EMPLOYMENT TRIBUNALS

Claimant: Mr P French

Respondent: Southpoint Films Limited

Heard at: **Southampton (via VHS)** **On:** **13 and 14 July 2022**

Before: **Employment Judge Belton**

Representation
Claimant: In person
Respondent: Mr B Large, counsel

JUDGMENT

JUDGMENT having been sent to the parties on 16 August 2022 and written reasons having been requested by the Claimant and the Respondent on 22 and 26 August 2022 in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1.1 This is the decision in the case of Mr Paul French v Southpoint Films Limited case number 1400368/2021.

1. The claim

1.2 By a Claim Form dated 13 January 2021, the Claimant brought a complaint of unfair dismissal, failure to provide written statement of employment particulars and wrongful dismissal.

1.3 The discrimination claims originally issued by the Claimant were withdrawn and a Judgment to that effect was made on 9 September 2021 by Employment Judge Richardson.

2. The evidence

2.1 I heard oral evidence from the Claimant and, for the Respondent, I heard from Mr R Johnson.

2.2 The following documents were produced at the commencement of the hearing;

a) Respondent's Hearing bundle comprising of 311 pages (including index);

b) Respondent witness statement comprising of 12 pages;

c) Respondents' chronology comprising of two pages;

d) Claimant's bundle comprising of 141 pages (including his witness statement and index);

e) Claimant's witness statement comprising of 13 pages; and

f) Claimant's chronology comprising of two pages.

3. The issues

3.1 Employment Judge Richardson comprehensively recorded the issues for determination in the case in the Case Management Order of 9 September 2021 [57-58]. They were re-visited with the parties during the hearing. Those issues were as follows:

Ordinary Unfair Dismissal (ss.94 — 95 & 98 Employment Rights Act 1996 (ERtsA))

a) Can the Respondent show the reason for dismissal was for the sole or principal reason one of the five potentially fair reasons, the Respondent contends gross misconduct.

b) Was the dismissal fair in all the circumstances, taking into account the size and business resources of the Respondent and equity of the case:

i. Did the dismissing officer have a genuine belief in the misconduct;

ii. Was this belief genuinely formed;

iii. Had it followed a reasonable investigation, and

iv. Was dismissal was in the band of reasonable responses?

c) Was the dismissal procedurally fair?

d) If unfair, would the Claimant have been dismissed in any event and what reduction should be applied to reflect this (Polkey s.123(1) ERtsA);

e) Did the Claimant contribute to his dismissal by his own

misconduct - in determining such is the Tribunal satisfied the conduct was culpable or blameworthy: caused or contributed to the dismissal; and it is just & equitable to reduce the award (Nelson v BBC (No2) s. 122(2); 123(6) ERtsA)?

f) Has the Claimant taken reasonable steps to replace his lost earnings?

g) What should the Claimant receive by way of award (ss.119 — 124 ERtsA)?

Failure to Provide Written Particulars Section 1 ERtsA

a) Did the Respondent provide the Claimant with written particulars of employment in accordance with section 1 ERtsA?

b) If not, what award should be made by the Tribunal under section 38 of the Employment Act 2002?

Wrongful Dismissal

a) Did the Claimant commit a repudiatory breach of contract warranting summary dismissal?

b) Did the Respondent affirm the breach and as such was the Respondent entitled to dismiss the Claimant without notice?

Remedy

a) What remedy is appropriate should any of the claims above be successful?

b) What loss has the Claimant suffered as a result of any conduct found to have been unlawful?

c) Should there be any reduction in relation to the award and if so what level of deduction up to 25% should be made (s.207A & Sch.A2 TU&LR(c)A).

2.2 The Claimant contends that he was unfairly and wrongfully dismissed.

2.3 The Respondent contends that the reason for dismissal was conduct which is a potentially fair reason for dismissal under s 98 (2) of the Employment Rights Act 1996 and that the decision to dismiss was a fair sanction, that is, that it was within the range of reasonable responses open to a reasonable employer when faced with those facts.

4. Findings of fact

4.1. I find the relevant findings of fact on the balance of probabilities. I attempted to restrict my findings to matters which were relevant to a determination of the issues. Page numbers of the Respondent's bundle

have been cited in this Judgment in square brackets.

4.2. There was dispute over the Claimant's commencement of employment. I find that the Claimant commenced employment on 1 February 2016 because the invoices prior to that date demonstrate that the relationship was not one of employment and the Claimant signed the Employee Checklist confirming the employment start date [171].

4.3. There is no dispute over the Claimant's effective date of termination which was 22 October 2020. The Claimant was therefore employed for 4 complete continuous years.

4.4. The Respondent admits that the Claimant was not provided with a contract of employment. The Respondent states that this was because the Claimant had told him one was not required. I find that despite the communication on 26 February 2017 in which the Respondent contends the Claimant told him that the contract was not needed, the Respondent had taken it upon himself to research the website .gov.uk [173] and this was on the back of a different legal dispute in which the Respondent recognised that he wanted "formal contracts drafted by a professional" (paragraph 6 of the Respondent's witness statement). The communication relied upon by the Respondent was also three years prior to the effective date of termination in which he could have taken legal advice or broached the subject again.

4.5. On 25 August 2020 the Claimant and the Respondent met and discussed redundancy. Although an earlier meeting regarding redundancy was said to have taken place in July 2020 this was in dispute but there was no disagreement between the parties regarding this August meeting.

4.6. On 2 September 2020 the Respondent emailed the Claimant confirming his role was to be made redundant [196].

4.7. On 23 September 2020 the Respondent emailed the Claimant details of his statutory redundancy pay, notice pay and holiday pay [208-211].

4.8. On 15 October 2020 the Claimant was invited into a disciplinary meeting to discuss two allegations [213-215]:

4.8.1. Acting in competition with the Company during employment;

4.8.2. Taking Company property without permission, entering the Company premises without consent from the Company and refusing to return Company property and refusal to provide an inventory of what had been taken (theft and failure to follow reasonable management request).

4.9. On 21 October 2020 the disciplinary meeting was held over Zoom. The Claimant attended and had provided a statement in advance of the hearing [269-272].

4.10. On 22 October 2020 the Claimant was summarily dismissed for gross

misconduct [284-289].

4.11. The Claimant did not appeal his dismissal.

Disciplinary Allegations

4.12. Allegation 1: Acting in competition with the Company during employment:

4.13. Lymington Sea Water Baths

4.14. The Respondent states that permission was given to the Claimant to undertake photography for Lymington Sea Water Baths as the Claimant had been contacted by them and that they were the Claimant's connection.

4.15. The Claimant denied that he had offered to undertake the work however I find that his comment on the social media post on 22 August 2020 was an offer on behalf of the Claimant [219]. He also admitted in his statement produced in response to the disciplinary allegations against him that he "offered to take photographs" [269].

4.16. The Claimant stated that he undertook the photography on a Sunday using his own equipment for no fee not for Lymington Sea Water Baths but for The Oakhaven Hospice and that the Hospice were not a client of the Respondent's. He also stated that he had undertaken photography for Lymington Sea Water Baths before as a free service to friends [269-270].

4.17. The Parties agreed that the Hospice was not a client of the Respondent's and the Respondent provided evidence that he was aware that the Claimant had previously undertaken photography for Lymington Sea Water Baths.

4.18. Coolhat business cards

4.19. The Respondent alleged that as Coolhat business cards were found in the Claimant's drawer it indicated that the Claimant had been giving them out to clients of the Respondent prior to March 2020 which demonstrates an attempt to solicit clients and work from the Respondent.

4.20. The Claimant contended in his written statement provided before the disciplinary that they were for his mentoring business (that the Respondent was aware of), that they do not mention website, photography or video services and that they had been ordered 3 years previously and he supplied an email from the printing company to evidence this [207-271].

4.21. Non-compete policy

4.22. The Respondent contends that the above is in breach of the non-competition and non-work related activities policy [146].

4.23. That policy permits personal non-commercial photos on the condition that no compensation is received and provides exemptions where the line manager considers there is no detriment to the Respondent.

4.24. Allegation 2: Taking Company property without permission, entering the Company premises without consent from the Company and refusing to return Company property and refusal to provide an inventory of what had taken (theft and failure to follow reasonable management request).

4.25. 8 October 2020

4.26. The Respondent alleged that on 8 October 2020 the Claimant attended its premises without permission and took property that did not belong to him.

4.27. The Respondent contends that the Claimant had refused to return the items and provide a list of what he had taken.

4.28. The Claimant contends in his statement submitted before the disciplinary hearing that he attended his place of work as he had done throughout employment and that this was on a date he had already informed the Respondent.

4.29. The Claimant stated that he recovered his personal property as the Respondent had said if he did not it would be disposed of.

4.30. The Claimant admits that the Respondent asked him to return the red tool box (although he disagreed with the Respondent's position on this) and did so the next day.

4.31. During the disciplinary hearing the Claimant was asked why he did not provide the inventory and he responded that the Respondent was being pathetic.

5. The Law and conclusions – unfair dismissal

5.1. Section 94 of the Employment Rights Act 1996 ("the 1996 Act") gives an employee the right not to be unfairly dismissed.

5.2. Section 98(1) of the 1996 Act provides that, when a Tribunal has to determine whether a dismissal is fair or unfair, it is for the employer to show the reason for the dismissal and that such reason is a potentially fair reason because it falls within section 98(1)(b) or section 98(2). The burden of proof to show the reason and that it was a potentially fair reason is on the employer. A reason for dismissal is a set of facts known to or beliefs held by the employer which cause it to dismiss the employee.

5.3. If the employer persuades the Tribunal that the reason for dismissal was a potentially fair reason, the Tribunal must go on to consider whether the dismissal is fair or unfair within the meaning of section 98(4) of the 1996 Act.

5.4. This requires the Tribunal to consider whether the decision to dismiss was within the band of reasonable responses.

5.5. Section 98(4) of the 1996 Act applies not only to the actual decision to dismiss but also to the procedure by which the decision is reached. The burden of proof is neutral under section 98(4) of the 1996 Act.

5.6. In considering this question the Tribunal must not put itself in the position of the employer and consider what it would have done in the circumstances. That is to say it must not substitute its own judgment for that of the employer. Rather it must decide whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. (*Iceland Frozen Foods Limited v Jones* 1982 IRLR 439, *Sainsbury's Supermarkets Limited v Hitt* 2003 IRLR 23, and *London Ambulance Service NHS Trust v Small* 2009 IRLR 563).

5.7. When the reason for the dismissal is misconduct the Tribunal should have regard to the three-part test set out in *British Home Stores Limited v Burchell* [1980] ICR 303.

5.7.1. First, the employer must show that it believed the employee was guilty of misconduct.

5.7.2. Secondly, the Tribunal must consider whether the employer had reasonable grounds upon which to sustain its belief in the employee's guilt.

5.7.3. Thirdly, the Tribunal must consider whether at the stage at which that belief was formed on those grounds the employer had carried out as much investigation into the matter as was reasonable in the circumstances.

5.8. Applying the statutory test under section 98 of the 1996 Act I conclude that the Claimant has been unfairly dismissed by the Respondent.

5.9. The principal potentially fair reason for dismissal was conduct under s 98(1) and (2) ERA of the 1996 Act. I find that the Respondent did not have a genuine belief that the Claimant was guilty of the misconduct alleged nor that that belief was held on reasonable grounds for the following reasons:

5.10. Allegation one:

5.10.1. The Claimant had previously taken photographs in his personal capacity for Lymington Sea Water Baths who were the Claimant's connection and the Respondent had knowledge of this.

5.10.2. The Claimant received no monetary consideration and the non-complete policy provide exemptions for this.

5.10.3. The Claimant made the approach on social media on 22 August 2020 prior to the redundancy consultation meeting that month taking place.

5.10.4. The social media post subsequently used by the Claimant was made on 20 September 2020 but the Respondent waited until 15 October 2020 to put the allegation to the Claimant during which time the Claimant had been given notice of redundancy.

5.10.5. The Respondent sent a message to the Claimant saying that he was happy for the Claimant to put himself out as a photographer in a non-corporate capacity and that when asked by the Claimant if he could say on LinkedIn he was looking for photography work but that some friends are clients, the Respondent responded that "Of course, I know that, and to be honest photography is so low down on the list of things SPF does…I don't mind".

5.10.6. The Respondent also drafted a script to be used for its podcast in which it stated that the Claimant could take on projects SPF would never be considered for – like photography projects" [238] and the Respondent drafted a statement about the Claimant announcing his redundancy saying "he's also been using his time on furlough to hone his photography skills" [246].

5.10.7. When the Claimant says that he had been approached, which I find wasn't the case, the Respondent responds saying "I know, you don't need to justify, It's all good" [237].

5.10.8. In respect of the business cards the Claimant provided evidence during the hearing that they had been ordered three years previously and that they did not advertise any competing services.

5.10.9. I therefore consider that it would not have made any difference to the consent the Claimant had from the Respondent had the Respondent been in fact told that the Claimant had made the approach and there was nothing in the message exchange to this effect.

5.10.10. In summary for allegation one: on the basis that the Respondent had admitted that photography was low down on its list, had consented to the work being undertaken, no money had been received and the Respondent has not provided evidence as to why it took nearly one month to act upon the allegation, I do not consider that the decision maker had a genuine belief that the Claimant was guilty of misconduct.

5.11. Allegation Two:

5.11.1. When the Claimant first mentioned 8 October the response from the Respondent was “I cant do 8th Oct. My availability is really poor too. Im working 7AM until 10PM most days”. The Claimant then suggested 21 October and the Respondent replied saying “potentially but I cant promise”. The Respondent also stated it was in the Claimant “interest to collect your own stuff that’s not my problem”. The Claimant went on to say he would drop in when passing and the Respondent did not make it clear that he had to be present when doing so.

5.11.2. It is fair to say that communications from this point onwards became fraught with the Respondent threatening to dispose of the Claimant’s personal possessions or donate to charity if they were not retrieved. The Claimant responded by reminding the Respondent he had given him two dates and he has until end of October to clear his equipment [243]. There was no response to this from the Respondent saying either of those dates were permissible.

5.11.3. When the Claimant did attend the premises, he messaged the Respondent to say so and the Respondent’s first response was “ok thanks”.

5.11.4. I therefore find that the Respondent did not have a genuine belief that the Claimant attended the premises on 8 October 2020 without permission.

5.11.5. I do not consider that the Claimant has refused to return items, items were returned the next day on 8 October 2020.

5.11.6. The Claimant stated that other items he took were those which had not been clearly identified on the invoices and that belonged to him. I consider that on the balance of probabilities the list of items on the invoice [212] was ambiguous and neither the Claimant nor the Respondent knew what items specifically were being sold.

5.11.7. The Claimant also stated that other items he took were ear-marked as rubbish, which based on the messages from January 2020, I consider that this was a reasonable expectation from the Claimant [184-185].

5.11.8. On the basis that the Respondent was aware that he had not told the Claimant he couldn’t attend the premises unless he was present, the fact that the Claimant had given the Respondent that date and was being threatened with his personal items being destroyed and on the basis that the invoice in respect of goods being transferred was ambiguous I do not consider that the Respondent had a

genuine belief that the Claimant was guilty of misconduct.

5.11.9. In respect of the inventory, I do consider that the Claimant has failed to supply an inventory at the Respondent's request. However, the Respondent had CCTV and identified for himself items that he did not consider the Claimant should have taken and relations between the parties on both sides was now poor.

5.11.10. I do not consider that the decision maker had a genuine belief that the Claimant was guilty of gross misconduct for failing to provide an inventory and that this warranted summary dismissal in this regard.

5.12. In addition, had the belief of gross misconduct held by the decision maker been a genuine belief on reasonable grounds I find that the Respondent acted unreasonably in treating the conduct as a sufficient reason for dismissal.

5.13. Had I had to consider whether the decision to dismiss was a fair sanction that was within the range of reasonable responses open to a reasonable employer faced with the same facts I consider that it was not within the range of sanctions open to the Respondent for the reasons set out above.

6. The Law and conclusions – wrongful dismissal

6.1. The Claimant was dismissed without notice. He brings a breach of contract claim in respect of 5 weeks' notice.

6.2. The Respondent says that it was entitled to dismiss him without notice for gross misconduct.

6.3. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of termination. This must not be less than the statutory minimum period of notice set out in section 86 of the 1996 Act. For someone who has been employed for 4 years, this is four weeks' notice.

6.4. An employer is entitled to terminate an employee's employment without notice if the employee is in fundamental breach of contract. This will be the case if the employee commits an act of gross misconduct. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.

6.5. I must decide if the Claimant committed an act of gross misconduct entitling it to dismiss without notice. The onus falls on the Respondent to convince the tribunal, on the balance of probabilities, that the Claimant did commit an act of gross misconduct. In distinction to the Claimant's claim of unfair dismissal, where the focus was on the reasonableness of the decision, and it is immaterial what decision I would myself have made

about the Claimant's conduct, I must decide for myself whether the Claimant was guilty of conduct serious enough to entitle the Respondent to terminate the employment without notice.

6.6. I set out my findings about the Claimant's actions above. They are equally applicable to the question whether the Claimant was guilty of conduct entitling the Respondent to dismiss without notice. I find that the Claimant did not commit an act of gross misconduct, that the Respondent was not permitted to dismiss without notice and that the Claimant is entitled to notice pay. His complaint of breach of contract succeeds.

7. The Law and conclusions – section 38 Employment Act 2002

7.1. Where a Tribunal finds in favour of an employee in an unfair dismissal claim and the Tribunal finds that the employer has failed to provide the employee with a written statement of employment particulars, the Tribunal must award the employee an additional two weeks' pay, unless there are exceptional circumstances which would make that unjust or inequitable, and may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.

7.2. As an employee the Claimant was entitled under section 1 of the 1996 Act to be provided with a written statement of employment particulars by not later than 2 months after the start of his employment i.e., by 1 April 2016. The Respondent contends he was told by the Claimant in February 2017 that a contract of employment was not needed. I find that despite the Claimant's comments the obligation is on the Respondent and in any event this communication was 10 months after the Claimant should have already received his written statement of terms and particulars.

7.3. I find that the Claimant was never given a written statement of employment particulars. I must, therefore, order the Respondent to pay an additional two weeks' pay and may, if I consider it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.

7.4. As a new employer with limited experience of running a business and relying on the Claimant as a mentor, I do not consider that it would be just and equitable to order the Respondent to pay additional compensation, but I order it to pay two weeks' pay.

8. Remedy

8.1. The following orders were made after a great deal of discussion regarding the figures with the Claimant and Respondent's Counsel.

8.2. Unfair dismissal; basic award

8.3. This was agreed in the sum of £2203.38.

8.4. Unfair dismissal; compensatory award

8.5. A figure of £400 was ordered in respect for loss of statutory rights.

8.6. Relevant law and conclusions - Polkey

8.7. As I have found that the Claimant was unfairly dismissed I should consider whether any adjustment should be made to the compensation on the grounds that that the Claimant would have been dismissed for redundancy in any event in accordance with the principles in *Polkey v AE Dayton Services Ltd* [1987] UKHL 8, *Software 2000 Ltd v Andrews* [2007] ICR 825; *W Devis & Sons Ltd v Atkins* [1977] 3 All ER 40; and *Crédit Agricole Corporate and Investment Bank v Wardle* [2011] IRLR 604.

8.8. The decision in *Polkey-v-AE Dayton Services* [1988] ICR 142 introduced an approach which requires a tribunal to reduce compensation if it finds that there was a possibility that the employee would still have been dismissed even if a fair procedure had been adopted. Compensation can be reduced to reflect the percentage chance of that possibility. Alternatively, a tribunal might conclude that a fair of procedure would have delayed the dismissal, in which case compensation can be tailored to reflect the likely delay. A tribunal had to consider whether a fair procedure would have made a difference, but also what that difference might have been, if any (*Singh-v-Glass Express Midlands Ltd* UKEAT/0071/18/DM).

8.9. It is for the employer to adduce relevant evidence on this issue, although a tribunal should have regards to any relevant evidence when making the assessment. A degree of uncertainty is inevitable, but there may well be circumstances when the nature of the evidence is such as to make a prediction so unreliable that it is unsafe to attempt to reconstruct what might have happened had a fair procedure been used. However, a tribunal should not be reluctant to undertake an examination of a *Polkey* issue simply because it involves some degree of speculation (*Software 2000 Ltd.-v-Andrews* [2007] ICR 825 and *Contract Bottling Ltd-v-Cave* [2014] UKEAT/0100/14).

8.10. I turn to this issue now and the Respondent invites me to find that employment would have ended in any event on 24 October 2020 by reason of redundancy. Having heard the oral evidence from the Claimant in which he does not dispute the work he was doing during the pandemic had diminished and that notice of redundancy had already been served on the Claimant, I do find that there was 100% probability that the Claimant's employment would have ended on 24 October 2020.

8.11. The Claimant is therefore awarded two days' pay which was agreed in the sum of £88.75.

8.12. Relevant law and conclusions - Contributory Fault

8.13. Now addressing the issue of contributory fault. The Tribunal may reduce the basic or compensatory awards for culpable conduct in the slightly different circumstances set out in sections 122(2) and 123(6) of the

1996 Act.

8.14. Section 122(2) of the 1996 Act provides as follows: "Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly."

8.15. Section 123(6) of the 1996 Act then provides that: "Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding."

8.16. I have been invited to consider whether the Claimant's dismissal was caused by or contributed to by his own conduct. In order for a deduction to have been made under these sections the conduct needs to have been culpable or blameworthy in the sense that it was foolish, perverse or unreasonable. It did not have to have been in breach of contract, equivalent to gross misconduct or tortious (*Nelson-v-BBC [1980] ICR 110*).

8.17. I have applied the test recommended in *Steen-v-ASP Packaging Ltd* [2014] ICR 56; I have had to:

a) Identify the conduct;

b) Consider whether it was blameworthy;

c) Consider whether it caused or contributed to the dismissal;

d) Determined whether it was just and equitable to reduce compensation;

e) Determined by what level such a reduction was just and equitable.

8.18. I have also considered the slightly different test under s. 122 (2); whether any of the Claimant's conduct prior to his dismissal made it just and equitable to reduce the basic award, even if that conduct did not necessarily cause or contribute to the dismissal.

8.19. I do not find the Claimant's conduct culpable or blameworthy or that it caused or contributed to the dismissal. The Respondent himself states that the Claimant did not come in on 8 October 2020 with bad intentions. Therefore, a reduction in compensation would not be just and equitable.

8.20. <u>Relevant law and conclusions - ACAS Uplift</u>

8.21. I am invited by the Respondent to make a 25% reduction to compensation due to the to the Claimant's unreasonable failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures. Namely, the Claimant's behaviour in the disciplinary meeting and his failure to appeal.

8.22. Section 207A Trade Union and Labour Relations (Consolidation) Act 1992 provides in relation to certain claims including unfair dismissal, that where an employee has failed to comply with an applicable ACAS Code relating to the resolution of the dispute, and that failure was unreasonable, "the employment tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the employee by no more than 25%."

8.23. Although the Claimant refused to answer questions, he had provided a written statement in advance of the meeting and did attend.

8.24. In respect of his appeal, he had five days to appeal taking him until 27 October 2020. Within that time on 22 October the Claimant stated he would appeal but did not do so within the specified time frame. The Claimant therefore had knowledge of his right to appeal and the timescale and had indicated his intention to do so but failed to appeal which I consider was unreasonable.

8.25. On the basis that the Claimant has failed to appeal his dismissal I make a 10% reduction to the compensatory award for his unreasonable failure to comply with the ACAS Code of Practice.

8.26. <u>Wrongful dismissal</u>

8.27. The Claimant's claim for wrongful dismissal in respect of his notice period succeeds. The Claimant is awarded £269.95 net pay being the 20% furlough reduction the Claimant received during his notice period – it was agreed with the Respondent's Counsel at the hearing that notice pay should have been at 100% not the 80% furlough rate and this sum was agreed by the Parties and the Claimant has therefore proved his loss.

8.28. <u>Section 38 Employment Act 2002</u>

8.29. The Claimant's claim for the Respondent's failure to provide the Claimant with a written statement of employment particulars succeeds and he is awarded two weeks' gross pay in the agreed sum of £734.46. It was not just and equitable to award four week's pay as the Respondent was a small new employer and had sought advice from the Claimant.

Employment Judge Belton
Date: 21 September 2022

Reasons sent to the parties: 28 September 2022

FOR THE TRIBUNAL OFFICE