EMPLOYMENT TRIBUNALS

Claimant: **Mr Shujahat Hussain**

Respondent: **Food Containers Manufacturing UK Ltd**

Heard at: **East London Hearing Centre**

On: **25-27 August 2021**

Before: **Employment Judge Barrett**

Representation
Claimant: Mr Alex Shellum, Counsel
Respondent: Mr Alan Williams, Solicitor, Peninsula

Interpreter: Mr Yashab Tamanna, Urdu language interpreter

UPON a reconsideration of the judgment dated **31 August 2021** on the Tribunal's own initiative under rule 73 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

JUDGMENT

The judgment of the Tribunal is that: -

1. **It is necessary in the interests of justice for the original judgment dated 31 August 2021 to be reconsidered.**

2. **On reconsideration, the Claimant's compensatory award is varied to the lower amount of £16,474.64.**

REASONS FOR ORGINAL JUDGMENT

JUDGMENT having been sent to the parties on 31 August 2021 and written reasons having been subsequently requested, the following reasons are provided:

Introduction

1. The Claimant on 11 January 2019 presented an ET1 making claims for unfair dismissal, notice pay and unauthorised deductions from wages. The Respondent resists the claims, contending that the Claimant was fully paid until the termination of his employment which the Respondent says was brought about by his resignation.

The hearing

2. The hearing took place over 3 days, 25 to 27 August 2021. The Claimant was represented by his counsel Mr Shellum and assisted by Urdu language interpreter Mr Tamani. The Respondent was represented by its solicitor Mr Williams.

3. The Claimant gave evidence on his own behalf.

4. Mr Balbir Singh Mann, Director, and Miss Jaswinder Mann, Administrator, gave evidence on behalf of the Respondent.

5. A further witness statement was provided by Mr Akhtar Khan, the Respondent's Head of Sales and Marketing. However, the Respondent did not call him to give evidence despite being offered the opportunity for this to take place over video link. In the circumstances I have placed no probative weight on his statement.

6. The Tribunal was supplied with an agreed bundle of documentary evidence numbering 153 pages. The parties also submitted a helpful Schedule of Agreed Facts which I have relied on in the fact-finding section of this judgment.

7. There was also a List of Issues agreed prior to a preliminary hearing in this case. Mr Shellum confirmed at the outset of the hearing that the Claimant no longer pursued a claim for a bonus payment. Mr Williams confirmed at the end of the hearing that the Respondent did not contend that if the Claimant was dismissed it could amount to a fair dismissal.

8. Taking into account those appropriate concessions, the issues for the Tribunal to decide were:

Unfair dismissal

8.1. Did the Respondent dismiss the Claimant? The Respondent contends that the Claimant resigned. The Claimant contends that he was dismissed by the Respondent.

8.2. If the Claimant was dismissed, did the Claimant contribute to the dismissal by culpable conduct?

8.3. If the Claimant was dismissed, would the Claimant have been dismissed in any event had a fair procedure been followed?

8.4. If the Claimant was dismissed, did the Respondent unreasonably fail to comply with the ACAS Code of Practice 1 - disciplinary and grievance procedure? Is the Claimant entitled to an uplift on damages and if so at what level?

8.5. Is the Claimant entitled to a declaration that he has been unfairly dismissed and what compensation is he entitled to?

Wrongful dismissal

8.6. Did the Respondent dismiss the Claimant or did the Claimant resign without working his required notice period? The Claimant contends that his employment was terminated by the Respondent without notice.

8.7. Is the Claimant owed notice pay and if so, how much?

Unauthorised deductions from wages / breach of contract

8.8. Is the Claimant owed wages / was the Claimant's contract breached by the Respondent failing to pay his full contractual wages during the period 8 June to 31 August 2018? This includes a four-day period on 9 to 12 July 2018 when the Claimant says he was not paid wages because the Respondent's premises were closed.

8.9. If so, how much is the Claimant owed?

Failure to provide a written statement of employment particulars

8.10. Did the Respondent fail to provide the Claimant with a written statement of the main terms of his employment in accordance with section 1 of the Employment Rights Act 1996?

8.11. If so, how much compensation should be awarded to the Claimant in respect of this failure?

Findings of fact

9. The Respondent is a foil manufacturer specialising in products for the catering and wholesale industries. It is a family business run by the Mann family.

10. The Claimant commenced working for a previous incarnation of the Respondent in the year 2000, as a Machine Operator and Forklift Truck Driver. He was not provided with a written statement of particulars of his employment at that time. His employment subsequently transferred to the Respondent, which incorporated in its current form in 2008.

11. The Claimant was aged 21 when he commenced employment. His first language is Urdu and he is not fluent in English. He has worked for the Respondent, or its predecessors, for almost his entire adult life.

12. The Claimant's duties included driving a forklift truck and general factory duties such as loading and unloading containers. He gradually rose to become the second most senior member of the Respondent's manufacturing staff.

13. The Respondent drafted a contract for the Claimant showing employment commencing on 4 January 2011. That start date was incorrect. Mr Mann's evidence was that the Claimant worked for him for 18 years (i.e. from 2000 to 2018). I accept the Claimant's evidence that he had not seen this unsigned document until a copy was disclosed during the course of this litigation. However, I also accept the Respondent's evidence that the document sets out the terms of the Claimant's employment from 2011 onwards.

14. The terms, insofar as they are relevant to this judgment, were:

    14.1. The Claimant's job title was Packer and Fork Truck Driver.

    14.2. His usual place of work was at the Respondent's factory premises in Barking, Essex.

    14.3. He was entitled to work basic hours of 40 hours per week over 5 days.

    14.4. At the time the 2011 contract was drafted, his hourly rate was £6.08; but by 2018 it had risen to £8.10.

    14.5. He was entitled to be paid for overtime.

    14.6. The holiday year ran from 1 January to 31 December, with an entitlement of 28 days inclusive of bank holidays.

    14.7. He was entitled to 1 week's notice of termination for each year's service up to a maximum of 12 weeks.

    14.8. There was a short time work and lay off clause stating: *"If there is a shortage of work for whatever reason the Company will endeavour to maintain continuity of employment wherever possible by placing people on short time or laying them off without pay. In such circumstances as much advance notice as can reasonably be given, will be if; in the Company's opinion it becomes necessary to do so."*

15. The Claimant was aware of the above terms, including those relating to pay, hours and holiday entitlement, save that he was not aware of the short time work and lay off clause.

16. From time to time, the Respondent required the Claimant to undertake duties outside his contractual role. These included undertaking painting and other maintenance work at the private residences of members of the Mann family, and on the premises of at least one other business owned by family members. He understood that if he did not undertake this work his salary would be withheld. He was in fear of losing his job if he refused.

17. From 25 June 2018 to 6 July 2018, the Claimant took a trip to Ireland at the Respondent's request. The Claimant's account of this trip has not been challenged by the Respondent's representative and I accept it as accurate. The Claimant had been told he would be accommodated at a hotel but was instead taken to stay in a room in the private home of someone he did not know. For the

first 4 or 5 days of his stay he had no blanket or pillow, although these items and a towel were eventually purchased for him. During his stay, he painted walls and cleaned shutters in premises which were used by the Respondent.

18. On his return from Ireland, the Claimant attended work for his next shift on 9 July 2018. He found the Respondent's Barking premises were closed due to a dispute with the landlord. He took a date-stamped photo of the closed entrance and landlord's notice with his phone camera.

19. The Claimant was underpaid for the period the factory was closed, namely 9 to 12 July 2018; his payslip for that week shows gross pay of £141.75 instead of his usual £316.82, an underpayment of £175.07.

20. The Respondent has contended the Claimant was coincidentally on unpaid leave that week visiting his mother. I reject that explanation. The Respondent's case has shifted; Miss Mann and Mr Mann in his written evidence originally contended there was no deduction. Mr Mann in his oral evidence could not explain why the Claimant needed to take unpaid leave halfway through the holiday leave year. The Claimant's phone photos show he physically attended the premises on 9 July 2018, which he would not have done if he was visiting his mother. Mr Mann suggested these photos were taken by his factory manager and had been disclosed by the Respondent. However, Mr Williams was not able to verify this contention and Mr Shellum told me (and Mr Williams did not dispute) that he had seen the email where the Claimant through a friend submitted the photos to his instructing solicitor for disclosure to the Respondent. On the balance of probabilities, I prefer the Claimant's account of 9 to 12 July 2018.

21. It was not argued by the Respondent in submissions that the short time work and lay off clause was invoked. However, Mr Mann did make reference to this clause when giving his oral evidence. For the sake of completeness, I have considered it. The period of 9 to 12 July 2018 did not amount to a lay off without pay for the purposes of maintaining continuity of employment within the short time work and lay off clause set out at subparagraph 14.8 above – even had that been a clause agreed with the Claimant to form part of his contract of employment. This type of clause is drafted in contemplation of maintaining continuity where there would otherwise be a redundancy situation, in which circumstances an employer can take certain mitigating steps. The Respondent did not lay the Claimant off or place him on short time working, it simply failed to provide work or pay him during this period.

22. The Claimant returned to work on 13 July 2018 and after a few days was asked to go to Ireland again by the Respondent to paint shutters, carry out cleaning and undertake other odd jobs. This time he refused to go.

23. There followed a period during which the Respondent put pressure on the Claimant to go to Ireland again. Meanwhile, the Claimant began asking for the money he said was outstanding in respect of the previous Ireland trip and the factory closure. However, he was "fobbed off" each time he tried to speak to one of the Respondent's directors about his pay. The Claimant's account in this regard was not challenged in cross-examination. I find that the Claimant's refusal to continue to carry out work outside the scope of his contractual role in Ireland and his request for pay he said was owing caused bad feeling on the part of the Respondent.

24. Sometime thereafter the Respondent told the Claimant to go home and that he would be called back into work when needed. From the Claimant's payslips, I date this as occurring during the week of 3 August 2018, when the Claimant's pay dropped. The Respondent did not purport to lay the Claimant off or place him on short time working. On the balance of probabilities, I find the reason the Claimant was sent home was not due to shortage of work. Mr Mann's evidence was that the factory was not closed during this period and that other employees were working. I find that Mr Mann was impatient with the Claimant due to his refusal to go to Ireland and his request for pay, and that was why the Claimant was not given his usual shifts.

25. The Respondent thereafter offered the Claimant work painting at the house of Mr Mann's uncle, and at the business premises of Mr Mann's brother, Mr Gurmit Mann. The Claimant did not refuse outright to undertake this work but made excuses not to undertake it and on occasions avoided calls from the Respondent and Mr Gurmit Mann. This was because he had become disillusioned and exasperated by being asked to undertake such work. However, the Respondent never invited or instructed the Claimant to return to his contractual role.

26. The Respondent partially paid the Claimant for the week of 3-10 August 2018 (£97.20 gross). Over the next two weeks, the Respondent paid the Claimant a minimal sum in respect of a tax rebate (£38 per week) but nil salary. From 31 August 2018 the Respondent stopped the Claimant's pay altogether.

27. On or around 11 September 2018, Mr Gurmit Mann told his brother Mr Mann that he had not been successful in getting the Claimant to undertake painting and other work for him in Enfield and that he thought the Claimant was "*a timewaster*". This prompted Mr Mann to instruct Miss Mann to issue the Claimant's P45.

28. The Claimant's P45 was issued on 14 September 2018. The P45 gave the date of termination of employment as 31 August 2018, namely the date when the Claimant's pay had been stopped. The P45 was posted to the Claimant without any covering letter.

29. The Claimant cannot recall exactly when he received the P45 in the post. Allowing time for the letter to arrive, I find he received and read it on 16 September 2018.

30. The Respondent's case is that the Claimant had requested the P45 and thereby resigned because he wanted to take up another job. I reject that explanation. I find it implausible for several reasons.

    30.1. The Respondent says the Claimant asked for his P45 over the phone and in person at the Respondent's premises on several occasions. However, no documentary evidence has been produced that any of these alleged requests were logged or passed on. Miss Mann's evidence was that she logged the requests in her diary and emailed Mr Mann about them, but neither the diary nor any such email has been disclosed.

    30.2. Miss Mann stated in oral evidence that the Claimant made these requests from around 17 August 2018 onwards. It was put to her by Mr Shellum that this was inconsistent with: (a) the documentary evidence which showed the Respondent offering painting work after that date; and (b) her evidence that she told Mr Mann promptly of the Claimant's request and he instructed

her to send the P45 *"a day or so later"* (this was not sent until 14 September 2018). She then said she could not remember the dates.

30.3. It is further said that the Claimant made the requests of other staff as well as Miss Mann and also in view of several staff in an open plan office. Only Miss Mann has given evidence of the requests. Mr Khan's statement purports to give corroborative evidence but Mr Khan has not confirmed that statement in oral evidence. The Respondent chose not to call him, initially on the basis he was self-isolating and then, when the Tribunal offered to facilitate video evidence, on the basis that he was not needed and would be *"gilding the lily"*. Given that his evidence might have corroborated a crucial dispute of fact, that reasoning is unconvincing.

30.4. The Respondent says the Claimant announced he wanted to leave to start another job. The mitigation evidence in the bundle shows the Claimant did not in fact start alternative employment until he found temporary work in October 2018. He found permanent employment in November 2018 and that was on lower pay than he had received from the Respondent. It was not put to the Claimant in cross-examination that he had any other employment in August or September 2018 which he had failed to disclose. In the circumstances I find the Claimant did not have another job lined up in August or September 2018. I accept Mr Shellum's submission that because the Claimant was a man on a low wage with a family to support, he would have been unlikely to request his P45 without another job to go to.

30.5. The Claimant's evidence has been consistent with his pleaded case and written statement. The Respondent's evidence has shifted in relation to: the 9 to 12 July 2018 shutdown, as described at paragraph 20 above; and the dates the Claimant allegedly requested his P45, as described at paragraph 30.2 above. Overall, I found the Claimant to be the more credible witness.

Submissions

31. For the Respondent, Mr Williams submitted that the pivot of the matter was whether the Claimant requested his P45 or not. I agree this is the crucial issue. He invited me to find that the Claimant did make such a request, on the basis of the evidence given by the Respondent's two witnesses. In the alternative, he submitted that if the Claimant was dismissed then his conduct, by failing to be in touch with the Respondent in late August and early September 2018, was culpable conduct which contributed to his dismissal and for which he could have been fairly dismissed had the Respondent followed proper processes. Mr Williams accepted that the applicable ACAS Code of Conduct had not been adhered to, but contended that it was not a case of a "*heinous breach*" that would merit a full 25 % uplift on the compensatory award. It was submitted that the Claimant was "*fully paid up*" in terms of salary and holidays when he resigned, although he tacitly accepted that the Claimant was not on a zero hours contract which would have enabled the Respondent to pay him only for hours worked.

32. For the Claimant, it was submitted that the Claimant's evidence was more credible and that I should accept his evidence that the P45 was sent unsolicited. Mr Shellum invited me to make a full 25% uplift for failure to adhere to the ACAS

Code. He submitted that the Claimant's conduct in the last few weeks of employment when he was only in limited contact with the Respondent did not amount to culpable contributory conduct in circumstances where the Respondent was pressuring him to undertake work, in his words, "*as the family dogsbody*". Neither, he submitted, would there have been any basis for fairly dismissing the Claimant. In relation to the wrongful dismissal claim, Mr Shellum submitted that there was no breach of contract on the Claimant's part, and it was not disputed that no notice was given. On the wages claim, he relied on the evidence of the payslips and invited me to prefer the Claimant's account of 9 to 12 July 2018. In relation to the statement of written particulars of employment, he again invited me to prefer the Claimant's account that no such statement was provided.

The law

Unfair dismissal

33. Section 95(1)(a) of the Employment Rights Act 1996 ('ERA') defines (express) dismissal as:

> **'termination of the employment contract by the employer, with or without notice.'**

34. Section 97 ERA defines the effective date of termination ('EDT'), as follows:

> **'(a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires,**
>
> **(b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect […]'**

35. The burden of proof is on the Claimant to show on the balance of probabilities that there has been a dismissal.

36. The test for whether there has been a dismissal is an objective one; see *Sandle v Adecco UK Limited* [2016] IRLR 941 at §26 &40:

> **'the test is not the intention of the speaker but rather how the words would have been understood by a reasonable listener in the light of all of the surrounding circumstances…**
>
> **The question is: given the facts found by the ET, given what was known to the employee and to the relevant circumstances of the case, what is the conclusion to be drawn? Has the employer communicated its unequivocal intention to terminate the contract?'**

37. Sending a P45 might amount to a communication of dismissal, depending on the surrounding circumstances. In *Sandle,* the EAT held at §30:

> **"Where there are no contraindications, the sending of a P45 can also be taken to communicate a dismissal, but it is the receipt of the P45 that is the crucial event (the communication of the employer's decision to treat the employment contract as at an end)".**

38. S.94 ERA provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by his employer.

39. If the Claimant has been unfairly dismissed, he will be entitled to a basic award and a compensatory award. The basic award is calculated in accordance with

s.119 ERA and may be subject to adjustment in respect of contributory fault under s.122 ERA.

40. The compensatory award is calculated in accordance with s.123 ERA and shall be the amount the tribunal considers is just and equitable in all circumstances having regard to the loss sustained by the claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. The Claimant has a duty to mitigate his loss.

41. In calculating the compensatory award, the tribunal must consider the chance that the employment would have terminated in any event, had there been no unfairness (the *Polkey* issue).

42. In *Hill v Governing Body of Great Tey Primary School* [2013] IRLR 274 the EAT (Langstaff P presiding) noted that a *Polkey* reduction has the following features:

> **'First, the assessment of it is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer would have done so? The chances may be at the extreme (certainty that it would have dismissed, or certainty it would not) though more usually will fall somewhere on a spectrum between the two extremes. This is to recognise the uncertainties. A Tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer would have done) … The Tribunal has to consider not a hypothetical fair employer, but has to assess the actions of the employer who is before the Tribunal, on the assumption that the employer would this time have acted fairly though it did not do so beforehand.'**

43. The compensatory award may also be reduced where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, and such reduction will be by such proportion as the tribunal considers just and equitable (s123(6) ERA 1996).

44. Section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) provides:

> **'If, in the case of proceedings to which this section applies, it appears to the employment tribunal that (a) the claim to which the proceedings relate concerns a matter to which a relevant Code of Practice applies, (b) the employer has failed to comply with that Code in relation to that matter, and (c) that failure was unreasonable, the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase any award it makes to the employee by no more than 25 per cent.'**

45. This provision applies to claims brought under any the jurisdictions listed in Schedule A2 TULR(C)A, which includes a claim for unfair dismissal.

Wrongful dismissal

46. For an employer to be entitled to summarily dismiss an employee, that is dismiss him without notice, the employee's conduct must amount to gross misconduct. Otherwise, the Claimant will be entitled to contractual notice pay, at least at the statutory minimum level.

Unauthorised deductions from wages

47. Part 2, Ss.13 to 27B of the Employment Rights Act 1996 Act ('ERA') set out the statutory basis for a claim of unauthorised deduction from wages.

48. An employer shall not make a deduction from wages of a worker employed by him, which are properly payable to the worker, unless the deduction is required or authorised to be made: by virtue of a statutory provision; a relevant provision of the worker's contract; or the worker has previously signified in writing his agreement or consent to the making of the deduction. Any agreement or consent authorising the deduction from wages to be made must be entered into before the event giving rise to the deduction.

49. 'Wages' for the purposes of Part II ERA is widely defined. It includes any fee, bonus, commission, holiday pay or other emolument referable to employment, and to statutory sick pay.

Written statement of particulars

50. An employee is entitled to be provided with written terms and condition in accordance with s. 1 ERA. Under s.38 of the Employment Act 2002, if when the proceedings were brought the employer was in breach of the duty to give written particulars, the Tribunal will make an award of 2 weeks' gross pay unless it would be unjust and inequitable to do so, and may if it considers it just and equitable in all the circumstances make an award of 4 weeks' gross pay.

Conclusions

Liability

51. The first issue to resolve is whether the Claimant was dismissed. For the reasons given at paragraph 30 above, I have found as a fact that the Claimant did not request his P45 and that it was the Respondent's decision to send it to him. In the circumstances, the Claimant reasonably understood the receipt of his P45 to communicate of the termination of his employment. The Claimant was dismissed by the Respondent on 16 September 2018.

52. The Respondent does not contend such a dismissal could amount to a fair dismissal, and therefore the Claimant is entitled to a declaration that he was unfairly dismissed.

53. I do not find that the Claimant contributed to his own dismissal. In many cases, a failure to undertake work requested by an employer or to maintain communication with an employer would amount to culpable contributory conduct. However, after telling the Claimant to go home during the week commencing 3 August 2017, the Respondent never thereafter invited or instructed him to return to his contractual role. The only work he was offered was informal work outside the scope of his contractual role working for members of the Mann family. Insofar as this amounted to a management instruction from the Respondent, it was not a reasonable one. Therefore, the Claimant did not refuse any reasonable management instruction or refuse to carry out his contractual role.

54. In relation to the *Polkey* issue, I find that the Respondent had no basis for fairly dismissing the Claimant even had a correct and fair procedure been followed. It was the Respondent who had failed to provide the Claimant with work and failed to pay him. The Claimant's refusal to go to Ireland and his reluctance to carry out informal work for members of the Mann family did not amount to misconduct within the scope of his employment. No *Polkey* deduction would be appropriate.

55. The Respondent failed to comply with the ACAS Code as it relates to disciplinary procedures in any meaningful way. There was no warning, no investigation and no hearing before the Claimant was dismissed. He was given no opportunity to put his side of the case or to appeal. The non-compliance was not reasonable and there is no justification for it. In the circumstances, the full 25% ACAS uplift is just and equitable.

56. In relation to wrongful dismissal, I conclude the Claimant was not in breach of contract and that the Respondent dismissed him summarily in breach of his contractual entitlement to notice. He is entitled to 12 weeks' notice pay, subject to mitigation, which forms part of the compensatory award calculated below.

57. In relation to unauthorised deductions from wages, it is apparent from reviewing the wage slips and the Respondent's record of pay, that deductions were made during the week of 9 to 12 July 2018 and from the week of 3 to 10 August 2018 onwards. I cannot see that deductions were made from 8 June 2018 onwards as pleaded. It may be that the Claimant worked overtime hours that were not remunerated in this earlier period, but any such deduction has not been sufficiently explained and proven. I therefore uphold the claim for unauthorised deductions, alternatively breach of contract, during the periods of 9 to12 July 2018 and 3 August to 16 September 2018. The calculations are set out below.

58. I have found that the Respondent failed to provide the Claimant with a written statement of his particulars of employment and there was therefore a breach of s.1 ERA. In accordance with s.38 EA 2002, I award 2 weeks' gross pay in respect of this breach. There are no specific factors that would make it just and equitable to make this award at the higher level of 4 weeks' pay.

Remedy

59. It is agreed that while employed by the Respondent the Claimant's gross weekly pay was £316.82 and his net weekly pay was £280.49. In relation to his new employment his new gross weekly pay is £187.92, and his net weekly pay is £184.81. He did not claim state benefits while unemployed.

60. It is further agreed that if the Claimant was unfairly dismissed (as he has been found to have been) he is entitled to a basic award of £5,544.35.

61. In relation to his compensatory award, the Claimant's losses are as follow:

    61.1. For the 7-week period between loss of his employment with the Respondent on 16 September 2018 and finding new permanent employment in November 2018, the Claimant lost the net wages he would have earned from the Respondent of £1,963.43. He earned £800.84 from temporary work for which he must give credit, resulting in a net loss of £1,162.59.

    61.2. Since the Claimant gained new employment, he continued to accrue losses in the amount of the difference between his higher net wages from the Respondent and the lower net wages in his new job, namely £95.68 a week. Over the period of 147 weeks from 1 November 2018 to the date of the hearing, that amounts to a loss of £14,064.96.

61.3. A reasonable further period over which the Claimant might be expected to find a job at a salary matching his salary with the Respondent is 6 months / 26 weeks. There is therefore a future loss of £2,487.68.

62. This gives a subtotal of £17,715.23. Uplifted by 25% in respect of the failure to comply with ACAS guidance gives a compensatory award of £22,144.04.

63. Two weeks' gross pay in respect of the failure to provide a written statement of particulars of employment is £633.64. This theoretically forms part of the compensatory award, but it is convenient to set it out separately.

64. In relation to unauthorised deductions from wages, the Claimant is entitled to repayment of the gross deductions made by the Respondent on 9 to 12 July 2018 and 3 August to 16 September 2018.

64.1. In respect of 9 to 12 July 2018, the sum of £175.07 as noted above.

64.2. In respect of 3 August to 16 September 2018, the Claimant ought to have received 5 weeks' gross pay: £1,584.10. He in fact received £97.20 gross pay, a difference of £1,486.90.

65. The total amount of unauthorised deductions from wages is £1,661.97. Note that the Claimant will be liable for tax on this part of his award.

66. This gives an overall total of £29,984.00 which the Respondent must pay to the Claimant.

REASONS FOR RECONSIDERATION JUDGMENT

67. On the Respondent's request for written reasons and on revisiting the judgment for the purpose of producing said reasons, I took the view of my own initiative that the judgment sent to the parties on 31 August 2021 should be reconsidered.

68. The Tribunal wrote to the parties on 25 October 2021 explaining that the grounds for the proposed reconsideration were that in calculating remedy, the statutory cap provided for by section 124 of the Employment Rights Act 1996 was not applied to the Claimant's compensatory award. Section 124 provides tha t a compensatory award shall not exceed £89,493 or 52 weeks' pay, whichever is lower. The parties agreed that while employed by the Respondent the Claimant's gross weekly pay was £316.82. Therefore, 52 weeks' pay is £16,474.64. The Claimant was awarded a compensatory award in the sum of £22,144.04. The parties were informed that on reconsideration, the compensatory award may be varied to the lower amount of £16,474.64.

69. The parties were invited to write to the Tribunal with their views on: a) whether they objected to the judgment being reconsidered, and if so their reasons; and b) whether the reconsideration could proceed without a hearing. Both parties' representatives replied promptly confirming there was no objection to the proposed reconsideration and that it could be dealt with on the papers.

70. I conclude that it is necessary to reconsider the original judgment in the interests of justice and that on reconsideration the compensatory award should be varied to the capped sum of £16,474.64 on application of the statutory cap. This means the Respondent must pay the Claimant a revised overall total sum of £24,314.60 comprising:

    70.1. £1,661.97 in compensation for unauthorised deductions from wages;

    70.2. A basic award of £5,544.35;

    70.3. A compensatory award of £16,474.64, which includes an uplift of 25% in respect of the Respondent's failure to comply with the ACAS Code but is capped at 52 weeks' pay;

    70.4. £633.64 in respect of the Respondent's failure to provide the Claimant with a written statement of the main terms of his employment.

Employment Judge Barrett

12 November 2021