EMPLOYMENT TRIBUNALS

Claimant: **Paul Jackson**

Respondent: **Park Holidays UK Ltd**

Heard at: **East London Hearing Centre** **On: 26 November 2020**

Before: **Employment Judge S Knight**

Representation

Claimant: In person, unrepresented

Respondent: Matthew Grand, solicitor

JUDGMENT

1. **The Claimant was unfairly dismissed by the Respondent.**

2. **The Claimant was not wrongfully dismissed by the Respondent.**

3. **The Respondent made unauthorised deductions from the Claimant's wages.**

4. **The Respondent failed to provide the Claimant with a written statement of changes to his particulars of employment.**

5. **The Respondent is ordered to pay the Claimant a total of £6,229.43 (calculated net) plus £3,106.36 (calculated gross) composed of the following:**

   (1) £6,229.43 for unfair dismissal.

   (2) £2,076.92 for failure to provide a written statement of changes to the written particulars of employment

(3) £1,029.44 for unauthorised deduction from wages.

6. For the purposes of the <u>Employment Protection (Recoupment of Benefits) Regulations 1996</u>:

(1) The total monetary award for unfair dismissal is £8,306.35.

(2) The prescribed element is £6,229.43.

(3) The prescribed element relates to 6 September 2019 to 26 November 2020.

(4) The amount by which the total monetary award for unfair dismissal exceeds the prescribed element is £2,076.92.

REASONS

Introduction

The parties

1. The Claimant was employed by the Respondent, firstly as a Retail Team Member, and then as a Retail Manager. The Respondent operates holiday parks which contain caravans owned by members of the public, along with bars and arcades attached to the holiday parks.

The claims

2. The Claimant claims for:

    (1) Unfair dismissal (for an automatically unfair reason);

    (2) Failure to pay notice pay (breach of contract / wrongful dismissal);

    (3) Unauthorised deductions from wages in the form of (i) pension contributions which the Claimant did not agree to; and (ii) unpaid wages whilst off work following an assault; and

    (4) Compensation for failure to provide written particulars of employment (or a statement of changes).

3. On 23 September 2019 ACAS was notified under the early conciliation procedure. On 8 October 2019 ACAS issued the early conciliation certificate. On 30 October 2019 the ET1 was presented. On 5 December 2019 the ET3 was filed with the Tribunal.

The issues

4. At the start of the hearing a list of issues was discussed. Both parties

constructively engaged in the process and agreed the final version.

Procedure, documents, and evidence heard

Procedure

5. This has been a hybrid in-person and remote hearing which has been consented to by the parties. The form of remote hearing was "***V**: video whether partly (someone physically in a hearing centre) or fully (all remote)*". A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic and no-one requested the same. The documents that I was referred to are in a bundle, the contents of which I have recorded.

6. The Claimant, the Respondent's representative, and the Respondent's witness Mr Bush attended in person; the Respondent's witness Mr Garland attended over Cloud Video Platform.

7. At the start of the hearing I checked whether any reasonable adjustments were required. Those in attendance confirmed that none were required.

Documents

8. There was an agreed hearing bundle consisting of 88 pages. The Tribunal was also provided with the following material on the morning of the hearing:

   (1) From the Claimant, a witness statement.

   (2) From the Respondent, the witness statements of Mr Bush and Mr Garland, and a skeleton argument.

Evidence

9. At the hearing I heard evidence under affirmation from the Claimant, Mr Bush, and Mr Garland. Each witness adopted their witness statements and added to them.

Law

Unfair dismissal for an automatically unfair reason

10. Section 94 of the Employment Right Act 1996 ("**ERA 1996**") provides that an employee with sufficient "qualifying service" has the right not to be unfairly dismissed by their employer.

11. Section 108 ERA 1996 provides that the requirement for qualifying service does not apply in health and safety cases brought under section 100(1) ERA 1996. In turn, section 100(1) ERA 1996 provides that it is not a fair reason to dismiss if the reason for dismissal is that the employee brings to the attention of the employer, by reasonable means, circumstances connected with the employee's work which

the employee reasonably believed were harmful or potentially harmful to health or safety. It provides insofar as is relevant as follows:

> "100.— Health and safety cases.
>
> (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
>
> > (c) being an employee at a place where—
> >
> > > (i) there was no such representative or safety committee […]
> >
> > he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety"

12. Section 98(1) ERA 1996 provides that it is for the employer to show that any dismissal was for one of a limited set of potentially fair reasons set out in section 98(2) ERA 1996, or some other substantial reason. However, in the case of *Smith v Hayle Town Council* [1978] 1 I.C.R. 996; 3 July 1978 the Court of Appeal held that if the Claimant does not have the amount of qualifying service which would usually be required to bring a claim, then the Claimant carries the burden of proving, on the balance of probabilities, that the reason for dismissal was an automatically unfair reason.

13. In the circumstances of this case, the result of these legal provisions is that if the Claimant proves on the balance of probabilities that he was dismissed for a health and safety reason, then he will have been unfairly dismissed. Otherwise, he will not have been unfairly dismissed.

Unauthorised deductions from wages

14. Sections 13 to 27B ERA 1996 set out the statutory basis for a claim for unauthorised deductions from wages. Section 13 ERA 1996 provides in particular as follows:

> "(1) An employer shall not make a deduction from wages of a worker employed by him unless—
>
> > (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
> >
> > (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.
>
> (2) In this section *"relevant provision"* , in relation to a worker's contract, means a provision of the contract comprised—
>
> > (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

15. "Wages" is widely defined. According to section 27(1) ERA 1996, it includes "*any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise*".

Pensions automatic enrolment

16. Section 3(2) Pensions Act 2008 requires employers to make arrangements to automatically enrol workers in a pension scheme. It provides as follows:

"(2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date."

17. Section 3(7) Pensions Act 2008 provides that the automatic enrolment date is the first day of employment. It provides insofar as is relevant as follows:

"(7) The automatic enrolment date, in relation to any person, is the first day on which this section applies to the person as a jobholder of the employer."

18. Regulation 6(1)(a) of the Occupational and Personal Pension Schemes

(Automatic Enrolment) Regulations 2010 provides that within 6 weeks of the automatic enrolment date (i.e. the start of employment) the employer must provide a pension scheme with information so that the employee becomes an active member of the pension scheme. It provides insofar as is relevant as follows:

> "(1) The arrangements the employer must make in accordance with section 3(2) (automatic enrolment) of the Act are to enter into arrangements with—
>
> > (a) the trustees or managers of an automatic enrolment scheme which is an occupational pension scheme, so that before the end of a period of six weeks beginning with the automatic enrolment date the jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the automatic enrolment date"

19. Regulation 8 of the Regulations requires an employer after the automatic enrolment date to deduct pension contributions. It provides that:

> "An employer must, on or after the automatic enrolment date, deduct any contributions payable by the jobholder to the scheme, from qualifying earnings or pensionable pay due to the jobholder"

20. Regulation 9 of the Regulations permits an employee to opt out of paying contributions. Insofar as is relevant to this case, it provides for the opt-out notice to be given by the employee within a month of being given the "**enrolment information**". It provides insofar as is relevant as follows:

> "(1) A jobholder who has become an active member of an occupational pension scheme or a personal pension scheme in accordance with arrangements under section 3(2) of the Act, may opt out by giving their employer a valid opt out notice obtained and given in accordance with this regulation.
>
> (2) Where the jobholder has become an active member of an occupational pension scheme, the jobholder must give their employer a valid opt out notice within a period of one month beginning with the later of—
>
> > (a) the date on which the jobholder became an active member of the scheme in accordance with regulation 6(1)(a), or
> >
> > (b) the date on which the jobholder was given the enrolment information."

21. Regulation 2 of the Regulations defines the "enrolment information" as the information described in paragraphs 1-15, and 24 of Schedule 2 to the Regulations. These set out a considerable amount of information, including at paragraph 1, "*A statement that the jobholder has been, or will be, enrolled into a pension scheme*".

Right to receive written particulars of employment

22. At all material times, the ERA 1996 gave employees a right to a written statement

of the particulars of their employment (essentially, a written employment contract). The ERA 1996 also gave employees a right to a written statement of changes of the particulars of their employment ("**a statement of changes**").

23. Section 1 ERA 1996 set out the right in regard to the initial employment contract as follows insofar as is relevant:

"1.— Statement of initial employment particulars.

(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

[…]

(3) The statement shall contain particulars of—

(a) the names of the employer and employee,

(b) the date when the employment began, and

(c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment containing them) is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),

(c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),

(d) any terms and conditions relating to any of the following—

(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),

(ii) incapacity for work due to sickness or injury, including any provision for sick pay, and

(iii) pensions and pension schemes,

(e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,

(f) the title of the job which the employee is employed to do or a brief description of the work for which he is employed,

(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

(h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer, […]"

24. Section 4 ERA 1996 set out the right to the written statement of changes as follows insofar as is relevant:

"4.— Statement of changes.

(1) If, after the material date, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall give to the employee a written statement containing particulars of the change.

[…]

(3) A statement under subsection (1) shall be given at the earliest opportunity and, in any event, not later than—

(a) one month after the change in question[…]

(5) A statement under subsection (1) may refer the employee for a change in either of the matters specified in section 1(4)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee."

Findings of fact

Unfair dismissal for an automatically unfair reason

25. The Claimant had an exemplary employment history. He was originally employed by the Respondent as a Retail Team Member on a temporary seasonal contract. He was later specifically recruited as the Retail Manager at the St Osyth park because of his prior work which increased the profits of the Respondent's business.

26. Standards at St Osyth were poor before the Claimant arrived. There were major issues that needed addressing. In particular, the clientele attempted to intimidate staff, and staffing changes were required to improve performance. The St Osyth park was dangerous. The Respondent had lost control of the site, and customers acted as they pleased. Before the Claimant's arrival at St Osyth as Retail Manager, the

Respondent had taken no steps to assert appropriate control, and ensure that its staff were safe from aggressive or violent customers.

27. The Claimant quickly drove up standards at the St Osyth park. Whilst he was away from work after having been the victim of a serious assault, standards slipped, but the Claimant swiftly restored them again on his return. The Claimant's performance as Retail Manager was exemplary. He dramatically and swiftly improved standards at the St Osyth park. He was the major cause of the increase in standards.

28. Before the serious assault which led the Claimant to take time off work, he had been threatened by customers, and assaulted by a customer called Dave.

29. On 21 July 2019 in the office at the St Osyth park the Claimant was assaulted by a member of the public. The lock on the office door was ineffective. It was a hot summer. Closing the office door would have been pointless due to the lock being ineffective, and counterproductive due to it being hot. Further, the Respondent treated it as acceptable to keep the office door open. In any event, closing the office door would not have done anything to prevent the assault by the member of the public. The Claimant bears no responsibility for the assault. I am concerned that the approach of the Respondent to the contrary is victim-blaming.

30. The Claimant met with Mr Bush on 26 July 2019 and expressed the need for a number of health and safety improvements, given the exceptional danger of the St Osyth park compared to the Respondent's other sites. These necessary health and safety improvements included (i) working locks; (ii) panic buttons; and (iii) daytime and evening security staff. However, Mr Bush rejected out of hand the proposal to introduce daytime security staff, simply because none of the Respondent's other sites had daytime security staff. He failed to take into account that the St Osyth park was exceptionally dangerous, and so merited additional safety measures including hiring daytime security staff. It appears that Mr Bush may have been limited in what he felt he could do by the Respondent's national approach of not having daytime security staff. In this regard Mr Bush was inadequately supported by the Respondent, so that in turn he was unable to adequately support the Claimant.

31. The Respondent failed to take any other steps to improve security at the St Osyth park, including by the installation of panic buttons. Instead, the Respondent expected the Claimant to source quotes for any safety features on his return to work. There was no commitment to the installation of any new safety features, despite the danger of the St Osyth park.

32. As the Claimant has rightly said, the Claimant was only in conflict with one or two of the 13 or 14 employees for whom he was responsible. The cause of that conflict lay not with him, but with the fact that he was (at the Respondent's instigation) successfully attempting to reassert some standards for the St Osyth park. Of the staff with whom he was in conflict, one of them was the daughter of a customer, and was unhappy with the Claimant's reassertion of control in the park on behalf of the Respondent. It was to be expected that some staff would object to the Claimant due to him insisting on higher standards. This was not the Claimant's fault. Indeed, the Respondent, and in particular Mr Garland, had explicitly

recognised the need for staffing and management changes at the St Osyth park.

33. After his return from work having been the victim of a serious assault, a member of staff made an allegation of assault against the Claimant, alleging he threw menus at her in the kitchen. This was a false allegation. Mr Bush did not believe the allegation was true, and had good reason to disbelieve the allegation, because the menus were not stored in the kitchen.

Failure to pay notice pay (breach of contract / wrongful dismissal)

34. The Claimant's employment contract, which was signed when he began his employment, provided for 1 week's notice. This is what he was entitled to when he was a Retail Team Member.

35. At the meeting at which the Claimant was hired, very limited terms and conditions of his new employment were discussed. The terms were limited to job title, job role, and issues around pay. The question of notice was not discussed.

36. The Claimant did not receive a new written statement of particulars of employment. There was no consolidated written statement of changes to the particulars of employment. The Claimant received payslips with his new pay and work site, and the head office set his email signature with his new job title on.

37. When the Claimant transitioned from being a Retail Team Member to Retail Manager, there was no agreement between the parties to vary the notice period to which the Claimant was entitled.

Unauthorised deductions from wages

38. It has not been disputed that the Claimant was an employee of the Respondent. I therefore accept that he was an employee, and was therefore entitled to protection from any unauthorised deductions from his wages.

The time off work

39. After he was assaulted on 21 July 2019 the Claimant was sent home from work. Up until 26 July 2019 he did not leave the house. This was because he was too unwell following the assault.

40. By the time of his meeting with Mr Bush on 26 July 2019, the Claimant was ready to come back to work, but wanted to know how the threatening customers would be dealt with by the Respondent. The Claimant would have returned to work on 26 July 2019 had he been permitted to do so. However, he was not permitted to return to work at that point.

The pension contributions

41. The documentation in the bundle relating to automatic enrolment in a pension scheme does not state that the Claimant was informed that he was enrolled on the pension scheme (although this is one conceivable reading of what the document means, it is not what it says). I find that the Claimant was not informed

of his auto-enrolment in the pension scheme.

42. Because the Claimant was not informed of his automatic enrolment, he did not opt-out of the enrolment.

Failure to provide written particulars of employment

43. The Claimant was promoted from Retail Team Member to Retail Manager, and his responsibilities and pay increased accordingly. This was a change to the particulars of his employment. He moved to a permanent role, not a seasonal role or for a trial period.

44. When his employment commenced, the Respondent provided to the Claimant written particulars of his employment. However, the Respondent did not provide a consolidated written statement of changes. The Respondent's (incorrect) reasoning for this was that there was no change to the Claimant's employment.

45. The Claimant informed the Respondent of the need to provide him with a new contract of employment (although in law the Respondent only had a duty to provide a written statement of changes of particulars of employment). The Respondent knew they were required to do this but chose not to. The Respondent's failure was a particularly serious and calculated breach of the law.

Closing submissions

46. Mr Grand for the Respondent firstly submitted that the Claimant was entitled to no more than Statutory Sick Pay ("**SSP**") whilst he was off work, and that any undertaking by Mr Garland to try to get him more did not change the terms of the employment contract, in accordance with which the Claimant was paid. Mr Grand submitted that the employment contract remained throughout as originally signed by the Claimant when he began his employment as a Retail Team Member.

47. Mr Grand next submitted that the pension contributions were not wages and so fell outside the scope of the right not to suffer unauthorised deductions from wages. In the alternative, he submitted that the deductions had been made by virtue of a statutory provision: the Claimant had been automatically enrolled into the pension scheme, as he had been required to be. Material in the bundle showed that the Claimant had been informed of having been enrolled. As such, the Claimant was required to opt out within 6 weeks, which he did not do. Therefore, the deductions were excepted deductions. Even if there was an opt-out generating an obligation to repay the contributions, they had been lawfully made originally.

48. Mr Grand next submitted that the reason for the dismissal was not that the Claimant raised health and safety concerns, but rather that the Claimant was "not a good fit", this being anything from competence, to conduct, to not fitting the role. He submitted that the Claimant had been afforded great sympathy for the assaults that he had suffered, and other staff were brought in to assist him. However, there was conflict in the workplace, and the Claimant was unsuitable for the post.

49. In relation to notice pay, Mr Grand submitted that the Claimant was only ever entitled to a week's notice, and that there was no documentary evidence to the contrary. Further, when the Claimant was promoted to Retail Manager, notice periods were not discussed. As such, the notice periods in the written employment contract signed when the Claimant was hired as a Retail Team Member continued to apply.

50. In relation to a written statement of changes of particulars of employment, Mr Grand submitted that this was provided because (i) the Claimant's email signature was created by head office; and (ii) he received payslips for his correct new rate of pay, and stating his new place of work.

51. In relation to an uplift for failing to comply with an ACAS Code, Mr Grand submitted that if there was an automatically unfair reason for dismissal, and dismissal was unconnected to conduct, then compensation could not be increase for failure to follow a code related to conduct. He further asked that any compensation be reduced by 25% to account for the Claimant failing to comply with an ACAS Code.

52. The Claimant made closing submissions highlighting his previous exemplary employment record in customer service, and that this had led the Respondent to recruit him. He noted that he would not have given up his previous work to work for the Respondent full-time on anything other than a permanent contract. He stated that the Respondent had failed to follow HR good practice in terms of confirmation of new role, changes to contractual terms and conditions, and following standard policies such as grievance and disciplinary. He noted that whilst individual sentences of conversations with the Respondent can be viewed in isolation as being supportive of him, the fact remains that no positive action was taken in terms of the duty of care to staff in what should have been a safe and secure space in a public environment. Instead, he was dismissed from his role very shortly after raising health and safety issues.

Conclusions

Unfair dismissal for an automatically unfair reason

53. Mr Bush's evidence was that the Claimant had a positive effect on the business, and that some conflict with staff in a time of change could be expected. However, the Respondent's rationalisation of its reason for dismissing the Claimant was because he was "not a good fit". This raises the question of what not being "a good fit" actually meant to the Respondent.

54. It is a striking feature of the case that, despite doing so much to improve standards at the St Osyth park, against a background of it being unsafe, the Claimant was dismissed shortly after raising health and safety concerns, which were never addressed. I conclude that the Respondent viewed the Claimant as "not a good fit" because the Respondent did not want to deal with the health and safety issues stemming from violence by customers that the Claimant brought to the Respondent's attention, and pushed to be resolved. Indeed, given his positive impact on the business, it is plain that, from the Respondent's perspective, in other respects the Claimant was "a good fit". Nonetheless, before the Claimant's

dismissal the Respondent did not make any commitments, or take any concrete measures, that would have improved health and safety. Accordingly, I conclude that the Claimant was dismissed because he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.

55. This is an automatically unfair reason for dismissal. Therefore, I conclude that the Claimant was unfairly dismissed.

56. I found that the Claimant's performance in his role was positive such that there were not competency issues, that the Respondent viewed the Claimant's performance as positive, that the Respondent did not have any genuine belief that the Claimant had committed any misconduct, and indeed that the Claimant had not committed any misconduct. Therefore, I conclude that the Claimant would not have been dismissed but for the automatically unfair reason for his dismissal.

57. I further conclude that on 1 July 2019 the Claimant had been moved onto a permanent contract as Retail Manager: he was no longer on a temporary seasonal contract. As such, I reject the Respondent's case that the Claimant would have been dismissed anyway at the conclusion of a temporary seasonal contract on 31 October 2019. Indeed, but for the automatically unfair reason for the dismissal of the Claimant, the Respondent was impressed by the Claimant's competence and would have been keen to continue his employment.

58. As such, the Claimant's compensation for unfair dismissal will not be reduced on a *Polkey* basis.

59. The Claimant happily obtained new employment on 2 January 2020 at the same rate of pay as his old employment. Therefore, he claims compensation for his net lost wages for 118 days ($16\frac{6}{7}$ weeks), at £423.11 per week. This is £7,132.43. He gives credit for £903 earned on a self-employed basis. As such, his loss of earnings is £6,229.43.

60. In light of the evidence of the Claimant seeking new employment and obtaining it within a little over 3 months, the Respondent did not pursue an argument that the Claimant failed to mitigate his loss. The Respondent was right not to pursue such an argument. The Claimant took reasonable steps to mitigate his loss by finding alternative employment and self-employment.

61. In relation to a failure to follow an ACAS Code of Practice, I have concluded that it would not be just and equitable to make any adjustment to the damages awarded.

Failure to pay notice pay (breach of contract / wrongful dismissal)

62. I found that the Claimant did not receive a new written statement of particulars of employment, or a written statement of changes of his particulars of employment. There was no update to the number of weeks' notice to which the Claimant was entitled. The Claimant was entitled to 1 week's notice. He was paid 1 week's pay in lieu of notice.

63. I therefore conclude that the Respondent was not in breach of contract by a failure to pay notice pay.

Unauthorised deductions from wages

The time off work

64. I found that the Claimant was told to leave work on 21 July 2019, that he was not able to return to work for 4 days for medical reasons, and that he was willing and able to return to work from 26 July 2019. His time off work thereafter was as a result of the Respondent not offering him work.

65. For the period between 26 July 2019 and 12 August 2019 (19 days or 2⁵⁄₇ weeks) the Claimant was paid only Statutory Sick Pay ("**SSP**") in the sum of £118.50. However, he was due to be paid £423.11 net per week x 2⁵⁄₇ weeks = £1,148.44. As such, there was a shortfall in his wages of £1,029.44.

66. As such, the Respondent made an unauthorised deduction of wages of £1,029.44.

The pension contributions

67. Section 13(1) ERA 1996 gives the Claimant a right not to suffer an unauthorised "deduction from wages". By virtue of section 27(2)(c) ERA 1996 the definition of wages excludes "any payment by way of a pension". I conclude that this means that a deduction by way of a failure to make a payment *by way of* a pension payment or contribution to a pension falls outside the definition of "wages", but that when the Claimant's remuneration is made with a sum deducted in order to make a pension contribution, this does constitute a deduction from wages. As such, I conclude that there has been a deduction from wages in respect of payments on the Claimant's behalf into a pension scheme.

68. Although I have found that the enrolment information was not provided to the Claimant during the course of his employment, the legal effect of this was not that the deductions were unlawful. Rather, the effect was that the Claimant retained the right to opt out of the pension scheme for a longer period. However, on my findings, he plainly did not opt out before the date on which the deductions were required to be made. As such, the deductions were required to be made by regulation 8. Therefore, at the time that they were made, the deductions were excepted from the protection of section 13 ERA 1996, by virtue of section 14(3) ERA 1996.

69. I therefore conclude that the pension contributions were deducted lawfully.

Failure to provide written particulars of employment

70. The Respondent advanced an inventive argument that because the Claimant's email signature had been created by the Respondent's head office, and the Claimant had received payslips for his new salary after his promotion from Retail Team Member to Retail Manager, there had been a provision to him of a written statement of changes of the particulars of employment. Inventive as it may have been, I am not persuaded by this argument. The creation of an email signature

by the Respondent's head office is not what is envisaged by section 4 ERA 1996. It is not a statement of a change of employment particulars. The employer did not "*give to the employee a written statement containing particulars of the change*", as required. Creating an email signature is not a written statement containing particulars of a change. The same can be said of the provision of correct up-to-date payslips.

71. I therefore conclude that the Respondent did not provide the Claimant with the required statement of changes to his written particulars of employment. I therefore conclude that the Claimant's complaint that he did not receive written particulars of employment is well-founded.

72. In light of my findings of fact, I conclude that the failure of the Respondent was a particularly serious and calculated breach of the Claimant's right to receive a written statement of changes to his particulars of employment.

73. I conclude that the Respondent will be ordered to pay to the Claimant compensation at the higher rate of 4 weeks' wages. This is £2,076.92 (calculated gross).

Employment Judge S Knight
Date 11 December 2020