EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4101433/2025

Held by video conference call in Glasgow on 28 October 2025

Employment Judge B Campbell

Mr B-G Torriero	**Claimant** **Represented by:** **Mr A Hutcheson,** **Hutchesons Solicitor**
Harleys Franchise Ltd	**Respondent** **Represented by:** **Mr J Harley,** **Director**

JUDGMENT OF THE TRIBUNAL

1. The complaints of:

    a. unfair dismissal,
    b. breach of contract in respect of failure to provide notice of termination of employment,
    c. breach of contract in respect of failure to remit sums to an occupational pension scheme,
    d. failure to provide a written statement of employment particulars, and
    e. failure to provide itemised payslips

    are upheld.

2. The claimant is awarded the sum of Sixteen Thousand, One Hundred and Eighteen Pounds and Twenty Nine Pence (£16,118.29) in compensation which the respondent is ordered to pay.

WRITTEN REASONS

Background

1. This claim involved a number of complaints by a motorcycle instructor against his former employer.

2. The claimant gave evidence as did Mr Harley, a director of the respondent. The claimant submitted a bundle of documents before the hearing and both individuals spoke to some of those. Numbers appearing in square brackets below are references to corresponding pages of the bundle.

3. The hearing took place over a day and I reserved judgment. My judgment is as above and the written reasons for it are below.

4. The legal complaints to be decided were as follows:

    a. Whether the claimant was unfairly dismissed under section 94 of the Employment Rights Act 1996 (the '**Act**'). The fact of dismissal was agreed;
    b. Whether the respondent breached the claimant's contract of employment under common law by not giving notice of the termination of his employment;
    c. Whether the respondent breached the claimant's contract of employment by not remitting deductions made from the claimant's pay into an occupational pension scheme;
    d. Whether the respondent breached the claimant's contract of employment by not making employer's contributions into an occupational pension scheme;
    e. Whether the respondent failed to provide the claimant with a statement of particulars of employment as required by section 1 of the Act; and
    f. Whether the respondent failed to provide itemised payslips to the claimant under section 8 of the Act.

Findings of fact

The following findings of fact were made, based on the evidence provided and on the balance of probabilities.

5. The respondent company operated franchises for the purpose of providing motorcycle lessons to members of the public. It did so by providing the services of instructors to companies which undertook the lessons. At the relevant time it did so in East Kilbride and Edinburgh. The claimant was employed by the respondent and engaged to provide his services in Edinburgh to a separate company named Harleys Edinburgh Limited ('**HEL**'). He reported to James Harley, a director of the respondent. Only Mr Harley and the claimant were employees of the respondent.

6. The claimant began employment with the respondent on 1 May 2022. He was not provided with a written statement of terms and conditions of his employment on commencement, or at any time until around 19 February 2025. The document he was provided with at that time was produced [39-43]. It contained some but not all of the particulars required by sections 1 to 3 of the Act. The claimant did not ask for written terms of employment until around August 2024. Up until then he was content to act on the basis of trust. When he did request a statement the company's CEO, David Lennox, told the claimant he would receive one but it was not provided. The claimant asked again on at least one occasion in late 2024 or early 2025 before the statement was provided.

7. From the beginning of his employment the claimant's salary had been expressed and agreed as £2,500 net of any necessary deductions. The claimant understood at the time that deductions would have to be made in respect of income tax and employee National Insurance contributions (NICs). Mr Harley told the claimant that this would be equivalent to approximately £40,000 gross. This was comparatively high for a motorcycle instructor and the claimant agreed. There was no subsequent agreement to vary his pay.

8. The claimant's monthly payslips were consistent with this arrangement. He normally received £2,500 net (save one month which was short by a penny) after deductions for income tax, employee NICs and employee pension contributions. The payslips also showed amounts for employer pension contributions.

9. Around the beginning of December 2024 the claimant sent a WhatsApp message to Mr Harley asking which occupational pension provider the respondent used. He said he was moving all of his pension funds into a single pot. Mr Harley said he would have Mr Lennox send the details. Mr Lennox did not do so and no pension provider details were given to the claimant.

10. On 18 December 2024 the claimant received a further electronic message from Mr Harley asking him if he was 'supposed to be opted out of the pension'. The claimant replied to say that if this meant he didn't want to be a member, then the answer was no. He said he was happy with the respondent contributing to the scheme on his behalf. He asked again for details of the pension provider. Mr Harley replied to say he didn't have the information to hand, but that the claimant was contributing 'at the moment'. This was in fact untrue, as no occupational pension fund had been set up for employees of the respondent. The claimant responded to say 'OK thanks, I'll stay doing that please Jim'.

11. Some time in January 2025 the claimant was ill and could not work. He was ill again in February and March 2025. He went on holiday to Australia on 20 March 2025. Whilst still there, on 4 April, he received a WhatsApp

message from Mr Harley saying that his employment had been terminated, ostensibly on 31 March. No right of appeal was offered. The claimant returned to the UK on 13 April 2025.

12. The claimant's employment was terminated as Mr Harley considered the respondent no longer had any funds to pay him, and was technically insolvent. The respondent's only sources of income were under franchise agreements with HEL and the East Kilbride training centre, both of which had been brought to an end by the end of December 2024. HEL had terminated its agreement with the respondent at least partly because the latter was unable to provide the claimant's services as a result of him being ill.

13. The claimant had been paid up to 31 March 2025 and was paid nothing further. He was not given notice of the termination of his employment nor any payment in lieu of any notice entitlement.

14. Following the termination of his employment and on his return home to the UK the claimant looked for alternative work. He secured a role with another business providing motorcycle lessons and started on 27 May 2025. He produced a copy of the written statement of terms he received from that employer [46-53]. The respondent did not dispute that he had made reasonable attempts to mitigate his losses in the circumstances.

15. Unknown to the claimant, the respondent had not arranged for an occupational pension fund to be implemented for its employees. The amounts shown in the claimant's payslips as employer and employee pension scheme contributions were not paid into any scheme. Mr Harley could not explain what happened to them. He intended to set up a scheme in early 2025 but that was overtaken by the financial difficulties caused by the cancellation of the franchise agreements.

16. The claimant was not at any point explicitly asked to make a choice as to whether to be a member of an occupational pension scheme, or to opt out. He assumed that he was opted in based on the details in his payslips and Mr Harley's messages in December 2024, which is what he wished to be the case.

Discussion and decision

Unfair dismissal claim

17. It was not in dispute that the claimant was dismissed by the respondent rather than, say, having resigned. The date of his dismissal was 4 April 2025, when he received the message from Mr Harley confirming the fact of termination. Dismissal could not be backdated by the message and nothing occurred before it was sent that indicated clearly enough an intention to end the contract earlier.

18. The onus is on an employer to show that the reason for dismissal was a fair one. More specifically, this means that it was one of the permitted reasons set out in section 98(1) and (2) of the Act.

19. I accepted the evidence of Mr Harley that by the end of December 2024 the respondent was no longer receiving any income and that by March 2025 its funds had entirely run out. It could no longer afford to pay the claimant, and therefore to engage him as an employee. On the evidence his dismissal was by reason of redundancy, as the term is defined in section 139 of the Act. The respondent ceased to carry on the business for which the claimant was employed – subsection (1)(a). The requirement for him to carry out work of the particular kind he was engaged for had ceased – subsection (1)(b).

20. As the respondent had cleared the first hurdle, the next question was whether it had acted reasonably in all relevant respects in dismissing the claimant by reason of redundancy. This is required by section 98(4) of the Act. The onus is neutral under this test.

21. It is established by way of earlier case law precedents issued from higher courts and tribunals, guidance from bodies such as ACAS, and also general good practice, that a redundancy-related dismissal will normally involve:

    a. Informing the affected employee(s) at a suitably early stage in the process of the possibility of redundancy;
    b. Consultation involving active listening to any proposals from those affected – on aspects such as numbers of redundancies, their location if relevant, pooling of similar employees, selection criteria and scoring systems, and alternatives to dismissal;
    c. Provision of sufficient information to the employees so that they adequately understand the provisional redundancy plan and can meaningfully reply; and
    d. A reasonable timescale for the process.

22. The respondent did none of those things. Mr Harley sent a text message to the claimant while he was on holiday, confirming his dismissal with immediate effect (in fact, unsuccessfully trying to backdate it to the end of the previous month). No opportunity for discussion of right of appeal was offered. There may have been little that he or the claimant could have done to avert the failure of the respondent as a business, but there could have been some element of forewarning and discussion before the decision to dismiss was confirmed.

23. On the evidence, Mr Harley reasonably knew from the end of December 2024 that the respondent's days were numbered. Certainly by the end of February 2025 he knew, or ought to have known, that the respondent would need to cease trading. He could have consulted with the claimant

during March, or April given that March was taken up with the claimant being absent through illness and then on holiday. At the very least he could have offered a meeting or telephone call to explain the position, invite comments from the claimant and, if necessary, serve notice of termination of employment.

24. For the above reasons, the respondent did not act reasonably in all the circumstances as section 98(4) requires. The options were necessarily limited and realistically all would have ended up with the claimant's dismissal at some point, but even an element of forewarning of the inevitable would have been preferable. If nothing else, the claimant could have been engaged slightly longer and/or have begun searching for other work sooner.

25. Calculation of compensation for the claimant's unfair dismissal is discussed below under 'remedy'.

Breach of contract – notice

26. Both under the claimant's written statement of employment terms [40] and statute – section 86 of the Act, the claimant was entitled to notice of termination equivalent to one week for each complete year of service. He had completed two complete years and was entitled to two weeks' notice. He did not receive any notice of termination.

27. The above written statement went further in saying that in the event of the respondent terminating the contract, the claimant would be entitled to 'severance, equal to their pay at the time of termination, for the notice period given'.

28. The evidence made it inescapable that the respondent had breached the claimant's contract by not providing notice and not making an equivalent payment in lieu of the lack of notice. The quantification is covered under 'remedy' below.

Failure to provide a compliant statement of employment particulars

29. As provided for in section 1 of the Act, an employer must provide each of its workers with certain details of their employment in a single document and no later than the beginning of the employment. The details are as listed in subsections (3) and (4). Where certain terms within that list do not apply, that must be stated rather than saying nothing at all – section 2(1).

30. The claimant was not provided with any written statement of his terms of employment at all until February 2025, almost three years after he started. This was given to him after he had requested a statement, and been promised one, some six months before. He had to ask again before he received it.

31. The statement which was provided in February 2025 did not contain all the details required by section 1(3) and (4) of the Act.

32. An employment tribunal can grant a remedy if a compliant statement of particulars has not been provided, but only if at least one other type of complaint (as listed in Schedule 5 of the Employment Act 2002) has been brought, and succeeded. One of those is a claim of unfair dismissal. In those circumstances the tribunal has power to make a declaration of any missing particulars and must normally make an award of at least two weeks' gross pay. This can be increased up to four weeks if the tribunal thinks it is just and equitable to do so.

33. The tribunal's approach to compensating the claimant for this complaint is dealt with in the 'remedy' section below.

Failure to provide itemised payslips

34. The claimant provided a number of his monthly payslips. From the sequence, those for the months between May 2022 and September 2023, and also from January, February and August 2024, were not included. The claimant asserted that he had not received them.

35. The respondent's position was that it outsourced the provision of payslips to a third party and was unaware of any not being provided, if that was the case. It could not definitively say whether the claimant received the allegedly missing payslips or not, but argued that it was not directly responsible for any errors or failures which occurred.

36. Every worker has a right to receive an itemised payslip on or before the date of payment of their wages – section 8(1) of the Act. 'Itemised' in this sense means that the payslip includes figures for gross and net pay, any deductions made (their amount and purpose), and hours worked if pay varies according to that measure – section 8(2).

37. On the claimant's uncontested evidence, he did not receive payslips for the months above. I accepted his position under oath that these were not provided. He was not accused of being wrong or disingenuous by the respondent.

38. A complaint must be raised within three months of the end of the relevant employment. Therefore, although the missing payslips were for months in 2022, 2023 and 2024, the complaint was in time.

39. The potential remedies when there has been such a failure are (i) a declaration of the missing details – section 11(1) of the Act, (ii) a declaration that there has been a failure to provide one or more properly itemised payslips – section 12(3), and (iii) a monetary award of up to the amount of the unrecorded deductions in the 13 week period before the

complaint is presented to the employment tribunal – section 12(4). This is dealt with further under 'remedy' below.

Employee and employer pension contributions

40. Mr Harley admitted that the deductions shown in the claimant's payslips for employee pension contributions had been made from the claimant's pay, but had not been paid into an occupational pension scheme as the payslips suggested and as the claimant had understood. No such scheme had been initiated.

41. Similarly, Mr Harley admitted that the entries in the claimant's payslips for employer pension contributions were misleading, as no such payments had been made into any scheme.

42. It was an implied term of the claimant's contract of employment that monthly deductions would be made from his gross pay at the minimum required level (5%) and remitted to an occupational pension scheme, and that the respondent would make the corresponding minimum level of monthly payments, namely 3% of earnings. These obligations are created by the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 under the Pensions Act 2008. By issuing monthly payslips the respondent suggested that this was being done. The respondent breached this implied term by not paying both monthly amounts into such a scheme. This was a material breach rather than a minor one. The claimant was clearly misled for over a year, including by way of comments made by Mr Harley in December 2024 which he knew to be dishonest. The effect in monetary terms was significant.

43. The consequences of these agreed facts are dealt with under 'remedy' below.

Remedy

44. The claimant provided a schedule of loss [61]. Mr Hutcheson identified some changes which he wished to make in his closing submissions. Essentially Mr Harley did not argue with the numerical calculations of the sums claimed or the fact that in principle the respondent had failed to honour the claimant's employment rights. His main argument was that the respondent had found itself in a precarious situation financially which was unavoidable, and which rendered it without any money to satisfy the claimant's entitlements.

Unfair dismissal

45. The claimant's dismissal was unfair and a **basic award** is due to him – section 119 of the Act. This is calculated on the basis of his two continuous years of service, his gross weekly pay being £745 (£38,750 per annum divided by 52 weeks), and his age at the date of dismissal being 60. As

the applicable statutory cap on a week's wages is £700, the calculation is £700 x 1.5 x 2, which results in a figure of **£2,100**.

46. In terms of any **compensatory award**, this is determined on the basis of what is just and equitable in the circumstances, having regard to the loss sustained by the claimant in consequence of the dismissal – section 123.

47. Whatever losses are actually sustained following the dismissal, a tribunal is entitled to calculate compensation on the basis of what would have happened had a fair process been followed if the evidence allows it to do so ***– Polkey v A E Dayton Services Limited [1987] IRLR 503***. This principle is relevant here, as the evidence clearly showed that the respondent was failing as a business from the beginning of 2025 at the latest, that the claimant was medically unfit to work for part of February and all of March 2025, and that there were no funds left to pay him beyond the end of that period.

48. Mr Harley ought to have faced up to the reality of the situation sooner in terms of briefing the claimant. Ideally he should have done this in March, and could have at least provided some information to the claimant about the seriousness of the situation. He could have raised the possibility, indeed the likelihood, of redundancy and intimated that it may not have been possible to engage the claimant beyond the end of that month. I recognise however that the claimant was ill until 20 March 2025 and then went on holiday. It would have been better to meet with the claimant, in person or by video, at least once to explain the position. Reasonably, Mr Harley would have needed to wait for the claimant's return from his holiday to do that.

49. I therefore find that compensation should be calculated on the basis that Mr Harley should have provided some sort of information and consultation process, even if there appeared to him to be no realistic options for saving the claimant's role. This should have run for a period of approximately a week following the claimant's return from his holiday on 13 April 2025, a Sunday. I therefore determine that the claimant be compensated for three weeks' net pay, covering the period from 1 to 22 April 2025. By the latter date, even had there been consultation and discussion, the likelihood is that the claimant would have still been dismissed. Taking the claimant's net pay as £2,500 per month, three weeks' worth of net pay amount to **£1,730.77**.

Breach of contract – notice

50. The claimant is entitled to damages equating to two weeks of net pay. That amounts to **£1,153.85**.

Failure to provide statement of employment particulars

51. In closing submissions Mr Hutcheson did not ask for a declaration of any terms omitted from the statement provided to the claimant in February 2025 or otherwise not provided. Therefore, no declaration is made in this judgment. The claimant did seek a compensatory award.

52. The complaint is competent given the success of the unfair dismissal claim, and it is upheld as there was no doubt that the claimant had not received a fully compliant section 1 statement as he should have done, either on or before joining the respondent, or at any time after. This was acknowledged by the respondent.

53. A tribunal must award at least two weeks' worth of gross pay (subject to the statutory cap) unless it would not be just and equitable to do so, and may increase that to up to four weeks if it is just and equitable to do that. In this case, the claimant requested a statement around the midpoint of 2024 and at least once after that before it was provided to him. He did at least eventually receive a statement, but it was inaccurate and non-compliant.

54. Had a statement been provided when it ought to have been, or even in the summer of 2024, the confusion around the question of the claimant's enrolment in an occupational pension scheme could have been resolved sooner. In the circumstances I consider it just and equitable to increase the award to three weeks' gross pay. As the same statutory cap applies as to a basic award, that equates to 3 x £700 or **£2,100**.

Failure to provide itemised payslips

55. There was a failure to provide certain months' payslips and a declaration is made to that effect. The claimant's pay and other benefits did not change over his period of employment with the respondent and therefore the missing necessary details would have been identical to those in any of the monthly payslips which he did receive. There were minor variations from month to month, and so it is declared that the required figures would have been as stated in the claimant's September 2024 payslip [36].

56. A tribunal can only award compensation in relation to the 13-week period ending on the day the claim was submitted to the tribunal – in this case 26 June 2025. That period would therefore have begun on 27 March 2025. There were no 'unnotified deductions' from that date in terms of section 12(4) of the Act and so no monetary award can be made.

Employee and employer pension contributions

57. The claimant assumed from the outset of his employment that he would become eligible to join an occupational scheme. When he began receiving payslips, those suggested that he had been enrolled, and that both he and the respondent were making regular monthly contributions. That was in line with the respondent's statutory duties.

58. Pursuant to the Pensions Act 2008 and the 2010 Regulations referred to above, all employers are under a duty to provide an occupational pension scheme and enrol their employees into it, unless they positively opt out. The minimum required level of employee contribution into an auto-enrolled occupational pension scheme under normal circumstances is 5% of earnings. The corresponding minimum payment for an employer is 3%.

59. Mr Hutcheson had calculated the value of employee and employer contributions for the claimant's whole period of service to be £3,390.45 and £5,650.75 respectively. Mr Harley conceded that they were payable but had not been paid.

60. I accept the claimant's argument in principle that he has sustained a loss equivalent to the value of employee and employer contributions which should have been made into an occupational pension scheme. I also accept the unchallenged basis the claimant suggested should be adopted for calculation of those sums, although not completely the arithmetic. On the basis of the evidence provided I consider that appropriate calculations are as follows:

    e. Employee - 5% of monthly gross pay of £3,226.31 for 35 months of employment (May 2022 to March 2025 inclusive) - **£5,646.04**

    f. Employer – 3% of above gross pay figure for 35 months - **£3,387.63**.

61. Accordingly the total of sums awarded to the claimant under all if his successful complaints (i.e. the figures in bold above) is **£16,118.29**. This is the sum the respondent is ordered to pay.

Date sent to parties 21 November 2025