



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4102619/2019**

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**Held in Edinburgh on 8 August 2019**

**Employment Judge A Jones**

10 **Mr Jonny Bates**

**Claimant  
In Person**

15 **James Davies (Scotland) Ltd**

**Respondent  
In person**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The claimant was dismissed by the respondent having served one day of a week's notice and therefore the respondent is required to pay the claimant the balance of the notice pay to which he was entitled being the sum of £320 gross and outstanding accrued holiday pay of 1.5 days being £140 gross.

The respondent failed to provide the claimant with a statement of particulars in terms of section 1 of the Employment Rights Act 1996 within the specified period of two months and the Tribunal orders that the award to the claimant be increased in accordance with section 38(3) of the Employment Act 2002 and orders respondent pay to the claimant an additional sum of two weeks' wages, being £800 gross.

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## REASONS

### Introduction

1. The claimant brought a claim against the respondent for a failure to pay notice  
5 pay; failure to pay outstanding overtime pay and a failure to pay accrued holiday  
pay. The claimant also complained that he had never received a statement of  
particulars as required by section 1 of the Employment Rights Act 1996. The  
respondent's position was that the claimant had resigned voluntarily and had not  
been willing to work his notice and was not entitled to any further sums from the  
10 respondent. The respondent also argued that a statement of particulars had been  
provided to the claimant.

2. The claimant gave evidence on his own behalf as did the respondent. Both  
parties produced documents.  
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### Findings in Fact

3. Having listened to the evidence and considered the papers before it, the Tribunal  
made the following findings in fact.

20 4. The respondent is a sole trader who provides trucks and drivers to a company  
which produces concrete.

5. The respondent employs around 5 or 6 staff at any one time, all of whom are  
drivers. The respondent has been in business for 19 years.  
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6. The claimant was employed by the respondent as a driver from 3 December  
2018 until his resignation on 11 February 2019.

7. The claimant had been advised that there would be no work for him over the  
30 Christmas and New Year period when there was a shut down of the business.  
However, the claimant was paid for 4 days annual leave over that period.

8. The claimant was not provided a with a statement of particulars during his employment which met the requirements of section 1 Employment Rights Act 1996.

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9. The claimant was paid a rate of £10 per hour for the first 40 hours worked in any week and £13 per hour for any additional hours, other than on a Sunday when special rates would apply.

10 10. The claimant worked between 40 and 50 hours per week.

11. There was no discussion between the parties at the commencement of employment as to the requirements for notice periods.

15 12. On 11 February 2019, the claimant advised the respondent by text that he was resigning from his employment. He indicated he was 'quite happy to work the rest of the week'.

20 13. The respondent was unhappy at the short notice given and texted the claimant advising him that he was required to give two weeks notice and should 'finish a week on Friday'.

25 14. The claimant responded by saying that notice had never been mentioned but reiterated that he was giving him 'the week'.

15. The respondent responded by text indicating that the claimant 'return your PPE (personal protection equipment) and just finish' and 'return the gate keys and all company property in your possession.'

30 16. The claimant returned the keys for lorry and left his PPE in the canteen at the depot.

17. The claimant left a sheet stating his hours in that canteen which was not the normal procedure.

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**Observations on the evidence**

18. The main dispute on the evidence was whether the claimant had returned his equipment before the respondent advised him to finish up. The respondent's  
5 position was that he had been advised by another member of staff that the claimant had already left before he was advised by the claimant.

19. The claimant however maintained that he had contacted the respondent in the first instance, that he had been willing to work the rest of the week as notice and  
10 had only contacted a colleague after what he termed as an unreasonable response from the respondent.

20. The Tribunal preferred the timeline which was advanced by the claimant which seemed to be supported by the screengrabs of texts which were produced by the  
15 claimant.

21. The Tribunal concluded that the claimant had been willing to work the rest of the week but had been advised by the respondent to finish up that night and return all equipment.  
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22. During the course of the hearing, the respondent gave evidence that he understood he had provided a statement of particulars to the claimant. He undertook to provide the Tribunal with a copy of that document as soon as possible. The respondent then sent by email to the Tribunal what appeared to be  
25 a job advert in relation to the role in which the claimant had been employed. It did not comply with the requirements of section 1.

**Discussion and decision**

23. The Tribunal concluded that the claimant had been willing to work the remainder of the week as notice. The claimant also conceded in evidence that in order to  
30 give the week's notice he should have given notice at the beginning rather than the end of the day, but that he would have been willing to work an extra day had the respondent required this.

24. The Tribunal therefore concluded that in advising the claimant to 'return his PPE and just finish', the respondent was dismissing him with immediate effect. Therefore the claimant is entitled to receive the balance of the notice pay to which he was entitled which is calculated on the basis of 4 days pay at £10 per hour and working 8 hours per day, amounting to a gross amount of £320. The claimant had already been paid 4 days holiday pay during his employment. On the basis of the dates of his employment he was entitled to a total of 5.5 days and therefore is due to be paid in lieu of 1.5 days which again on the basis of £10 an hour and an 8 hour day would amount to £120.

25. The Tribunal also considered the question of overtime. The claimant claimed that he was due to be paid for an extra 1.5 hours overtime. However the claimant conceded that he had not followed the proper procedure of texting the respondent the number of hours worked and therefore the Tribunal concluded that the claimant had not established that he was entitled to be paid for overtime.

26. Finally, the Tribunal considered the issue of whether the claimant had received a statement of particulars as required by section 1 Employment Rights Act. This requires that an employer provide an employee a written statement of particulars of employment within two months of commencing employment. The statement must set out various matters such as pay, hours of work, notice required, holidays and the date on which employment commenced. It must by definition, be particular to the individual employee. Therefore, a job advert is not sufficient to meet these requirements.

27. Section 38 of the Employment Act 2002 states that where a Tribunal has made an award to an employee in terms of a claim under Schedule 5 of that Act, which includes a claim for unauthorised deductions from wages, and when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) of the Employment Rights Act, the tribunal must, subject to section 5, increase the award by the minimum amount (which is two weeks' pay) and may if it considers it just and equitable in all the circumstances, increase the award by the higher amount (being four weeks' pay).

28. In the present circumstances, the Tribunal concluded that it would be appropriate to increase the award to the claimant by the minimum amount. The Tribunal bore in mind in particular that the respondent is a small employer, that it did not believe the omission was deliberate, but was rather through ignorance of the employer's  
5 duties, and that the claimant had only been employed for just over two months. In addition, there was no suggestion from the claimant that he had asked for but been refused a statement of particulars. Therefore, the Tribunal orders that the award to the claimant be increased by two weeks' pay being £800 gross.

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**Date of Judgment: 22 August 2019**  
**Employment Judge: Amanda Jones**  
**Entered Into the Register: 23 August 2019**  
15 **And Copied to Parties**