THE EMPLOYMENT TRIBUNALS

Claimant: **MR SCOTT DAVIS**

Respondent: **IODEM LIMITED**

Heard at: **THE EMPLOYMENT TRIBUNAL AT NEWCASTLE UPON TYNE**

On: **7, 8, 9, 10 MARCH 2022**

Before: **Employment Judge RODGER (sitting alone)**

Representation:

Claimant: IN PERSON Respondent: MR DAMIAN ROBSON (Solicitor)

JUDGMENT

1. The Claimant's complaint of unfair dismissal is well-founded and is upheld.

2. The Claimants' complaint of automatic unfair dismissal is not wellfounded and is dismissed.

3. The Claimant's complaint of of unauthorised deductions from wages is well-founded and is upheld.

4. The Claimant's claim to an award for failure to give a statement of employment particulars is well-founded and is upheld.

5. The Respondent shall pay the Claimant the sum of £3,666.46.

REASONS

Introduction

1. Mr Scott Davis worked for Iodem Limited, a company whose business includes the provision of healthcare, investigatory services to healthcare institutions and training services to lawyers. Mr Davis worked in the part of the business that provided investigatory services.

2. Like many people, Mr Davis was on furlough for most of 2020. He says he was unfairly dismissed between 21 August and 2 September 2020. He says that Iodem failed to pay him his accrued holiday pay at the end of his employment. And he says that right back at the start of his employment, Iodem failed to give him a written statement of the particulars of his employment also entitling him to an award.

3. Iodem for its part says that by 3 September 2020, its requirement for employees to carry out work of the particular kind carried out by Mr Davis had ceased or diminished. On that date, says Iodem, it gave Mr Davis notice of dismissal on grounds of redundancy effective on 31 October 2020. It says it duly and in accordance with regulation 15 of the Working Time Regulations 1998 gave Mr Davis notice to take his accrued holiday during the notice period, which ran from 3 September to 31 October. Iodem admits the claim in relation to the failure to give

   Mr Davis a written statement of the particulars of his employment contrary to section 1 of the 1996 Act.

4. Mr Davis represented himself and did so with a level of competence that would not shame a professional advocate with experience in the work of the Employment Tribunals.

5. Iodem was represented by its solicitor Mr Damian Robson.

Issues

6. These are the issues I have to decide.

   (1) What was the effective date of termination of Mr Davis ' employment? Was it between 21 August and 2 September when he was told that there was no longer a job for him to come back to from furlough? Or was he dismissed on 31 October 2020 pursuant to Iodem's letter of 3 September 2020 giving him notice of dismissal on grounds of redundancy?

   (2) What was Iodem's reason for the dismissal? Was it redundancy, as Iodem contends? Mr Davis was relatively non-committal about this issue and reserved his position. He said, rightly, the burden was on Iodem to prove its reason was redundancy, and, while he was open to the possibility that it might be, Iodem had failed to provide evidence to support its position. If the reason for the dismissal was not redundancy, then Mr Davis 'unfair dismissal claim succeeds.

   (3) If the reason was redundancy then I have to ask whether Iodem acted reasonably in all the circumstances in treating it as a sufficient reason to dismiss Mr Davis. This involves asking whether Iodem adequately warned and consulted Mr Davis, adopted a reasonable selection decision, including its approach

to a selection pool, and took reasonable steps to find the Mr Davis suitable alternative employment; and I have to ask whether dismissal was within the range of reasonable responses.

(4) In relation to the holiday pay claim, the issue is whether Iodem gave Mr Davis valid and effective notice under regulation 15 to take his holidays. This involves asking what was Mr Davis ' accrued holiday entitlement, when was notice given and whether any such notice complies with the requirements of the Regulation, in particular whether it was given a sufficient period in advance of the first day which Mr Davis was required to take as leave.

(5) I have also to decide whether Mr Davis is entitled to an award arising out of Iodem's failure to give him a written statement of the particulars of his employment.

Evidence

7. I heard oral evidence from the two directors of Iodem who are also husband and wife, Mr Maurice and Mrs Janet Hawthorne; and I also heard evidence from Mr Davis. At the start of the hearing I was given a bundle of documents; and in the course of the hearing I was given recordings of various conversations which took place between the parties. I have read and listened to all the material which I was given.

8. I found the evidence generally unsatisfactory.

9. Dealing with the oral evidence first, I found Mr Davis to be the most reliable witness. He gave evidence in a calm and measured way and he answered questions in a straight forward and open manner. Almost

without exception he accepted obvious propositions even when they were adverse to his case. He was clearly doing his best to be helpful

and in no way was evasive: he was asked questions which at times bordered on the unintelligible but he did not take refuge in that or seek to use that to avoid giving an answer. Notwithstanding the surely great frustration in being asked to answer such questions, he did not let that frustration show. My criticism of Mr Davis is that his witness statement oral evidence was far too long—running to 424 paragraphs—and included matters of irrelevance such as what he regarded as Iodem's inadequate response to the outbreak of the Covid-19 pandemic in lateMarch and early-April 2020.

10. Mr Hawthorne's evidence by contrast was far too short. Or, at least, far too short on what counts. Despite being an obviously highly intelligent and capable doctor and business man, he provided very little above a brief and cursory, vague and unspecific account of Iodem's business and its fortunes in Autumn 2020. This notwithstanding Iodem having the assistance of solicitors in the production of his witness statement. I pause to note that that witness statement was provided late and unsigned. I cannot criticise the manner in which Mr Hawthorne gave evidence from the witness box. He answered the questions put to him straight forwardly and with good grace. But I remind myself that he was not tested by a professional cross-examiner.

11. The same criticisms can be made about Mrs Hawthorne's witness statement evidence. On the crucial factual issues, when, why and how Mr Davis's employment was ended, that statement is lightweight to say the least. It was also served late and unsigned. Mrs Hawthorne had the disadvantage of giving evidence when she was clearly unwell. I am

well aware of the need to be cautious about attributing much to the demeanour of a witness in the witness box and, especially in the circumstance of Mrs Hawthorne being unwell, I do not do so here. But there were aspects of Mrs Hawthorne's evidence that I struggled to accept in the face of contemporaneous documents. I particularly have in mind her assertion that when she told Mr Davis at the end of 2 September to say his goodbyes, she only meant his goodbyes for the day. That would have been bizarre; and it is inconsistent with the recording. Likewise her explanation that when Mr Davis did not come into work on 3 September, she was desperate to keep him in Iodem's employ and was giving him space to think about things: that was hopelessly inconsistent with the letter she caused to be sent on that day giving him notice.

12. I also need to say something about the documentary evidence. Under the directions given by Employment Judge Jeram on 27 April 2021, Iodem was ordered to provide a paper and electronic bundle no later than 14 days before the hearing; and to upload the bundle to the document upload centre. Under the directions given by Employment Judge Shore on 18 February 2022, Iodem was ordered to lodge the bundle by 4 March 2022. Iodem completely failed in that obligation. The bundle was not provided until about 9.30am on the morning of the hearing. And that bundle is best described as incomplete and disorganised. It is not in a bundle. It has no index. It has not obvious order. It is incomplete.

13. Such a failure only harms Iodem itself: I sought a copy of the bundle on 3 March so I could prepare for this hearing. By prepare, I mean, among other things, read—and think about—the evidence the parties want to rely on. Iodem deprived itself of that consideration.

14. It also became apparent that Iodem had failed to give the disclosure it was ordered to give by Employment Judge Shore on 18 February. I was unable to get to the bottom of this during the hearing and, again, such failures only hurt Iodem.

Findings of fact

15. Fortunately, this case presents few disputes of fact for me to resolve. These are my findings.

16. Iodem was incorporated on 13 September 2010. It has two directors, Mr and Mrs Hawthorne. It has three main work streams as I have summarised. To my surprise, Iodem has told me very little about itself: it has not put in evidence about the number of employees it has, its financial strength and size and the HR resources available to it. These matters are obviously relevant. What I have been able to discern is that Iodem is small but—relatively speaking—very well-resourced and cash-rich, and has a single-digit head count.

17. Mr Davis was employed as a manager dealing with investigation from 29 February 2016. He was not given a written contract of employment, despite asking for one on repeated occasions, until April 2017. Again, Iodem has given me precious little to go on about what Mr Davis did and how he did it and who else did it. My impression is that by 2020 he was the only employee working in investigations, although Janet Hawthorne was active in that work stream.

18. In the spring of 2020 there was some discord between Iodem and Mr Davis. It is clear that the directors of Iodem, like anyone in their position would be, were uncertain about how to proceed in the face of public and political hysteria in response to the Covid-19 virus. By contrast, Mr Davis, like many people, was very clear about how he thought they should proceed: he was anxious that proper policies be developed and

that he and other employees should be directed to work from home immediately. This was not much ventilated in the hearing and is not relevant to the issues I have to decide but it is part of the background and clearly was important to the parties. What it reveals is something characteristic of the interactions in this case: at every point, each side had a strong view and expressed it strongly but failed to appreciate the other side's position and to hear what the other side was saying.

19. By August 2020, Iodem knew it was going to be losing its most lucrative income stream—not the one in which Mr Davis worked—from February 2021. Mr Hawthorne described this—or accepted my description of it—as a looming black cloud getting ever closer.

20. And since the onset of the pandemic, Iodem's principal customer, the NHS, had diverted almost all its attentions to that pandemic to the cost of Iodem.

21. On 7 August 2020 there was a telephone conversation between Mr Hawthorne and Mr Davis. It was recorded by Mr Davis and the transcript of the recording in his witness statement is agreed as accurate. Mr Hawthorne said, "So, at the moment, there is no sign of any work coming in, which is not good news for you". What he meant was the investigations work carried out by Mr Davis had dried up and there was no sign of such work starting to flow and that meant there was nothing for Mr Davis to do. Mr Davis accepted the truth of Mr Hawthorne's statement.

22. The conversation went on and Mr Hawthorne raised with Mr Davis what was referred to throughout the hearing as Medulaw and the Medulaw role. Medulaw was a nascent project of Iodem's to provide online learning about medical negligence and medical regulation to

lawyers. I say nascent because at no time does it ever seem to have progressed beyond conception let alone into the maternity ward of commerce. Mr Hawthorne suggested to Mr Davis that he might be interested in moving into Medulaw, looking at how to market it and how to write, produce and record podcasts.

23. The next important event was a conversation between Mr Hawthorne and Mr Davis on 21 August 2020. Again Mr Davis recorded it and again Mr Hawthorne accepted the accuracy of the recording. Mr Hawthorne said this to Mr Davis. “Now the bottom line with you is this: it’s—if you’re gonna come back, and we would be very happy to have you back, it’s gonna be working on Medulaw with Janet. The bottom line is this. The stark alternatives that you have are you come back and work with us on Medulaw or we talk redundancy”.

24. This is a fairly brutal way of going about things with a long-standing employee. Mr Davis was sensibly concerned to have more information about the Medulaw role. It is obvious to anyone listening to him in that conversation that he did not think Medulaw was viable and that as such it was not much of an alternative for him. As he said in the hearing, he did not want to end up in the same position—being told he had no job—in another two month’s time. He asked how long he had to make up his mind and if the only other option to Medulaw was redundancy. Mr Hawthorne said that it was, “because we’ve got no other work, Scott”. He asked him to make up his mind in five days, by Wednesday 26 August.

25. On 25 August 2020, Iodem sent Mr Davis a standard form letter instructing him to come back to work from furlough and notifying him that he was at risk of redundancy as a result of a restructuring process.

Of course, there was no restructuring process and this is the only time those two words have been uttered in this hearing.

26. On 26 August 2020, Mr Davis wrote to Iodem. He referred to the conversation on 21 August and his understanding that his role was redundant. He expressed confusion about why, given Iodem had already told him his job was redundant, it was now starting a consultation exercise.

27. On 27 August 2020, Iodem replied. The letter included a job description for the Medulaw role and stated that should Mr Davis decide it was not for him, Iodem would serve notice of redundancy on him and his employment would be terminated on 2 September 2020. The letter is somewhat ambivalent because it acknowledged that Mr Davis was entitled to a month's notice and stated that he was to take his accrued holiday in the notice period: that would be impossible if Iodem carried through its stated intentions to terminate Mr Davis ' employment from 2 September.

28. Mr Davis went to work on Friday 28 August 2020 and again on Tuesday 1st and Wednesday 2 September (Monday 31 August being a bank holiday) although he did not have any of his usual work to do.

29. On 28 August, Mr Davis met with Mrs Hawthorne in the morning for a meeting that lasted about two hours. Only a small part of the meeting was recorded by Mr Davis. It is all somewhat intemperate and the parties somewhat fell out about whether Iodem could lawfully require Mr Davis to take his holiday during his notice period. I am surprised by the confrontational and adamantine approach adopted by Mrs Hawthorne. I do not think Mrs Hawthorne's note of the meeting is accurate when it records that Mr Davis was still thinking about the Medulaw role. It is obvious from the parts of the meeting that were

recorded that he was not: the parties were arguing about the terms of his departure.

30. There was a further meeting at lunchtime on 2 September 2020 but its contents have not formed part of the dispute between the parties. What was more significant is the meeting on the evening of 2 September 2020. This might be described as a termination meeting. Mr Davis said, “This has literally kept me up all night. I don’t think I’ve slept more than an hour the last week. I’ve decided not to take the

role”. By that, he meant he was not going to accept the Medulaw role. What happened next is quite sad. Mr Davis naturally became emotional because not accepting the Medulaw role meant losing his job and all parties accepted that. Mrs Hawthorne advised Mr Davis to say his goodbyes to his colleagues. It was late in the day. She told him, “you’re gonna miss these people if you don’t go now”. In the witness box she sought to persuade me that she meant he should say his goodbyes in the ordinary way one does at the end of the working day. She sought to persuade me Iodem was desperate to keep Mr Davis. That is frankly bizarre and I do not accept her evidence. It is obvious from the transcript that Mr Davis was leaving now for good.

31. Moreover, when Mr Davis did not come into work the following day, Mrs Hawthorne sought to persuade me that she thought he was taking some space further to consider the Medulaw role and she was content for him to do so. I cannot imagine why Mrs Hawthorne gave such evidence. In fairness to her, she was unwell as she gave it, so I give her the benefit of the doubt. I do not accept her evidence, however, because far from giving Mr Davis some space on 3 September, she dismissed him. She wrote to Mr Davis giving him notice that his position would become redundant from 31 October 2020, putting him

back onto furlough and requiring him to take his accrued holiday of 18.5 days during his notice period. That requirement was expressed thus: “You have 18.5 days holiday owed to you by 31 October 2020. The Company requires you to take the days as holiday on dates of your choosing between now and 31 October 2020.”

32. On 20 October 2020 Iodem was invited to tender for more investigations work, which tender it won.

33. I accept that down to 20 October 2020, Iodem had had no new investigations work for about 2 years and that 8 investigations had long

since been whittled down to none and that at no time was any more such work in prospect. Even the contract won after 20 October 2020 did not start and was out on hold until spring 2021 and was only a framework contract. I have heard no evidence to suggest Iodem in fact has at anytime since spring 2020—when Mr Davis went on furlough—had any investigations work to do. I know the HR consultant Mr Ross wrote to Mr Davis on 26 October clearly starting that investigations work had come in but that appears to have been inaccurate. No doubt that inaccuracy has caused Mr Davis some distress and has wasted a lot of time as he attempted to get to the bottom of the question. I have to observe that Iodem’s evidence on the question of whether such investigations work had dried up—that is, whether Mr Davis ’role was redundant—was almost non-existent. I would have expected some accounting information, some management analysis, even some more narrative. But there is none. My conclusion rests predominantly upon Mr Davis ’own evidence and his candid and frank and admirable concessions.

Issue 1: what was the effective date of termination of Mr Davis ’ employment?

34. I find that the effective date of termination was 31 October 2020 for the following simple reasons. Although in August 2020 Iodem was telling Mr Davis in unpalatably blunt terms that it had no work for him and that it was Medulaw or redundancy and that he had to make his mind up by 26 August, I regard that merely as plain speaking rather than words of dismissal. Telling a man that there is no work for him to do is not the same as dismissing him, at least not without rather more; similarly, telling a man either to accept an alternative role by a deadline or be made redundant does not mean that he is dismissed should the alternative role go unaccepted when the deadline passes. Moreover, Mr Davis went to work on 28 August, 1st September and 2nd September. The date of effective termination could not have been before then.

35. As for the meeting on 2 September, it was plain that Mr Davis was dismissed but not with immediate effect. Everyone knew that he was entitled to notice—because they had been arguing about whether he should take his holidays during the notice period. I find that the dismissal is the letter of 3 September giving notice of termination on 31 October. That date—31 October 2020—is the effective date of termination.

Issue 2: what was the reason for the dismissal?

36. The burden is on Iodem to show that its reason for dismissing Mr Davis was redundancy. It must discharge that burden on the balance of probabilities. Rightly, Mr Davis does not concede the point. I must ask myself whether, given my comments about the poor quality of Iodem's evidence, Iodem has discharged the burden. If it has not, then Mr Davis was unfairly dismissed.

37. I refer to section 139(1) of the Employment Rights Act 1996:

(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.

38. I do not have to decide whether Mr Davis was in fact redundant, merely whether Iodem reasonably considered him to be and acted reasonably in all the circumstances in treating redundancy as a sufficient reason to dismiss him.

39. I would expect an employer, even a small employer such as Iodem, to provide the following evidence:

    (1) a proper narrative account of the nature of its business and work including the number of employees doing the relevant work;

    (2) where a fall in work is relied upon some statistical analysis and accounting evidence in the form of sales figures, or profit figures,

    (3) some internal discussion of the problem, maybe limited to emails between the directors but ultimately board minutes,

    (4) where a restructuring process is being undertaken, a description of the restricting process.

40. There was none of that here. Iodem's evidence is highly inadequate. Iodem is forced to rely on very brief statements by its directors and the evidence of Mr Davis 'recordings and Mr Davis 'concession that when Mr Hawthorne told him there was no sign of any new work, he was speaking the truth.

41. However, by the slimmest of margins, I am satisfied that Iodem can discharge the burden. I accept the evidence that there had been no new investigations work for two years. I accept that none was in prospect at the material time. And I accept that whereas in 2019, Mr Davis had had eight investigations to keep him busy, these had all been completed by summer 2020. I accept that the NHS had become obsessed with Covid to the neglect of much other work including investigations. Moreover, it is not disputed that Mr Davis had been on furlough—indicative of there being no work for him to do—since April

2020 and his own case is that when he returned to work on 28 August, there was no proper work for him to do.

42. There is also no good evidence that Iodem has since had any significant investigations work.

43. I accept that the reason for Mr Davis 'dismissal was redundancy.

Issue 3: did the Respondent act reasonably?

44. I have to ask, however, whether Iodem acted reasonably in all the circumstances in treating redundancy as a sufficient reason to dismiss Mr Davis. This involves asking whether Iodem adequately warned and consulted Mr Davis, adopted a reasonable selection decision, including its approach to a selection pool, and took reasonable steps to find the Mr Davis suitable alternative employment; and I have to ask whether dismissal was within the range of reasonable responses?

45. Given what I know about Iodem, a small company, facing financial uncertainty as a result of the Covid pandemic, with only Mr Davis doing that work beneath Mrs Hawthorne, I sadly but readily find that the selection of Mr Davis for redundancy was reasonable and that there was no real alternative. The one possible alternative proposed by anyone was a change of role to Medulaw and it is clear Mr Davis did not want that. Moreover, for all the reasons Mr Davis did not want the role, I find that it was not much of an alternative. The Medulaw project was completely undeveloped and the job within it that was offered to Mr Davis was vaguely described and uncertain in prospect. It is not suggested by Mr Davis that there was some other role he could have carried out. There was nothing else Iodem could have done.

46. However, Iodem's procedure was inadequate and unfair in my view. I have no problem with the straight talking of Mr Hawthorne. Nor am I asking for the kind of formulaic letters written by HR consultants in the knowledge that they are just going through the motions. But I find that Iodem's mind was made up from the outset and there simply was no consultation properly so called. Such a consultation must involve an open mind especially on the part of the employer, even if redundancy appears inevitable. And it must involve a proper exchange of information in which each side listens to and thinks about what the other has to say. That did not happen here. Throughout, Iodem's position was Medulaw or redundancy. I do not find that Iodem was striving to retain Mr Davis 'services: not least because nowhere in the contemporaneous evidence do they say as much. At best they were pushing him to Medulaw but they were not really listening to his justifiable concerns. Medulaw of course, even 18 months later, remains unborn.

47. Because of this procedural unfairness, I find that Iodem did not act reasonably in treating redundancy as a reason to dismiss Mr Davis. That renders his dismissal unfair.

48. But, it is also my finding that had Iodem adopted a fair procedure, exactly the same result would have obtained. On 31 October 2020, Mr Davis 'employment would have terminated. There was no viable alternative in my judgment. And there was time at the start of September 2020 in which a fair process could have been implemented and one month's notice expiring on or before 31 October 2020 could have been given. The result is that I am bound to make a 100 per cent *Polkey* deduction. A *Polkey* deduction is a deduction made from a compensatory award in an unfair dismissal case to reflect the chance that although a dismissal was procedurally unfair it would have

happened in any case. And that is what I find surely would have happened here.

49. Mr Davis was paid, albeit at furlough rates, down to 31 October 2020 and he was paid a redundancy award. The payment of the redundancy award negates any entitlement to a basic award. The 100 per cent *Polkey* deduction negates any compensatory award: effectively he has suffered no loss.

Issue 4: did the Respondent give the Claimant valid and effective notice under regulation 15 to take his holidays?

50. I turn next to the claim in respect of unauthorised deductions from wages. The question can be shortly put. Did Iodem give Mr Davis a valid and effective notice requiring him to take his accrued holidays before the end of his employment.

51. Iodem points to three notices. The first is said to be in Mr Davis ' contract of employment which states at paragraph 14, "Please note that Iodem Medical Services Limited—as Iodem was then called reserves the right to require you to take unused holiday during your notice period". That is not a notice to take unused accrued holiday during the notice period. It is merely a wholly superfluous reservation of Iodem's right to give such a notice.

52. The second is Iodem's letter of 27 August 2020. That letter deals with what will happen if Mr Davis were to decline the Medulaw role. It states that in those circumstances his effective date of termination will be 2 September 2020, that he will be entitled to one month's notice and that "the Company will require you to take holiday during your notice period. You have 14.5 holidays lefty to take as at 31 August 2020". That is not a notice either, because it does not require Mr Davis to do

anything: it rather points towards some future possibility that he will be required to do it.

53. That leaves the letter of 3 September 2020. This states as follows: "You have 18.5 days holiday owed to you by 31 October 2020. the company requires you to take these dats as holiday on dates of your choosing between now and 31 October 2020."

54. The question is whether that is a valid notice. Regulation 15(3) provides as follows:

> A notice under paragraph … (2)—
>
> (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
>
> (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
>
> (c) shall be given to the employer or, as the case may be, the worker before the relevant date.

55. Under regulation (4) it is provided:

> The relevant date, for the purposes of paragraph (3), is the date—
>
> (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day

> specified in the notice as the number of days or partdays to which the notice relates.

56. The notice does not specify the days on which the leave is to be taken. It simply requires Mr Davis to take his holiday on any day of his choosing between now—3 September 2020 and 31 October 2020.

57. Mr Robson for Iodem valiantly but misguidedly sought to persuade me that despite the words of the regulation, a notice does not have to specify any particular days. He relies on the authority of Craig v Transocean International Resources Limited for that proposition. He could not take me to any passage in the authority upon which he relied. Having considered the case report, I see that it is authority for the proposition that a notice need not specify particular dates, in the sense of, say, 10 March 2022, but must only identify an ascertainable period which must be taken as leave. Various examples are given, such as a notice in a contract of employment which specifies that employees must take leave during the employer's annual summer shutdown, or must take leave in the two weeks after the completion of a particular contract. This, however, is quite a different scenario altogether. Here the notice does not identify specify in any way any particular day which Mr Davis was required to take as leave: rather it left the specification down to him.

58. Further, the notice relates to 18.5 days. Paragraph 4 of the regulations demands that such a notice must be given at least 37 days before the earliest date on which Mr Davis was required to take leave. Yet the notice required him to take leave in a period beginning immediately.

59. In my judgment, the notice is not a valid notice and in failing to pay Mr

Davis 18.5 days 'pay in respect of holidays accrued down to 31 October 2020, Iodem made an authorised deduction from his wages contrary to section 13 of the 1996 Act.

Issue 5: is the Claimant entitled to an award arising out of the Respondent's failure to give him a written statement of the particulars of his employment?

60. I turn last of all to Iodem's failure to give Mr Davis a written statement of the particulars of his employment contrary to section 1 of the Act. The failure is admitted. Mr Davis 'entitlement to an award under section 38 of the Employment Act 2002 is admitted.

61. The question is whether he is entitled to an award equal to only two weeks 'pay or whether I should order more, up to the statutory maximum of four weeks.

62. Mr Davis points to his unchallenged evidence that he repeatedly requested such a statement, which request was repeatedly rebuffed. That evidence was unchallenged and I have found that that is what happened. In my judgment that is an aggravating factor which warrants a higher award.

63. Moreover, although Iodem is a small business, it is extremely wellresourced and its directors are competent and intelligent people. They offer no explanation for this most basic of failures and none is admitted of their apparent circumstances. In the circumstances, I consider the appropriate award to be an amount equal to three weeks 'pay.

Automatic unfair dismissal

64. I do not consider there to be any evidence to support Mr Davis 'claim to automatic unfair dismissal. I did not understand that claim to be wellarticulated or seriously pursued and I dismiss it. There is no evidence that Mr Davis was dismissed because he asserted a statutory right: the evidence is and I have found that he was dismissed by reason of redundancy.

Quantum

65. Mr Davis is entitled to a declaration that he was unfairly dismissed and to an award equal to 18.5 days 'pay and three weeks pay (that being the agreed number of holidays accrued by Mr Davis as at 31 October 2020 but for which he was not paid).

66. Mr Davis 'schedule of loss helpfully quantifies the holiday pay claim at £2,052.46 and his weekly wage as £538.00. Three times the weekly wage is £1,614. The total award is £3,666.46.

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EMPLOYMENT JUDGE RODGER

Judgment signed by Employment Judge on:

5 April 2022