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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100036/2021 (V)

Final Hearing Held by CVP on 21 and 22 June 2021 at 10.00am
10 **Employment Judge Russell Bradley**

Mr P Cebula **<u>Claimant</u>**
Represented by:
A Sierant
Consultant

Nickam Limited **<u>Respondent</u>**
Represented by:
Macih Maham
Director of respondent

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgement of the employment tribunal is that: -

1. The Claimant was unfairly dismissed by the respondent; the Respondent shall pay to the Claimant the sum of ONE THOUSAND ONE HUNDRED AND 20 NINETY ONE POUNDS AND FIFTY FIVE PENCE (£1,191.55) made up of a basic award of THREE HUNDRED AND SEVENTY ONE POUNDS AND TWENTY PENCE (£371.20) and a compensatory award of EIGHT HUNDRED AND TWENTY POUNDS AND THIRTY FIVE PENCE (£820.35).
2. The respondent has made an unlawful deduction from the claimant's wages 25 in contravention of section 13 of the Employment Rights Act 1996 in respect

of the notice period; the respondent is ordered to pay to the claimant the sum of SIX HUNDRED AND NINETEEN POUNDS AND ELEVEN PENCE (£619.11).

3. The claim for accrued and untaken holiday pay succeeds; the respondent is ordered to pay to the claimant the sum of SIX HUNDRED AND NINETEEN POUNDS AND ELEVEN PENCE (£619.11).
4. The claim in terms of section 38 of the Employment Act 2002 succeeds; the respondent is ordered to pay the claimant the sum of SIX HUNDRED AND EIGHTY POUNDS (£680.00).

Introduction

1. This was a final hearing to determine claims of unfair dismissal and for notice pay, holiday pay and in respect of an alleged failure to provide written particulars of employment. The agreed effective date of termination was 31 October 2020. Early conciliation began on 2 November. A certificate was issued on 17 November. The ET1 was presented on 5 January 2021. The ET3 was lodged on 20January.

2. On 17 February a case management order was issued. It required parties to liaise to lodge a copy of a file (or single set of documents) 14 days before the first day of this hearing. An indexed hearing bundle was duly produced. It indexed 37 entries totalling 191pages. Various pages were added in the course of the hearing.

3. The index also included entries 38 to 55 being various CCTV recordings shown as being at various times on 19 September 2020. I was given a disc which was said to contain the recordings. In discussion with the parties before hearing evidence it was agreed that I would not consider them for two reasons. First, they were not relevant to the issues. Mr Maham explained that the footage was of the respondent’s premises being left unattended. Given the reason relied on for dismissal (redundancy) and the criteria said to have been relied on the footage was of no relevance. Second, there were no

means by which it was possible for all to view it in a hearing conducted by CVP.

The issues

4. Given the claims and from my reading of the ET1 and the ET3, the issues for determination were:-
    a. What was the reason for the claimant's dismissal? The respondent offers to show that the reason was redundancy, which is in dispute; the claimant argues that the reason was not redundancy; that it was a sham as is evidenced by his allegation that two new chefs were employed by the respondent shortly after the claimant's dismissal.
    b. If the reason for dismissal was redundancy, was it nonetheless unfair in that
        i. The claimant was not given sufficient warning or consultation about redundancy
        ii. The claimant was denied a right of appeal against his dismissal
        iii. Was there a reasonable selection decision including questions of pooling, selection criteria and scoring
        iv. No reasonable steps were taken to consider alternative employment?
    c. Was the dismissal fair or unfair in the circumstances including the size and administrative resources of the respondent and in accordance with equity and the substantial merits of the case?
    d. If the claimant was unfairly dismissed
        i. To what basic award is he entitled?
        ii. To what compensatory award is he entitled?
    e. Could the respondent have fairly dismissed and, if so, what were the chances that the employer would have done so?
    f. In the event that the reason for dismissal was not redundancy did the respondent unreasonably fail to comply with the ACAS Code on Discipline and Grievance?
    g. If so to what compensation is the claimant entitled?

h. To what period of leave was the claimant entitled in the relevant year (1 April 2020 to 31 October 2020)?
i. In the period from 1 April to 31 October how much leave had been taken by the claimant?
5 j. How many holiday days' pay were paid to him after 31 October?
k. To what period of notice was the claimant entitled?
l. For what period of notice was he paid?
m. What if any is the balance of the entitlement?
n. Did the respondent fail to provide to the claimant new particulars of
10 employment as required by sections 1-4 of ERA 1996; if so to what compensation is he entitled?

The evidence

5. I heard evidence for the respondent from Macih Maham, a Director of respondent and from Donald Ward. The claimant gave evidence and called
15 Anna Clinch and Kacper Kryczyk as witnesses. By agreement and because of availability, Ms Clinch gave her evidence after Mr Maham and before Mr Ward, so out of order.

6. The hearing was conducted throughout with the benefit of a translator, translating to and from Polish principally for the benefit of the claimant but
20 also for Kacper Kryczyk's evidence.

Findings in Fact

7. I found the following facts admitted or proved.
8. The claimant is Pawel Celuba. He was employed by the respondent between 20 June 2017 and 31 October 2020. He was employed as head chef. He
25 worked at the respondent's restaurant at 184 Rose Street, Edinburgh. The restaurant is called Miros Cantina Mexicana, "*Miros*".
9. The respondent is Nickam Limited. It is a limited company. It was incorporated in August 2020. Macih Maham is one of its two directors. The other is Nick Cyrus. Mr Maham was appointed a director in August 2020.

10. Prior to August 2020 the restaurant Miros was operated by a relative of Mr Maham. For at least some of the time of that operation, the restaurant used the services of Neil Nisbet & Co Limited, chartered accountants, Edinburgh.
11. For a period prior to 2017 the claimant worked as a chef at the Castle Arms. By virtue of that work, the claimant and Mr Maham came to know each other.
12. On or about 28 August 2020 the respondent acquired Miros. On or about that date, the claimant's employment transferred to the respondent by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006. At that time, the respondent employed about 8 staff at Miros. About 3 of them were chefs.
13. For a period between 6 April and 28 August 2020 the claimant was furloughed.
14. The respondent retained the services of Nisbet & Co as its accountants for the restaurant after the TUPE transfer.
15. On or about 31 August Mr Maham met with the staff of Miros. The business had recently re-opened. Mr Maham explained to the staff that; all of their jobs were at risk unless they worked together; the rent for the property was very high; it was difficult for the respondent to cope with; and as a result it needed to save money. At the meeting he proposed that staff reduce their hours. They agreed. Shortly thereafter, Mr Maham tried to reduce the hours worked by the chefs. The claimant objected. The claimant explained his reasons for objecting. Mr Maham accepted the explanation. As a result he did not reduce the claimant's hours.
16. The respondent prepared a written statement of main terms of employment for its staff to work at 184 Rose Street, Edinburgh (**pages 47 and 48**). The respondent did not issue it to any staff as it did not have the chance to do so. The respondent did not issue a copy to the claimant.
17. About two weeks after 28 August, Mr Maham noticed that the restaurant had few or no customers on Mondays, Tuesdays or Wednesdays. As a result, he decided to close the restaurant on those days.
18. A short time thereafter the respondent used social media to try to generate custom from local customers. That activity produced a good response. As a

result, the restaurant returned to normal trading days. Normal trading continued for a few weeks.

19. From about 19 September, the claimant was absent from work by reason of illness. He reported that he had COVID-19 symptoms. On 24 September he sent a What'sApp message to Mr Maham. In it he said that; he had worked 54.5 hours in the period 14 to 20 September; he was still unwell; he had been tested the previous day and was awaiting the result.

20. In week commencing Monday 21 September one of the respondent's other chefs (Kacper Kryczyk) was on holiday. In that week the claimant was not at work as he was unwell. As a result the restaurant had only one part-time chef and a kitchen porter.

21. The restaurant was fully booked on the Friday and Saturday of that weekend. With assistance from the previous owner, the respondent managed its service on Friday (25 September). Mr Maham needed help to cover chef duties beyond 25 September. He therefore contacted a friend who operates another restaurant. It was agreed that the respondent could engage one of its chefs, Matthew Gillan, to help to cover its needs. Mr Gillan was rostered to work for the respondent at Miros in the two week period from Monday 28 September to Sunday 11 October. The claimant returned to work on Monday 28.

22. Following an announcement by the Scottish Government on 7 October, the respondent closed the restaurant at 6pm on Friday 9 October.

23. As a result of that closure, the respondent decided to make half of its staff redundant. In selecting those to be made redundant the respondent used two criteria being (1) length of service and (2) cost to the business. There was no discussion or consultation with the claimant or any other members of staff about the use of those criteria. There was no discussion about the application of the criteria to the workforce.

24. By email on 10 October, Mr Maham gave notice to the claimant that his employment would end on Saturday 31 October 2020. The email was the first time that the respondent had advised the claimant that he was even at risk of redundancy.

25. The email made no offer of a right of appeal against dismissal.

26. On or about 13 October, the claimant sent to Mr Maham a sick note from his general practitioner. It recorded that the claimant had been assessed by his GP on 13 October. It advised that he was not fit for work in the period 9 October to 9 November.

27. The respondent relied on the advice of Nisbet & Co, its accountants, in deciding what payments were due to the claimant following on from the email of 10 October.

28. As at the claimant's effective date of termination his gross weekly pay was £340.00. As at that date, his net weekly pay was £302.35.

29. The respondent's holiday year was 1 April to 31 March. The claimant took paid leave between 27 July and 3 August 2020. He received £200 as pay for that leave period.

30. For the period between 10 and 31 October, the claimant was paid £287.55 being statutory sick pay. Three such payments each of £95.85 were made on or about 24 October, 31 October and 6 November. Those payments were marked as being paid to him in the three week period of notice to which he was entitled (see **page 94** of the bundle).

31. On or about 13 November the respondent paid £1158.80 to the claimant. The respondent believed that this was what was due to the claimant as a statutory redundancy payment. The respondent relied on advice from its accountant that the claimant's weekly wage for this purpose was £257.51 based on his average hours worked in tax year 2019-2020 (see **pages 92 and 93**).

32. On or about 30 November the respondent paid £89.51 to the claimant in lieu of accrued and untaken holidays (see **page 94**).

33. The claimant did not try to appeal the decision to dismiss him. Had he done so, it would have made no difference to the outcome. An appeal would have been considered by Mr Maham.

34. The claimant maintained a loss of earnings after his dismissal of one week (**page 101B** which was an updated schedule of loss lodged on 22nd June).

Comment on the evidence

35. For the most part, Mr Maham's evidence was credible and reliable. On two aspects, however, his credibility was doubtful. First, on the criteria used to select employees for redundancy. The respondent's written position was that (**page 32** at paragraph 7) it used selection criteria including length of service, productivity, absentee records and punctuality. At **page 73** of the bundle, there was a note of criteria used for redundancy. From what is said there and from what Mr Maham said at the outset of the hearing, it set out the criteria used to select the claimant. Those criteria differ in that the only criterion common to the pled position is length of service. **Page 73** adds a second criterion, "*employee costs*". In his evidence Mr Maham said that only two criteria were used being length of service and cost. In cross examination he said that he had in fact used the criteria of productivity and punctuality but that the information about the employees was such that it did not distinguish the claimant from the others, or indeed distinguish any of them from each other. There was no documentation in the bundle to support a finding that productivity or punctuality had been used. Given the apparent speed with which the decision to dismiss the claimant was taken and in the absence of that material it was not credible that either of those two criteria were used. That conclusion was supported by the respondent's own evidence at **page 73**. The second issue on Mr Maham's credibility was to do with a meeting which he said took place on 19 September 2020. His evidence (which was foreshadowed in paragraph 7 of the ET3 response document, **page 32**) was that at the meeting he said that there was a chance of redundancy. His evidence was that this chance was not just in respect of the claimant, but for everyone. The claimant strenuously denied that such a meeting took place. The bundle had no contemporaneous material to support a finding that such a meeting had taken place. **Pages 56 to 72** of the bundle contained a number of What'sApp messages between Mr Maham and the claimant in the period 19 September to 14 October. There is no mention in them of a meeting or a discussion about the risk of redundancy. Ms Clinch and Mr Kryczyk both gave evidence that they too had been made redundant on 10 or 11 October

but had had no prior notice and had not attended such a meeting. On balance, I did not accept that a meeting took place between the claimant and Mr Maham on 19 September.

36. Donald Ward gave evidence about an episode that he said had taken place while the claimant was employed at the Castle Arms. That evidence was of no relevance to the issues which I had to decide. I made no findings based on his evidence.

37. While intending no criticism, the bundle contained a number of documents which were not spoken to by any witness, nor were they referred to by either representative. I disregarded them.

Submissions

38. Mr Maham made a short submission. He highlighted two points. First, in relation to holiday pay he reiterated that there was no sum outstanding and due to the claimant. The respondent's accountant had calculated what was due. The rationale was set out on **page 92**, the accountant's letter to him of 18 January 2021. The amount which was due (£89.51) had been paid on 30 November. On the issue of unfair dismissal, Mr Maham said that the respondent had had no time to follow a consultation exercise. The situation was abnormal due to the pandemic. When the Scottish Government ordered lockdown, he required to act quickly to save the business. Finally, he said that he had been accused of character assassination whereas he was simply telling the truth. In contrast he felt that **page 75** of the bundle showed character assassination of the business in that it was a social media comment "*awful place, selling out of date food .. avoid this place*" left by the claimant's daughter on 11 October immediately after the claimant's dismissal.

39. In reply, Mr Sierant first addressed the issue of unfair dismissal. Under reference to the decision of the Employment Appeal Tribunal in the case of ***Mental Health Care (UK) Ltd v Biluan*** [2013] All ER (D) 265 he referred to paragraph 35 and five steps (which are set out in paragraph 34) said to be "*very much the sort of consultation exercise that we would expect an*

employer to carry out." He highlighted that in this case there was no consultation. The claimant had not been given any opportunity to ask questions. There had been no staff meetings. There had been no consultation on the criteria used. There had been no right of appeal. The claimant's witnesses had confirmed that there had been no consultation whatsoever. He reminded me that Mr Maham's position was that he had had to make the decision quickly, so it was even more probable that there had been no consultation. In summary, the claimant had been robbed of any opportunity to influence the decision. He had been unfairly dismissed. On the question of unpaid leave, TUPE provided that benefits including the right to paid leave transferred to the respondent. The relevant holiday year began on 1 April. By virtue of Regulation 14 of the Working Time Regulations, the claimant is owed the amount as per his revised Schedule of Loss (£911.10). On notice pay, the claimant was entitled to 3 weeks' notice conform to section 86(1)(b) of the Employment Rights Act 1996. He referred also to section 89(2) to (4) of that Act in relation to the fact of the claimant's period of absence in the notice period. On the claim for a failure to provide a section 1 statement (under reference to section 38 of the Employment Act 2002) the claimant (as per his Schedule of Loss) claimed two weeks' pay. In his submission, Mr Sierant said that a claim *post* TUPE against the respondent may seem trivial where the claimant had been given a statement by the transferor (see **pages 45 to 46**) but it was not trivial for the claimant whose first language is not English. It was important for him to be clear on his employment terms after 28 August with the respondent. Finally, his submission was that any social media comment by the claimant's daughter was irrelevant to the issues, the claimant had no control over what his daughter said using those channels.

The law

40. Section 98(1) of the Employment Rights Act 1996 provides that *"In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—(a) the reason (or, if more than one, the principal reason) for the dismissal, and (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held*." One reason with subsection (2) is that the employee was redundant.

41. Section 98(4) of the Act provides "*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case*."

42. Section 139(1) of the 1996 Act provides that *"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—(a) the fact that his employer has ceased or intends to cease—(i) to carry on the business for the purposes of which the employee was employed by him, or (ii) to carry on that business in the place where the employee was so employed, or (b) the fact that the requirements of that business—(i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish*."

43. In ***Williams and ors v Compair Maxam Ltd*** 1982 ICR 156, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. It stressed, however, that in determining the question of reasonableness it was not for an employment tribunal to impose its standards and decide whether the employer should have behaved differently. Instead it had to ask whether 'the dismissal lay within the range of

conduct which a reasonable employer could have adopted'. But it said, "*There is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:*

a. *the employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.*
b. *The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.*
c. *Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.*
d. *The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.*
e. *The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.*"

44. Section 89 of the 1996 Act provides that "*Employments without normal working hours.(1) If an employee does not have normal working hours under the contract of employment in force in the period of notice, the employer is*

liable to pay the employee for each week of the period of notice a sum not less than a week's pay.(2) The employer's liability under this section is conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week's pay.(3) Subsection (2) does not apply—(a) in respect of any period during which the employee is incapable of work because of sickness or injury,(b) in respect of any period during which the employee is absent from work wholly or partly because of pregnancy or childbirth or on adoption leave, shared parental leave, parental bereavement leave, parental leave or paternity leave, or (c) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays.(4) Any payment made to an employee by his employer in respect of a period within subsection (3) (whether by way of sick pay, statutory sick pay, maternity pay, statutory maternity pay, paternity pay, statutory paternity pay, adoption pay, statutory adoption pay, shared parental pay, statutory shared parental pay, parental bereavement pay, statutory parental bereavement pay, holiday pay or otherwise) shall be taken into account for the purposes of this section as if it were remuneration paid by the employer in respect of that period.(5) Where notice was given by the employee, the employer's liability under this section does not arise unless and until the employee leaves the service of the employer in pursuance of the notice." Section 88 makes similar provisions for employees with normal working hours.

45. Regulation 13(1) of the Working Time Regulations 1998 provides that a worker is entitled to four weeks' annual leave in each leave year. Regulation 13A of the 1998 Regulations provides that a worker is entitled in each leave year to a period of additional leave which in this case (as per Regulation (2)(e)) is 1.6 weeks.

46. Regulation 14(2) of the 1998 Regulations provides that where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3). Paragraph (3) provides that where there are no provisions of a relevant agreement which apply, a sum equal to the amount

that would be due to the worker under regulation 16 in respect of a period of leave determined according to a formula which is set out in it.

47. Regulation 16(1) of the 1998 Regulations provides that a worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13 and regulation 13A, at the rate of a week's pay in respect of each week of leave.

48. Section 38 (1) to (5) of the Employment Act 2002 provides that "(*1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5. (2) If in the case of proceedings to which this section applies (a) the employment tribunal finds in favour of the worker, 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 worker under section 1(1) or 4(1) of the Employment Rights Act 1996 (duty to give a written statement of initial employment particulars or of particulars of change) or (in the case of a claim by an employee) under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday),the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the worker 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 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 worker under section 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by a worker) under section 41B or 41C of that Act, 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.(4) In subsections (2) and (3)—(a) references to the minimum amount are to an amount equal to two weeks' pay, and (b) references to the higher amount are to an amount equal to four weeks' pay. (5) The duty under subsection (2) or (3) does not apply if there are*

exceptional circumstances which would make an award or increase under that subsection unjust or inequitable." Schedule 5 includes the claim of unfair dismissal.

Discussion and decision

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49. In my view the respondent has shown that the reason for the claimant's dismissal was redundancy. I accepted its evidence on the issue of the financial position of its business. I accepted its unchallenged evidence that the impact of the announcement by the Scottish Government resulted in an immediate need to reduce its headcount. The claimant's dismissal was wholly or mainly attributable to the fact that its requirements for chefs at Miros had diminished or were expected diminish. The dismissal was not a sham. There was no evidence to support such a conclusion. At the relevant time the respondent did not recruit any other chefs other than Matthew Gillan. His employment was short term and for the purpose of covering while others were not at work. However, in my view the dismissal was unfair. There was no consultation at all with the claimant prior to the issuing to him of notice to end his contract. The email of 10 October is clear that the catalyst for its decision was the Scottish Government's announcement in the context of its business circumstances. Consultation is important for at least two reasons. First, it allows staff (either individually or collectively) to comment on the criteria by which an employer intends to select for redundancy. Second, it allows staff to comment on the possibility of alternatives to dismissal. Those alternatives could include other work, temporary lay-offs or shortened working hours. As was said in the decision of the House of Lords in ***Polkey v A. E. Dayton Services Ltd*** [1988] A.C. 344 in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation. In my view the respondent did not warn or consult with the claimant prior to its decision. Nor did it adopt a fair basis on which he was selected. While the respondent's

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recorded that it had used fair criteria (length of service, productivity, absentee records and punctuality) by its own admission it did not use them. Similarly, the respondent pled that it considered alternative employment for the claimant. However, there was not evidence to support such a finding. The evidence was that no such consideration was given. The claimant's dismissal was unfair.

50. On the claimant's claim for notice pay, the relevant facts are that the claimant was entitled to notice of dismissal of three weeks. That notice was given. He was incapable of work because of sickness or injury. He was entitled to be paid a (full) week's pay for that three week period in terms of section 89 (or 88) of the Employment Rights Act 1996. Instead, and following the advice of its accountant the respondent paid statutory sick pay for each of those weeks. The claimant's claim therefore succeeds.

51. On the claim for accrued and untaken holiday, the contract ended on 31 October, being exactly seven months into the relevant holiday year. This equates with 58.33% of the holiday year. Applying that percentage to his entitlement of 28 days equals 16.33 days or 3.27 weeks. Using the agreed net pay of £302.35 per week he was thus entitled to paid leave equivalent of £988.68. The claimant received £200 in respect of leave between 27 July and 3 August 2020. The respondent paid £89.51 on 30 November representing accrued and untaken holiday. There is a thus a balance due to the claimant. To the extent set out below, this claim succeeds.

52. Where a tribunal finds that an employer has breached its duty to provide full and accurate employment particulars, it must award the "*minimum amount*" of two weeks' pay (subject to exceptional circumstances which would make an award or increase unjust or inequitable). In cross-examination, Mr Maham accepted that the respondent had not issued the respondent's written terms to the claimant. The claim under section 38 is thus well founded and succeeds.

Remedy

53. The claimant produced an amended schedule of loss at the start of the hearing on 2nd June. On the claim of unfair dismissal, he sought a basic

award of £371.20 being the balance of what was due as a statutory redundancy payment (£1530.00) less what was paid (£1158.80). As at the effective date of termination the claimant was 47 years of age. He had 3 years' continuous service. His agreed gross weekly wage was £340.00. The statutory redundancy payment due to the claimant was thus £1530.00. The respondent is therefore liable to pay the sum claimed, £371.20. The amended schedule of loss makes a claim for compensation for loss of earnings since 31st October 2020 of £302.35. I find the respondent liable to pay this sum as compensatory award. One of the heads of loss for which a tribunal may award compensation is the value of accrued statutory rights that have been lost: where an employee begins a new job following the termination of their employment, they will need to accrue 2 years' continuous service before they will have acquired the right to claim unfair dismissal or a statutory redundancy payment and may have lost the right to a lengthy statutory notice period if they have been employed for several years. There is no particular figure that should be awarded, but it is usually around £250 to £500. The claimant seeks £538.00 "*calculated as a weekly pay cap*". I see no basis to make this award using the current statutory maximum of a week's pay. Mr Sierant did not explain why it should be used as the reference point. I find the respondent liable to pay £500 as compensation for loss of the claimant's statutory rights.

54. The claim for notice pay succeeds. The claimant was entitled to receive £907.05. The respondent paid him £287.84. The balance (£619.11) is due. I was not addressed as to the statutory basis of this claim. It appeared to me that it could have been made either as a claim for breach of contract or as an unlawful deduction from wages. I have treated it as the latter.

55. On holiday pay, the claimant was entitled to paid leave in the holiday year equivalent to £988.68. He received £200 in respect of leave while employed. The respondent paid £89.51 on 30 November representing accrued and untaken holiday. There is thus a balance of £699.17 due to the claimant. I find this sum due.

56. In relation to the claim for a failure to provide a written statement the claimant seeks two weeks' gross pay. I find that the sum of £680.00 is thus due to the claimant.

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Employment Judge:	Russell Bradley
Date of Judgment:	05 August 2021
Entered in register: and copied to parties	09 August 2021

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