claimant will receive a copy of the Recoupment Notice from the Secretary of State. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the Secretary of State in writing within 21 days. The Tribunal has no power to resolve such disputes, which must be resolved directly between the claimant and the Secretary of State.