Case Number: 6001505/2024

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr O Ola-Said	v	Lumi Support Limited

Heard at: Leeds **On**: 5, 6, 7 and 10 February 2025

Before: Employment Judge James
Ms J Lancaster
Mr D Eales

Representation

For the Claimant: Represented himself

For the Respondent: Mrs K Singh, solicitor

REASONS

The issues

1. The agreed issues which the tribunal had to determine are set out in Annex A.

The proceedings

2. Acas Early Conciliation took place between 30 March and 3 April 2024. The claim form was issued on 4 April 2024. The claimant makes claims for unpaid wages/holiday pay, whistle-blowing detriment, detriment for raising an issue about unpaid holiday, breach of contract and failure to provide a statement of terms and conditions of employment.

3. A preliminary hearing for case management purposes took place on 14 October 2024 before Employment Judge Jones. The claimant's application to amend his claim to include a detriment claim under the Working Time Regulations was allowed. The application to add a complaint of automatically unfair constructive dismissal (s.103A Employment Rights Act 1996) was refused. The other complaints the claimant wanted to bring were not ones the tribunal has jurisdiction to consider and the amendment application was refused in respect of those claims.

4. This final hearing was listed and related case management orders were made to ensure that the claim the case was ready to proceed.

5. At the commencement of this hearing, two further detriment claims were identified. These are apparent from Box 8.2 of the ET1 and Mrs Singh was content that they be dealt with on the understanding that if any further evidence in chief was required from the respondent's witnesses, leave would be given for that. The respondent also accepted that the claim form clearly raised a complaint that at the time the proceedings were commenced, a statement of employment particulars had not been provided to the claimant as required by ss 1, 2 and 3 Employment Rights Act 1996 and therefore that if the claimant succeeded in any of his other claims, further compensation may be payable under Section 38 Employment Act 2002.

6. The respondent admitted that holiday pay was owed and confirmed that it would be paid by the end of the month. The parties have been able to come to an agreement regarding the amount of holiday pay still outstanding by the time of this hearing and the amount ordered to be paid in the Judgment previously issued reflects that agreement.

7. Since the judgment was issued, the claimant has made a request for these written reasons.

The hearing

8. The hearing took place over four days. Evidence and submissions on liability were dealt with on the first three days. It was arranged that on the fourth day, the tribunal would give its decision and reasons and, if the claimant was successful, would go on to deal with remedy.

9. The tribunal heard evidence from the claimant. For the respondent, the Tribunal heard from Mr Fanso Maria, a Director of the respondent; Mr Marcel Chipamuanga, also a Director of the respondent and Managing Director; Nancy Banda, now also a Director; Ms Tapiwanashe Chiremba, Support Worker; and Ms Tarari Chiremba, former Support Worker. There was an agreed hearing bundle of 265 pages. Further pages were added by agreement during the hearing.

Findings of fact

10. The claimant started work for the respondent on 25 June 2022 in the role of Support Worker. Throughout his employment, the respondent was happy with the quality of the work carried out by the claimant; there were never any issues with his performance.

11. The respondent is a small employer, employing 6 people. The respondent provides supported living provision to young people aged 16 to 18, at two houses, situated in Edlington and Cantley. The claimant worked at both houses. Whilst the young people in those homes do not have complex care needs or disabilities, they do come from challenging backgrounds and are often vulnerable.

12. Neither Mr Maria nor Mr Chipamuanga had run a business before. Before taking on new employees, they interviewed them, carried out DBS checks and obtained references. They were keen to get the business up and running so they could start to provide a service to young people. It is fair to say that they

did not pay as much attention to the intricacies of employment law as they ought to have done. Having said that, the Tribunal does appreciate that even large employers can sometimes find it difficult to comply with all of their employment law obligations.

13. The claimant was not provided with a statement of particulars of the terms of his employment when he started work. Although the respondent stated that he was provided with an offer letter, Mr Chipamuanga stated in evidence before us that he thought he showed the claimant a letter on a work laptop. The Tribunal finds that the most likely scenario, given what has been said above about the directors not appreciating all of their legal obligations as employers, is that the claimant was not shown or provided with a summary offer letter and that the terms of the offer were only discussed verbally.

14. The claimant alleges that in October 2023, his colleague, Tapiwanashe Chiremba approached him regarding unpaid holiday pay for herself and her sister, Tarari Chiremba and asked him to raise the issue on her behalf due to his longer tenure with the company. The Tribunal finds that there was a discussion around November 2023 between the claimant and the Chiremba sisters about holiday pay. Noting however that both Tapiwanashe Chiremba and Tarari Chiremba deny in their witness statements that they ever asked the claimant to raise the issue of holiday pay with management on their behalf; and that is consistent with their evidence at the hearing; the Tribunal finds that neither of them asked the claimant to raise the issue on their behalf. As will be seen from what is set out below, they were both capable of asking questions about holiday pay on their own behalf and did so.

15. The claimant subsequently spoke with Mr Chipamuanga and Mr Maria about holiday pay. The Tribunal finds that he mentioned his own holiday pay as well as that of the Chiremba sisters. The claimant was assured that holiday pay would be paid once the respondent implemented a new system, with the help of Bright HR. They stated that they were working with their accountant to resolve the issue and that payment would be made once the system was in place.

16. Again, there is a conflict of evidence on this point. The tribunal prefers the evidence of the claimant, when it comes to the question of him raising his own holiday pay. The Tribunal concluded it was implausible that the claimant would only have raised the issue of holiday pay in relation to his colleagues. The claimant had not been paid holiday since his employment began over a year before, holiday pay is an important right, and we do consider it unlikely that the claimant would not have mentioned his own entitlement.

17. Tarari Chiremba messaged Mr Chipamuanga on 28 November 2023 about paid holidays, asking how much leave she had to take as she wanted to book some leave. Mr Chipamuanga replied to say they were looking into it and would let her know soon. Tapiwanashe Chiremba also asked Mr Chipamuanga about paid annual leave around that time and was told that Mr Chipamuanga was speaking with the accountant about it. The respondent was by this time on notice that holiday pay was payable and were concerned about the financial implications of paying all of the arrears of holiday pay in a relatively short space of time.

18. We find that the claimant represented to Mr Maria when they spoke in December about holiday pay, that he was raising the issue on behalf of Tari

and Tapi. In fact, as noted above, he had no authority to do so. He also said words to the effect that the organisation could be sued, and that the cost could be substantial. We consider it likely on the evidence we have heard that the figure of £60,000 was mentioned.

19. Mr Maria then reported that conversation to Mr Chipamuanga. When he was next on shift with Tapiwanashe Chiremba, he asked whether she had asked the claimant to raise the issue on her behalf. It is likely that what the claimant said was not remembered exactly by Mr Maria. It would not be unusual for what was said to be misunderstood or misinterpreted; that happens all the time in human interaction. Also, as we now appreciate more, memory is inherently unreliable; and what people hear can be very much influenced by what they expect to hear. The Tribunal is satisfied that there was no deliberate attempt by Mr Maria, or Mr Chipamuanga when speaking to Ms Tapi Chiremba, to misrepresent what the claimant had said.

20. As a result of what had been reported to her by Mr Chipamuanga, Tapi Chiremba became much more reserved during handovers with the claimant after that. She kept their future interactions strictly professional.

21. Around this time, the working relationship between the claimant and Fanso Maria became strained due to their friendship breaking down over an argument regarding the music work Mr Maria and the claimant used to do together outside of the work of the respondent. The claimant had acted as Mr Maria's manager for a number of years, but they had a serious falling out over a proposed record contract. Mr Maria decided to keep his relationship with the claimant strictly professional after that. He agreed with Mr Chipamuanga that he would minimise contact with the claimant.

22. At the beginning of February 2024 the claimant spoke with Mr Chipamuanga about handing in his resignation. The reason given by the claimant was that he felt he could not work with Mr Maria any more because of the termination of their personal relationship outside work. The claimant said he felt it would be better if he left and was looking to start his own business. That this conversation took place is evidenced by a WhatsApp message between Ms Banda and Mr Chipamuanga on 6 February 2024, when the claimant's decision in principle to leave was mentioned, due to his relationship with Mr Maria.

23. The claimant did not provide a specific date in March when he would be leaving. He assumed he had to give a week's notice.

24. On 20 February 2024, the claimant received an email from Bright HR, the company which had by then been retained by the respondent to assist with HR issues.

25. The claimant alleges that on 23 February 2024, he had a further discussion with Tari Chiremba about holiday pay, following receipt of that email. The Tribunal finds that entirely plausible. The Tribunal does not however find plausible the claimant's suggestion that Tari Chiremba later discussed that with Mr Chipamuanga, that Mr Chipamuanga became annoyed, and expressed that annoyance to the claimant, for encouraging Tari Chiremba to raise the issue.

26. We find that implausible because Ms Tari Chiremba had raised the issue back in November in a message and did not receive any negative response from

management for doing so, either at that time, or during the remainder of her employment. Further, it is inconsistent with our finding that the directors had belatedly realised that holiday pay was due, and were taking steps, albeit slowly, to understand how that should be calculated and paid to staff. Engaging Bright HR was part of those efforts.

27. On 25 February 2024, Mr Chipamuanga sent the claimant a message with the rota for March attached. The claimant was only allocated 2 shifts, instead of the usual 6 or more. The claimant replied on 29 February to ask if he could start the Sunday shift on 3 March at 11am. He did not raise any issues about the number of shifts he had been allocated. He received a positive reply on 1 March from Mr Chipamuanga, about changing the shift start time.

28. Each home had a laptop for use by staff. The work laptop was specific to that home and has a generic Outlook email address so that staff working at the home can be sent messages specific to the service users there.

29. On 1 March 2024, the claimant says he saw evidence on his home laptop that his personal Gmail account had been accessed on another device. However, he has no independent evidence of this; he says he no longer has the record of that. In the absence of any corroborative evidence, the Tribunal finds that this did not happen.

30. When the claimant worked on Sunday 3 March, he saw that searches had been carried out using links in the Safari web browser search history, of sites he had accessed during times he worked at Cantley House.

31. Ms Tapiwanashe Chiremba denied in her evidence in chief that she accessed the claimant's search history or Gmail account. The Tribunal concludes that she did not have the claimant's Gmail account password and it is improbable that she could have accessed that account. However, Tapi Chiremba later accepted that she did look at some of the sites which were visible in the laptop's Safari web browser account, by clicking on some of the links. Since these links were available on the work laptop which all workers used, this did not amount to a breach or a misuse of the claimant's personal data. There was no encouragement by management for her t0 do so.

32. On 3 March 2024 a supervision meeting took place between the claimant and Ms Banda. Ms Banda knew the claimant was resigning and wanted to carry out a last supervision meeting. What was discussed is a matter of dispute, but not one we need to determine in order to decide the issues in the case. A report was sent to the claimant after the meeting. This noted, amongst other things:

> *No further training is required and this is Oli['s] last month working for Chozen 1ne Ltd*

33. The claimant did not feel the supervision note captured adequately what had been discussed. He therefore sent an email to Ms Banda on 6 March 2024 stating:

> *Firstly, I am dissatisfied with being evidently removed from shifts immediately after pursuing clarification of my request for holiday pay on 23/02/24. This sudden shift in the rota has raised concerns about the transparency of the decision-making process.*

Furthermore, there have been instances of false accusations circulating within the team which I am unhappy about. I've been accused of turning staff against management merely for seeking what is rightfully owed in terms of my holiday pay, which has in turn created a hostile working environment.

A particularly concerning issue is the encouragement given to staff to access my personal emails and online search history on the 03/02/24.

Added to this my privacy was also violated on a separate occasion when important letters of mine which were accidentally left on the desk on my shift were opened and subsequently shredded. Despite questioning staff present during previous shifts on the 12/12/23, all denied any knowledge of the incident.

I have failed to received any holidays or holiday pay for the duration I have been working at Chozen 1ne Limited, which started on 19/07/22 and will finish on 01/04/24.

I am concerned In regards to this as there was an incident where one of the directors threatened to terminate another staff member for simply requesting their entitled holiday pay.

Another issue involves a false statement made to a staff member, claiming that I had said the staff member in question had threatened to sue Chozen 1ne Limited for £60k merely for requesting their own holiday pay. Such misinformation not only damages my relationships with colleagues but also contributes to a toxic work environment.

Lastly, I would like to highlight that I was never provided with an employment contract, a fact that has also been used to deny entitlement to holiday pay.

34. The claimant's employment ended on 17 March 2024, following his resignation.

35. The claimant did not receive a written response to his email of 6 March. However, he was invited to a Zoom meeting to discuss the issues raised. He sent a further email on 19 March asking for his P60 (presumably, he meant his P45). He said he could not make the Zoom meeting which was arranged for Friday 22 March, later that week, due to a prior engagement. He asked for a breakdown of his holiday entitlement.

36. Shortly after, the claimant received an email from Ms Banda accusing him of a serious data protection breach as follows:

It has come to our immediate attention that a significant breach of data protection regulations, specifically violating the General Data Protection Regulation (GDPR), has occurred within our organisation. This breach involves the unauthorised transfer of highly sensitive information to personal email accounts. We are deeply troubled by the severity of this violation, particularly as it involves the transmission of personal data belonging to vulnerable young individuals and staff members, including full names, addresses, and email addresses.

37. The claimant responded to the email the same day, stating:

I appreciate your message bringing this serious matter to my attention. However, I'm not aware of the specific data breach you mentioned. If you

could provide more details or evidence regarding this incident, I'm more than willing to cooperate fully.

Given the gravity of the situation and considering past disputes concerning holiday pay and staff intimidation, which have no yet been resolved, I believe it's prudent to involve Acas for a thorough review. Rest assured, I'm committed to cooperating with the investigation. I want to clarify that I have not accessed any personal information belonging to staff or individuals in care. On the contrary, I have reported instances of my own personal information being accessed.

38. In a further email sent later that day, the claimant stated:

Please find attached supporting evidence that I sent to myself showing my email and personal data was accessed on the 03/02/24 and the correlating times. As you are aware, I had raised these concerns via email previously, but unfortunately, there was no response from management. This lack of acknowledgment was troubling, especially considering my impending departure from the company on the 16/02/24.

39. On 20 March 2024 Ms Banda emailed the claimant to ask:

As part of our investigation, please could you explain why you downloaded this information on the 16/03/2024 (which was your last day of work) and emailed it to yourself? This work browser information consists of young people and staff sensitive information. Please see email below as part of the evidence of what we are investigating?

40. The clamant replied:

As referenced in our email thread from yesterday, which I have attached, I downloaded the information on 16/03/2024 as a precautionary measure. This action was taken in response to discovering that my email and personal data had been accessed on 03/02/24, reportedly by a member of staff under the directive of one of the directors. Regrettably, despite raising concerns about data security via email previously, there was no response from management, which left me feeling troubled, particularly given my impending departure from the company.

41. The claimant's final payslip was sent on 27 March by Mr Chipamuanga by email. The claimant emailed back the following day, saying:

I have received my final pay slip however, I have not yet received my accrued holiday pay or holiday pay calculation as previously discussed. Could you please inform me of the date when this payment will be processed?

Additionally, I have not received my P60. Could you please advise when I can expect to receive this document?

42. On 5 April Mr Chipamuanga told the claimant by email:

I apologize for the delayed response. Regarding your P45, we've already requested it from our HR department. Once we receive it, we'll promptly forward it to you. Your patience in this matter is greatly appreciated.

As for your holiday pay and the breakdown you've requested we have attached to the email. We understand its importance, and you will be among the first to receive it. However, due to procedural requirements, we will need

to disburse it in five instalments. The first payment will be completed through payroll.

Mr Chipamuanga clarified during the hearing that 'procedural requirements' was in fact a reference to the financial difficulties of paying large amounts of holiday pay arrears in a short space of time.

43. The claimant did not hear anything further about the alleged GDPR breach until he received a letter from the Information Commissioner's office dated 5 July 2024 stating:

I write in relation to a complaint received at this office from the City of Doncaster Council / ChozenINE Ltd. The complaint relates to an alleged data breach that occurred prior to you leaving your employment with the latter and involves an allegation that you emailed the contents of a company laptop's web browser to your personal email address.

44. The claimant told the Tribunal, and we accept, that after discussing the matter with the ICO's investigation officer, it was confirmed that there was no data breach and no further action would be taken. No allegations are made by the claimant about the alleged GDPR breach.

45. The Claimant's P45 was finally sent to him on 8 July 2024.

Relevant law

46. Section 23 Employment Rights Act 1996 in conjunction with s.27 gives a right to make a claim to an employment tribunal that his employer has made an unauthorised deduction from wages in respect of amounts due to them and their employment contract 'or otherwise'. The latte includes rights under relevant statutory provisions, including holiday pay.

47. Regulation 30 of the Working Time Regulations 1998 gives a worker the right to make a claim to the employment tribunal in respect of breaches of certain rights under the working Time regulations, including rights and regulations 13 and 16, in respect of holiday pay.

48. S.45A Employment Rights Act 1996 provides:

(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker— …

(e) brought proceedings against the employer to enforce a right conferred on him by those Regulations, or

(f) alleged that the employer had infringed such a right.

49. Section 47B Employment Rights Act 1996 gives a worker the right not to be subjected to a detriment as a result of making a protected disclosure. Since, for the reasons given below, it has not been necessary to consider and apply these provisions in detail, nothing further needs to be set out in this section of the judgment.

Conclusions

50. In arriving at the following conclusions on the issues before the Tribunal, the law has been applied to the facts found above. The Tribunal will not repeat every single fact, in order to keep these reasons to a manageable length. The issues are dealt with in turn.

    Protected disclosure/complaint of an infringement of working time rights

    Issue 8. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?

    Issue 8.1 What did the claimant say or write? When? To whom?

51. The claimant raised the issue of unpaid holiday pay for himself and other colleagues in meetings with the respondent as set out in the findings of fact above. Since that disclosure of information potentially gives rise to a claim under section 45A Employment Rights Act 1996, no further conclusions need to be reached in relation to the remainder of the protected disclosure issues.

    Issue 8.2 Was that a disclosure of information?

52. See 8.1 – not applicable.

    Issue 8.3 Did he believe the disclosure of information was made in the public interest?

53. See 8.1 – not applicable.

    Issue 8.4 Was that belief reasonable?

54. See 8.1 – not applicable.

    Issue 8.5 Did he believe it tended to show that:

    - *a person had failed, was failing or was likely to fail to comply with any legal obligation [Namely, the right to paid holidays under the Working Time Regulations 1998?]*

53. Yes he did, but see 8.1 – not applicable.

    Issue 8.6 Was that belief reasonable?

55. See 8.1 – not applicable.

    Issue 9. If the claimant made a qualifying disclosure, was it a protected disclosure because it was made to the claimant's employer?

56. See 8.1 – not applicable.

    Issue 10. Did the claimant allege the respondent had infringed the right to a working time right [of his]?

54. Yes he did – see the findings of fact above and the conclusion on issue 8.1.

    Detriment (Employment Rights Act 1996 section 45A and 47B)

    Issue 11. Did the respondent reduce the claimant's shifts?

55. The claimant was only offered two shifts in March 2024, when usually he would be offered six shifts or more.

    Issue 11A – did the respondent circulate false accusations against the claimant, namely that he was 'stirring up trouble within the team' by him telling

management that Tari and Tapiwanashe were threatening to sue the respondent for £60,000 over holiday pay?

56. The respondent did not stir up false allegations against the claimant. The claimant raised the issue of holiday pay with Mr Maria on his own behalf as well as on behalf of Tapiwanashe and Tarari Chiremba (although he had no authority to do so). Mr Maria spoke with the claimant about this, who then spoke with Mr Chipamuanga who spoke with Tapiwanashe Chiremba. The claimant's account may have inadvertently been changed during that process; that is not untypical of human communication. There was however no deliberate attempt by the respondent to stir up false accusations. The claimant did not help the situation by purporting to speak on behalf of the Chiremba sisters without having their authority to do so.

Issue 11B – did the respondent breach the claimant's privacy by allowing unauthorised access to his personal emails and online search history

57. The Tribunal has found that this did not happen as a matter of fact. The search history was visible on a work laptop used by all staff at that home. Viewing that search history was not a breach of the claimant's privacy. The clamant had his own laptop to use, if he did not want his search history to be viewed on the work laptop. He was entitled to use his own laptop when at the respondent's homes, at appropriate times, when he was not otherwise engaged on work-related duties.

Issue 12. By doing so, was that a detriment?

58. The respondent does not dispute this.

Issue 13. If so, was it done on the ground that he made the above protected disclosure?

59. It is not necessary to reach any conclusions on this issue - see issue 14 below.

Issue 14. Further or alternatively was it done on the ground that he alleged the respondent had infringed a working time right?

60. The Tribunal concludes that it was not. It was poor practice of the respondent to put the shifts together for March without checking with the claimant his leaving date. We conclude however that the reason the claimant was only offered two shifts in March was because the respondent did not know when he would be leaving and was concerned that if the claimant was booked in for shifts he could not work, that could affect continuity of service for the home's vulnerable residents. Shifts were therefore covered by other staff who were definitely going to be available. The Tribunal concludes that Mr Maria should have asked the claimant and agreed a leaving date with him, before allocating the shifts for that month. However, the reason for him not doing so was not because the claimant had raised his rights under the Working Time Regulations 1998.

61. Further, if the respondent wanted to hit back at the claimant for raising the issue of holiday pay, or encouraging others to do so, they could have reduced his shifts in January or February. The fact that they did not do so makes it less likely, in the Tribunal's judgment, that they would so in March.

Wages/WTR claims – Issues 24 to 36

62. The parties have agreed that the claimant is owed the further sums of £431.38 holiday pay (to be paid without deductions, with the respondent being responsible for any tax or NI payable on that sum) and £168.28 as compensation by way of interest on the total amount unpaid (s.13 Employment Rights Act 1996/Regulation 30 Working Time Regulations 1998 and breach of contract claim).

Ss 1,2, 3 and 11 Employment Rights Act 1996 and s.38 Employment Act 2002

When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

63. Yes it was.

If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

64. The respondent does not seek to argue that there any such exceptional circumstances.

Would it be just and equitable to award four weeks' pay?

65. The Tribunal has concluded that it would not be just and equitable to award four weeks pay. There was no evidence that the claimant raised the issue of a lack of a statement of employment particulars several times as the claimant alleges. He raised the issue of holiday pay but not the lack of a statement of particulars. The claimant has not put forward any convincing reasons why it would be just and equitable to award four weeks under s.38.

Should any Acas uplift be applied due to a failure of the respondent to follow the Acas code on disciplinary and grievance procedures?

66. The claimant has succeeded in his claim of holiday pay only. The Tribunal notes that the claimant was invited to a meeting over Zoom to discuss the matters he complained about in his email of 6 March 2024. The claimant said that\ meeting was only to discuss the question of holiday pay, but that was not the evidence of Ms Banda, who said that the meeting was to discuss the whole of the contents of the email of 6 March. Ms Banda's evidence was not challenged and it was accepted by the Tribunal on that matter.

67. In any event, the claimant has only succeeded in relation to his holiday pay claim. Even on his own case, he declined a meeting to discuss that, and asked for calculations instead. The claimant has already been awarded interest, which compensates for the late payment to him. In the circumstances, the Tribunal does not consider that there has been a breach of the Acas Code by the respondent, or that any such breach would justify any uplift to the compensation already awarded to him.

<u>Time limits</u>

68. Time limits are no longer in issue.

Employment Judge James
North East Region

Dated 17 February 2025

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

ANNEX A - LIST OF ISSUES

Time limits

1. Issues 4 to 7. The respondent no longer takes any time limit points.

Protected disclosure/complaint of an infringement of working time rights

2. Issue 8. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996?
3. Issue 8.1 What did the claimant say or write? When? To whom?
4. Issue 8.2 Was that a disclosure of information?
5. Issue 8.3 Did he believe the disclosure of information was made in the public interest?
6. Issue 8.4 Was that belief reasonable?
7. Issue 8.5 Did he believe it tended to show that:
   - a criminal offence had been, was being or was likely to be committed;
   - a person had failed, was failing or was likely to fail to comply with any legal obligation;
   - a miscarriage of justice had occurred, was occurring or was likely to occur;
   - the health or safety of any individual had been, was being or was likely to be endangered;
   - the environment had been, was being or was likely to be damaged;
   - information tending to show any of these things had been, was being or was likely to be deliberately concealed?
8. Issue 8.6 Was that belief reasonable?
9. Issue 9. If the claimant made a qualifying disclosure, was it a protected disclosure because it was made to the claimant's employer?
10. Issue 10. Did the claimant allege the respondent had infringed the right to a working time right?

Detriment (Employment Rights Act 1996 section 45A and 47B)

11. Issue 11. Did the respondent reduce the claimant's shifts?
12. Issue 11A – did the respondent circulate false accusations against the claimant, namely that he was 'stirring up trouble within the team' by telling management that Tari and Tapi Chiremba were threatening to sue the respondent for £60,000 over holiday pay?
13. Issue 11B – did the respondent breach the claimant's privacy by allowing unauthorised access to his personal emails and online search history; ~~and/or tamper or destroy his personal letters~~? *[Words deleted words on the basis of the claimant conceding during the hearing that he cannot prove that element of the allegation]*
14. Issue 12. By doing so, was that a detriment? The respondent accepts that in principle the allegations amount to detriments.

15. Issue 13. If so, was it done on the ground that he made the above protected disclosure?

16. Issue 14. Further or alternatively was it done on the ground that he alleged the respondent had infringed a working time right?

Remedy for Protected Disclosure Detriment

17. Issue 15. What financial losses has the detrimental treatment caused the claimant?

18. Issue 16. Has the claimant taken reasonable steps to replace his lost earnings?

19. Issue 17. What injury to feelings has the detrimental treatment caused the claimant and what sum in compensation is appropriate for that?

20. Issue 18. Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

21. Issue 19. Is it just and equitable to award the claimant other compensation?

22. Issue 20. Did the respondent or the claimant unreasonably fail to comply with ACAS Code of Practice on Disciplinary and Grievance Procedures such that the award should be increased or decreased by up to 25%?

23. Issue 21. Was the protected disclosure made in good faith?

24. Issue 22. If not, is it just and equitable to reduce the claimant's compensation by up to 25%?

25. Issue 22A In addition, should any further compensation be awarded under s.38 EA 2002?

    25.1. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

    25.2. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

    25.3. Would it be just and equitable to award four weeks' pay?

Holiday Pay (Working Time Regulations 1998)

26. Issue 23. Did the respondent fail to pay the claimant holiday pay to which he was entitled and, if so, for what period?

27. Issue 24. How many days remain unpaid?

28. Issue 25. What is the relevant daily rate of pay?

Unauthorised deductions

29. Issue 26. Did the respondent make unauthorised deductions from the claimant's wages in the form of holiday pay and, if so, how much was deducted?

30. Issue 27. How much is the claimant owed?

Breach of Contract

31. Issue 28. Did this claim arise or was it outstanding when the claimant's employment ended?

32. Issue 29. Did the fail to pay the claimant holiday pay to which he was entitled?

33. Issue 30. Was that a breach of contract?

34. Issue 31. How much should the claimant be awarded as damages?

Additional Issues

Failure to provide a statement of employment particulars – s.11 Employment Rights Act 1996 and s.38 Employment Act 2002

35. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

36. If the claim succeeds, are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

37. Would it be just and equitable to award four weeks' pay?