THE EMPLOYMENT TRIBUNALS

Claimant: **Mr A Batey**

Respondent: **Callerton Haulage Limited**

Heard at: **North Shields Hearing Centre** **On:** **19th February 2020**

Before: **Employment Judge A M S Green**

Representation:

Claimant: **In Person**
Respondent: **In Person per Mr L Chapman (Director)**

REASONS

1. Oral reasons were given to the parties at the hearing on 19 February 2020. A written judgment was issued to the parties on 3 March 2020. Callerton Haulage Limited ("Callerton") have asked the Tribunal to provide written reasons.

2. Mr Batey presented claims to the employment tribunal which were received on the 14th of December 2019. He is claiming "other" pay, arrears of pay and failure to pay holiday both in terms of six days accrued holiday pay and also an underpayment of holiday pay in respect of holiday that he took in April to May in 2019. He has set out the sums claimed for his holiday pay underpayment/non-payment in his claim form. He is also claiming underpayment of wages which amount to seven days short payment and he has also set out the dates for those in the claim form. The total amount of money that Mr Batey claims is £1,125.90.

3. I heard evidence from Mr Batey, Mrs Laws, who is the office manager at Callerton, and Mr Chapman who is a director and the owner of Callerton.

4. Having heard the evidence it was very clear to me that the following key events occurred:

    a. Mr Batey was employed by Callerton as an HGV Driver. He started his employment on 25th of February 2019 and his employment came to an end on 12th of September 2019 when he resigned.

b. The arrangement between Mr Batey and Callerton was informal in the sense that no written contract of employment was issued to Mr Batey. When I asked Mr Chapman about this, he was very clear that it was an informal arrangement. He knew Mr Batey quite well as a friend and from this her believed no formal contract (i.e. written) needed to be put into place. Mrs Laws confirmed this in her evidence.

c. Throughout his employment, Mr Batey never received an itemised pay slip. I accept that eventually pay slips were prepared and but there was some dispute about whether these were actually sent to him although copies were produced at the hearing. It was suggested that they were sent out to him after his employment ended.

d. Throughout the time he was employed, Mr Batey did not have written particulars of employment (known as a "Section 1 Statement" named after Employment Rights Act 1996, Section 1).

e. Despite there being some differences of opinion, Mr Batey received a regular wage of £569.00 per week. This was a basic salary and I was told by Mrs Laws that when she prepared the Excel spreadsheet to send to the accountant to prepare the payroll that this was the figure that she would put into the spreadsheet.

f. There was disagreement about whether Mr Batey should have been paid extra for additional days worked and after quite a lot of evidence and discussion about this, when we looked at the tachograph and timesheet entries that Mr Batey was relying upon, it was very clear to me that he had not been underpaid for those periods of time. I was satisfied with Mr Chapman's evidence on those points. He was paid for five days and not for the six days as Mr Batey claimed.

g. However, there is a different picture when it came to the calculation of the holiday pay. The Respondent accepts that after Mr Batey had left Callerton, holiday pay had accrued to him. Furthermore, there was to be no disagreement that he took five days holiday during his holiday year in 2019. Mrs Laws accepted that he was entitled to six days accrued holiday on termination of employment. Where the disagreement arose was how to calculate the amount of holiday pay to be paid. Mr Batey's position was that he should have been paid £569.00 as the base calculation for working out the holiday, in other words if he is paid £569.00 per week, if one divides that by five then that give a day rate of £113.80. Callerton's understanding was different. They seemed to suggest that the base rate should be stripped out and not include extra allowances such as nights allowance and so forth as those would not have been worked when Mr Batey was on holiday. I could see some logic in that argument, but the law is quite clear that if a person receives habitually a standard rate of pay which would include allowances and that has to be the base rate to make the calculation. I think the evidence here indicates that Mr Batey should have had a base salary of £569.00 for calculating his holiday.

5. So where does that leave things? If we look at the accrued holiday which he was paid, he received five days when he should have been paid for six. He had accrued six days holiday. Using the base rate of £113.80 that takes the figure up to £682.80. Then we have to deduct £404.72 that he already received for holiday pay that he received which leaves a net balance of £278.08. That should have been paid to Mr Batey, but it wasn't. He was entitled to that money. This is a breach of the Working Time Regulations 1998 and I find in favour of Mr Batey in relation to that.

6. Turning to the question of the unlawful deduction from wages claim, I find against Mr Batey because I am satisfied with Mr Chapman's evidence about those days. I do not think that there were any missing days.

7. We then have to look at the holiday pay that was already paid for the five days holiday that he took in April to May 2019. I do not accept that the tribunal has jurisdiction to make an award in that because for the simple reason that I think that particular claim is time-barred.

8. The rules are very strict about when a claim must be made for that. The Working Time Regulations 1998, regulation 30(2) states that a complaint must normally be presented to a Tribunal before the end of three months beginning the date on which the holiday pay should have been made. Looking at the claim form this aspect of the claim relates to the period April to May 2019. However, the claim was only presented to the tribunal on 14th December 2019 (some 7 months later) so that claim is time-barred, and the Tribunal does not have jurisdiction to hear that. I accept on the evidence that a deduction was made against the pension but that would have come against the unlawful deduction claim. However, I still think that the holiday pay claim of £278.08 stands.

9. There is something that gives me great cause for concern in this case and that was the complete failure to give Mr Batey a Section 1 Statement. From the evidence, it was clear that Mr Chapman has been in business for a long time. Callerton is his business and he told me that he employed between eight and ten people. It is a fundamental principle of employment law under Section 1 of the Employment Rights Act that all employees who have been employed for a minimum period of two months are entitled to be given a Section 1 statement which sets out the basic terms and conditions of their employment without which employees really don't know where they stand and it is not good enough frankly to have verbal agreements between friends. Never has there been more truth to the adage that familiarity breeds contempt. I'm also very concerned there was a lack of any pay slips issued to Mr Batey during the period in question. He was entitled to itemised pay slips under Section 13 of the Wages Act and he was not provided with those. There was a failure there which adds to the poor impression as to how the office paperwork work was being handled.

10. The Employment Act of 2002, section 38 states that Tribunals must award compensation to an employee, where upon a successful claim being made under any of the Tribunal jurisdictions listed in Schedule 5, it becomes evident that the employer was in breach of it duty to provide a Section 1 Statement. The list of jurisdictions in Schedule 5 is extensive and includes breaches of the Working

Time Regulations 1998. An award under section 38 is not dependent upon an employer raising a claim under Employment Rights Act 1996, section 11 for failure to provide a Section 1 Statement. It is enough that the Tribunal makes a finding at the hearing that the employer was in breach of Employment Rights Act 1996, section 1 at the time when the main proceedings were begun.

11. The Tribunal must award the minimum amount of two weeks' pay and may, if it considers it just and equitable in the circumstances, award the higher amount of four weeks' pay.

12. In this case I have allowed Mr Batey's holiday pay claim for one day of holiday pay. This opens the door to awarding Mr Batey compensation for Callerton's failure to give him a Section 1 Statement. As already indicated, Mr Batey does not have to ask for that and I can make that order on my own volition. The starting point is two weeks' pay but I can go up to four weeks if I think it is just to and equitable do so under the circumstances. I think it would be just an equitable to increase the award to four weeks' pay because Mr Chapman is not new to this business. He has run it for a long time, and he has several employees. He should have known better and made sure that basic employment practices were followed. I think under these circumstances the complete absence of providing any Section 1 Statement to Mr Batey was wrong. Under the legislation, a week's pay is capped at £525, and I found that Mr Batey's week's pay was £569.00. I am awarding Mr Batey four weeks' pay calculated by reference to £525.00 which comes to a total of £2,100.00.

EMPLOYMENT JUDGE A.M.S GREEN

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 9 April 2020