Case No: 1600196/2020

EMPLOYMENT TRIBUNALS

Claimant: **Mr G Scowen**

Respondent: **Doors Wales Warehouse Limited**

Heard at: Cardiff **On:** 1 December 2020

Before: Employment Judge Brace

Representation
Claimant: Mr A Griffiths (Counsel)
Respondent: Mr Maggs (Director)

RESERVED JUDGMENT

The Claimants complaints of:

a) wrongful dismissal/breach of contract (notice pay),
b) unfair dismissal,
c) unlawful deductions from wages,
d) failure to provide written reasons for dismissal and
e) failure to provide written statement of employment particulars

are all well founded and succeed.

The Respondent is ordered to pay the Claimant the sum of **£9,668.50** as follows:

a) Wrongful Dismissal/breach of Contract - **£3,672.00**
b) Unfair Dismissal - **£3,793.50**
c) Unlawful deduction from wages - **£367.00**
d) Failure to provide written reasons for dismissal - **£918.00**
e) Failure to provide written statement of employment particulars **£918.00**

The Claimant is responsible for any tax and national insurance on the sums at 1 and 3 above.

WRITTEN REASONS

Background

1. The claims before me are of:

    a. Wrongful dismissal/breach of contract – notice pay
    b. unfair dismissal arising from the dismissal of the Claimant on grounds of gross misconduct;
    c. unlawful deduction from wages;
    d. compensation for failure to provide written reasons for dismissal; and
    e. compensation for failure to provide a written statement of particulars of employment.

2. No counter-claim has been submitted by the Respondent in this claim.

3. An application was made by the Respondent, on the morning of the hearing, for a postponement of the hearing, an application having already having been made earlier in the week and refused. Again, the postponement application was refused and oral reasons were provided at the hearing.

4. The Tribunal had before it a Tribunal bundle, prepared by the Claimant's solicitor, of some 70 pages. Page references in this Judgment are indicated by [ ]. It also had a witness statement from the Claimant, a Schedule of Loss and a draft List of Issues that had been prepared by the Claimant's solicitor and sent to the Respondent by email on 25 November 2020.

5. No witness statements had been prepared for, or on behalf of the Respondent but, after discussion and agreement from the Claimant's Counsel, I gave permission for the ET3 and ET3 attachment to stand as a witness statement from Mr Maggs, owner and director of the Respondent.

6. Again with the agreement of the Claimant's Counsel, I also allowed the Respondent to add an additional document into the Claimant Bundle [@page 71]. It transpired, following cross-examination of Mr Maggs, that this document was not a copy of an original customer order, but was a document that had been created by Mr Maggs, with information relating to a customer order at Ivy Cottage, taken from the Respondent's original record books (referred to as the "Red Book"), with additional comments from Mr Maggs. I did not consider the document to be 'fabricated' as such, as had been suggested by Claimant's Counsel, rather it had been created by Mr Maggs for the purposes of this litigation and he did not suggest that it was anything other than a document that he had created.

7. It was explained to the Respondent how the case would proceed and Mr Maggs was asked whether it was disputed that the Respondent had dismissed the Claimant. Mr Maggs confirmed that it was. He disputed that he had told the Claimant '*Get out. You are sacked'* as alleged. The Respondent's position, although not contained in the ET3, was that that Mr Maggs had instructed the Claimant to *'Leave the building'*.

8. The issues for determination at the hearing were discussed as follows:

a. Was the Claimant dismissed?

b. If the Claimant was dismissed, what was the reason or principal reason for dismissal?

c. Was it a potentially fair reason?

d. Did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the Claimant?

e. What was the reason or principal reason for dismissal? If the reason was misconduct, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant? The Tribunal will usually decide, in particular, whether:

   i. there were reasonable grounds for that belief;
   ii. at the time the belief was formed the Respondent had carried out a reasonable investigation;
   iii. the Respondent otherwise acted in a procedurally fair manner;
   iv. dismissal was within the range of reasonable responses.

Facts

9. The Respondent is a joinery company that amongst other products and services makes, fits and alters internal and external doors for domestic and commercial customers. It employs around 45 employees and employed the Claimant as a joiner/carpenter from 1 October 2010 until the termination of his employment on the 26 September 2019.

10. It is managed by Mr Maggs, one of the company directors, who is assisted in administration of the company's business by his daughter who, as part of her role, manages the corporate email account. His wife also assists in the business, Alison Maggs. Mrs Maggs accompanied Mr Maggs at the hearing. It may be that there are other family members, and I make no finding on that, but it is essentially a family run business.

11. The Respondent's business has, like many other businesses, suffered greatly during the Covid-19 pandemic, and one cannot underestimate how difficult trading over 2020 must have been and will be at this moment in time. Many of the Respondent staff have been and continue to be on furlough since the March lockdown.

12. The events in question however relate to period back in September 2019, when Covid-19 was not upon us and was not a factor in the matters in dispute or, save potentially in respect of remedy, the issues for determination by this Tribunal.

13. At the time of the termination of his employment, the Claimant was 71 years old and he had been employed by the Respondent for just under nine years.

14. During his employment with the Respondent, the Claimant did not receive a contract of employment, but there appears to be no obvious conflict between the Claimant and the Respondent prior to the summer of 2019. The Claimant had need to visit his GP on a weekly basis and the Respondent allowed him to do that in working time without requiring him to 'make up' the time. The Respondent also did not oblige the Claimant to undertake the duty of moving logs, which required lifting. The Respondent was a business that tried to look after its staff.

15. Prior to his termination, the Claimant raised the possibility of working part time. Whilst the Claimant did initially deny making such a suggestion, when pressed, he conceded that he may have indicated this to the Respondent. I concluded that on balance of probabilities, the Claimant had asked to work part time.

16. There is a dispute between the parties regarding whether the Claimant had asked to be 'laid off' or made redundant. Mr Maggs was emphatic that the Respondent had made such a request, the Claimant emphatically denied this. This request had been made to Mrs Maggs and Mr Maggs' daughter, neither of whom gave evidence. It was also apparently witnessed by another individual. Again, no evidence was provided by that individual.

17. Whilst the Claimant may have said such a thing, I did not conclude on balance of probabilities, on the evidence before me, that he had.

18. The Claimant was on holiday for the period from the 2 to 18 September 2019. The Claimant was entitled to 20 days annual leave per holiday year running from 1 April of each year together with 8 bank holidays. The Claimant was paid a gross basic weekly pay of £459 and net basic weekly pay of £385. The Claimant worked a week in hand and was paid weekly. He was due to be paid for work undertaken in week commencing Monday 23 September 2019 on Friday 27 September 2019.

19. On 26 September 2019, there was an altercation between the Claimant and Mr Maggs over the Claimant's work. There was a considerable amount of confusion in the evidence of both the Claimant and Mr Maggs regarding two particular jobs that the Claimant had been asked to undertake and whilst there was no dispute between the parties that the Claimant had undertaken the two jobs in the lead up to 26 September 2019, what was disputed was which one had caused the altercation between the Claimant and Mr Maggs on 26 September 2019.

20. The two jobs were as follows:

    a. The Claimant had been asked to cut new doors for a customer at Ivy Cottage ('Ivy Cottage Doors').;

    b. The Claimant had been asked by Mr Maggs to visit a customer to check some beading on existing doors, to ensure the Respondent matched the beading on the two new doors that the customer had ordered ('Beading Doors').

21. I made it clear to Mr Maggs during the hearing, that I would not be making findings on *why* either or both jobs had gone wrong, and/or who was at fault,

and repeatedly encouraged him to focus on the events of 26 September 2019 and what discussions had taken place that day that had led to the Claimant leaving the joinery. I decline to make findings on:

a. Whether or not the Claimant had been negligent or made a mistake when cutting the Ivy Cottage Doors; and/or
b. Whether or not the Claimant should have taken steps to measure/photograph the Beading Doors whilst he was at the customer's premises.

22. With regard to the Ivy Cottage Doors, measurements had been given to the Claimant by the Respondent and the Claimant had proceeded to cut the doors. Mr Maggs believed that the Claimant had failed to take into account and allow for the door frame measurements, when cutting the doors so that the doors could not be fitted / fitted with locks.

23. It was Mr Maggs' belief that the Claimant had made a mistake in not allowing for the door frames when cutting. Mr Maggs was annoyed and frustrated that the Claimant had failed to inform him of how he had to cut down the door, particularly as this had resulted in a dissatisfied complaining customer and financial loss for the Respondent, both in terms of a carpenter's wasted time in unsuccessfully trying to fit the doors for the customer and having to provide replacement doors for the customer.

24. With regard to the Beading Doors, Mr Maggs was annoyed and frustrated that the Claimant had not, when at the customer's premises, also taken accurate measurements and/or photographs of the aperture and beading. Mr Maggs took the view that had the Claimant done so, this would have avoided the need for a second visit from Mr Maggs.

25. It was the Claimant's evidence that discussions relating to the Beading Doors took place between the Claimant and Mr Maggs on 26 September 2019 and led to the altercation between the two men. It was the Respondent's evidence that the altercation related to the Ivy Cottage Doors.

26. Having considered the oral evidence from both, I considered that it was more likely than not that the discussion, which triggered the Claimant being told to leave the joinery, related to the Beading Doors but, by the start of the morning on 26 September 2019 Mr Maggs was annoyed and frustrated with the Claimant as a result of *both* jobs:

a. He was annoyed and frustrated with the Claimant as he believed that the Claimant had incorrectly cut the Ivy Cottage Doors; and
b. He was annoyed and frustrated with the Claimant as he felt that the Claimant should have taken the opportunity to measure and/or photograph the aperture and beading on the Beading Doors and had failed to do so leading him to expend time in doing so.

27. The Claimant refused to cut the aperture to the Beading Doors as instructed by Mr Maggs. He was concerned that the measurement would not be accurate. His evidence was that he held concerns that Mr Maggs would dock his pay if he made an error and that as a result he refused to do so.

28. There was no live evidence that the Respondent had taken such a step with any employee and the evidence given by the Claimant was purely anecdotal and based on one apparent conversation with another employee.

29. Taking into account the long service that the Claimant had with the Respondent, the lack of any relevant evidence that this had in fact happened with other employees and the previous working relationship between the Claimant and the Respondent, I found that not only was this not a reasonably held belief, but that it was more likely than not the Claimant did not genuinely believe that this would happen.

30. As such the Claimant's refusal to comply with Mr Magg's instructing to cut the aperture was an unreasonable refusal to comply with a reasonable instruction from Mr Maggs and escalated the interaction with Mr Maggs. I concluded that it was also more likely than not that the Claimant's unreasonable refusal to comply with Mr Maggs' instruction on the Beading Doors together with Mr Magg's existing frustration with the Claimant's work on the Ivy Cottage Doors, led to Mr Maggs shouting at the Claimant and telling him to leave.

31. The Claimant's evidence is that he was told to '*Get out'* by Mr Maggs. Mr Maggs' evidence is that he told the Claimant to '*Leave the building'*. Either way, the Claimant was told by Mr Maggs to leave the joinery.

32. What is in dispute is whether Mr Maggs also told the Claimant '*You're sacked*' This is set out clearly in the ET1 and in the Claimant's witness statement. The Respondent does not deny this in the ET3. Further, when questioned by the Claimant's Counsel on the point, he did not deny stating those words, only that the altercation related to Ivy Cottage Door not the Beading Door. It was only in response to a direct question that Mr Maggs responded that he had not said those words, that he had just asked him to leave, did Mr Maggs deny saying to the Claimant ' *You're sacked'*.

33. I concluded on balance of probabilities, based on both the Respondent's failure to deny this within the ET3 and Mr Maggs' equivocal answers to Mr Griffiths' questioning, that it was more likely than not that in the heat of the moment that Mr Maggs did say to the Claimant '*You're sacked'.*

34. The Claimant left the joinery in response. He returned briefly on realising he had forgotten some of his tools, but returned to his car and left the premises. At some point as the Claimant was returning to his car, Mr Maggs did approach the Claimant, as he was getting in or had sat in his car. No conversation took place as such. Both men at this point were still angry. Mr Maggs felt that the Claimant slammed the car door in his face when he tried to speak to him. Mr Maggs was questioned on whether he had said to the Claimant at that point '*I hope you haven't got any of our fucking tools in your box'*. He responded to Mr Griffiths 'I couldn't say yes or no to that – I was quite frustrated at that point'. I found it likely that Mr Maggs had said this to the Claimant as the Claimant was leaving in his car.

35. No further contact took place between the Claimant and the Respondent. The Claimant did not appeal his dismissal and made no attempt to return to work the following day or thereafter.

36. On Friday 27 September 2019, the Claimant should have been paid his wages from Monday 23 September 2019 to Thursday 26 September 2019. The Respondent withheld his wages as the Respondent concluded that the Claimant had taken annual leave in the holiday year to that point of 21 days including the bank holidays that was in excess of his accrued annual leave.

37. No evidence on mitigation was contained in the Claimant's witness statement and no documentary evidence of the Claimants attempts to look for alternative work e.g. copy job applications, were contained in the Bundle.

38. On allowing additional questioning from Claimant's Counsel at the outset of the Claimant's evidence, the Claimant confirmed that in terms of steps he had taken to obtain alternative employment, he had made a telephone call to two joineries but did not hear back from them. He tells me that he applied for a job in Rhondda Cynon Taf local authority, but no evidence was provided on that job application either in more detail orally, or within the Bundle.

39. It was accepted by the Respondent that September – March is the 'quietest time' for carpentry/joinery work as seasonal and from March 2020, due to the Covid-19 pandemic, no one was taking on such labour until August 2020.

40. On 8 January 2020 these proceedings were issued in the Wales Employment Tribunal.

41. By March 2020 at the latest, the Claimant had stopped looking for employment and chose to retire. This is not contained in his witness statement but is referred to in the Schedule of Loss provided. My further findings in relation to remedy are set out below.

Issues and Law

42. With unfair dismissal, I first have to consider whether the Claimant was dismissed. If I conclude that the Claimant was dismissed, I then have to consider the reason for the dismissal and whether it was a potentially fair reason for the dismissal.

43. In this regard, the respondent bears the burden of proving on balance of probabilities, that the claimant was dismissed for one of the potentially fair reason set out in section 98(2) Employment Rights Act 1996 (ERA 1996).

44. After considering the reason for dismissal, on the presumption that I identified a potentially fair reason for dismissal, I then have to consider whether the application of that reason in the dismissal for the Claimant in the circumstances was fair and reasonable in the circumstances (including the respondent's size and administrative resources). This should be determined in accordance with equity and the substantial merits of the case and the burden of proof in this regard is neutral.

45. When assessing the reasonableness of the Respondent's actions against those of a reasonable employer I was conscious not to substitute my own views as to the appropriateness or otherwise of the dismissal.

46. If I concluded that the Claimant had been unfairly dismissed I am required to consider the question of the Claimant's loss, under section 123 of the Employment Rights Act 1996 which provides:

> *(1) Subject to the provisions of this section and sections 124 and 124A, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.*
>
> *(2) The loss referred to in subsection (1) shall be taken to include—*
>
> *(a) any expenses reasonably incurred by the complainant in consequence of the dismissal, and*
> *(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.*
>
> *(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.*

46. In ***Scope v. Thornett [2007] IRLR 155*** the Court of Appeal guides us as to our need to engage in a certain amount of speculation in the appropriate circumstances in the words of Pill LJ at paragraph 34:

> *"The employment tribunal's task, when deciding what compensation is just and equitable for future loss of earnings will almost inevitably involve a consideration of uncertainties. There may be cases in which evidence to the contrary is so sparse that a tribunal should approach the question on the basis that loss of earnings in the employment would have continued indefinitely but, where there is evidence that it may not have been so, that evidence must be taken into account."*
> And at paragraph 36
>
> *"The EAT appear to regard the presence of a need to speculate as disqualifying an employment tribunal from carrying out its statutory duty to assess what is just and equitable by way of compensatory award. Any assessment of a future loss, including one that the employment will continue indefinitely, is*

by way of prediction and inevitably involves a speculative element. Judges and tribunals are very familiar with making predictions based on the evidence they have heard. The tribunal's statutory duty may involve making such predictions and tribunals cannot be expected, or even allowed, to opt out of that duty because their task is a difficult one and may involve speculation."

47. The guidance on consideration of chance in the context of an unfair dismissal claim is summarised in and principles emerge from **Software 2000 Ltd v Andrews & Ors [2007] ICR 895** in that in assessing compensation '*the task of the Tribunal is to assess the loss flowing from the dismissal, using its common sense, experience and sense of justice. In the normal case that requires it to assess for how long the employee would have been employed but for the dismissal'.*

48. That requires the tribunal to assess for how long the employee would have been employed but for dismissal. If the employer seeks to contend that the employee would or might have ceased to be employed in any event had fair procedures been followed, or alternatively, would not have continued in employment indefinitely, it is for them to adduce any relevant evidence that they wish to rely on. However, we must have regard to all the evidence when making that assessment, including any evidence from the employee herself. There will be circumstances where the nature of the evidence which the employer wishes to adduce is so unreliable that the Tribunal may take the view that the whole exercise of seeking to reconstruct what might have been is so riddled with uncertainty that no sensible prediction based on that evidence can properly be made. Whether that is the position is a matter of impression and judgment for the Tribunal but in reaching that decision we must direct ourselves properly and need to recognise and have regard to any material and reliable evidence which might assist us in fixing just compensation, even if there are limits to the extent to which we can confidently predict what might have been. We must appreciate that there is a degree of uncertainty with that exercise.

49. The claimant must prove loss; the respondent must establish a failure to mitigate loss (***Wilding v British Telecom PLC [2002] EWCA Civ 349***)

Conclusions

50. In applying my findings to the issues identified at the outset, I needed to initially consider whether the Claimant was dismissed by the Respondent.

51. Having found that the Claimant was told to leave the joinery by Mr Maggs, and further having found that that Mr Maggs had told the Claimant '*You're*

sacked', I concluded that the Respondent had expressly dismissed the Claimant with unambiguous words that can only be interpreted as a termination of the employment relationship by the employer.

52. However, even if my finding in relation to the comment '*You're sacked'*, is wrong, I still concluded that the Claimant was effectively dismissed by Mr Maggs, when Mr Maggs told the Claimant he was to leave the joinery. I did not conclude that the proper inference to draw was that the Claimant's resignation could be inferred from the events of that day and afterwards as:

    a. Mr Maggs, as the management of the employer, had told the Claimant to leave and had the opportunity of withdrawing any words spoken in the heat of the moment or clarifying that they were meant to be taken literally and that he expected the Claimant to return to work the following day;
    b. There was no evidence that any words spoken in anger, were immediately withdrawn by Mr Maggs. Rather, I found that as the Claimant left, Mr Maggs had questioned the Claimant as to whether he was removing company tools.
    c. No attempt was made by Mr Maggs or anyone in the Respondent to contact the Claimant after his departure or to ascertain why he had not returned to work on the Friday or weeks following. Rather, the Respondent chose not to pay the Claimant for his week's work, retaining his last week's wages to set off against holidays taken that the Respondent concluded had not been accrued.

53. The Respondent, having asserted that there was no dismissal, put forward no alternative argument on the basis of a finding that if it was determined that the Claimant was dismissed, that there was a potentially fair reason for dismissal.

54. There was no suggestion from the Respondent that the Claimant's work or conduct that day would have resulted in disciplinary, performance management or would have resulted in, for example, a breakdown of trust and confidence in him as an employee.

55. I concluded that the Respondent had not discharged the burden of proving a potentially fair reason for dismissal, whether conduct, capability or 'some other substantial reason of a kind' justifying dismissal and that the dismissal was substantially unfair. I did not conclude that the Claimant would have been dismissed at some point for the events of that day or the events leading to that day, namely the Ivy Cottage Doors and/or the Beading Doors jobs.

56. Whilst that is the end of the matter, in terms of any assessment of overall fairness, the context of the section 98(4) test, there was no process at all leading to the termination of the Claimant's employment.

Polkey Reduction

57. As such, no deduction is therefore made for any chance that the Claimant would have been dismissed had a fair process been followed.

Contributory Conduct

58. S.123(6) ERA imposes an absolute duty on tribunals to consider the issue of contributory fault in any case where it was possible that there was blameworthy conduct on the part of the employee regardless of whether the issue was raised by the parties (**Swallow Security Services Ltd v Millicent** EAT 0297/08)

59. I concluded that the Claimant's conduct on the day of 26 September 2019 contributed to the dismissal. Having found that the Claimant did not have a reasonably or genuinely held belief that Mr Maggs would 'dock' his wages if there was a mistake in the work on the Beading Doors, the Claimant's refusal to cut the aperture in the Beading Doors, following instruction to do so by Mr Maggs contributed to his dismissal.

60. This was in my mind culpable conduct which contributed significantly to the events of that day and his dismissal by Mr Maggs.

61. In my judgment, the Claimant's contribution is properly placed at 50% so that of any compensation (basic and compensatory) for unfair dismissal which he is ultimately awarded, the Claimant will receive 50%.

ACAS Code

62. Whilst I found that the Respondent did not comply with the ACAS Code, Mr Griffiths made no submissions on the point, and I also found that the Claimant had not appealed the finding of dismissal. I decline to make any uplift in relation to the failure to follow the ACAS Code.

Wrongful Dismissal

63. For the reasons which are set out above, it is not established that in this case there was any conduct or performance of the Claimant that was of such seriousness that it amounted to a fundamental breach of contract. I therefore find that by summarily dismissing the Claimant, the Respondent acted in breach of the Claimant's contract of employment.

64. The claimant is entitled to compensation representing payment in lieu of statutory entitlement to notice of 8 weeks.

65. For the reasons set out above I find that the Claimant was both unfairly and wrongfully dismissed.

Unlawful deductions from wages

66. The Claimant was not paid in respect of 4 out of the 5 days for his week of work commencing Monday 23 September 2019. No written contract of employment was provided to the Claimant by the Respondent and the Respondent cannot therefore rely on any agreement from the Claimant to deduct from his wages any amount it considers due and owing in respect of annual leave taken in excess of accrued annual leave.

67. A claim of unlawful deductions in respect of pay from Monday 23 September to Thursday 26 September 2019 is therefore well founded and succeeds.

Written statements

68. It is not in dispute that the Respondent has not provided a written contract of employment and/or written statement of particulars of employment. The Respondent has failed to provide the Claimant with written statement of particulars of employment in breach of s.1 Employment Rights Act 1996.

69. It was not disputed that the Claimant had requested written reasons for dismissal albeit no documentary evidence was contained in the Bundle. The Claimant requested written reasons for his dismissal and this was not answered by the Respondent. Having been requested by the Claimant to be provided with a written reasons for dismissal, there was a failure to do so by the Respondent.

70. Both claims are well founded and succeed.

Remedy

Wrongful dismissal

71. The Claimant has 8 years' service and seeks compensation of 8 weeks' net pay. This is awarded on the basis of the conclusions that the Claimant had been dismissed in breach of contract.

72. The award has been made gross to take into account the post-employment notice pay that the Claimant must pay on this amount.

Unfair Dismissal

73. The Claimant seeks a basic award of £5,508 based on his age, 8 years' service and a gross weekly pay of £459 of £5,508. This is awarded but is reduced to **£2,754** on the basis of the conclusions of contributory conduct of 50%.

74. The Claimant seeks a compensatory award of £23,868 based on losses as follows, but capped at the statutory cap of one year's gross pay (£23,868):

a. net losses from 29 September 2019 to 3 April 2020 (when the Claimant chose to retire) of £10,395
b. net losses from 3 April 2020 to 1 December 2020 of £13,107
c. six months future loss of £10,010 and
d. loss of statutory rights £918

75. I concluded that the Claimant had not shown that the loss of earnings for that total period was caused by the dismissal by the Respondent, but concluded that any loss of income was in part as a result of the Claimant's determination to end his working life. Whilst I accepted that the Claimant would not necessarily have retired in September 2019, I was not persuaded by what the Claimant had indicated in his Schedule of Loss, that he would not have decided to retire in March 2020 had it not been for his dismissal. I heard no evidence from the Claimant on this point and I was not persuaded that this was the case.

76. Having found that the Claimant was seeking to reduce his hours prior to termination, I further concluded that the Claimant had already been considering the end of his working life in around September 2019 and would have retired by March 2020 at the very latest, if not earlier, even if the Claimant had not been dismissed.

77. I concluded that losses from March 2020 were therefore not caused by the dismissal at all but by the Claimant's decision to retire which would have been taken irrespective of the dismissal.

78. I concluded that it would have been more likely than not that he would have reached this decision prior to the March 2020 lockdown and furlough arrangements.

79. When this point would have been reached was tied in with my findings on what were the Claimant's efforts to look for alternative work after dismissal. Whilst it is for the Respondent to prove that the Claimant failed to mitigate his losses, on cross-examination by Mr Maggs the Claimant confirmed that he had taken limited steps only to look for alternative work. Whilst it was accepted that joinery work was at its quietest in Winter months, it does not follow that there was no work available.

80. I concluded that by the end of December 2019, the Claimant stopped looking for work and chose to instead retire from working life. I concluded that there had been no concerted effort by the Claimant to look for alternative work after these initial attempts as such, and that it was just and equitable that any compensation for loss of earnings should be limited to the period from the end of the 8 weeks' notice period (22 November 2019) to the end of December 2019, when it was more likely than not the Claimant would have stopped looking for alternative work.

81. I decline to make an award for loss of statutory rights on the basis that the Claimant has chosen to retire and my findings in that regard.

S.13 unlawful deductions – s.13 ERA 1996

82. In breach of Section 13(1) of the Employment Rights Act 1996 ("ERA 1996"), the Respondent deducted from the Claimant's wages, without his authorisation, four days' pay and it is ordered to pay him in respect of four days gross pay in this regard. There was no right for the Respondent to deduct monies in respect of any holidays taken but not yet accrued.

Written reasons and particulars

83. Having found that the Claimant had requested, and the Respondent had failed to provide, written reasons for dismissal, I concluded that there had been no reason for the employer's refusal or failure, and that the failure on the part of the Respondent was unreasonable. I therefore make an award compensation to the Claimant in the sum of two weeks' pay.

84. Section 38 Employment Act 2002 states that a tribunal must award a minimum of two weeks' pay compensation to a worker where, on a successful claim being made under any of the tribunal jurisdictions listed in

Schedule 5, it becomes evident that the employer was in breach of its duty to provide full and accurate written particulars under S.1 ERA — Ss.38(1)–(3). The list of jurisdictions set out in Schedule 5 includes unfair dismissal.

85. Having found that the Respondent was in breach of its duty to provide written particulars to the Claimant, the Claimant is awarded two weeks' pay. I was not persuaded, nor were submissions put to be that it would be just and equitable to award the higher amount of four weeks' pay and I decline to do so despite that having been claimed in the Schedule of Loss.

86. Having found that the complaint under s.93 of the ERA 1996 is well founded, I must order that the Respondent pay to the Claimant a sum equal to two weeks' pay. The tribunal has no discretion to refuse to make an award or over how much to award. .

87. The Respondent is ordered to pay the Claimant the following sums:

1	Wrongful dismissal / Breach of contract (Notice Pay)	Based on 8 weeks' net pay from 27 September 2019 – 21 November 2019, grossed up to take into account post-employment notice pay tax.	**£3,672.00**
2	Unfair Dismissal Basic Award	50% of a Basic Award of £5,508 (8 x 1.5 x £459)	**£2,754**
3.	Unfair Dismissal Compensatory Award	50% of a Compensatory Award of £2,079 based on losses from 22 November 2019 to 31 December 2019 based on net weekly pay of £385 (5.4 weeks)	**£1,039.50**
4.	Unlawful deduction from wages – s.13 ERA 1996	Four days gross pay from 23 September 2019 to 26 September 2019	**£367.00**
5.	Failure to provide written reasons for dismissal – s.93 ERA 1996	Two weeks' pay	**£918.00**

6.	Failure to provide a written statement of terms and conditions - s.38 ERA 1996	Two weeks' pay	**£918.00**
7.	**Total**		**£9,668.50**

78. The Claimant is responsible for any income tax or employee national insurance contributions that may be due on the sums awarded at paragraphs 1 and 4 above.

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Employment Judge R Brace

Date 2 December 2020

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

3 December 2020

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FOR EMPLOYMENT TRIBUNALS