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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Anthony Cross

**Respondent:** IJ Facilities Management Ltd

**Heard at:** Bury St Edmunds Employment Tribunal (in person)

**On:** 9 and 10 May 2024

**Before:** Employment Judge Hutchings

## Representation

Claimant: Ms Finnigan, lay representative

Respondent: Mr Collyer, employment consultant

**UPON** a reconsideration of the oral judgment given on 10 May 2024 on the Tribunal's own initiative under rule 73 of the Employment Tribunals Rules of Procedure 2013, the judgment is reconsidered as follows:

## JUDGMENT

1. The complaint of unfair dismissal is not well-founded. The claimant was not unfairly dismissed under section 104 of the Employment Rights Act 1996.
2. The complaint of breach of contract in relation to expense payments is not well-founded and is dismissed.
3. The complaint of unlawful deduction from wages for one day's wages on 26 January 2023 is not well founded; the Tribunal does not have jurisdiction to hear this claim as it is out of time.
4. An award cannot be made under section 38 of the Employment Act 2002 as the Employment Tribunal has not found in favour of claimant in respect of any other claims to which the proceedings relate.

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# REASONS

1. Noting this was not raised during the hearing, Employment Judge Hutchings took account of the representation made by Mr Collyer after judgment was delivered that an award under section 38 of the Employment Act 2002 cannot be made by an Employment Tribunal if the claimant has not succeeded in any other claims in the proceedings.
2. On my own initiative, I reconsidered section 38 of the Employment Act 2002, the relevant part of which is below:

**38 Failure to give statement of employment particulars etc.**

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

(2) If in the case of proceedings to which this section applies—

(a) the employment tribunal finds in favour of the worker, but makes no award to him in respect of the claim to which the proceedings relate, and

(b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 (c. 18)

(duty to give a written statement of initial employment particulars or of particulars of change or (in the case of a claim by an worker) under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday),

the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

3. While, as a finding of fact stated at the hearing at the time the proceedings were begun the respondent was in breach of its duty to provide the claimant with a written statement of employment particulars, applying section 38(2)(a) no financial award can be made to the claimant as the judgment in the other claims does not satisfy the requirement that the Employment Tribunal “finds in favour of the worker” [the claimant] .
4. This means as the other claims the claimant brought to the Employment Tribunal did not succeed (judgment paragraphs 1 to 3 inclusive) as a matter of law he is not entitled to a monetary award for any factual breach of section 38 Employment Act 2002. Therefore the award given at the oral hearing has been reconsidered and no award is made under section 38.

Employment Judge Hutchings

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13 May 2024

JUDGMENT SENT TO THE PARTIES ON  
4 June 2024

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FOR THE TRIBUNAL OFFICE

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