Appeal No. UKEAT/0127/19/RN

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS FETTER LANE, LONDON EC4A 1NL

At the Tribunal
On 24 September 2019

Before

HER HONOUR JUDGE KATHERINE TUCKER

(SITTING ALONE)

MR YASER IQBAL T/A SMOKIN' ROOSTER — APPELLANT

MR AMANDEEP SINGH — RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR YASER IQBAL (Appellant in Person)
For the Respondent	Respondent neither present nor represented – on written submissions

SUMMARY

PRACTICE AND PROCEDURE – Parties

CONTRACT OF EMPLOYMENT – Written particulars

An Employment Tribunal found that the Claimant was employed by the Respondent personally, not by a limited company of which the Respondent was a Director. The Tribunal had refused an application to adjourn the hearing which was made by the Respondent some way into it, so as to permit him to bring documents which he had not brought to the hearing. The Employment Judge gave clear reasons for that decision, noting that the Notice of Hearing had clearly set out that the hearing would decide the claim and that the parties were responsible for bringing copies of relevant documents to it, and for ensuring that witnesses were available to give evidence.

The EAT noted that applications to adjourn should be considered carefully but that in the particular circumstances of this case, it was not an error to proceed with the hearing. The appeal was dismissed.

Furthermore, the Tribunal had made an additional award of 4 weeks' pay pursuant to s.38 of the **Employment Act 2002** because the Respondent had not complied with its duty pursuant to s.1 of the **ERA 1996**. The Claimant had claimed that he had suffered unlawful deductions during two separate periods of employment. The first period of employment ran for more than 2 months. However, the Tribunal found that the claim for unlawful deductions in respect of that period was out of time and that it did not have jurisdiction to hear it. The second period of employment lasted for 6 weeks and 2 days. The Tribunal found that the Claimant's claim in respect of that period was well founded and declared that he had suffered unlawful deductions for that period of employment. On appeal, it was contended that it was an error to make an award pursuant to section 38 **EA 2002** when the claim in respect of unlawful deductions for the only period of employment which lasted for 2 months or more had been dismissed for want of

jurisdiction. The decision in **Sefanko v Maritime Hotel Ltd** (UKEAT/0024/18) was considered and applied. The appeal was dismissed: the preconditions for an award pursuant to section 38 of the **EA 2002** are set out clearly in the statute. The starting point is whether, at the time the proceedings were initiated the employer was in breach of his/her duty to the employee pursuant to section 38 **EA 2002** and whether the Tribunal had found in favour of the employee.

When the present claim was initiated, the employer was in breach of its s.1 duty. That duty had continued even after the employee had left employment (section 2(6) **ERA 1996**) and applied even though the second period of employment had not continued for 2 months. The Tribunal found in the Claimant's favour on one aspect of his claim. The Tribunal had been entitled to make the award.

HER HONOUR JUDGE KATHERINE TUCKER

1. This case concerns an appeal from a decision of Employment Judge O'Rourke. His Reserved Judgment and Reasons were sent to the parties on 16 April 2018. The hearing of the claims took place on 13 April 2018. The Employment Judge found that the Respondent had made unlawful deductions from the Claimant's wages in the sum of £451.20 in respect of a period of employment with the Respondent employer from July to August 2017. Further, the Judge found that a claim in respect of unlawful deductions from wages regarding an earlier period of employment was out of time, and that the Tribunal had no jurisdiction to determine it. The Tribunal, however, having made an award against the Respondent employer, also found that the Respondent employer was in breach of its obligation under Section 1 of the **Employment Rights Act 1996** ("ERA") and made an award of four weeks' pay pursuant to Section 38 of the **Employment Act 2002** ("EA"). The reconsideration application decision was dealt with on the papers on 8 June 2018.

2. The Respondent employer, Mr Iqbal now appeals against those decisions.

3. I ought to record that at the outset of this oral Judgment, the Appellant, Mr Iqbal, told me today that he has changed the basis upon which he and his company employ individuals, and that they now are given a contract of employment. I was pleased to hear that. He added that he asks employees to return an email to the employer, including or attaching that contract, so that the employer can prove that they do indeed provide contracts of employment in accordance with their obligations in section 1 of the **1996 Act**.

4. I will refer to the Appellant as the Respondent and the Respondent to the appeal as the Claimant, as they were in the claim before the Tribunal.

The facts

5. I have taken the facts then from the judgment of the Employment Tribunal ("the ET"), read together with the reconsideration application decision.

6. The Claimant worked for the Respondent in one of the Respondent's takeaway restaurants. The Claimant contended that his employer was Mr Iqbal. Mr Iqbal contended that he was not the correct Respondent and that he had not employed the Claimant. He stated that, the correct Respondent was Smokin' Rooster Limited. This is clear from the Reasons of the Tribunal: for example, paragraph 4 provides as follows:

> **"4. Mr Iqbal denied that he was the employer, it being instead Smokin' Rooster Limited, of which he and his brother, Mr Nasar Iqbal, are directors."**

The Judge then went on to identify that there were issues about the hours which the Claimant worked and the terms of a contract which the Respondent asserted he had provided to the Claimant.

7. The Tribunal found that the Claimant's employer was Mr Yaser Iqbal, and an award was made against him. The Claimant sought to recover unpaid wages for the period of time from 13 July 2017 to 29 August 2017, a period of some six weeks and five days. The Tribunal accepted the Claimant's evidence about the hours that he said he had worked; that he was paid less than the national minimum wage; and, furthermore, that he had suffered deductions from his wages in the amount of £451.20.

8. The Tribunal also considered a claim made by the Claimant that he had suffered deductions from wages in May 2017 during an earlier period of employment. It is clear from the Reasons (for example, paragraph 6) that the Claimant also asserted that he was employed by

A the Respondent at that time. The Tribunal found that any claim in respect of the earlier period of employment was out of time, and the Tribunal dismissed that claim.

B 9. Although the identity of the Claimant's employment regarding the second period of employment was clearly an issue, there is nothing, in my judgment, within the Judgment or the Written Reasons, or, indeed, the Response lodged by Mr Iqbal to suggest that there was any further issue regarding the identity of the employer for the first period of employment other than the same issue which was litigated in respect of the second period employment (i.e., whether the employer the Respondent Mr Iqbal or Smokin' Rooster Ltd). Today, in submissions, however, Mr Iqbal has argued that the earlier period of the Claimant's employment was a period of employment not with either Smokin' Rooster Limited nor with Mr Iqbal, but, in fact, with Smokin' Rooster No 2 Limited.

E 10. During the course of the appeal hearing, the Respondent drew my attention to two documents from Companies House. Those indeed do show details of two companies. The first is Smokin' Rooster Limited. The directors of that company, appointed in 2011 are Mr Nasar Iqbal and Mr Yaser Iqbal. The second company is Smokin' Rooster No 2 Limited. The only director of that company is Mr Nasar Iqbal. Save for producing the printouts from Companies House, there are no other documents before me on appeal regarding the contention that the Claimant was employed by Smokin Rooster No 2 Limited. For example, there are no payslips or a P45 from Smokin' Rooster No 2 Limited. Furthermore, the issue of whether the Claimant's employer was Smokin Rooster No 2 Limited does not appear to have been an issue that was advanced before the Tribunal. Looking at the Response lodged in present claim before the Tribunal, there is no reference to Smokin' Rooster No 2 Limited.

11. The first time this point appears, possibly, to have been identified as a potential issue, was during the course of the Rule 3(10) Hearing at the Employment Appeal Tribunal. His Honour Judge Simon Auerbach in the Order of 10 April 2019 identified that there was an issue as to whether or not there was an error in making an award pursuant to section 38 of the **2002 Act**, if it may have been concluded that the earlier period of employment was with a different employer. The reasons, however, setting out why the Judge allowed the matter to proceed to a Full Hearing make no reference to the existence of a second company, Smokin' Rooster No 2 Limited. Notwithstanding that matter, Mr Iqbal wanted me to consider that specific issue today. I acknowledge that Mr Iqbal states that he has nothing to do with that company. I observe that that may be at odds with some of the facts set out in an earlier ET decision where Mr Yaser Iqbal appears to have entered a Response on behalf of, he says, that company, and identified himself as the point of contact for it.

The Tribunal's Judgment

12. The Tribunal heard evidence from Mr Iqbal and the Claimant. It is clear that the Judge was unimpressed by Mr Iqbal as a witness. The Judge went as far as to find that he had fabricated documents. Those were significant findings.

13. The Judge recorded, paragraph 8 of the Judgment, that he had refused an application for an adjournment made by Mr Iqbal. It is important that I set out precisely what the Judge said about that. Under the heading of, "Nature of this hearing" the judge stated as follows:

> **"Sometime into this Hearing, when challenged as to the absence of relevant documentary evidence on his part, such as payslips or a P45, Mr Iqbal asserted that he had thought that this was a preliminary hearing, and that, therefore, he was not required to bring such documentation or to call witnesses, which he could have done had he realised the true nature of the hearing. He also asserted that on arrival at the Tribunal, he had spoken to the Tribunal clerk, [on the morning of the hearing] who had confirmed that the hearing was a preliminary hearing…."**

14. The Judge refused the application for an adjournment and gave five, clearly articulated, reasons for refusing that adjournment. First, he referred to the fact that the Notice of Hearing letter, dated 25 January 2018, which was sent to both parties, made it clear what the nature of the hearing was. It stated:

> "*…that one hour had been allocated to hear the evidence and decide the claim" and it also stated: "It is your responsibility to ensure that any relevant witnesses attend the hearing, and that you bring sufficient copies of any relevant documents*." **(Emphasis added)**

15. Secondly, the Judge considered that it was somewhat irrelevant what the clerk had said outside the hearing room, just before the hearing, because any preparation that could have been done by that stage was minimal. During the course of submissions today, Mr Iqbal stated that he called the Tribunal in advance of the hearing to check what the nature of the hearing was, and that they had confirmed that which he thought, namely, that it was a Preliminary Hearing. No reference to that telephone conversation appears to have been made before the Tribunal.

16. The third reason given by the Judge was that Mr Iqbal, although a litigant in person, had previous experience of Tribunal hearings, having been involved in another case which the Judge described as being very similar to the one he was considering. I was, initially, confused about some of the submissions that Mr Iqbal made today regarding that case. As a result, I downloaded a copy of the Judgment in that case in an attempt to better understand the points that Mr Iqbal was seeking to advance. I allowed Mr Iqbal the opportunity to comment upon it. In that case Mr Iqbal had contended that the correct employer was a limited company. The Tribunal did not accept that assertion. Having considered the Judgment, and Reasons I cannot see that it supports Mr Iqbal's appeal or any of the submissions made by him.

17. Fourthly, the Judge did not consider that Mr Iqbal was a reliable witness. It is clear that the Judge did not feel able to place confidence in the assertions or statements which Mr Iqbal

had made. Fifthly, the judge considered that it would be inconsistent with the overriding objective to adjourn the hearing given the issues at stake.

18. The Judge then went on to determine the claim. In so doing, the Judge preferred the Claimant's account of events over that of the Respondent's. The Judge found that although Mr Iqbal had asserted that he had provided the Claimant with a contract of employment, he was not satisfied that the document in the bundle was genuine. He observed that the copy of it was not a clear or 'good' copy. I also raised this as an issue with Mr Iqbal: the copy of the document prepared within the appeal bundle is almost illegible. He was unable to provide a better copy.

19. The Judge found that it was likely that the Claimant's signature had been cut and pasted onto that document.

20. The Judge also found that the Claimant had not been provided with a statement of terms and conditions of employment as required by section 1 of the **Employment Rights Act 1996**, and made an award for four weeks' pay to the Claimant. The reasoning for that award was at paragraph 16 of the Judgment under the heading of, "Failure to provide terms and conditions of employment". The Judge stated as follows:

> **"16. Clearly the Respondent failed to provide terms and conditions of employment compliant with s.1 of the ERA, in either the previous or most recent period of employment. Applying s.38 of the EA, as to whether the award to should the Claimant be of two, or four weeks' pay, I consider, taking into account the Respondent's utter failure to comply with any of the documentary requirements of employment legislation and his fabrication of the contract document he now provides that four weeks is appropriate, calculated at 50 hours per week, [making a] total of £1,410."**

21. The Judge revisited that issue on the application for reconsideration. In the reconsideration decision the Judge dealt with a number of issues. By that stage he had had the opportunity to see a P45 and payslips, which purported to be from Smokin' Rooster Limited. (These appear to be the documents Mr Iqbal had wished to present at the final hearing). The Judge declined to admit that evidence as new evidence, holding that it was evidence that could,

and should have been properly provided before to the Tribunal. The reasons for that are at paragraph 11 of the Reconsideration Judgment.

22. Furthermore, in respect of the award under section 38 the Judge noted that the second period of employment was less than two months. He stated as follows:

> **"9. Reference is made to paragraph 16 of the Judgment, in which it was found that the Respondent had failed to provide s.1 compliant terms and conditions of employment to the Claimant, in either of his two periods of employment, firstly a period from January to May 2017 and secondly, in a later period of employment, from 13 July to 29 August 2017. It is self-evident that the latter period of employment is for less than two months and that therefore the Respondent's duty to provide terms and conditions for that employment was not, subject to s.1(2) ERA, engaged. There was (and isn't now) any dispute that the first period of employment was for more than two months and that the Respondent did not provide terms and conditions of employment in respect of it…."**

23. The Judge continued at paragraph 10 that:

> **"…. At the point that the proceedings were begun (in January 2018), the Respondent continued to be in breach of s.1(1) and (2) ERA, in that he had failed to provide terms and conditions of employment to the Claimant for the first period of employment. There is no requirement in s.38 EA that the breach of s.1(1) ERA relate to the period of employment for which the claim was successful. Accordingly, the judgment in this respect stands."**

24. I have seen the documents produced by the Respondent regarding the payslips and the P45. The Appellant seeks to invite me to consider those under the rules set out in **Ladd v Marshall** [1954] EWCA Civ 1.

The Appeal

25. The two following grounds of appeals were permitted to proceed following a hearing pursuant to Rule 3(10) of the **EAT Rules of Procedure**. First, that in circumstances where (a) no order for advanced disclosure and exchange of documents was made prior to the ET hearing, (b) the Tribunal made findings as to the identity of the employer, the authenticity of documents, and the amount of wages owed, and (c) the Respondent was asserting that he had further

documents relevant to those issues, the Tribunal erred in proceeding to determining those issues without permitting or directing further disclosure.

26. The second ground was as follows:

> **"ii). The Tribunal erred in making an award pursuant to section 38 of the Employment Act 2002 by reference to an earlier period of employment, and/or doing so in circumstances where the only substantive claim in relation to that period had been dismissed and/or doing so in circumstances where, if it also erred as per ground (i) it may be concluded that the earlier period was with a different employer."**

27. I consider the two grounds of appeal separately. Before doing so I set out the following: the Appellant Respondent below represented himself today. He is not a lawyer. He is however clearly able to understand the principles that were being applied in this case. He was able to refer me to **Ladd v Marshall**. He was able to draw to my attention relevant documents. Like many litigants in person, at times, he found it difficult to focus on the fact that an appeal lies to the EAT in respect of an error of law, and not to engage more broadly in the substance and merits of the underlying claims. In particular, he found it difficult to, if I use the colloquial term, 'let go' of his evidently felt anger towards the Claimant, genuinely believing, he says, that the Claimant stole from him or his companies, and his subsequent disappointment that no action was taken by the CPS in relation to that. That evident frustration and anger at times led him into issues which were not the subject of the appeal. The function of this Tribunal is to adjudicate in cases where there has been an error of law.

The law

28. Section 13 of the **Employment Rights Act 1996** (ERA 1996) sets out an employee's right not to suffer unlawful deduction from wages. Section 1 of the **ERA 1996** sets out an employer's obligation to provide a written statement of terms and conditions of employment. Section 38 of the **Employment Act 2002** provides a Tribunal with a power to increase an award made to an employee by 2-4 week's pay where the employer is in breach of section 1 of

A the **ERA 1996**, alternatively to make an award of the same amount if no award is made in respect of the claim itself. The relevant provisions are

> **"38 Failure to give statement of employment particulars etc**
>
> **(1). This section applies to proceedings before an employment tribunal relating to a claim by [F1 a worker] under any of the jurisdictions listed in Schedule 5 [the claim for unlawful deductions is one such claim]**
>
> **(2). If in the case of proceedings to which this section applies —**
>
> > **(a)the employment tribunal finds in favour of the [F2worker], but makes no award to him in respect of the claim to which the proceedings relate, and**
> >
> > **(b)when the proceedings were begun the employer was in breach of his duty to the [F2worker] under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18) (duty to give a written statement of initial employment particulars or of particulars of change …**
>
> **the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the [F6worker] and may, if it considers it just and equitable in all the circumstances, award the higher amount instead**.
>
> **(3). If in the case of proceedings to which this section applies—**
>
> > **(a)the employment tribunal makes an award to the [F7 worker] in respect of the claim to which the proceedings relate, and**
> >
> > **(b)when the proceedings were begun the employer was in breach of his duty to the [F7 worker] under section 1(1) or 4(1) of the Employment Rights Act 1996 …**
>
> **the tribunal must, subject to subsection (5), 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 Tribunal does not have to make such an award if it considers that it would be unjust or inequitable to do so.

29. Section 2(6) of the **ERA 1996** provides that:

> **"A statement shall be given to a person under section 1 even if his employment ends before the end of the period within which the statement is required to be given."**

Conclusions

Ground 1

30. As regards the failure to adjourn the case, I consider that there are a number of important points to note. First, it is clearly recorded in the Judgment that the adjournment

application was made 'some way through' the hearing, and that it was only made once the employer Respondent, Mr Iqbal, had been challenged about the absence of any documents. It has not been suggested that that is inaccurate. Secondly, I acknowledge that there was no Order for disclosure before the hearing took place. It is also clear that the Judge in this case made significant findings adverse to the Respondent's credibility, and that he found that he had fabricated documents. Thirdly, in those circumstances, partway through a case dealing with adjudicating upon many disputes between a Respondent and a Claimant, some Judges may have considered that it was appropriate to adjourn, others may not have done. Nonetheless, the fact is that the decision whether to adjourn was one in respect of which the Judge had considerable discretion. The Judge had an obligation to exercise that discretion judicially, fairly, having regard to all relevant matters, and not taking into account matters which were not relevant. The Judge had to ensure that he complied with the overriding objective: for the Tribunal to deal with cases fairly and justly. Those principles of fairness and justness apply, not only, to the litigation in hand (the individual dispute which falls to be adjudicated between the two individual parties to the proceedings) but something which must apply to all who wish to bring their case before the Tribunal, having regard to the overall resource of the Tribunal. The ET rules also make it clear that dealing with a case fairly and justly includes trying, so far as possible, to ensure that the parties were on an equal footing, dealing with cases proportionately to the complexity and issues, avoiding delay, so far as that it is compatible with proper consideration of the issues.

31. From the Judgment it appears that the Claimant was ready to proceed with his case. The Respondent had attended a hearing at which he had been given full, written, notice that he needed to attend with any witnesses or any documents he wished to rely upon and that the claim would be decided upon at that hearing. He attended with only a copy of the Response in his

possession. He explained in the appeal that that was simply because he believed that the hearing was going to be a Preliminary Hearing. Putting to one side for a moment the fact that that did not appear to have been raised before the Tribunal, he could not explain, however, how he was going to address any of the matters which might have been raised at that Preliminary Hearing without any of the underlying relevant documents. Furthermore, I remained a little unclear on the submissions made by the Respondent today where the idea that there might be a Preliminary Hearing had come from given that which was said today and that recorded in the Judgment. I also clarified with the Respondent that there had not been a Preliminary Hearing in the earlier Southampton case; there had just been one hearing.

32. On balance, I consider that the Judge in this particular instance, on the particular facts before him, was entitled to decide not to adjourn the case. He, as the first instance judge, was best able to assess the situation on the grounds, and to assess the fairness or otherwise of the granting that application in the Reconsideration Judgment, it is clear that the Judge had not believed some of Mr Iqbal's assertions that were made during the course of the hearing.

33. The Judge gave very clear reasons why he exercised his discretion in favour of not granting the adjournment. In addition, on the reconsideration application he revisited the issue, having seen the relevant documents. On balance I am not satisfied that there was any error of law with which this Tribunal should interfere in respect of the refusal to grant an adjournment, and notwithstanding the fact that there had not been a previous directions hearing. This is not a decision which can be said to be plainly wrong. Different judges may have adopted different approaches. This Judge exercised his discretion judicially and explained his reasoning.

Ground 2

34. The second ground of appeal was in relation to section 38 of the **EA 2002**. When considering this case, I provided a copy of a Judgment to the Appellant in the decision of **Stefanko and Others v Maritime Hotel Limited and Another** UKEAT/0024/18. That is a judgment of Her Honour Judge Stacey sitting in the EAT. In it she considered in some detail the provisions of section 38 of the **EA 2002**, and the obligation under section 1 of the **ERA 1996**. I provided a copy of that Judgment to the Appellant, and I then stated that I was happy to provide further time for the Appellant to consider it. The Appellant did so and asked for some more time, and I readily granted that additional time for him to consider that authority.

35. The Appellant carefully drew to my attention issues regarding the company structures relevant to the facts of that case. I drew his attention to those parts of the decision which I considered were potentially relevant in this appeal. I considered that the case suggested that, having regard to section 198, section 1 and section 2(6) of the **ERA 1996**, the law which applied at the relevant time for this claim can be succinctly stated as follows:

> **"An employer has an obligation to provide an employee with a statement of initial employment particulars containing the information set out in Section 1(3) of the ERA 1996. That, pursuant to Section 198 of the 1996 Act, applies to all employees, save for those who have worked continuously for less than one month. Further, pursuant to Section 2(6) of the 1996 Act, the obligation in Section 1 continues even if an employment ends before the end of the two-month period set out in Section 1(2) of the ERA 1996."**

Mr Iqbal stated that he fully accepted that and took, as I understood his submissions, no point in relation to that statement of law.

36. The application of that law to this particular case is, in my judgment, significant. The result is that the Tribunal would have been able to make an award pursuant to section 38 of the **ERA 1996**, even though the second period of employment lasted for less than two months because the obligation to provide the statement continued, even after the employment ended.

Therefore, the summary statement of the law set out in the Reconsideration Judgment was, in my judgment, an error to the extent that it suggested that an award could only be made if the employment had continued for two months. That failed to take account of section 2(6) of the **ERA 1996**.

37. In my judgment, the power to make an award pursuant to section 38 of the **EA 2002** applies if, in respect of proceedings to which that section applies, the Tribunal either finds in favour of the employee and makes no award in respect of a claim to which the proceedings relate, or, makes an award in respect of a claim to which the proceedings relate.

38. In this case the ET would have been at liberty to make that award in respect of the second period of employment because, at the date that the claims were issued, no statement had been issued (the breach of section1 **ERA 1996** was still outstanding), and the Tribunal found in favour of the Claimant.

39. Furthermore, although there is no requirement in section 38 of the **EA 2002** itself that there is a link between the claim which succeeds, and the failure to provide a statement of terms and conditions, the Tribunal must either have found in the Claimant's favour but made no award in respect of the relevant claim, or, made an award in respect of the claim. I consider that, arguably, had the Tribunal held that it had no jurisdiction to hear the claim, it cannot be said that the Tribunal 'found in favour of' the claimant. However, in this case, the Tribunal did find in the claimant's favour in respect of the second period of employment, and made an award. The breach of the requirements of section 1 was continuing at the date of issue of the proceedings. The Tribunal was entitled to make an award, albeit for different reasons to those given by the Employment Judge.

40. Mr Iqbal submitted that the earlier employment was in fact with an entirely different company, naming Smokin' Rooster No 2. He stated that he had no idea if a contract was provided to the Claimant during his employment there because it had nothing to do with him. This contention was not advanced before the Tribunal. As I have already noted, there was no suggestion at all in the Response lodged by Mr Iqbal that the earlier employment had actually been with Smokin' Rooster No 2. There is no reference to that company in either of the Judgments, and the only point at which it may possibly have been raised is at Rule 3(10), although that is not altogether clear. Further, in the other Tribunal proceedings it appeared that Mr Iqbal had completed the documents and represented Smokin' Rooster No 2. Finally, at the point at which Mr Iqbal wishes to advance that argument, he has not produced any payslips or documents to evidence his assertion that the Claimant's earlier employment had actually been with Smokin' Rooster No 2. He has not explained why the issue was not advanced before the Tribunal. I did not consider that I should allow that argument to be advanced now before the EAT for the first time.

41. In conclusion in respect of the second ground of appeal, my judgment is that there was no error of law in the respect of the award made pursuant to section 38.

42. I note as well that the provisions in relation to providing employment particulars will change with effect from 6 April 2020 following the introduction of the **Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2019**. Those regulations will introduce two changes. First, the statement of employment particulars will become a 'day one right', i.e. they must be provided on day one. Secondly, there is an amendment in respect of holiday pay.

43. The provision in the **2002 Act** for the award of additional sums of money when there has been a failure to provide employment particulars underlines just how important it is to provide those employment particulars. They provide transparency and they provide clarity, for employer and employee alike. In this case, if those particulars had existed, it would have been clear from the date that they were provided whom the Claimant's employer was, what the employee's contractual obligations were, and what his rate of pay was. Had all of that been done it may have been that this case would never have reached a Tribunal, or, if there had been a dispute about the amount of money which had been paid, it was one which would have been capable of quick resolution by looking at employer records of hours worked, and the contractual document setting out of rates of pay. Importantly, there could have been no ambiguity as to who the identity of the employer was, and, importantly, there would have been no ambiguity as to rates of pay.

44. I finish on the positive note that I started with. I understand that the Respondent has now changed his practice, and he now provides clear contracts of employment, and evidences that the employees receive them by asking them to return them with an email. I am delighted to hear that and I hope that that means that he avoids situations such as he has experienced in these proceedings and in the earlier proceedings in Southampton.

45. That is my judgment.