

IN THE EMPLOYMENT TRIBUNAL

Claim No. 37/2026

BETWEEN:

KENNETH BALDWIN

Claimant

-AND-

GIBRALTAR BUS COMPANY

Respondent

AWARDS JUDGMENT

THE CLAIMANT IS AWARDED AND THE RESPONDENT IS ORDERED to pay to the Claimant the total sum of **£34,062.63** as particularised hereunder and as calculated in the Schedule hereto, within 21 days of the date of this Judgment.

Background

1. The Respondent employed the Claimant as a Bus Driver with commencement of employment date 24 August 2015. He was paid weekly.
2. The Claimant suffered a stroke in May 2021 and from then on suffered from a number of debilitating health conditions, which were consistently diagnosed by the Respondent's Occupational Health advisers as a disability for the purposes of the Equal Opportunities Act. The Claimant was intermittently on long periods of sick leave in each of the years 2021-2024, originally on full pay, then unpaid from February 2023 to September 2024. In September 2024, the Claimant was offered and accepted an alternative non-driving, light duties post, on half pay.
3. The events between June 2025 and November 2025 are not clear from the Claimant's Claim Form. However, it is clear that on 3 November 2025, the Respondent terminated the Claimant's employment, citing "*unable to carry out driving duties*" in the ETB Termination Notice and offered him a payment of 3 months' pay. In the ETB Termination Notice, the Respondent stated that the details of payments made to the Claimant on termination were "*to be advised*".
4. The Claimant filed a Claim Form on 2 February 2026 claiming unfair dismissal, disability discrimination and breach of employment contract and seeking re-engagement and financial compensation (3 months 'pay).
5. Pursuant to Rule 13 of the Employment Tribunal (Constitution and Procedure) Rules 2016 (**the Rules**), the accepted Claim was sent to the Respondent together with the prescribed Response Form on 5 February 2026. On the Application of the Respondent, with the consent

of the Claimant, a Consent Order was made dated 18 March 2026 which ordered that the time for filing of the Response by the Respondent should be extended to 17 June 2026.

6. The Respondent did not present the Response by 17 June 2026 or at all, nor did it make any further Application for an extension of time for presenting the Response.
7. I handed down a Rule 21 Judgment on 8 July 2026 holding that on the available material (the Claim Form, with attached particulars of claim and supporting evidence):-
 - (i) The Claimant's claim for breach of employment contract (under the Employment Tribunal (Extension of Jurisdiction) Order 2016) did not succeed because the Claimant had not pleaded any facts or provided any evidence supporting a claim for breach of employment contract by the Respondent.
 - (ii) The Claimant's claim for unfair dismissal was well-founded, under Section 59 of the Employment Act, and succeeded and an Award of compensation would therefore be made under the Employment Tribunal (Calculation of Compensation) Regulations 2016 (**the Regulations**), further to an Awards case management directions order (which accompanied the Judgment), any further information which might be requested and any Hearing which might be fixed.
 - (iii) The Claimant's claim for disability discrimination was well-founded, under Sections 12 and 15 of the Equal Opportunities Act 2006 (**the EO Act**), and succeeded and an Order for compensation would therefore be made under Section 70 of the EO Act, further to the Awards case management directions order, any further information which might be requested and any Hearing which might be fixed.
 - (iv) The Respondent would be entitled to notice of Hearings and Decisions of the Tribunal but, unless and until an extension of time were granted, would only be entitled to participate in any Hearing to the extent permitted by the Chairperson.
8. The Awards case management directions order Ordered the Claimant to file a Schedule of Loss and supporting evidence by 11 August 2026; and to file any witness statements upon which he might wish to rely by 1 September 2026.
9. The Claimant filed the Schedule of Loss and supporting evidence on 4 August 2026. On 5 August 2026, I requested further information from the Claimant, which he provided on 6 August 2026. Correspondence from the Respondent and the Claimant was received on 6, 7 and 8 August 2026. The Claimant did not submit any witness statements.

Facts relevant to this Awards Judgment

1. The Claimant's Schedule of Loss stated his weekly gross and net pay at termination to be £328.08 and £252.20 respectively, which was corroborated by the evidence appended to the Schedule of Loss.
2. However, on 25 February 2026, the Respondent paid to the Claimant (to the Claimant's wife's

bank account) the sum of £7,890.74 (apparently some kind of settlement payment). The Respondent stated in correspondence to the Tribunal that this was equal to 3 months' pay. This means that the Respondent considered the Claimant's gross weekly pay to be £606.98 (resulting in approximately £446.86 net pay weekly).

3. On the material available, the Respondent did not give the Claimant his statutory 13 weeks' notice period (under Section 54(1)(a)(i) of the Employment Act), nor make a payment in lieu.
4. The Claimant stated in the Schedule of Loss that he has not had any income since his dismissal, including unemployment benefit. I requested further information from the Claimant as to why he had not applied for this and the Claimant stated that he had been told that he could not claim if he had savings, but did not provide any further information or evidence in this regard.
5. The Claimant also stated in his Schedule of Loss that he had registered as unemployed and available for part time work with: *"Likelihood of Success. Hopeful in my thinking"*.

The Law

Unfair dismissal awards

1. Section 70(3) of the Employment Act provides that where the Tribunal finds that the grounds of a claim for unfair dismissal are well-founded and does not make a recommendation, the Tribunal shall make an award of compensation, to be paid by the employer to the claimant, in respect of the dismissal. Section 71 provides that the award of compensation shall consist of a Basic Award and a Compensatory Award.

2. The Employment Tribunal (Calculation Of Compensation) Regulations 2016 (**the Regulations**) provide:-

"1.(2) For the purposes of these Regulations–

"the appropriate amount" means–

... (b) one and a half week's pay or three times the weekly minimum wage, whichever is the greater, for a year of employment in which the employee was not below the age of forty-one...

"weekly minimum wage" means the amount prescribed as the minimum weekly remuneration payable under the Conditions of Employment (Standard Minimum Wage) Order 2001 as amended from time to time... [currently, £390.00]

Basic award.

2.(1) The amount of the basic award provided in section 71(a) of the Employment Act, shall be £2,200 or such higher amount as calculated by–

(a) determining the period, ending with the effective date of termination, during which the employee has been continuously employed,

(b) reckoning backwards from the end of that period the number of years of employment

falling within that period, and
(c) allowing the appropriate amount for each of those years of employment.

...

Compensatory awards.

3.(1) ... the amount of the compensatory award shall be such amount as the Employment 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.

... (4) In ascertaining the loss referred to in subregulation (1) the Employment 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 Gibraltar.”

Disability discrimination awards

The EO Act provides:

“70. (1) Where the Employment Tribunal finds that a complaint presented to it under section 69 (jurisdiction of the Employment Tribunal) is well-founded, the Tribunal shall make such of the following as it considers just and equitable—
(a) an order declaring the rights of the complainant and the respondent in relation to the act to which the complaint relates;
(b) an order requiring the respondent to pay to the complainant compensation of an amount corresponding to any damages (including damages for injury to feelings) he could have been ordered by the Supreme Court to pay to the complainant if the complaint had fallen to be dealt with under section 76 (jurisdiction of Supreme Court); ...”

The aim of a discrimination compensation award under Section 70(1)(b) of the EO Act is to put the claimant in the position, so far as is reasonable, that they would have been in had the discrimination not occurred (*Ministry of Defence-v-Wheeler* [1998] IRLR 23). The heads of financial losses which can be claimed are more or less the same as for an unfair dismissal compensatory award e.g. past and future loss of earnings and benefits (with the same duty to mitigate). However, distinct from the unfair dismissal award:

- (a) there is no statutory cap on the amount of a discrimination compensation award;
- (b) the Tribunal assesses loss under the same principles as apply to torts;
- (c) the Tribunal may make an award of compensation for non-financial losses such as injury to feelings; and
- (d) the Tribunal has power to, and normally should, award interest on past losses.

Injury to feelings

The Court of Appeal case, *Vento-v-Chief Constable of West Yorkshire Police* (2002 EWCA Civ 1871) (*Vento*), is the leading authority on assessing compensation for injury to feelings. It held that an award of compensation for injury to feelings is intended to compensate the claimant for negative feelings (such as upset, frustration, anxiety, distress, stress, depression and fear) caused by unlawful discrimination. The award is compensatory and not punitive: the focus is on the actual effects the

discriminatory act has had on the particular claimant (Komenq-v-Creative Support Ltd [2019] UKEAT/0275/18); and should be just to both parties. Feelings of indignation at the discriminator's conduct should not be allowed to inflate the award. On the other hand, awards should not be too low, as that would diminish respect for the policy of the anti-discrimination legislation; awards must ensure that discrimination is understood to be wrong.

Relevant factors which the Tribunal will take into account when assessing the effect(s) on the claimant may include:

- the vulnerability of the claimant and personal characteristics: if a claimant reacted to the discrimination more severely than others might react, then this should be accounted for, regardless of whether the act of discrimination could be viewed objectively as less serious;
- long-term effects such as panic attacks, stress, loss of confidence and interference with personal relationships;
- the degree of hurt, distress or upset caused;
- any medical condition from which the claimant was suffering;
- the nature of the claimant's job and the effect of the discrimination on their career;
- whether the discrimination was a one-off incident or a course of conduct;
- the position of the person who was found to be discriminating;
- the seriousness of the treatment.

The Tribunal has a broad discretion about the level of an award of compensation for injury to feelings, within the boundaries of what are known as "Vento bands" - 3 bands of potential awards with guidelines, set out by the Court of Appeal in Vento. The figures are updated annually and for claims presented between 6 April 2025 and 5 April 2026 (as in this case) were:

- lower band: £1,200 - £12,100 for "*less serious cases, such as where the act of discrimination is an isolated or one-off occurrence*";
- middle band: £12,100 - £36,400 for "*serious cases, which do not merit an award in the highest band*"; and
- upper band: £36,400 to £60,700 for "*the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race*",
- with the most exceptional cases capable of exceeding £60,700.

In Base Childrenswear Limited-v-Otshudi EAT 0267/18, the EAT held: "*it is right to say that, in deciding whether the case should fall within the low or middle Vento bands, an ET might think it relevant to have regard to whether the discrimination in question formed part of a continuing course of conduct (perhaps a campaign of harassment over a long period) or whether it was only a one-off act. That said, each such assessment must be fact and case specific. It is, after all, not hard to think of cases involving one-off acts of discrimination that might well justify an award falling within the middle or higher Vento brackets, or other cases involving a continuing course of conduct that are properly to be assessed as falling within the lower band. Simply describing discrimination as an isolated or one-off act may not provide the complete picture and I do not read the Vento guidance as placing a straitjacket on the ET such that it must only assess such cases as falling within the lower band. The question for the ET must always be, what was the particular effect on this individual complainant?*"

Interest on discrimination compensation

The EO Act provides:

- 70.(4) Where an amount of compensation falls to be awarded under subsection (1)(b), the Tribunal—
- (a) may include in the award interest subject to, and in accordance with, the provisions of section 75 (interest on compensation); and
 - (b) shall consider whether to do so, without the need for any application by the complainant.

... 75.(2) Interest shall be calculated as simple interest which accrues from day to day.

(3) ... the rate of interest to be applied shall be the rate of interest prescribed in respect of judgment debts in the Supreme Court by the order made under section 36 of the Supreme Court Act in force from time to time [currently, 8% per annum].

...(6) ... (a) in the case of any sum for injury to feelings, interest shall be for the period beginning on the day of the contravention or act of discrimination complained of and ending on the day of calculation;

(b) in the case of all other sums of damages or compensation in the award ..., and all arrears of remuneration, interest shall be for the period beginning on the mid point date and ending on the day of calculation.

...(9) The Tribunal's written statement of reasons for its decision shall— (a) contain a statement of the total amount of any interest awarded and, unless this amount has been agreed between the parties, either a table showing how it has been calculated or a description of the manner in which it has been calculated; or (b) include reasons for any decision not to award interest.

... (11) In this section— “day of calculation” means the day on which the amount of interest is calculated by the Tribunal; “mid point date” means the date half way through the period beginning on the date of the contravention or act of discrimination complained of and ending on the day of calculation, or where the number of days in that period is even, the first day of the second half of the period.”

Compensatory awards and future losses (discrimination and unfair dismissal)

Case law on compensatory awards and assessing future losses is extensive. As set out in Edward-v-Tavistock and Portman NHS Trust [2023] EAT 33 (a pregnancy discrimination case):-

“22. ... Morison J began his general guidance as to compensation by referring to the principles stated by the House of Lords in Mallett-v-McGonagle [1970] AC 166 (a fatal accident case). He cited (949F-G) the following passage of Lord Diplock: “The role of the court in making an assessment of damages which depends on its view as to what will be and would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past the court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend on its view as to what will happen in the future or would have happened in the future

if something had not happened in the past, the court must make an estimate of what are the chances that a particular thing will or would not have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards.”

...25. While a multiplicand/multiplier approach may be appropriate particularly in cases of long-term or career long loss, in many cases the tribunal will instead make a determination as to when the employee is likely to get another job on equivalent terms and calculate the loss to that date, awarding no loss after that date. ... in Wardle- v-Credit Agricole Corporate Bank [2011] ICR 1290...The tribunal awarded compensation for the whole period through to the claimant’s retirement, but discounted it by 70% after the first three years, to reflect the chance of the claimant finding a job that fully replaced his lost earnings. The Court of Appeal held that the tribunal erred in its approach. After considering the rare cases where it is appropriate to assess loss over a career lifetime, Elias LJ said:

“[51] However, in my view the usual approach, assessing the loss up to the point where the employee would be likely to obtain an equivalent job, does fairly assess the loss in cases – and they are likely to be the vast majority – where it is at least possible to conclude that the employee will in time find such a job. In this case the tribunal has in effect approached the case on the assumption that it must award damages until the point when it can be sure that the claimant would find an equivalent job.

[52] In my judgment, this is the wrong approach. In the normal case, if a tribunal assesses that the employee is likely to get an equivalent job by a specific date, that will encompass the possibility that he might be lucky and secure the job earlier, in which case he will receive more in compensation than his actual loss, or he might be unlucky and find the job later than predicted, in which case he will receive less than his actual loss. The tribunal’s best estimate ought in principle to provide the appropriate compensation. The various outcomes are factored into the conclusion. In practice, the speculative nature of the exercise means that the tribunal’s prediction will rarely be accurate. But it is the best solution which the law, seeking finality at the point where the court awards compensation, can provide.”

26. This passage was cited with approval by Underhill LJ in Griffin v Plymouth Hospital NHS Trust [2015] ICR 347: “[9] The tribunal considered the issue of future loss of earnings After referring to various factors affecting the assessment it held that she was likely to obtain suitable alternative employment at 25 hours per week in a year’s time; and it awarded one year’s loss of earnings, being £15,201.48, on that basis. At the risk of spelling out the obvious, that is not a finding that it was more probable than not that the claimant would find a job after precisely one year. Rather, it is an estimate, made on the assumption that the claimant continued to make reasonable efforts to mitigate her loss, of the mid-point of the probabilities.” After quoting paragraph 52 of Wardle, he continued: “It is, however, convenient to refer to it, as the tribunal did, as the date on which it was likely she would obtain employment.””

Mitigation (discrimination and unfair dismissal)

The relevant common law principle is that a claimant may recover only such losses as could not reasonably have been avoided. The claimant is required to take reasonable, but not extraordinary, steps to mitigate loss. However, the burden of proving a failure to mitigate, and the extent of any consequent reduction in loss, rests upon the respondent:

“(1) The burden of proof is on the wrongdoer; a Claimant does not have to prove that he has mitigated loss.

(2) It is not some broad assessment on which the burden of proof is neutral. ... If evidence as to mitigation is not put before the Employment Tribunal by the wrongdoer, it has no obligation to find it. That is the way in which the burden of proof generally works: providing the information is the task of the employer.” (Cooper Contracting Ltd-v-Lindsay UKEAT/0184/15)

Findings and Awards

I rely herein on the Claimant’s gross weekly pay figure as indicated by the Respondent of £606.98. This would result in approximately £446.86 weekly net pay.

Unfair dismissal Basic Award

Under Regulation 2.(1), the Basic Award payable by the Respondent to the Claimant is £11,700.00.

Unfair dismissal Compensatory Award

I have decided to assess the Claimant’s financial losses flowing from the dismissal/the act of discrimination under the EO Act, meaning that interest can be awarded on that compensation under Section 70(4) of the EO Act, which I find to be reasonable and just.

Loss of statutory rights

I award the Claimant £500.00 for loss of statutory rights (bearing in mind his 10 years of employment).

Discrimination compensation award

The Claimant’s loss of earnings from the date of the discriminatory dismissal to today’s date amount to £20,555.56.

The Claimant’s explanation that he did not apply for unemployment benefit because he had been told he was not entitled might in principle constitute a failure to mitigate his losses. However, the burden of proving that the Claimant failed to mitigate rests upon the Respondent and in this case, the Respondent has not discharged that burden. I therefore make no deduction for failure to mitigate.

In respect of future losses, I adopt what I find to be the fairest approach of assessing the loss up to the point where the Claimant would be likely to obtain an equivalent job, following Wardle and Griffin. Given the Claimant’s experience and expertise with vehicles, his statement in the Schedule of Loss that he had registered as unemployed and available for part time work with “*Likelihood of Success. Hopeful in my thinking*”, but bearing in mind that the Claimant will reach 60, now the State pensionable age for all in Gibraltar, on 24 November 2026, and not having the benefit of the any further input from the Claimant on this issue (by way of a witness statement or otherwise), in my view, the Claimant may well, if he makes reasonable efforts, be able to find replacement part time work, on equivalent pay to the pay he was receiving from the Respondent at dismissal, by the end

of November 2026, or equally then decide to retire. I therefore award the Claimant future losses from today's date until 30 November 2026, in the sum of £4,468.60.

Injury to feelings

In assessing the compensation for the injury to feelings suffered by the Claimant consequent on the Respondent's discriminatory conduct, namely the Respondent's dismissal of the Claimant by reason of his disability, and weighing up the applicable factors, I accept the Claimant's evidence that the discriminatory termination of his employment by the Respondent and the disorganised and confused way in which this was carried out left him feeling like "*unwanted goods*". In his words, "*It hurt me*". The Claimant had been employed by the Respondent for more than 10 years.

However, there is no evidence before me (and the Claimant did not submit any witness statements) which establishes that the Claimant has suffered any long lasting severe distress, depression or other mental disorder which was caused or exacerbated by the Respondent's discriminatory conduct itself, rather than the Claimant's pre-existing mental health. In addition, there was not a continuing course of discriminatory conduct here,

Balancing up all of these factors, I find that the Claimant's injury to feelings arising from the Respondent's unlawful disability discrimination falls at the lower end of the lower Vento band and I award to the Claimant the sum of £4,000.00.

Interest

I can see no reason why I should not award interest on the discrimination Awards under Sections 70(4) and 75 of the EO Act, as calculated in the Schedule hereto.

SCHEDULE

Unfair Dismissal Basic Award

Number of qualifying years = 10
10 X 3 X weekly minimum wage £11,700.00

Loss of statutory rights £500.00

Discrimination Awards

Past losses

3 November 2025 – 21 September 2026 (46 weeks X £446.86) £20,555.56

*This includes the Claimant's statutory 13 weeks' notice period.

Less: payment made by the Respondent to the Claimant on 25 February 2026 [£7,890.74]

Past Losses Total: £12,664.82

Interest on past losses

161 (no of days-mid point) x 8% x 1/365 (daily calculation) x £12,664.82 (past losses) £446.91

Future loss of earnings

10 weeks @ £446.86 £4,468.60

Injury to Feelings

£4,000.00

Interest on Injury to Feelings

322 (no of days) x 8% x 1/365 (daily calculation) x £4,000.00 (sum awarded for past losses) £282.30

TOTAL AWARD **£34,062.63**

Gabrielle O'Hagan

Chairperson Gabrielle O'Hagan

Date: 21 September 2026