



EMPLOYMENT TRIBUNALS

Claimant: Mr Bobby Myers
Respondent: Tailor Estates (Essex) Limited
Heard at: East London Hearing Centre
On: 25, 26 & 27 April 2017
Before: Employment Judge C Lewis
Members: Ms M Long
Mrs B Saund

Representation

Claimant: In person
Respondent: Ms P Hall (Consultant)

JUDGMENT

The unanimous judgment of the Tribunal is that:-

1. The claim for direct age discrimination under Section 13 & 39 of the Equality Act 2010 fails and is dismissed.
2. The claim for failure to provide a Section 1 statement of employment particulars succeeds and we award four weeks pay at the statutory maximum of £479 under Section 38 of the Employment Act 2002, being the sum of £1,916.
3. The claim for dismissal for asserting a statutory right under Section 104 of the Employment Rights Act succeeds and we award an uplift of 25% for failure to follow the ACAS Code.
4. The grand total of compensation for unfair dismissal awarded is £10,788.90 to which the recoupment provisions apply.

Employment Protection (Recoupment of Benefits) Regulations 1996

5. The relevant particulars for the purposes of the Recoupment Regulations are as follows:
- (a) The monetary award to which recoupment provisions apply is the sum of £10,788.90
 - (b) The prescribed element is £10,788.90
 - (c) The prescribed period is 1 July 2016 to 25 April 2017.
 - (d) There is no excess of the monetary award over the prescribed element.

REASONS

1 The Claimant brought claims of age discrimination, automatic unfair dismissal for asserting a statutory right, and the failure to provide a written statement of employment particulars.

The Issues

2 The issues in this claim were identified at a Preliminary Hearing on 5 December 2016 before Employment Judge Brown and those are set out at paragraph 4 of the summary of that Preliminary Hearing:

3 After discussion with the parties and clarifications of the claims, the tribunal identified the following issues for determination at the Final Hearing:

Direct Age Discrimination

4. Did the Respondent treat the Claimant less favourably than it treated, or would have treated, an older comparator, when it dismissed the Claimant? The Claimant relies on an actual comparator Gary Monk, aged about 'over 50', and/or a hypothetical comparator aged 45 or over. The Claimant is aged 31 and compares himself with people aged over 45.

4.1 Has the Claimant shown facts from which the Tribunal could conclude that the Respondent dismissed the Claimant because of age? The Claimant contends that he was pressurised by the Respondent to employ Mr Monk and, also, that the Respondent employed Mr Monk immediately after it dismissed the Claimant.

4.2 If so, has the Respondent shown age was not part of the reason that it dismissed the Claimant?

- 4.3 If the Claimant was dismissed because of age, has the Respondent shown that the Claimant's dismissal was a proportionate means of achieving a legitimate aim?

Automatic Unfair Dismissal – Section 104 Employment Rights Act 1996

5. Did the Claimant allege that the Respondent had infringed his statutory right not to suffer unlawful deductions from wages on 30th June 2016?
- 5.1 If so, was the reason or the principal reason for the Claimant's dismissal the fact that the Claimant had alleged that the Respondent had infringed his statutory right not to suffer unlawful deductions from wages?

Failure to Provide the Claimant with a Statement of Employment Particulars

- 6 Did the Respondent fail to provide the Claimant with a statement of employment particulars under s1 *Employment Rights Act 1996*?

Evidence

7 The Tribunal was provided with an agreed bundle and three further documents C1 – C3 in day one of the Tribunal and on day two the Respondent added document R1, a copy of a bank statement. The Tribunal had witness statements from the Claimant and from Emma Humphries for the Respondent and both witnesses gave oral evidence and were cross-examined.

Findings of Fact

8 The Tribunal made the following findings from the evidence it heard, as far it is relevant to the issues.

9 The Claimant is 31 years of age, his date of birth is 12 May 1985 and for the purposes of his age discrimination claim he compares himself with people who are over 45, in particular a named comparator Gary Monk who is between 48 to just over 50 according to the Respondent, he falls into the category of being over 45.

10 The Respondent is an estate and letting agency in Romford Essex, set up in June 2015. Its first Branch Manager was David Pollock who was 30. His employment as a Branch Manager did not work out and he left after approximately eight months. The Respondent's explanation is that the business was not being steered in the right direction under his management. The Respondent approached an agency to replace Mr Pollock and Gary Monk was sent as a candidate, he came highly recommended and the Respondent offered him the position of Branch Manager, which initially he accepted but then having a better offer just before he was due to start he declined the offer: this left the Respondent needing to recruit again.

11 The Claimant was introduced to the Respondent through a mutual friend: he was interviewed and performed well and was appointed. He started work for the Respondent

on 1 March 2016. The Claimant and Respondent both agreed that he was offered a salary of £45,000 for the first six months followed by a reduced salary of £25,000 per annum from 1 September 2016 but with a 10 percent commission payable on banking over £10K per month.

12 The Respondent produced a document [page 29 of the bundle] which Ms Humphries stated she handed to the Claimant on his first day of employment. The document bears the date 26 February 2016 and state as follows:

“Dear Bobby, we look forward to you joining our company and would like to offer you the following salary £45,000 per annum the start date 1/3/16 to be paid for six months. Salary as of 1/9/16 will be £25,000 PA with 10 percent comms of office banking over £10,000

Regards

Emma Humphries, Tailor Estates”

13 The Claimant disputes ever having received this letter and claims that he had not seen it until it was disclosed in these proceedings.

14 Once it had heard all the evidence the Tribunal gave careful consideration to whether this document had been produced on the date it bore and provided to the Claimant on the 1 March as Ms Humphries asserted. We were not impressed with this document. It had no heading or address, it was not consistent with subsequent email sent from Ms Humphries where she has described herself as director and has referred to the company’s name and address, nor with other emails which have a formal footer. Ms Humphries described this letter as the Claimant’s offer letter; she stated she knew that people should have be provided with offer letters but she did not send it to the Claimant by post as she did not have his address, she had passed his CV with his contact details to the company accountant, so she decided to hand the document to the Claimant on 1 March. The Claimant for his part was adamant he had not seen this document and had not been provided with it on the first day of his employment, or at all. He was very concerned throughout his employment that he did not have written confirmation of what had been agreed in respect of his salary. We accept his evidence. We find that he maintained this position throughout his employment and he refers to it after his dismissal in his email dated 14 July 2016 [page 73]. He has been entirely consistent in his evidence throughout on this point.

15 The Tribunal also considers that this document which only addresses the salary arrangements is inconsistent with Ms Humphries evidence that it was akin to an offer letter; there is no mention of what the job is or other relevant matters you might expect to see in an offer letter. We found that Ms Humphries explanation does not ring true. There is no reference, for example, to the car allowance, or payments for petrol or any other matters that were also discussed with the Claimant and agreed before he started.

16 The Respondent does, however, accept that there is a gap in the later document provided to the Claimant which purports to be a statement of his main terms of employment [page 30 – 33]. There is also a dispute in respect of that document which

we will come to later. The obvious deficiency in that document is that under the heading 'remuneration' the salary is left blank. Ms Humphries accepted that she overlooked that and had not filled that in and that document provided to the Claimant did not set out his salary. We find it is not just coincidence that the document at page 29 only refers to salary arrangements, which is the only part of the document at page 30 – 33 which is missing in order to comply with Section 1 of the Employment Rights Act. We are satisfied that the document at page 29 was not given to the Claimant at the time as alleged by the Respondent and was produced after the event.

17 The Claimant also disputes that he was provided with document at page 30 – 33 in April as the Respondent alleges. The document bears the date 11 April 2016 [11/4/16]. The Claimant's evidence was that he was given this document on 7 June and that when it was given to him the salary section was blank. As already indicated the Respondent accepted the salary was blank but insisted that the document was given to him on 11 April. The Claimant was very clear and specific about the date on which he received the document, he also made reference to the date in his letter of 14 July very shortly after his dismissal, and in his statement and again in his evidence before the Tribunal. We find that the Claimant had reason to recall the date and we accept that he is accurate in his account to us of when he was given that document. The 17 June was the Friday before his wife went into labour on the Saturday. The Claimant's evidence at paragraph 22 of his statement is that he raised concerns on that Friday in respect of the payment of petrol allowance and the fact he was always having to ask for it, in a conversation with Mr Bruce Taylor another director of the Respondent, and he raised then that he had not received his contract. We accept his account of that conversation (as set out at paragraph 22 of his witness statement) including his account of Mr Taylor's comment to him when the Claimant referred to not having had his contract being, "Well if that is the case it will costs us nothing for you to go then". We are satisfied that the Claimant is being truthful in his evidence: he was concerned about his lack of written contract, his wife was about to give birth and he was concerned about the insecurity of his position.

18 Mr Taylor was present in the Tribunal for the two days of the hearing but was not called to give evidence to challenge the Claimant's account.

19 The Respondent's state that they engaged the services of Peninsula late in February or around the beginning of March 2016. We were referred to payments to Peninsula in their bank statements. In April they were in fact two payments; one on 4 April and one on 11 April. Whilst we accept it is quite possible the document at page 30 onwards was provided by Peninsula to the Respondent on 11 April, or by that date, we do not find that it was given to the Claimant on that date, we are satisfied that it was not given to him until after his conversation with Mr Taylor on 17 June.

20 The Claimant started in his new role for the Respondent at the beginning of March to find an office that was poorly organised, with files that were incomplete and lacking the necessary information to meet the standards required of a residential sales and letting agency. He had limited support staff; one was a trainee, another only worked part-time and with no estate agency experience. He requested support, or assistance, in running the office; we note that these requests were described by the Respondent as the Claimant "constantly complaining". The Claimant set about getting the files and office into an acceptable condition and to get the business onto a sound footing. After the first couple of months the Claimant was told he could recruit a sales negotiator. He approached an

agency and interviewed a number of candidates and then was told by Bruce Tailor that Garry Monk who had previously been offered the branch manager role was available and was prepared to take the sales negotiator role. At this point the Claimant became concerned about his own position. He expressed his concern to Emma Humphries and Bruce Tailor that Mr Monk was over qualified for the sales negotiator role. We accept the Claimant's evidence as set out in paragraph 17 of his witness statement in respect of his conversations with Mr Tailor in this regard and again it is consistent with the Claimant's assertion that he had not been provided with his contract by the date in April and this was discussed. Mr Monk employment with the Respondent was curtailed after a period of approximately one week when Mr Monk left. The Respondent's states Mr Monk told them this was because he was made to feel uncomfortable by the Claimant and he could not work with him.

21 The Respondent referred to an email [page 59] between the Claimant and Mr Monk as an example of his attitude towards him and why Mr Monk was unable to carry on working for them, they described the Claimant as being short with Mr Monk. We are satisfied that the email is direct, but simply gives management instruction. The Respondent also referred to another incident when they alleged that the Claimant was hostile towards Mr Monk when he found him rummaging about around the Claimant's desk when he was looking for some office equipment. Despite the Respondent's evidence to the Tribunal as to the concern about the Claimant's conduct there is no evidence of anything being raised with him at the time, rather the Respondent put forward evidence that they were still supportive of the Claimant; Ms Humphries states in paragraph 11 of her statement that although the Claimant was in his probationary period at this time they supported him rather than Mr Monk when Mr Monk left. The Respondent also pointed to an email to someone called Adam, who was an IT subcontractor, which is dated 12 April as evidence of the Claimant's poor attitude and conduct. This also took place in April, which, as the Respondent pointed out, was within the Claimant's three months probationary period. However, the Respondent took no steps to address their supposed unhappiness with the Claimant and continued his employment beyond his probationary period.

22 The Claimant's wife went into labour on Saturday 18 June and he took the following week off from work. He had understood there had been an agreement between himself and Ms Humphries that he would have two weeks off following the birth of his baby and he was therefore disappointed to be called on the Friday of the first week and told that he was to come back to work and that the office was not able to cope without him for two consecutive weeks. He agreed to return to the office and understood that he would return for a week and then be allowed to go off again the following week. The Claimant returned to work the week beginning 27 June and was in the office as usual. His day off was the Thursday 30th June. The Respondent's evidence is that on Wednesday 29 June the Claimant began to raise concerns that he was not going to be paid promptly on 30th, which was the last day of the month and therefore the day that his salary was due. The Respondent suggested in submissions that on the 1 July, at the meeting with Ms Humphries, the Claimant was angry that his holiday had been curtailed and that no sales negotiator had been provided and that he arrived at the meeting angry as a result of that together with the issues around payment. We do not find this is consistent with his already having returned to work for three days that week. We are satisfied that his concern on 1 July was whether he was going to be paid or had been paid on time. We are also satisfied that this is recognised by Ms Humphries in her evidence at paragraph 15 – 19 of her witness statement.

23 Ms Humphries alleges that she received a text from the Claimant on 29 June, around lunch time, asking when he would be paid, to which she responded, “tomorrow” and he replied, “12 tonight is tomorrow”. She said she was taken aback by that response and telephoned her co-director Bruce Tailor. She told him she could not believe what the Claimant had just said. There are then subsequent emails on 30 June between the Claimant and Ms Humphries. We are satisfied those email show that the Claimant was concerned that he was not going to be paid on time and was raising with the Respondent the issue that he believed they were not going to pay him on time and he wished to be paid promptly on the 30th. This came to a head in an email on 30th June in which the Claimant informed Ms Humphries at 17.40 that by 17.30 his salary had still not been paid, he refers to having a meeting booked in the morning of the 1st and looking forward to discussing those issues, but states that he would not be in the office if his salary was unpaid, or rather saying I will be in the office subject to my salary being paid. He also states that it is ‘completely unacceptable and to be honest unprofessional from a business perspective’ [p.66]. Ms Humphries replied asserting that the salary had indeed paid and should have reached him.

24 The Claimant sets out his reasons for his belief that he would not be paid on time and why he was so concerned about that at paragraph 24 of his statement: his reasons include his contention that after four months not being given a proper contract he felt he would not work unless he was going to be paid. He was aware of other court cases, namely with the previous manager, Mr Pollock, who had brought a Tribunal claim against the Respondent over not being paid, and he honestly believed the same was going to happen to him; he had a new born baby, two older children and a house to support and pay for, and he felt that he had been treated disrespectfully. We accept that those were the reasons in his mind for his concerns and he raised those with the Respondent in good faith. We find that what he was doing amounted to the assertion of a statutory right not to suffer unlawful deductions from his pay and that he made the assertion that the right had been breached in good faith.

25 To fall within the protection of s104(2) of the Employment Rights Act 1996 it does not matter that the Claimant had not suffered a deduction at that point, the question is whether he was asserting or alleging the right had been infringed (see ***Mennell v Newell & Wright (Transport Constructions Ltd) [1997] ICR 1039 CA***). We are satisfied that it was reasonably clear to the Respondent what the right was that the Claimant claimed was being infringed, namely that he should be paid his wages when properly due.

26 The Claimant attended a meeting with Ms Humphries on 1 July and we have two conflicting account of what took place at that meeting. Ms Humphries at paragraph 19 of her statement states that the Claimant arrived ‘on his high horse’: she wanted to understand what was bothering him and began by asking him why he said he would not be coming in to work unless he was paid, at which point, according to Ms Humphries he flared up and asked if she wanted him to leave the keys. Ms Humphries maintained that she had wanted to have an in-depth conversation with him about his conduct, productivity and attitude, however, this was not possible because the Claimant virtually stormed out of the office leaving his company car keys behind. She then sent a letter on 4 July 2016 confirming that he had been dismissed with immediate effect due to his conduct, productivity and attitude.

27 The Respondent relies on the examples given to the Tribunal of the Claimant's conduct with Mr Monk and Adam the IT subcontractor, as well as raising his voice in the office. We find the examples relied upon, specifically in relation to Adam and Mr Monk, predate the end of the probationary period and that the Respondent continued to support the Claimant following those incidents. We are not satisfied that those incidents were the real reason for the decision to dismiss the Claimant, nor do we find that the Respondent set up the meeting on 1 July in order to discuss concerns specifically about conduct, attitude and productivity. We find that it had been agreed in discussions with Mr Taylor that meetings would take place every other week and that this was one of those pre-arranged meetings. The Claimant had not been told that his conduct, attitude or productivity would be raised at that meeting.

28 We do not find that the Claimant walked out of that meeting. We prefer his account of the way that meeting took place and we accept his evidence at paragraph 25 of his statement, which we find to be completely credible. We are satisfied that having received his email dated 30 June, timed 17.40, Ms Humphries commenced the meeting by stating that she 'did not think this was going to work' and when the Claimant asked what she meant, she responded, "You are meant to be the manager. You can't turn round and say you are not coming in because we haven't paid you". We accept that she then asked him to leave his car keys and office keys and asked him to leave.

29 The Respondent submits that the reason for the decision to dismiss on 1 July was cumulative; there were concerns about the Claimant's conduct, attitude and productivity with the last straw being his conduct in raising the issues around his payment. When pressed on that the conduct relied on was the way the Claimant behaved on 1 July namely, that he walked out of the meeting with Ms Humphries. It may well be that the Respondent had some concerns in respect of the Claimant's conduct, or attitude, or even productivity but there was no evidence of those having been documented or raised with him at any stage. In any event, we are satisfied that in his email of 30 June the Claimant was asserting the right to be paid his wages when payment was due and it was this conduct which was the principal reason in Ms Humphries' mind at the time of the decision to dismiss the Claimant.

30 The Respondent sought to support its contention there were problems with the Claimant's attitude and conduct by referring to allegations that came to light later: for instance, that Jessica could not work with him, or working with him was causing her to be stressed, but those were not considerations in Ms Humphries' mind at the time of the dismissal. Her evidence was clear that was something that came to her attention subsequently.

31 We find that the Claimant was dismissed for asserting a statutory right contrary to Section 104(1)(b) of the Employment Rights Act 1996 and that dismissal was automatically unfair.

Polkey.

32 The Respondent raised another matter which came to light after the Claimant's dismissal and sought to rely on that in respect of seeking a Polkey reduction i.e. a contention that they would have dismissed the Claimant in any event on the basis of the new misconduct allegation. That allegation was that the Claimant had double charged a

landlord for a valuation by accepting a payment into his bank account and a cash payment of £50 for the same valuation. We were told the allegation came to light some months after the Claimant was dismissed; we were addressed in submissions on the basis that the Respondent could have fairly dismissed the Claimant within a matter of weeks, specifically three weeks from the date of the dismissal on 1 July. We note the evidence put forward in support of the misconduct allegation was a print off dated November 2016 in respect of a payment made on 3 March 2016, [page 137]. We find the evidence was only provided to the Respondent in November 2016.

33 The Claimant accepts that he received a payment from the landlord in question for carrying out a valuation. He asserted that he had been given permission to accept the money because he was carrying out the valuation in his own time, outside office hours, so it was agreed that the money would be paid to him. He disputes any double charging or taking cash for the valuation. The question for us is whether the Claimant could have been or would have been dismissed fairly by the Respondent at a later date. The Claimant was not in a position to meet the allegation when it was put before him in these proceedings. We found that he did not have sufficient information as to the basis of the allegation. The Claimant would have been entitled to a fair disciplinary procedure and an opportunity to know and meet the case against us. It was not at all clear to us what the evidence that the Respondent was relying on showed or was purporting to show. In the circumstances it is not possible for us to speculate as to the outcome, given the scant evidence and information provided. We are satisfied that it is simply too speculative an exercise to put a figure on an assessment for a Polkey reduction and we therefore make no reduction.

Failure to follow the Acas Code.

34 We went on to consider whether there had been a failure to follow the ACAS Code. We were again referred to the dismissal letter dated 4 July 2016 [page 67] and noted that this purports to reflect the outcome of a meeting at which conduct, productivity and attitude were discussed and at which the opportunity to put forward mitigation had been provided. The letter states:

“At the meeting you failed to provide any valid mitigation.

Having carefully considered your responses including the fact you have a short amount of service, I have decided that your employment should be terminated.”

35 The letter purports to give the reader the understanding that there had been a discussion in which conduct, attitude and productivity were raised and the Claimant had had an opportunity to respond as well as put forward mitigation. This is not consistent with the evidence Ms Humphries gave to us in the Tribunal. Her evidence was that there was no opportunity to discuss the concerns she had intended to raise about conduct, attitude and productivity because the Claimant handed his keys to her at the start and walked out. We are therefore satisfied that the letter does not give a true reflection of what took place and in fact attempts to mislead.

36 The final paragraph of the letter refers to there being a right to appeal against Ms Humphries' decision, which was by writing to Ms Humphries herself within five calendar days, “giving the full reasons why you believed the disciplinary action taken

against you is too severe or inappropriate". It was not disputed that the letter, although dated 4 July 2016 was not delivered to the Claimant until 7 July 2016 when it was delivered by hand; despite the fact that the Claimant and Ms Humphries were clearly in communication by email in the intervening period. The Claimant does respond to the dismissal letter [p. 67] by his letter dated 7 July [at page 71]. He states that he had not been given ample time to reply given the letter was dated 4 July and that it refers to an 'apparent meeting' when at no point was the meeting arranged on 1 July about his conduct. That was consistent with the account of both Ms Humphries and the Claimant as to what took place on 1 July. In the rest of his letter he takes issue with what Ms Humphries has said and the matters she has raised and finishes by saying he looks forward to a reply from her; we are satisfied that was sufficient to meet the requirement of indicating that he wished to appeal set out by Ms Humphries in her dismissal letter. There was no response to this letter; as the Claimant pointed out, not even an email or any acknowledgement. There was no attempt by Ms Humphries to ask the Claimant to clarify whether he was indeed appealing or to refer him to any disciplinary procedure in which the appeal procedure was set out. Ms Humphries accepted she did not respond to that letter and had no answer to explain why she had not done so, nor treated it as an appeal.

37 We were addressed by Ms Hall on the basis that the Respondent was a small business and that that should go some way to explain their failure to provide an appeal, but we note that the Respondent had the services of Peninsula by this date. We do not find the fact that they were a small business excuses them for not doing anything at all, not even passing the letter on to their employment advisers. We find that the dismissal letter itself compounds the failure to follow the provisions of the Acas Code by attempting to paint a false picture of what took place, attempting to give the impression that a hearing had taken place at which the Claimant had an opportunity to put his case. We are satisfied that the uplift should be the maximum which is 25%.

Age discrimination.

38 That brings us to our findings in respect of the claim for age discrimination. The Claimant relies on his dismissal and replacement with Mr Monk as the act of less favourable treatment. The Claimant compares himself to Mr Monk. It is not disputed that Mr Monk was older, over 45, than the Claimant who was 31. We were addressed by Ms Hall on the basis of a number of authorities, including *Nagarajan, Madarassay* and *Igen v Wong* in respect of the burden of proof and the Claimant having to establish a prima facie case. Has the Claimant established facts from which we could conclude that the Respondent dismissed him because of his age. The Claimant asserted that the Respondent believed that Mr Monk was a better fit because he was older and had more experience and a more mature face was seen as possibly a better fit by the clients. The Respondent said that Mr Monk came highly recommended; he had experience of building up new businesses, and he had a nice, or pleasant, manner and a good way with people.

39 We are satisfied that experience is a factor which can be related to age, although in the case of direct age discrimination that is subject to a possible justification defence. The Respondent's case is that if it wanted to replace the Claimant with Mr Monk it could have done so in April, and the fact that they stood by the Claimant in April when Mr Monk said he could not work with him is evidence that they did not have the intention of replacing the Claimant with Mr Monk; they let Mr Monk go and kept the Claimant on as branch manager.

40 The Respondent's evidence was to the effect that they ultimately replaced the Claimant with Mr Monk because they had at that point decided to dismiss the Claimant and because Mr Monk was available and competent, but that this was only a temporary arrangement. Mr Monk agreed to come in and manage the office on an interim basis, and to help them to recruit a replacement. The evidence of what happened subsequently is consistent with that account: the Respondent recruited Mr Ahmed Jamal, who was 39, he started on 18 August 2016 and is still in place. This is not consistent with the Claimant's allegation that he was dismissed in order to replace him with someone older. We find that the Claimant has not established the basis for the allegation that his dismissal was because of the difference in age. For the avoidance of doubt, we find that the principal reason for the Claimant's dismissal was his assertion of a statutory right. We do not find that his age was a factor in the Respondent's asserted cumulative considerations, conduct, attitude and productivity which may have formed the background to that final decision; as far as those were subsidiary parts of the reason for dismissal we do not consider that his age was an influence, as opposed to the Respondent's perception of his temperament. If we are wrong about that then we consider that the Respondent's legitimate aim in employing Mr Monk was to find someone who was competent and able to meet the needs of the business. We accept that employing Mr Monk was a proportionate means for them to meet that aim; they had a business without a branch manager, they needed to find somebody quickly to step in and Mr Monk was available. Those are factors that are not related to his age but explain why he was re-employed by them when he was, albeit on a temporary basis. The claim for age discrimination is therefore dismissed.

REMEDY

41 The Claimant is entitled to compensation for unfair dismissal which we will return to in due course.

Failure to give statement of employment particulars

42 The award under Section 38 (3) of the Employment Act 2002 for failing to provide a written statement of particulars of employment under Section 1 ERA 1996, is between two and four weeks' pay, subject to statutory maximum which at the relevant time was £479 for a week's pay. We have decided that it is just and equitable to award the Claimant four weeks' pay, which is the sum of £1,916. We are satisfied that 4 weeks is the appropriate award in the light of the Respondent's conduct in attempting to mislead the Tribunal by purporting to provide the statement in two parts, and having found that the document at page 29 was not provided to the Claimant as asserted. Not only has there been a failure but there has been an attempt to mislead the Tribunal in that regard.

Unfair dismissal

43 After a short adjournment for the Claimant to clarify his figures for loss of earnings and to discuss those with Ms Hall, we were informed that the Claimant's claim is in the following amounts:- Loss of earnings for July £2,797.87; August £2,797.87; the salary for September which would have been a reduced salary from the Respondent the Claimant claims in the sum of £1,563.33; for October £1,563.33; November is a part month, the Claimant obtaining new employment on 23 November, the approximate figure that was reached following a discussion between the Claimant and the Respondent was

£1,200.00 and that is the amount the Claimant seeks. Those figures are all net. The total amount for lost income is therefore £9,922.40. The Claimant was paid two weeks' notice pay in July in the sum of £1,291.28 for which the Claimant gives credit to the Respondent. The balance is therefore £8,631.12 before any uplift. We awarded an uplift of 25% which is the sum of £2,157.78.

44 The grand total of compensation for unfair dismissal is therefore £10,788.90.

45 The date of dismissal was 1 July 2016 and the date of this hearing is 25 April 2017 and that is the prescribed period. The prescribed element is the sum of £10,788.90 to which the recoupment provisions apply under the **Employment Protection (Recoupment of Benefits) Regulations 1996**. The monetary award does not exceed the prescribed element.

Employment Judge C Lewis

16 May 2017