



EMPLOYMENT TRIBUNALS

Claimant: Mr G Leedham

Respondent: Royal Mail Group Limited

Heard at: Leeds

On: 30 August 2024

Before: Employment Judge D N Jones

REPRESENTATION:

Claimant: In person

Respondent: Mr R Chaudhry, solicitor

JUDGMENT

The claimant was provided with itemised wage statements by the respondent in accordance with section 8 of the Employment Rights Act 1996.

REASONS

1. The answer to this case turns upon the meaning of the word “given” in section 8 of the Employment Rights Act 1996 (ERA). Section 8 of the ERA provides:

“A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.”

2. Section 8(2) of the ERA provides what particulars must be included in that itemised pay statement.

3. By section 11 of the ERA provides a worker may bring a claim to an Employment Tribunal if an employer has failed to comply with section 8 in providing an itemised wage statement and the worker may seek a determination of what particulars ought to have been given.

4. The claimant is an Operative Post Grade at the Royal Mail. He says that the respondent has not given him itemised pay statements since June 2023. He presented a claim to the Tribunal raising that concern on 26 December 2023.

5. The respondent introduced digital payslips for its managers in 2021. On 26 April 2023 workers at Royal Mail were notified, by Zereena Brown, Chief People Officer, that the respondent intended to move towards digital wage slips for all. She said that by that stage, 26 April 2023, 85% of staff were using a "People App". But, as from June, it would not be possible to receive a paper payslip. Ms Brown enclosed frequently asked questions to explain how the wage slips could be obtained:

"(1) I do not have access to a printer at home. Can I opt back in to receiving printed payslips?"

A: No. The People App provides individuals with the ability to download and save pdf copies of payslips which can be forwarded to any device for printing. Copy and print stores provide for print services and can be sourced on Google search and many public libraries and universities also offer this facility.

(2) I do not have a smartphone. Can I access the People App on any other device?"

A: The app is available to download from both Apple and Google Play App Stores for iOS or android smartphones, tablets or via this link on any web browser. [Link provided]

(3) I don't have a smartphone, laptop, printer, email. How will I access my payslip?"

A: Creating an email address will allow you to access People App on any smartphone, tablet or desktop. If you do not have access to a smartphone, tablet etc then most public libraries offer public computers and free wi-fi. If you do not have wi-fi at home many public places such as shops, cafes, museums, libraries and restaurants have free wi-fi.

(4) Is it illegal not to provide me with a paper payslip?"

A: Employers can choose to provide electronic online payslips. Further information can be obtained online. [Link given]

(5) I need paper copies of my payslips. Is there a way to opt back into the business providing them?"

A: People App gives you access to your historic payslips and P60s so can download and print historical forms as and when you need them. Therefore there is no need to request to receive paper payslips. Whilst we understand that exceptionally there may be a personal requirement for paper copies, this is something that individuals will need to fulfil themselves."

6. The document stated that the final payslip would be issued on 29 May 2023; that People App features could be accessed any time 24/7 and downloaded; that if there was no smartphone, People App could be accessed via a link (which was provided) on a desktop computer, laptop, phone or tablet; and it included a QR code which could access the app by use of a mobile phone.

7. As communicated, the respondent changed its policy as of June 2023.

8. The claimant has not received a payslip since then to date and has not accessed the information in the ways the respondent has suggested. The claimant raised with his manager his complaint about not having a printed payslip on 30 September 2023. There was some communication thereafter with the Human Resources Department.

9. This culminated in a letter from Mr Cunniffe, Director of HR, of 10 January 2024. He explained the history whereby there had been a move to digital provision of wage information. He said they would provide an opportunity for people with a known disability or medical condition, which prevented them from accessing technology, to provide evidence of that. He would be happy to share the process with the claimant if it applied to him. (I was told that 11 individuals receive printed copies because of medical conditions). The claimant could therefore only receive his information in the ways set out.

10. I heard evidence from the claimant and from Mr Sergei Shkul, who is employed by the respondent as Head of Pay Services. Mr Shkul explained the provision of itemised pay statements historically and in the way that they had been provided since June 2023. Previously the payslips would be printed and sent in an envelope to the address of the employee.

11. In his witness statement the claimant said that he had learned of serious privacy concerns. He produced in this hearing (with my permission) a printout from the Google Play Store which suggested that the app may track users' precise location, record audio and video and read modified calendar contacts. He said that the presence of a code signature of a third-party tracker called Tealium had been detected in the People App; it tracked online activity and built a profile of the user. He believed that the respondent was being unreasonable by coercing all employees onto the People App to receive their pay details. He said that if the respondent wished to provide information in this way it could do so by providing workers with a smartphone and a paid internet connection. All workers, he said, were being compelled to use their own personal equipment, and this fell short of the requirement on the employer under section 8.

12. In closing argument, the claimant said that there is a difference between informing someone where they have left their car keys and giving them their car keys. He says that is a useful comparison. The respondent is telling the worker where they can access information about their pay, but not giving it to them. The claimant says there is an obligation on an employer, on any view, to provide this information to an employee who has a difficulty in accessing it online, for example because of a medical reason. He finally said that he was not objecting to the principle of the information being provided in electronic form – it was simply the means which the respondent, inflexibly, was requiring its own workers to access this information through its People App. The claimant said other companies were far more flexible.

13. On behalf of the respondent Mr Chaudhry drew my attention to an authority, **Anakaa v Firstsource Solutions Ltd [2014] IRLR 941**, from the Court of Appeal of Northern Ireland. That case concerned similar, but different, legislation to the

Employment Rights Act 1996: Article 40 of the Employment Rights (North Ireland) Order 1996. It is drafted in identical wording to section 8 ERA.

14. The Court of Appeal of Northern Ireland was concerned as to whether provision of wage information online, by way of password access, complied with Article 40. It was troubled that might not be 'written' information. It resolved that question under the Interpretation Act (Northern Ireland) 1954. That provision has identical terms in English law. Section 5 and Schedule 1 of the Interpretation Act 1978 provides that writing, in any Act of Parliament, includes "*typing, printing, lithography, photography and other modes of representing or reproducing words in a visible forms and expressions referring to writing are to be construed accordingly*".

15. Mr Chaudhry says the claimant has no medical or physical impairment, or any financial difficulty, in obtaining the information. The claimant agreed, in cross examination, that he has a phone which can access the information online, although he does not have a computer and printer at home. He said there is a local library at which he could access the information using a library computer, for which there was no charge. The library also provided printing facilities.

16. The claimant does not dispute that this is anything other than a point of principle. He says it is an important point. I can find no judicial decision on what the word "given" means in section 8 of the Employment Rights Act 1996.

17. The authority of the Court of Appeal in Northern Ireland is not binding on this Tribunal. It is however persuasive. The Court upheld the Tribunal's decision; that the provision of the information in electronic form by access by password complied with the same provision in Northern Irish law. It added a caveat: "*If an employer is aware that an employee is having any sort of difficulty in actually accessing a payslip in this way, the employer is obliged to find an alternative method of providing information in accordance with the statutory requirement*". I would agree with the caveat.

18. One of the claimant's objections is that this puts upon the employee a burden to have to use his personal equipment at his own expense, albeit it may not be a significant cost. He says that is "coercive". I am not persuaded by that. No objection was taken to the previous system of sending the itemised pay statement by post. Then the employee would have to have an address to which the document could be posted. The purpose of section 8 was considered by His Honour Judge David Richardson in the Employment Appeal Tribunal in the case of **Ridge v HM Land Registry UKEAT/0098/10**. He said, "*The purpose of an itemised pay statement is I think clear enough – it is to enable [a worker] receiving a payment of wages or salary to see, at a glance and in broad outline, how that payment is made up. In order to do so, deductions may be identified and explained. Hidden and unexplained deductions are not permitted*". Using electronic equipment to access information is not inconsistent with this purpose.

19. There is no definition in the Employment Rights Act 1996 of the term "given" in section 8. In the light of the persuasive authority of the Northern Ireland decision, I find that use of electronic equipment to access wage information complies with section 8. I do not think the word "given" can be literally restricted to being handed

from one individual to another – the previous use of post seems to have been regarded as acceptable. The word “given” can quite properly be construed as giving access to the information in a readable form. In the light of the various mechanisms by which this information could have been obtained, either by downloading the app, accessing the app on a website on the worker’s own equipment or by using other computers available to the community, the employee would be able to receive the information for the purpose identified by His Honour Judge Richardson.

20. I am not able to explore the technological privacy issues raised by the claimant with respect to tracking and accessing private information of the worker. That was first raised by the claimant in his witness statement and is not set out in the claim form. The respondent had no notice of this issue and it was too late to raise it for consideration at the hearing. It would require expert opinion, for which permission would be required in advance from the Tribunal. No such expert evidence has been obtained. It is well beyond my experience to make an informed judgment on such matters.

21. In these circumstances I find the respondent has discharged its duty under section 8. I dismiss the claim.

Employment Judge D N Jones

Date: 6 September 2024

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