EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002994/2025

Held in Dundee on 27 April 2026

Employment Judge R Phillips

Mr A Abbas	**Claimant** **In Person**
RSA Leisure Ltd	**Respondent** **Represented by:** **Mr R Singh - Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Tribunal is that:

1. the claim of unfair dismissal under Section 94 of the Employment Rights Act 1996 (ERA) is well-founded;

2. the claim that the respondent failed to permit the claimant to take paid annual leave under the Working Time Regulations 1998 (WTR) is well-founded;

3. the claim that the respondent failed to provide the claimant with a written statement of employment particulars, contrary to section 4 of the ERA, is well-founded;

4. the claim that the respondent failed to provide the claimant with itemised pay statements, contrary to section 8 of the ERA, is well-founded;

5. the claim of breach of contract by:

    a. non-payment of notice pay of two weeks is well-founded; and

    b. non-payment by the respondent of the employer's pension contribution is not well-founded; and

6. the claim of unauthorised deductions from wages by non-payment of the national minimum wage, contrary to section 13 of the ERA, is not well-founded;

7. the respondent shall pay to the claimant:

    a. a basic award of **£732.60;**

    b. a compensatory award of **£2,269;**

    c. the sum of **£3,207.06,** consisting of

        i. £2,718.66 in respect of accrued untaken holiday pay;

        ii. £488.40 in respect of two weeks' notice pay; and

    d. an award of **£976.80,** being four weeks of uncapped pay in respect of failure to issue a written statement of employment particulars.

REASONS

Introduction

1. On 9 December 2025, the claimant lodged claims in the Employment Tribunal for (i) unfair dismissal, (ii) unauthorised deductions from wages by the non-payment of accrued untaken holidays and non-payment of notice pay, (iii) breach of contract by non-payment of notice pay, (iv) failure to provide written pay statements, and (v) failure to provide written statement of employment particulars. The claimant stated in his ET1 that "I also suspect that i was regularly paid an hourly rate below the National Minimum / Living Wage".

2. The respondent denied dismissing the claimant and resisted all the claims in its ET3 response form dated 17 December 2025.

3. On 29 January 2026, the claimant made an application to add a breach of contract claim for the respondent's non-payment of employer pension contributions required under the auto-enrolment regime. The respondent was willing to respond to that claim at the final hearing and, by consent, the claimant's application was allowed on 27 April 2026.

4. A final hearing to determine all issues took place on 27 April 2026. The claimant appeared as a party litigant. The respondent was represented by Mr R Singh, manager of the India Gate Restaurant, Dunblane.

Evidence

5. At the start of the final hearing, I explained the purpose of this evidential hearing to determine all the issues of liability and remedy.

6. For the claimant, evidence was given by the claimant and the claimant's wife. For the respondent, evidence was given by Mr Singh.

7. The parties lodged their own bundles of productions. Following a brief adjournment, and by consent, further pages were added to the claimant's bundle.

Issues

8. The issues to be determined, as noted below, were discussed at the start of the hearing.

8.1. Unfair Dismissal – s94-98, ERA

(a) Was the claimant dismissed?

(b) If so, what was the reason (or, if more than one, the principal reason) for dismissal and was it a potentially fair reason for dismissal?

(c) If so, did the respondent act reasonably, in the circumstances, in treating this as a sufficient reason to dismiss the claimant?

8.2. Unauthorised Deductions from Wages – s13, ERA

(a) Did the respondent make unauthorised deductions from the claimant's wages by failing to pay the claimant at the relevant national minimum wage rate throughout his employment?

(b) If so, how much was deducted?

8.3. Holiday Pay – reg 30, Working Time Regulations 1998 (WTR)

(a) Whether the respondent recognised the claimant's right to paid annual leave;

(b) whether the claimant was given an effective opportunity to take paid annual leave;

(c) whether annual leave accrued and carried forward throughout the employment;

(d) what entitlement arose on termination; and

(e) the amount of compensation due.

8.4. Wrongful dismissal

(a) Did the respondent act in breach of contract by dismissing the claimant without notice?

(b) If so, how much should the claimant be awarded as damages?

8.5. Damages for breach of contract

(a) Did this claim arise or was it outstanding when the claimant's employment ended?

(b) Did the respondent fail to pay the claimant's pension contributions of 3% of the claimant's gross pay throughout his employment?

(c) Was that a breach of contract?

(d) How much should the claimant be awarded as damages?

8.6. Itemised Pay Statement – s8 ERA

(a) Did the respondent fail to provide the claimant with a written itemised pay statement containing the particulars specified in s8(2), ERA?

(b) If so, should the Tribunal make a declaration or any orders as specified in s12, ERA?

8.7. Written statement of employment particulars – s1 ERA

(c) Did the respondent fail to provide the claimant with a written statement of employment particulars specified in ss1-4, ERA?

(d) If so, should the Tribunal make a declaration or any orders as specified in s38, Employment Act 2002 (EA2002)?

8.8. Remedy

(a) If the claimant establishes any of his complaints, to what remedy is he entitled? Specifically:

 (i) What basic and/or compensatory award is payable to the claimant, if any?

 (ii) What award is payable to the claimant, if any, for unauthorised deductions from wages?

 (iii) What award is payable to the claimant, if any, for non-payment of accrued untaken holiday pay?

 (iv) What award is payable to the claimant, if any, for damages for breach of contract?

 (v) What award is payable to the claimant, if any, for failure to issue written employment particulars?

 (vi) Is it appropriate to adjust any award due to unreasonable failure to follow the Acas Code?

Findings in fact

9. On the documentary and oral evidence presented, I have set out the essential facts as found for the purpose of determining the issues in this claim.

10. The claimant was employed by the respondent as a waiter. He worked at the India Gate Tandoori Restaurant (trading as "Mr. Singh's") located at Fourway Roundabout, Perth Road, Dunblane, FK15 0EY. The claimant's employment started on 1 December 2022 and ended on 22 August 2025. The claimant was 53 years of age when his employment ended. His duties included normal 'front of house' work: taking orders by telephone and serving customers.

11. The claimant's employer was Fortblane Ltd between 1 December 2022 and 10 December 2023. On 10 December 2023, there was a relevant transfer of the India Gate Tandoori Restaurant between Fortblane Ltd to RSA Leisure Ltd (the respondent). All staff transferred to RSA Leisure Ltd that day on the same terms and conditions of employment.

Written employment particulars

12. On 11 December 2023, SA Accountants, accountants and tax advisors to Fortblane Ltd recorded that the claimant was employed by the India Gate restaurant on a permanent basis and received a gross salary of £916.66 at the end of each month.

13. On 19 December 2023, Ranjit Kaur, director of the respondent, confirmed by letter that the claimant's salary was £916.66 per month and that he worked 20 hours per week.

14. Save for these records with limited information on monthly pay and hours of work only, the claimant was not issued with any written employment statement of employment particulars on his first shift or at any time during his employment.

Hours of work

15. The hours of work actually carried out by staff was recorded on separate A4 sheets which were filled out each day. Mr R Singh or his brother filled these sheets out. These records stated the actual start and end times. For example, if staff were needed to work extra hours. None of these records were produced by the respondent. Further, the claimant did not produce a log of the hours he worked during his employment.

16. The claimant worked 20 hours per week at a minimum throughout his employment.

Payments received

17. The claimant was paid monthly by bank transfer. The claimant produced a document detailing all the payments he received from his employers throughout his employment. All the payments were received from the same bank account and same sort code. Prior to the transfer, the transaction was described as “FORTBLANE LTD T/A SALARY”. After the transfer, the transaction was described as “RSA LEISURE LTD T/ SALARY”. The respondent did not produce extract bank statements to challenge the claimant’s evidence concerning the sums he received from the respondent and its predecessor.

18. It was not possible to ascertain the hours actually worked by the claimant in a pay reference period from the payslips. While employed by Fortblane Ltd, the claimant received a regular monthly payment of £916.66. £916 or thereby was the gross monthly sum paid to the claimant throughout his employment. Very broadly, after appropriate deductions (including pursuant to an earnings arrestment order), the claimant received £861 per month throughout the remainder of his employment. Accordingly, the claimant’s remuneration did not noticeably increase when the national minimum wage increased. Nor was there evidence that the claimant worked fewer hours after each increase in national minimum wage.

19. The claimant also received seven additional payments from Fortblane Ltd at various weekly intervals. Some of these payments appear not to have been recorded in certain of the claimant’s payslips.

20. When employed by the respondent, the payments the claimant received monthly were more irregular but equated roughly to £865 per month. At that time, the claimant had a wages arrestment of £55 per month for child support. The Claimant received roughly £920 monthly before deductions.

21. From May 2025, the claimant’s regular monthly payment dropped to £761. No payslips covering this period were produced by the parties. No explanation was offered for this change. There continued to be various unexplained additional payments from the respondent to the claimant, which were not recorded in the claimant’s payslips.

22. Contemporaneous correspondence stated that the claimant worked 20 hours per week. There was no record of the claimant disputing these contemporaneous records at the time. The first statement that the claimant thought he was working 25 hours per week was in his letter date 9 September 2025, after his employment ended. By working 20 hours per week at the national minimum wage, the claimant’s earnings were at a level that no

income tax liability arose and negligible employee's national insurance contributions were deducted by the claimant.

Payslips

23. During his employment, the claimant received 8 payslips in respect of his earnings in January 2023, April 2023, January 2024, May 2024, June 2024, October 2024, November 2024, and July 2025. The first payslip issued by the respondent was January 2024. It detailed that the claimant was paid £10.41 per hour for 173.33 hours.

24. The claimant was paid the national minimum wage and worked 20 hours per week. His weekly wage was £244.20 gross.

Holiday Pay

25. The claimant worked 20 hours per week throughout his employment.

26. Absent an agreed holiday leave year, the claimant's holiday leave year started on 1 December until 30 November.

27. When the claimant took holidays or time off work, he was not paid holiday pay when he was not working. The claimant was never told that he could take paid annual leave.

28. The respondent did not operate a holiday-request system for the claimant and did not maintain annual leave records.

29. At no stage did the respondent warn the claimant that leave would be lost at the end of a leave year.

30. In or around May-June 2025, the claimant asked his employer about holiday pay. The net monthly payments for May and June 2025 were £761. The Tribunal found on balance that the Claimant took holidays in May and June and was not paid annual leave, which explains lower payments in these months. When the claimant began asking about holiday pay, the claimant noticed that Mr Singh was looking for any excuse to criticise his work.

31. The claimant's payslips did not refer to rolled-up holiday pay until July 2025 and August 2025. Rolled-up holiday pay was not included in the April 2025 payslip. Payslips from May and June 2025 were not produced. In the July 2025 payslip, the claimant received a payment of £68.00 as "Holiday Pay", which was 8.333% of the basic pay (of £816) in that month. The net sum of £829 was not paid into the Claimant's bank account until 11 August 2025. In the August 2025 payslip, it is recorded that the claimant received a payment of £46.06 as "Holiday Pay", which was 8.333% of the basic pay (of £552.72) in that month.

Termination of employment

32. On 22 August 2025, the claimant was working a shift as a waiter in Mr Singh's India Gate Restaurant. Mr R Singh was also working that night. There was an interaction between the claimant and Mr Singh at around 7pm. In the lead up to this interaction, Mr Singh had been picking up on small things with the claimant. At around 7pm, the claimant cleared a table and brought dirty plates and cutlery to the kitchen. The usual practice of waiting staff was to bring the plates and cutlery in and leave them near the washing station. Mr Singh began shouting at the claimant. He said, "I told you to leave the knives and spoon there". The claimant responded, "If you want, I can do that. You can tell me to do this nicely as well." In response, Mr Singh said to the claimant "You have to go". The claimant responded, "You are not going to sack me like this? Why are you dismissing me?" The claimant felt humiliated. Despite this exchange, the claimant continued to work his shift until 9pm. At around 9pm, Mr Singh asked the claimant, "Why are you still here?" The claimant had thought that this was just a normal argument. But at around 9pm, Mr Singh said, "You have to go. Finish your work. We don't need you anymore." The claimant left at 9pm. This conversation was not overhead by others working in the premises. However, the claimant told "Shankar" who was working that night and others in the kitchen.

33. On or around 8 September 2025, Mr Singh misdialled the claimant. The claimant replied to the missed call by electronic message asking if he was trying to contact him. Mr Singh replied to the claimant's message the same day at 8:12am with "Pressed in error". The claimant responded with "OK no worries."

34. The claimant sent an undated letter to Mr Singh's India Gate by recorded post. It was delivered on 19 September 2025 and signed for by "SINGHS". The letter said:

    "I am writing to you to seek further information regarding my dismissal from your employment on 22nd August 2025. I have sought advice from the Citizen's Advice Bureau in Stirling and I am not aware of some information that has not been available to me and should have been.

    I have been employed by the India Gate since December 2022. I do not have a written contract, but should be entitled to this. I was dismissed without notice with no reason given and I would be due notice pay. I also believe that this was an unfair dismissal that I should challenge at an employment tribunal.

    Please can you provide me with the following information:

    - *The terms and conditions of me employment (or contract)*

- *The reason for my dismissal without notice*
- *My hourly rate of pay and contractual hours (I believe these to be 25 hours per week)*
- *Details of my holiday pay calculation*
- *Details of pension provision*
- *My P60 detailing total pay and deductions for each tax year*
- *My P45 and final payslip*

I look forward to hearing from you by 30th September. If I don't get a response, I will consider taking action through ACAS (www.acas.org.uk) for unfair dismissal.

Regards,…"

35. The Claimant received no reply to this letter. As the respondent accepted, it was received and signed for. However, Mr Singh did not recall seeing the letter.

36. On 15 October 2025, the claimant started ACAS early conciliation. The early conciliation certificate was issued on 26 November 2025. The respondent did not engage with the early conciliation process.

37. After a few weeks, the claimant started looking for other jobs. He started a new job after 8 weeks, which duly replaced his loss of earnings.

Observations on evidence

38. I considered that the claimant gave his evidence in a straightforward and convincing manner in the main. The claimant's evidence was broadly consistent with the limited documentary evidence produced. However, in the Tribunal's judgment, the Claimant's evidence that he worked 25 hours per week throughout his employment was not credible for the reasons given below at paragraph 40.2.

39. Mr Singh gave evidence on behalf of the respondent. Mr Singh did not cross examine the claimant or challenge his account in any way until he gave his evidence in chief. There were a number of factual disagreements, which are analysed below at paragraphs 40.1 to 40.5. The claimant cross-examined Mr Singh and challenged Mr Singh's account. Mr Singh's account was based on general assertions without documentary evidence to support his evidence (when it is understood that documents to corroborate his evidence existed but were not produced). Further, when Mr Singh was unable to answer certain

questions about rates of pay, he indicated that his brother was responsible for that.

40. In the following paragraphs, the Tribunal sets out how it resolved the key areas of disputed evidence between the claimant and Mr Singh:

Dismissal/resignation

41. Mr Singh's evidence was that the claimant was not dismissed. He simply left employment after an altercation with Mr Singh and did not return. Mr Singh's expectation was that the claimant would return for his next shift. Mr Singh concluded that the claimant had left and he was not dismissed.

42. The Tribunal preferred the claimant's account of the events on 22 August 2025. In particular, the Tribunal found on the balance of probabilities that Mr Singh said to the claimant "You have to go" at 7pm and "Why are you still here?" before the end of the shift at 21.30. Viewed objectively, the words used by Mr Singh and Mr Singh's subsequent conduct confirmed that a reasonable recipient would have understood that this was a dismissal. The claimant said to Mr Singh on 22 August: "You are not going to sack me like this?" The Tribunal did not accept Mr Singh's account that he genuinely did not interpret this exchange as a dismissal on 22 August. The claimant's letter to the respondent on 19 September 2025 made the claimant's understanding clear and the respondent took no steps to rectify any misunderstanding. This further supports the conclusion that Mr Singh's intention was for the claimant's employment to be terminated.

Hours of work done by the claimant

43. The hours of work actually done by the claimant for the respondent were recorded in clocking in and clocking out records that neither party produced. An incomplete set of payslips were also produced. Of the payslips produced, only two recorded the hours worked and the hourly rate of pay: January and February 2024: Respondent's Bundle pp2 and 3.

44. The claimant gave evidence that he worked variable hours in addition to the 20 hours per week. Working on Wednesday, Thursday, Friday, Saturday and Sunday each week between 16.30 and 21.30 equated to 25 hours weekly and the claimant asserted that he sometimes worked 30 hours per week. The claimant called his wife to corroborate his account of his hours of work actually done. While the Tribunal did not dispute the genuineness of the Mrs Abbas' evidence, as she was not present in the workplace at clocking on and clocking off times, it was not a reliable source or able to corroborate the hours the claimant had in fact worked.

45. The claimant's national minimum wage claim is based on an average of 25 hours of work per week multiplied by the prevailing national minimum wage rate and 52 weeks per fiscal year. This was set out in the claimant's Schedule of Loss at pages 1 and 2 of the Claimant's Bundle. There are a number of difficulties with this approach: first, the claimant is relying on average hours, not actual hours worked in the relevant pay reference period. Secondly, the pay reference period is monthly, not weekly (as calculated by the claimant). Thirdly, the claimant's pleaded case did not assert that he worked 25 hours per week. That became clear in his evidence at the final hearing. Although the Schedule of Loss was exchanged before the final hearing and the claimant's letter of 19 September 2025 was produced at the final hearing, it was not clear that the claimant was valuing his national minimum wage claim based on having worked 25 hours per week.

46. Mr Singh's answer was stated shortly in his evidence: the claimant was paid everything he was entitled to. When he was challenged further, Mr Singh explained that his brother managed the payroll and he could not give detailed answers. The respondent's obligation to produce records showing the claimant's actual hours of work were not produced by the respondent or the subject of a Tribunal Order.

47. The claimant produced a document which purported to be all the payments received from his employers during his employment. Mr Singh disputed the accuracy of this document and said that the respondent's records differed. The total taxable pay on the payslips produced did not reconcile with a sum of the net payments made. Mr Singh did not say in what ways they differed or produce any other contradictory evidence, such as bank statements or extract reports.

48. The claimant's document setting out the payments received revealed a broad pattern of £916.66 paid monthly during his employment by Fortblane Ltd, with what appeared to be top-up payments made mid-month. That figure dropped to £860 or thereby following an earnings arrestment order for child support, which was first recorded in July 2024.

49. From the evidence before it, the Tribunal found that on balance the claimant's earnings were such that no income tax or employee's national insurance was payable in any fiscal year. Only a very negligible amount of employer's national insurance was paid each year.

50. In the 2025-26 fiscal year, the payments received from the respondent were £5,140.00, whereas the total taxable pay was £3,930.78, per the claimant's last payslip. No explanation was given for this inconsistency. In other fiscal years, the payments made were similar to the total taxable pay, as recorded in the payslip closest to the end of the fiscal year.

51. While the claimant's payments schedule revealed an irregular payment wages pattern in the 2024-25 fiscal year, the following broad themes could be ascertained:

- The claimant appears to have been paid approximately £916-920 per month throughout his employment;

- If the claimant worked 20 hours per week, very broadly, this would have resulted in an hourly rate of pay in excess of the national minimum wage at all times; and

- If the claimant worked 25 hours per week, very broadly, this would have resulted in an hourly rate of pay below the national minimum wage in the fiscal years 2022-23, 2023-24, and 2024-25.

52. The Tribunal has considered carefully the evidence produced by the claimant to support his claim that he worked 25 hours a week throughout his employment. This is inconsistent with correspondence issued in December 2023. The claimant took no issue with that inconsistency at the time or at the final hearing. The Tribunal was mindful of the record keeping obligations owed by an employer contained in the National Minimum Act 1998 and related regulations and the terms of section 28 which reverses the burden of proof. The respondent has not produced records which were in its possession or under its control.

53. If the claimant had produced credible evidence in support of his statement in evidence that he worked approximately 25 hours each week, such as (a) contemporaneous diary entries; (b) rotas; (c) text / WhatsApp messages concerning shifts or rotas; (d) timesheets in his possession; (e) evidence from colleagues about typical shifts, or (f) evidence of any grievances or complaints by the claimant during employment about his pay or the hours he worked being more than 20 hours per week, and the respondent failed to produce the statutory records it was obliged to keep, the Tribunal would have been justified in preferring the claimant's evidence, even if it is necessarily approximate concerning the hours actually worked. The Tribunal recognises that it would be artificial to require exact proof from the claimant when the employer's failure to comply with statutory record-keeping duties has made exact proof impossible. However, the ultimate legal burden is on the claimant to establish entitlement and, if successful on liability, the award to be made. In the Tribunal's judgment, it was not credible for the claimant to assert for the first time in a letter on 19 September 2025 that he worked 25 hours a week throughout his employment while only being paid for 20 hours per week. Rotas, timesheets in his possession, evidence from colleagues about shift patterns would have supported the claimant's account. The assertion that he was working 25 hours per week was inconsistent with contemporaneous

written records from the employer's accountant and the respondent's director, which the claimant did not challenge. If the claimant had been working 25 hours per week, his earnings would have exceeded the standard personal allowance and would have triggered income tax liability. The Tribunal considered whether it was possible to draw adverse inferences or conclusions from the claimant's schedule of payments received and the limited number of payslips. However, it was not possible to conclude that the claimant worked 25 hours per week even on a very broadbrush basis or to decipher the applicable national minimum wage rate, given the detailed required for the statutory calculation.

Written employment particulars

54. Mr Singh referred to a template document in the Respondent's Bundle at page A called "Zero-hours Written Statement of particulars Front of house worker statement of employment". It was an incomplete template document. It was not completed with the claimant's details, although Mr Singh contended that it would have been completed and given to the claimant.

55. The following provisions were of particular note:

- The written Particulars referred to the employer as Fortblane Ltd, which was the claimant's employer on his first shift.

- It stated that "you are employed on a casual "as-and-when" basis" and "there is no minimum guaranteed work". This was inconsistent with the letter issued by SA Accountants and Ranji Kaur, director of the respondent.

- It stated that the claimant would be paid "£[national minimum wage]" per hour". This was inconsistent with the hourly rate of pay stated in the ET3 of £14 per hour gross but was consistent with the payslip dated January 2024 and February 2024: Respondent's Bundle, pages 2 and 3.

- Holiday entitlement was "5.6 weeks of paid annual leave per year (pro-rata). Due to the fluctuating hours, holiday pay will be calculated and accrued at a rate of 12.07% of the total hours worked per pay period". If this Template had been issued on the Claimant's first shift, as Mr Singh had stated, there were two inconsistencies that arose: first, the law did not change to permit rolled-up holiday pay until 1 April 2024. Second, there was no express reference to rolled-up holiday pay on the payslips until the July 2025 payslip: Respondent's Bundle, page 11.

- There was no reference to pension rights or the automatic enrolment earnings trigger that applied.
- “Disciplinary & Grievance Procedures. Procedures can be found in the staff handbook”: no staff handbook was lodged by the respondent.
- These written particulars were not in any event compliant with sections1-4, ERA.

56. The claimant was asked about this template of written employment particulars and confirmed that he had not received them. He had only received the letters referred to at the Findings in Fact at paragraphs 12 and 13 above. Given the various inconsistencies with contemporaneous records and with the law on rolled-up holiday pay on 1 December 2022, the Tribunal concluded that this template was not issued to the claimant then and preferred the Claimant’s evidence that he had not written statement of employment particulars at all.

Written payslips

57. Mr Singh gave evidence that the claimant’s payslips were produced monthly and all of them were distributed to the claimant monthly and on time. The respondent only produced a selection of the claimant’s payslips. The claimant’s evidence was that he received only 8 payslips during his employment.

58. On balance, the Tribunal preferred the claimant’s evidence. However, as the remuneration paid to the claimant each fiscal year was lower than the standard personal allowance threshold (and the claimant had no income tax liability), the Tribunal concluded that it was not necessary to make a determination of the deductions.

Pension contributions

59. Mr Singh gave evidence that the claimant was not entitled to employer pension contributions because of his part-time worker status and that he was ineligible for auto-enrolment for that reason. The claimant contended that he was entitled to employer pension contributions as a matter of contract. The Tribunal records that it could not accept either position advanced by Mr Singh or the claimant. The eligibility requirements for auto-enrolment are not enforced in the employment tribunal unless there is an express or implied contractual right to employer pension contributions. To the extent that the claimant contended that a term should be implied into the contract requiring the respondent to make employer pension contributions. The Tribunal was not satisfied that any such contractual term existed. There was no express agreement to that effect, no written statement of particulars referring to employer pension contributions, and no evidence of any discussion between

the parties from which such a term could be inferred. This issue was not raised by the claimant until after his employment had ended, which is evidence that any such term was not so obvious, notorious or mutually understood as to satisfy the officious bystander test. The Tribunal therefore concludes that the claimant has not established any express or implied contractual entitlement to employer pension contributions. Any entitlement arose, if at all, under the statutory auto-enrolment regime rather than under the contract of employment.

Law

Unfair dismissal

60. Under section 94 of the ERA, an employee has the right not to be unfairly dismissed.

61. The Tribunal must first determine whether there has been a dismissal within the meaning of section 95, ERA.

62. In *Omar v Epping Forest District Citizens' Advice* [2023] EAT 132, the EAT undertook a comprehensive review of the authorities and set out the principles applicable to the construction of (putative) notices of dismissal or resignation in the employment context. The core principle is: would a reasonable person in the position of the recipient, considering all the circumstances, have understood the words used as a genuine and immediate resignation or dismissal that was really intended at the time?

63. The burden lies on the claimant to establish that a dismissal took place. Once dismissal is established, the burden shifts to the respondent to show the reason for the dismissal and that it was potentially fair under section 98, ERA.

64. If dismissal is established, the Tribunal must determine:

    64.1. whether there was a potentially fair reason for dismissal (section 98(1)–(2), ERA); and

    64.2. whether, in all the circumstances, the employer acted reasonably in treating that reason as sufficient to dismiss (section 98(4), ERA).

65. The assessment under section 98(4) requires application of the well-known "band of reasonable responses" test (*Iceland Frozen Foods Ltd v Jones* [1982] IRLR 439). The Tribunal must not substitute its own view but must determine whether the employer's decision fell within the range of reasonable responses open to a reasonable employer. Procedural fairness is a key component of the section 98(4) assessment. A failure to follow a fair procedure will ordinarily render a dismissal unfair *(Polkey v AE Dayton*

Services Ltd [1987] IRLR 503), subject to any reduction for the possibility that the outcome would have been the same.

66. Where dismissal arises out of an informal exchange or argument, the absence of any fair process will normally weigh heavily in favour of a finding of unfairness. If an employer brings the employment relationship to an end without warning or consideration of alternatives, it will rarely fall within the band of reasonable responses, unless exceptional circumstances apply.

Holiday Pay & Rolled-up holiday pay

67. Under the WTR, workers are entitled to 5.6 weeks of paid time off work each holiday year. Regulation 13 WTR confers an entitlement to four weeks' annual leave. Regulation 13A WTR confers an additional entitlement to 1.6 weeks' leave. Regulation 14 WTR provides for a payment in lieu of accrued but untaken leave on termination.

68. In *Smith v Pimlico Plumbers Ltd* [2022] UKSC 29, the Supreme Court held that a worker who has not been permitted to take paid leave may carry forward and accumulate that leave throughout the engagement and, upon termination, recover a payment in respect of the entire accrued entitlement.

69. The burden rests upon the employer to show that it specifically and transparently gave the worker the opportunity to take paid leave, encouraged the worker to do so, and informed the worker that the entitlement would otherwise be lost.

70. Rolled-up holiday pay arrangements means paying holiday pay by rolling it up into hourly wages, instead of paying holiday pay when leave is taken. For Irregular hours / part year workers, WTR (as amended) permits rolled up holiday pay (from leave years beginning on or after 1 April 2024), provided it is clearly itemised.

71. The critical issue is whether the employer can show that holiday pay was actually paid, and it was clearly identified as such in payslips or records. If there is no record or clear documentation of rolled up holiday pay during most of the employment, a Tribunal is unlikely to accept a bare assertion that it was included within wages.

72. Where payslips do not identify any holiday pay element; and the employer cannot demonstrate how holiday pay was calculated and paid, the Tribunal may find that holiday pay was not paid at all. An employee may bring a claim for unpaid holiday pay, pursuant to reg. 30 of the WTR, or an unlawful deductions from wages claim, pursuant to section 13 of the ERA, potentially as a series of deductions.

National Minimum Wage

73. The burden of proof remains on the claimant to establish that he was not paid the National Minimum Wage (NMW), on the balance of probabilities.

74. However, the statutory regime (principally under the National Minimum Wage Act 1998 and associated Regulations) recognises that relevant pay and hours are often within the employer's knowledge and records.

75. Accordingly, where a claimant advances a properly particularised case—raising a prima facie inference of underpayment—an evidential burden may shift to the employer to provide records or explanation.

76. The Tribunal will ordinarily require some factual foundation before drawing any adverse inference or expecting the employer to justify its pay arrangements. This may include:

    76.1. evidence of hours worked;

    76.2. payslips suggesting shortfall;

    76.3. inconsistencies in pay records;

    76.4. or a coherent explanation of how the alleged underpayment arises.

77. Employers are subject to statutory obligations to keep sufficient records to demonstrate compliance with the NMW.

78. If the claimant raises a credible case, and the employer fails to produce adequate records, the Tribunal may be entitled to draw adverse inferences and accept the claimant's account.

79. A mere assertion, without supporting detail or evidential basis, will not shift the burden. However, once the claimant establishes a prima facie case of underpayment, the evidential burden moves to the employer to rebut that case, typically by producing adequate wage records.

Employer Pension Contributions

80. Where there is no express or implied contractual entitlement to employer pension contributions, the legal position derives primarily from the statutory auto enrolment regime, not contract.

81. The relevant legislation is the Pensions Act 2008 and associated regulations. Eligible jobholders must be automatically enrolled into a qualifying pension scheme. Employers are under a statutory duty to:

    22.1. enrol the worker; and

22.2. pay minimum employer contributions (currently prescribed percentages of qualifying earnings).

82. The duty to pay employer contributions is statutory, not contractual, unless expressly or impliedly incorporated into the employment contract.

83. Accordingly, failure to pay contributions is not automatically a breach of contract actionable in the Employment Tribunal as an unlawful deduction or breach of contract claim. Instead, it is a breach of statutory duty owed under the auto enrolment regime, with enforcement primarily by the Pension Regulator.

Written statement of employment particulars

84. Under section 1 of the ERA, an employer is required to provide an employee with a written statement of employment particulars. Since 6 April 2020, this obligation arises on or before the first day of employment and applies to workers as well as employees, with certain core particulars required in a single document and others capable of being provided in instalments. The statement is not itself the contract of employment but constitutes evidence of the terms of any such employment contract. A failure to provide a compliant statement does not, of itself, give rise to a free standing claim. However, where an employee succeeds in a substantive claim before the Tribunal listed at Schedule 5 of the Employment Act 2002, the Tribunal must make an award of a minimum of 2 weeks' pay as additional compensation under section 38 of the Employment Act 2002 and may make an award of a maximum of four weeks' pay if it considers it just and equitable in all the circumstances.

Written pay statements

85. Under section 8 of the ERA, an employer is required to provide an employee with an itemised pay statement at or before the time at which any payment of wages is made. The statement must specify, among other matters, the gross amount of wages, the amounts and purposes of any variable and fixed deductions, the net amount payable, and, where applicable, the number of hours worked where pay varies by reference to time worked. The right extends to workers as well as employees. A failure to provide a compliant payslip, or to ensure that it contains accurate particulars, entitles the worker to present a complaint to the Employment Tribunal under section 11 of the ERA. Where such a complaint is upheld, the Tribunal may make a declaration and, in certain circumstances, may determine what deductions were properly made.

Deliberations

Unfair dismissal

86. The claimant was dismissed by Mr Singh on 22 August 2025. Before his dismissal, the claimant was criticised by Mr Singh for his work and the claimant replied criticising Mr Singh's tone. The words "you must go" first used by Mr Singh were ambiguous. The words by Mr Singh "You have to go. Finish your work. We don't need you anymore." were not ambiguous. It was clear to Mr Singh that the claimant believed he had been dismissed. Mr Singh took no steps to clarify his position at the time or in the days after 22 August or after receipt of the claimant's letter. The respondent's position in its pleadings and at the final hearing that the claimant resigned is not consistent with Mr Singh's words. Viewed objectively and considering all the circumstances, a reasonable bystander would have concluded that the claimant was dismissed.

87. As there was a dismissal by the respondent in law, the next question is whether there was a potentially fair reason of the dismissal. The respondent advanced no reason for the claimant's dismissal. The Tribunal could not conclude that there was a potentially fair reason pursuant to section 98(1). As no potentially fair reason has been established, the dismissal is unfair. In any event no fair procedure was followed.

88. The claimant sought compensation only, rather than reinstatement or re-engagement.

Basic Award

89. The basic award payable to the claimant is based on 2 (as he had 2 complete years' service on 22 August 2025) x 1.5 (as the claimant was more than 41 years of age during this period of employment) x £244.20 (a week's gross pay for the claimant) which amounts to **£732.60.**

Compensatory Award

90. With regard to compensatory award, the claimant explained that he had found a job to replace his income from the respondent entirely after 8 weeks. The Tribunal considered whether the claimant had mitigated his loss and found that the claimant has acted reasonably in accepting this other role.

Past Losses

91. To avoid damages being awarded twice, given the Tribunal's judgment in relation to the notice pay claim below, it is fair to award damages for wrongful dismissal and assess compensation for the unfair dismissal claim from the day after the damages period ended.

92. The Tribunal has calculated the claimant's net weekly pay from the information before the Tribunal, which is £244.20.

93. From 27 August 2025 to 8 October 2025, there are 6 weeks. The claimant would have earned 6 x £244.20 which is £1,465.20.

Future Losses

94. There are no future losses since the claimant has replaced his income entirely after 8 weeks.

Loss of Statutory Rights

95. The claimant is also entitled to a sum in respect of the loss of statutory rights he has suffered, in respect of which the Tribunal awards £350.

96. The total compensatory award is therefore £1,465.20 plus £350 which is £1,815.20.

ACAS Code

97. As no fair dismissal process was followed by the respondent but the claimant's performance or conduct was in issue, the respondent unreasonably failed to comply with the ACAS Code. In all the circumstances an increase of 25% is just due to the respondent's unreasonable failure to comply with the ACAS Code. The total compensatory award is increased by 25% from £1,815.20, to **£2,269.**

Recoupment

98. The recoupment regulations do not apply to this award because the claimant was not in receipt of relevant benefits.

Unlawful deduction from wages

99. National Minimum wage: in the Tribunal's judgment, the claimant has not discharged the burden of proof that he was working 25 hours per week. The employer is under a statutory duty to keep NMW records, a failure to keep or produce those records can effectively reverse the evidential burden. Given the finding from the available evidence and on balance that the claimant worked 20 hours per week, the payments made to the claimant indicate that he was paid at or above the applicable national minimum wage rate throughout his employment. The claimant's complaint that he was not paid the national minimum wage is therefore not well-founded.

Failure to pay holiday pay / rolled-up holiday pay

100. The Tribunal found that the respondent did not recognise the claimant's right to paid annual leave. When the claimant took time away from work, he was not paid for that leave. The Tribunal accepted the claimant's evidence that he was never informed that he could take paid annual leave and that the respondent did not operate any system for requesting, recording or monitoring annual leave.

101. The respondent maintained that holiday pay was incorporated within the claimant's wages. The Tribunal did not accept that contention. The claimant's payslips identified only ordinary pay until July 2025. The first documentary reference to holiday pay appears in the July 2025 payslip, followed by a similar entry in the August 2025 payslip. There was no satisfactory evidence demonstrating that holiday pay had previously been rolled up into the claimant's remuneration.

102. The right protected by regulation 13 WTR is the right to take paid annual leave. An opportunity to take unpaid leave is not an adequate substitute. On the facts found, the claimant was not given an effective opportunity to exercise his right to paid annual leave. The respondent did not specifically and transparently provide such an opportunity, encourage him to take paid leave, or warn him that untaken leave would otherwise be lost.

103. In those circumstances, the principles identified by the Supreme Court in *Smith v Pimlico Plumbers Ltd* apply. The claimant's entitlement to the four weeks' annual leave provided by regulation 13 WTR carried forward from leave year to leave year and accumulated throughout the employment because the respondent failed to provide the conditions necessary for that entitlement to lapse.

104. The Tribunal does not consider it necessary in this case to determine whether the same analysis applies to the additional 1.6 weeks' domestic leave provided by regulation 13A WTR. The claimant is entitled in any event to recover the entirety of his accrued but untaken regulation 13 leave.

105. Upon termination, regulation 14 WTR required the respondent to make a payment in lieu of that accrued leave. The respondent failed to do so. The complaint is therefore well-founded.

Remedy

106. The claimant was employed from 1 December 2022 until 22 August 2025, a period of approximately 142 weeks. The Tribunal finds that a week's pay for the purposes of regulation 14 WTR was £244.20.

107. The claimant accrued regulation 13 leave at the rate of four weeks per leave year. Expressed as a proportion of a year's entitlement, the claimant accrued:

 2.9 years × 4 weeks = 11.6 weeks.

108. The value of that entitlement is:

 11.6 weeks × £244.20 = £2,832.72.

109. The respondent is entitled to credit for the holiday pay expressly paid and identified in the July and August 2025 payslips, namely £68.00 and £46.06 respectively.

110. Accordingly, the claimant is entitled to:

 £2,832.72 − £114.06 = **£2,718.66.**

111. The respondent shall pay the claimant the sum of £2,718.66 in respect of accrued but untaken annual leave.

Damages for breach of contract (notice pay and employer pension contributions)

112. The claimant was entitled to 2 weeks' notice of dismissal or payment in lieu. There were no circumstances that justified summary dismissal by the respondent. The claimant was not paid his statutory entitlement to two weeks' notice pay. The respondent is ordered to pay damages for breach of contract in the sum of £488.40.

113. While the claimant had a statutory right to receive employer pension contributions, the issue of employer pension contributions was not raised at any time during the claimant's employment. It was raised indirectly for the first time in his letter to the respondent delivered on 19 September 2025. Accordingly, in the Tribunal's judgment, there was no express or implied contractual right to employer pension contributions of 3% of gross pay. The claimant only had a statutory right to this payment. The employment tribunal is not a competent jurisdiction in which to enforce that statutory right. This claim is dismissed.

Written Statement of employment particulars

114. A blank template statement of employment particulars only was produced by the respondent. No copy of the statement actually issued to the claimant was produced. Mr Singh could not recall giving the statement to the claimant in December 2022 or afterwards and the claimant denied ever receiving one.

115. References in the contract to rolled-up holiday pay indicated that the template produced was a more recent iteration and could not have been the version issued at the start of the claimant's employment on 1 December 2022. At that

time, rolled-up holiday pay was not lawful and the terms of clause 6 was not reflective of employment law until 1 April 2024. It was not credible that the terms of this clause was used in 2022 when the claimant started employment.

116. Accordingly, in the Tribunal's judgment, the claimant was not issued with a written statement of employment particulars. The failure to provide this statement was a serious matter and resulted in significant confusion as to the claimant's rights. In these circumstances, an award of 4 weeks' pay is justified.

Written pay statements

117. The respondent contended that the claimant was issued with monthly payslips but chose to produce only a selection of payslips at the final hearing. The Tribunal did not accept the respondent's evidence on this issue and declares that the respondent had failed to comply with a statutory obligation pursuant to section 8, ERA. There being no finding that deductions were made, no monetary award has been made.

Summary

118. The claimant is entitled to:

118.1. a basic award of **£732.60**, calculated in accordance with sections 119–122 ERA; and

118.2. a compensatory award of **£2,269**, comprising past losses and loss of statutory rights totalling £1,815.20, increased by 25% on account of the respondent's unreasonable failure to comply with the ACAS Code of Practice on Discipline & Grievance; and

118.3. an award of **£2,718.66** in respect of the failure to pay holiday pay throughout the claimant's employment.

118.4. an award of **£976.80** in respect of failure to issue a written statement of employment particulars; and

118.5. damages for failure to pay full notice pay/wrongful dismissal in the sum of **£488.40** calculated as follows 2 x 244.20.

Date sent to parties **<u>17 July 2026</u>**