



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: S/4108587/2018**

**Hearing Held at Aberdeen on 13 December 2018**

**Employment Judge: I McFatridge (sitting alone)**

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**Mr William Stewart**

**Claimant  
Represented by:  
Mr Lawson  
Trainee Solicitor**

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20 **Highfield Haulage Contractors Limited**

**Respondents  
Represented by:  
Mr Lane  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The Judgment of the Tribunal is

1. The respondents unlawfully withheld wages from the claimant in the period from 19 May 2017 until 30 March 2018.
2. The respondents shall pay to the claimant the sum of Five Hundred and  
35 Twenty Three Pounds and Thirty Three Pence (£523.33) in respect of unlawfully withheld wages.
3. As at the termination of his employment the claimant was due the sum of Three Thousand, One Hundred and Seventy Eight Pounds and Seventy Eight Pence (£3178.78) in respect of paid annual leave accrued but

untaken. The respondents shall pay to the claimant the sum of Three Thousand, One Hundred and Seventy Eight Pounds and Seventy Eight Pence (£3178.78) in respect of this.

- 5 4. The respondents were in breach of contract with the claimant in terminating his employment without notice. The respondents shall pay to the claimant the sum of Five Hundred and Sixty Seven Pounds and Sixty Four Pence (£567.64) (one week's pay) as a payment in lieu of notice.
- 10 5. When these proceedings commenced the respondents were in breach of their obligation to provide the claimant with a statement of particulars of employment in terms of Section 1 of the Employment Rights Act 1996. The respondents shall pay to the claimant the sum of Two Thousand, Two Hundred and Seventy Pounds and Fifty Six Pence (£2270.56) (four weeks' pay) in terms of Section 38 of the Employment Act 2002.
- 15 6. The claimant's claim for payment of arrears of statutory sick pay is dismissed following withdrawal.

## REASONS

- 20 1. The claimant submitted a claim to the Tribunal in which he claimed that he was due various sums following the termination of his employment. The respondents did not submit a response within the statutory period however they subsequently submitted a response which was accepted though late. A default judgment which had been made was withdrawn. The hearing was  
25 thereafter set down to take place on 13 December in Aberdeen. The parties were advised of the hearing date on or about 31 October 2018. On 12 December 2018 the respondents applied for a postponement. The postponement request was made in writing. It was considered by the resident Employment Judge in Aberdeen and refused.  
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2. On the morning of the hearing the claimant was present with his representative ready to proceed. The respondents' representative was present but advised that the respondents' principal, Mr Gardner and witnesses were not. He had

previously indicated that the respondents intended to call witnesses in addition to Mr Gardner. The Respondents' agent repeated the request for postponement. I heard submissions from both sides. The respondents' representative indicated that there were two strands to the application. He appreciated that the application had been refused the previous day having been made on much the same grounds. The first ground was what he termed evidential. He indicated that both the claimant and Mr Gardner had attended a hearing at the Traffic Commissioners on 21 November. It was his position that the claimant gave evidence on oath at this hearing and during this evidence he confirmed that he was not owed any arrears of wages by Mr Gardner. The respondents' position was that they wished to lodge the transcript of the evidence from the Traffic Commissioners' hearing. This was not yet available and they asked that the present hearing should be postponed until this was available so that the transcript could be put to the claimant. The second point which was made was that the respondents' principal, Mr Gardner was unavailable due to festive demand on the company's services. Mr Gardner was the principal witness. The demand on the firm's services went up considerably in the run-up to Christmas and Mr Gardner simply could not attend since he had to work. It was also his position that the other secondary witnesses had to work in the business and that the hearing should be postponed to a different time of year.

3. The claimant's representative vigorously opposed the application. With regard to the Traffic Commissioners' hearing it was the claimant's position that he had not given evidence along the lines suggested. The Traffic Commissioners' hearing had nothing to do with the subject matter of the Employment Tribunal. In any event the claimant would be giving evidence on oath and it would be open to the respondents' representative to put the allegation to him. With regard to the second reason put forward the claimant's representative pointed out that the dates of hearing had been fixed since 31 October. Mr Gardner would have been well aware that this was a busy time and it would have been open to him to apply for a postponement at a much earlier date. He had not done so. The hearing had already been delayed as a result of the respondents'

failure to submit their ET3 in time. The claimant was entitled to a remedy and it was not in line with the overriding objective for the case to be postponed on the basis of a last minute application by the respondent in those circumstances. In addition it was clear that the respondent was not complying with the  
5 overriding objective in that Mr Gardner had tried to pre-empt the decision by refusing to attend despite the fact that he knew that the application to postpone made the previous day had been refused.

4. In the circumstances, I had little hesitation in considering that the  
10 representations of the claimant must prevail. I am required to approach matters in line with the overriding objective. One of these is avoiding delay. The issue of what evidence the claimant did or did not give before the Traffic Commissioners was really of only tangential relevance to the matter I would be required to consider. It would be open to the respondent to put whatever point  
15 they wished to make to the claimant. The claimant would be giving evidence on oath. I could see absolutely no reason for postponing the hearing until a transcript of the Traffic Commissioners' hearing could be lodged. With regard to the second point I considered the claimant's objections to be virtually unassailable. The date had been fixed for months. Mr Gardner would know  
20 that his business would be busy in the run-up to Christmas. It was up to him to either make arrangements which would allow he and his witnesses to attend the hearing or alternatively apply for a postponement in good time. He had done neither. I also considered that there had already been delay in this case and that it would be in the interests of justice to hear the case sooner rather  
25 than later. If the claimant was correct in his contentions he has been underpaid wages and is due to have a remedy within a reasonable time.

5. I advised the parties of my decision. Mr Lane indicated that in the  
30 circumstances he would not be leading evidence but that he would be cross examining the claimant in accordance with his instructions. Thereafter Mr Stewart gave evidence on oath. He referred to various productions. On the basis of the evidence and the productions I found the following factual matters to be proved or agreed.

**Findings in Fact**

- 5 6. The claimant is a Class 1 HGV Driver. He commenced employment with the respondents as a driver around 1 April 2017. He had previously worked for them on an agency basis. At no point did the claimant receive a statement of particulars of employment. His contractual rate of pay was £10 per hour. He generally worked a five day week on weekdays. On occasions if he was asked to come in on a Saturday he would be paid £13 per hour for these additional hours. The claimant was also entitled to be reimbursed for expenses such as tolls. In addition to this the claimant received a flat rate fee or allowance of £25 per night for what was termed a “night out”. This was a night when the claimant was unable to return home but required to sleep in the cab of the lorry. This payment of £25 per night was paid separately from his hourly pay along with any expenses such as tolls.
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- 20 7. Generally the claimant completed a time sheet each week. This detailed the hours worked, the odometer reading on his vehicle, start times and finish times for each day, a note of what he was doing, the places loaded, the destination and whether he went home or got a ‘night out’. These time sheets were handed in to the respondents at the end of each week. These were then passed on to the respondents’ accountant and the claimant would be paid one week in arrears. After a short time the claimant began to notice that his pay slips did not accurately reflect the hours he had worked. At the hearing the claimant lodged his time sheets for the period between 8 May 2017 and 23 March 2018 (pages 27-70). He also lodged those pay slips which he had retained for the period. There were certain occasions where the claimant was either not given a pay slip or had not retained this. The pay slips the claimant had were lodged (pages 71-82).
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8. For the week commencing 8 May 2017 the claimant worked 62 hours 10 minutes and was paid for 61 hours, an underpayment of 1 hour 10 minutes.

9. For the week commencing 15 May 2017 the claimant worked 44 hours and was paid for 44 hours.
- 5 10. For the week commencing 22 May 2017 the claimant worked 56 hours 54 minutes and was paid for 56 hours, an underpayment of 54 minutes.
11. For the week commencing 29 May 2017 the claimant worked 75 hours and was paid for 75 hours (15 at overtime rate since it was a Saturday).
- 10 12. For the week commencing 5 June 2017 the claimant worked 65 hours 55 minutes and was paid for 65 hours giving a shortfall of 55 minutes.
13. For the week commencing 12 June 2017 the claimant worked 40 hours 22 minutes and was paid for 40 hours, a shortfall of 22 minutes.
- 15 14. For the week commencing 19 June 2017 the claimant worked 58 hours 26 minutes and was paid for 58 hours, an underpayment of 26 minutes.
- 20 15. For the week commencing 26 June 2017 the claimant worked 75 hours 50 minutes. He was paid for 72 hours giving a shortfall of 3 hours 50 minutes.
16. For the week commencing 3 July 2017 the claimant worked 70 hours 52 minutes and was paid for 70 hours giving a shortfall of 52 minutes.
- 25 17. For the week commencing 10 July the claimant worked 69 hours 20 minutes and was paid for 68 hours, a shortfall of 1 hour 20 minutes.
18. For the week commencing 17 July 2017 the claimant worked 53 hours 3 minutes and was paid for 52 hours giving a shortfall of 1 hour 3 minutes.
- 30 19. For the week commencing 24 July the claimant worked 60 hours and 50 minutes and was paid for 55 hours giving a shortfall of 5 hours 50 minutes.

20. For the week commencing 31 July 2017 the claimant worked 66 hours 44 minutes and was paid for 57 hours giving a shortfall of 9 hours 44 minutes.
- 5 21. For the week commencing 6 August 2017 the claimant worked 66 hours 8 minutes and was paid for 57 hours giving a shortfall of 9 hours 8 minutes.
22. For the week commencing 13 August the claimant worked 43 hours 28 minutes and was paid for 64 hours giving an overpayment for that week of 20 hours 32 minutes.
- 10 23. For the week beginning 20 August 2017 the claimant worked 74 hours 55 minutes and was paid for 74 hours, a shortfall of 55 minutes.
24. For the week commencing 27 August 2017 the claimant worked 67 hours 15 1 minute. There is no pay slip lodged for this period and I have assumed the claimant was paid correctly for this.
25. For the week commencing 3 September 2017 the claimant worked 48 hours 23 minutes and was paid for 48 hours giving a shortfall of 23 minutes.
- 20 26. For the week commencing 10 September 2017 the claimant worked 55 hours 55 minutes and was paid for 59 hours which means that there was an overpayment of 3 hours 5 minutes.
- 25 27. For the week commencing 17 September 2017 the claimant worked 58 hours 54 minutes and was paid for 58 hours giving a shortfall of 54 minutes.
28. For the week commencing 24 September 2017 the claimant worked 66 hours and 56 minutes and was paid for 66 hours giving a shortfall of 56 minutes.
- 30 29. For the week commencing 1 October 2017 the claimant worked 52 hours 13 minutes and was paid for 58 hours giving an overpayment of 5 hours 47 minutes.

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30. For the week commencing 8 October 2017 the claimant worked 70 hours 17 minutes and was paid for 69 hours giving an underpayment of 1 hour 17 minutes.
31. For the week commencing 15 October the claimant worked 52 hours 43 minutes and was paid for 53 hours giving an overpayment of 17 minutes.
- 10 32. For the week commencing 22 October 2017 the claimant worked 81 hours and 9 minutes and was paid for 62 hours giving a shortfall of 19 hours 9 minutes.
33. For the week commencing 29 October 2017 the claimant worked 57 hours 34 minutes and was paid for 61 hours giving an overpayment for that week of 3 hours 26 minutes.
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34. For the week commencing 5 November 2017 the claimant worked 71 hours and 5 minutes. There is no pay slip for that week and I have assumed the claimant was paid correctly.
- 20 35. In the week commencing 12 November 2017 the claimant worked 68 hours and was paid for 68 hours meaning that he was paid correctly.
36. In the week commencing 20 November the claimant worked 55 hours 27 minutes and was paid for 55 hours giving an underpayment of 27 minutes.
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37. In the week commencing 26 November the claimant worked 73 hours and 30 minutes but was paid for 74 hours giving an overpayment of 30 minutes.
38. In the week commencing 4 December the claimant worked 44 hours 44 minutes but was paid for 45 hours giving an overpayment of 16 minutes.
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39. In the week commencing 10 December 2017 the claimant worked 71 hours 54 minutes. The claimant did not receive a payslip for this period but a sum



was paid into the claimant's bank. I decided that on balance of probabilities the claimant was paid correctly for the hours worked.

- 5 40. On 18 December 2017 the claimant worked 67 hours 10 minutes. Once again the claimant did not receive a pay slip for this period although money was paid into his bank account. I decided that on the balance of probabilities I required to make a finding that the claimant was paid correctly for this period.
- 10 41. For the week commencing 24 December 2017 the claimant worked 58 hours 57 minutes and was paid for 59 hours giving an overpayment of 3 minutes.
42. For the week commencing 4 January 2018 the claimant worked 43 hours and was paid for 42 hours giving an underpayment of 1 hour.
- 15 43. For the week commencing 8 January 2018 the claimant worked 53 hours 1 minute spread across two time sheets. He was paid for 53 hours giving an underpayment of 1 minute.
- 20 44. For the week commencing 14 January 2018 the claimant worked 38 hours 50 minutes and was paid for 39 hours meaning that he was overpaid 10 minutes.
- 25 45. For the week commencing 21 January 2018 the claimant worked 32 hours and 50 minutes. He was not given a pay slip and on the balance of probabilities I have found that he was paid correctly for that week.
- 30 46. For the week commencing 13 February 2018 the claimant worked 68 hours. The claimant did not receive a pay slip for that week. On the balance of probabilities I found that the claimant was paid correctly for that period.
47. For 18 February 2018 the claimant worked 48 hours 56 minutes. The claimant did not receive a pay slip and on the balance of probabilities I found that he was paid correctly for that period.

48. In the week commencing 25 February 2018 the claimant worked 55 hours and was paid correctly for this.
- 5 49. For the week commencing 4 March 2018 the claimant worked 61 hours 44 minutes and was paid for 60 hours. There was therefore a shortfall of 1 hour 44 minutes.
- 10 50. For the week commencing 11 March 2018 the claimant worked 69 hours 10 minutes and was paid for 61 hours giving a shortfall of 8 hours 10 minutes.
- 15 51. The week commencing 19 March 2018 was the claimant's last week of work. The claimant worked 69 hours 24 minutes. He had four nights out during that period. The claimant did not receive any pay on or about 30 March 2018 when he would have expected to receive this. At the time the claimant raised these proceedings he had still not been paid. The claimant was subsequently paid for the hours he had worked. He was not paid the £100 he was due in overnight allowance for his final week at work.
- 20 52. Adding up the various underpayments and overpayments which the claimant was subjected to over the period from 8 May gives a total of 42 hours and 20 minutes. I considered that the claimant was due to be paid this at his normal rate of £10 per hour for these hours. The claimant was therefore underpaid wages in the total sum of £423.33 over this period. In addition, the respondents failed to pay the claimant the £100 due to him in respect of overnight allowance for his final week at work. The total underpayment of wages is therefore £523.33
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- 30 53. The claimant did not receive any paid holidays at all during his period of employment. There was no agreement between the parties as to the holiday year. It is therefore taken to run from his start date of 1 April. The claimant worked a total of 51.4 weeks from 1 April 2017 until his employment was terminated on 27 March.

54. The claimant was not subject to any formal disciplinary processes during his employment. There was an occasion in early 2018 where the claimant had a verbal discussion with Mr Gardner who was dissatisfied about the claimant having failed to pick up a trailer. The respondents characterise this as a verbal warning. The claimant was also involved in a minor accident with his lorry while going up a farm road. No formal or informal disciplinary process arose as a result of this.
55. On or about 27 March the claimant attended the respondents' office in the usual course of his duties. He was called in to speak to Mr Gardner. Mr Gardner told him that one of their large customers Mr Killoh was upset about the claimant having been late in doing a delivery. The claimant had been 30 minutes late as a result of traffic. The claimant offered to telephone Mr Killoh and Mr Gardner agreed to this. The claimant telephoned Mr Killoh in Mr Gardner's presence. There was nothing untoward about the conversation. Mr Gardner then told the claimant that he was dismissed with immediate effect.

### **Observations on the Evidence**

56. I found the claimant to be a truthful witness and his evidence was in accordance with the documentary productions which were lodged. He was subject to vigorous cross examination by Mr Lane and whilst he made appropriate concessions I did not consider that they adversely effected his credibility. In examination in chief he had indicated that he thought he had probably been underpaid on those occasions when he did not have a pay slip. His position was that he had probably been underpaid by a number of minutes in each case due to the apparent practice of the respondents of rounding down. In cross examination he readily accepted that he was not in a position to know this for definite since all he could go by was the respondents' practice. He had received sums of money in his account and in the absence of a pay slip he was not in a position to say how many hours he had been paid for. I felt this concession was properly made and in the circumstances I did not feel able to

make a definite finding that the claimant had been underpaid for those weeks where he had no pay slip. This included one particular week where the claimant's position was he had been underpaid by five hours but in the absence of a pay slip the claimant conceded he could not know this for definite. The claimant also initially made a claim in respect of statutory sick pay. It was his position that he had had some time off as a result of illness during his employment and that he had not been paid for this. His evidence regarding this was rather vague and he was totally unclear as to the dates. At the end of evidence in chief his final evidence was to the effect that he had been off for around 10 days but that there had only been one of those occasions where his absence had been for four days. All of the other absences had been fewer than this which meant SSP would not be triggered. He could not say when the four days had taken place. During cross examination he accepted he could not be definite about this and at the end of the evidence the claimant's representative formally withdrew the claim so far as it related to arrears of SSP.

57. With regard to the circumstances of the claimant's dismissal I entirely accepted his evidence which had the ring of truth about it. His position is that a customer was upset and he had offered to contact the customer to explain the circumstances. It was his position he had been late because he had been delayed in traffic. He did not accept that he had been abusive to the customer. He readily accepted that there had been an incident in relation to a previous delivery although he said this was about picking up a trailer rather than a lorry as stated by the respondents. The claimant accepted that he had been spoken to about this. No written evidence was lodged about any disciplinary process or the claimant having been given any kind of formal verbal warning. In the circumstances I was not prepared to make a finding that he had been given a formal verbal warning although at the end of the day nothing turns on this. With regard to the Traffic Commissioners' hearing the claimant confirmed that he had been there. He did not recall having been put on oath and denied saying anything at all about whether or not he was owed money by Mr Gardner. It was his position that the Traffic Commissioners' hearing had absolutely nothing to do with the circumstances of the current case.

**Discussion and Decision**

58. Both parties made full submissions. I will refer to these where appropriate  
5 below. With regard to the alleged underpayment of wages I found that this was  
proved on the basis of the evidence led at the hearing and the productions. I  
was taken through each of the time sheets and pay slips by the claimant and  
my factual findings are as set out above. There was a degree of confusion  
about the total. The claimant indicated that he had personally prepared a  
10 spreadsheet however this had not been lodged as the spreadsheet had  
included his final week's pay which had not been paid until some months later.  
In the circumstances I felt that the appropriate course was for me to myself add  
up the underpayments of wages which the claimant had received on a weekly  
basis I thereafter deducted the amount of the overpayments which the claimant  
15 had received from time to time and came up with the figure of 42 hours  
20 minutes. It is clear to me that the claimant was underpaid this sum and he  
is entitled to a declarator to that effect in terms of Section 23 of the Employment  
Rights Act 1996. He is also entitled to payment of the sum due.

20 59. With regard to the overnight allowance Mr Lane's position was that I should not  
take this into account in calculating any unlawful deduction of wages. This was  
on the basis that this allowance was not wages in terms of Section 27 of the  
Employment Rights Act 1996. It was also his position that the sum could not  
be awarded on the basis of breach of contract since this had not been pled by  
25 the claimant. I disagreed with both of these propositions. It appears clear to  
me that the overnight allowance of £25 is a sum payable to the worker in  
connection with his employment. It is not one of the excepted payments listed  
in Section 27(2). In particular although it was characterised by Mr Lane (and  
indeed by the claimant in his ET1) as a payment of expenses it appears clear  
30 to me that it was not. It was a fee in the form of a fixed rate allowance which  
was payable if the claimant had to sleep in his cab. It was distinguishable from  
the reimbursement of expenses for things like tolls. The claimant did not  
require to produce any receipts or proof that he had made payment. It was

5 simply an allowance or fee paid to him in addition to his hourly rate if he required to sleep overnight in his cab. Secondly, even if I am wrong in this, I did not consider that the respondents could properly state that the claim could not be characterised in the alternative as a claim for breach of contract. In the ET1 the claimant marked the box stating that he is owed other payments. I note that in the paper apart the claimant himself has referred to the sum of £25 as expenses. Whilst in my view he is incorrect in doing this it clearly shows that the claimant was intending to make a claim for payment of a sum which could not be made as a claim under Section 13 of the Employment Rights Act. 10 This clearly shows in my view that the claimant was making a claim of breach of contract. In any event however the payment is characterised I accepted on the basis of the evidence that the claimant was due this sum in respect of the four nights out he had had during his final week of employment and that this sum had not been paid.

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60. With regard to holiday pay I accepted the claimant's evidence that he had not received any paid holidays during his period of employment. This was backed up to some extent by the contemporary time sheets which showed that he had taken a day off for a public holiday but not been paid for this. The claimant worked from 1 April until his employment was terminated without notice on 20 27 March. I considered that in the circumstances the claimant be taken to have worked 52 weeks. This is on the basis that, as I indicate more fully below the respondents were in breach of contract in terminating the claimant's contract without notice when they did. In any event I see that even if this were not the case the usual practice of rounding up to whole weeks would mean that the claimant was to be held to have worked 52 weeks. The claimant is entitled to 25 5.6 weeks' holiday pay. The claimant calculated a week's net pay as being £464.68. I considered that it would not be appropriate to use the net figure for this calculation. The payment is taxable in the hands of the claimant and this, together with the other payments awarded will have to be calculated on the basis of gross pay. Using the data from the timesheets the claimant worked a 30 total of 738 hours and 56 minutes in the 13 weeks immediately prior to the termination of his employment. His average gross pay is therefore £567.64.

The claimant is therefore entitled to £3178.78 (567.64 x 5.6) in respect of annual leave accrued but untaken as at the date of termination of employment.

5 61. With regard to the claim for notice pay there were no written particulars of employment. I took the claimant to be entitled to one week's notice in terms of Section 86 of the Employment Rights Act 1996. It was the respondents' position that the claimant was not entitled to this since he had been dismissed for gross misconduct. On the basis of the evidence before me I did not consider this to be the case. For the respondents to be entitled to summarily  
10 dismiss the claimant's conduct would require to be such as to amount to a repudiatory breach of contract.

15 62. In my view the reference in the ET3 to the alleged disciplinary record of the claimant is simply irrelevant. If the claimant had been dismissed as a result of having accumulated a number of warnings then he would be entitled to be paid his notice. The respondent is only entitled to dismiss without notice if the claimant's conduct amounted to a repudiatory breach. Whilst I only heard evidence from the claimant in relation to what happened it is clear to me that there was no repudiatory breach of conduct by the claimant either in being late  
20 for picking up whatever it was he was supposed to have picked up or delivered to Mr Killoh or in the way he spoke to Mr Killoh on the telephone. Given that the respondents were not entitled to dismiss for gross misconduct the claimant was entitled to be given notice. Since he was not he is entitled to receive one week's pay in lieu of this amounting to £567.64.

25 63. It was common ground between the parties that the respondents had failed to comply with their duty in terms of Section 1 of the Employment Rights Act 1996 to provide the claimant with an initial statement of particulars of employment. In terms of Section 38 of the Employment Act 2002 I am required to make an  
30 award of either the minimum amount of two weeks' pay or the higher amount of four weeks' pay unless there are exceptional circumstances which make an award or increase unjust or inequitable. There was absolutely nothing before me to suggest that there were exceptional circumstances in this case which

would make such an award unjust or inequitable. The sole question for me to determine therefore was whether I should make an award of the minimum amount of two weeks' pay or the higher amount of four weeks' pay. I have no evidence regarding the size of the employer's undertaking. I assume that they  
5 are a relatively small firm which would point towards the minimum award. On the other hand it is clear to me that the employment in this case lasted for almost a year. The claimant was placed at a real disadvantage in working out whether or not he was being paid correctly as a result of the respondents' failure to provide him with the details they are legally required to provide. There  
10 was absolutely nothing put before me by way of excuse for this failure from the respondents. In all the circumstances I consider it appropriate that the higher amount of four weeks' pay is awarded. This amounts to £2270.56.

64. All of the sums awarded have been calculated on the basis of gross pay. The  
15 respondents shall be entitled to deduct from the sums paid to the claimant any tax or National Insurance Contributions they are required by law to deduct under the PAYE scheme but only on condition that:
1. They immediately account to HMRC for such deductions and pay the said deductions to HMRC immediately
  - 20 2. They provide an itemised payslip to the Claimant showing such deductions and a written receipt from HMRC confirming that the deductions have been duly paid.

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35 **Employment Judge: Ian McFatridge**  
**Date of Judgment: 21 December 2018**  
**Entered in register: 24 December 2018**  
**and copied to parties**