

Respondent but not provided on the hearing.

5. At paragraph 18 the Respondent accepts that the misunderstanding which led to the claim “could have partly been avoided by supplying a contract”. At paragraph 23 the Respondent states that she has paid the court fee, the holiday pay and the hours outstanding. She disputes the award made under section 38 of the Employment Rights Act 2002.
6. I regret to say that in the Judgment I referred to the Employment Rights Act 2002 which should have been a reference to the Employment Act 2002.
7. No explanation is offered by a way of grounds for reconsideration in relation to that element of the Judgment. Section 38 of the Employment Act 2002 imposes an obligation in the terms “the tribunal must” increase the award by the minimum amount and may if it considers it just and equitable in all the circumstances increase the award by the higher amount instead. The minimum amount is two weeks pay and a higher amount is four weeks pay. The tribunal is released from the obligation if there are exceptional circumstances which would make an award or increase unjust or inequitable.
8. I do not consider that anything has been advanced to suggest that this case was exceptional. The award was made in a higher amount because the Respondent appeared to have been provided with all the necessary material to comply with her obligations but failed to do so and the evidence suggested that this was in order to obtain an advantage or had the effect of obtaining an advantage in respect of the Claimant during the period of her probation. The Respondent has put forward nothing in the application to engage with the rationale for that award given in the reasons at paragraph 20.
9. In relation to notice pay the simple fact is that on the hearing the allegations of gross misconduct were not made out and the allegation appeared to have arisen in response to the Claimant’s claim for notice pay.
10. For these reasons I do not consider that the application for reconsideration stands any reasonable prospect of success. It amounts to a request to have a second hearing. The application is therefore refused.

Regional Employment Judge Hildebrand
Date 8 August 2017