EMPLOYMENT TRIBUNALS

Claimant: Mr M Alexander

Respondent: Howards Solicitors Limited

HELD AT: Manchester (by CVP) **ON:** 30 March 2023

BEFORE: Employment Judge Peck (sitting alone)

REPRESENTATION:
Claimant: Mr L Bronz (Counsel)
Respondent: Ms J Veimou (Litigation Consultation)

JUDGMENT

1. The claimant's claim that he was denied the right to be accompanied under section 10 of the Employment Relations Act 1999 is dismissed upon withdrawal by the claimant.

2. The respondent was in breach of contract by dismissing the claimant without notice and the claimant's wrongful dismissal claim is therefore well-founded and succeeds.

3. The respondent failed to provide the claimant with a written statement of employment particulars in accordance with section 1 Employment Rights Act 1996 and the claimant shall be entitled to an award pursuant to section 38 Employment Act 2002.

4. The respondent made an unauthorised deduction from wages by failing to pay the claimant in lieu of accrued but untaken annual leave on termination of employment.

5. The claimant shall be awarded compensation and the matter shall be listed for a remedy hearing for this purpose.

REASONS

Introduction

1. This was a final hearing taking place via CVP on 30 March 2022, with a reserved Judgment. The parties were notified that a decision would be made on 16 May 2023 in chambers. This date was changed due to the availability of Employment Judge Peck and a decision was made on 22 May 2023.

2. By a claim form presented on 2 December 2022, the claimant complained that he was owed notice pay by the respondent. He claimed that his contract "*was expressed to be for a minimum term of 6 months from 8 August 2022*" and that "*the contract was not terminable prior to the end of the term by notice given by either party to the other*". He claimed that the respondent acted in breach of contract by dismissing him on 24 August 2022.

3. The claimant also complained that he had not been afforded the statutory right to be accompanied at a meeting on 24 August 2022, that the respondent had failed to provide him with particulars of employment in accordance with section 1 of the Employment Rights Act 1996 (**ERA**) and that he was owed "*other payments*".

4. The claimant commenced early conciliation on 4 October 2022 and received an ACAS early conciliation certificate on 4 November 2022.

5. By a response form dated 4 January 2023, the respondent resisted the complaints. It denied that the claimant was entitled to notice pay. Its position was that there was no fixed term contract in place and that, at the time his employment terminated, the claimant had insufficient service to entitle him to statutory notice. The respondent in its grounds of resistance stated that it could "*end the employment early should there be some lawful reason to do so*" and that the claimant becoming ineligible for the duty solicitor scheme meant that his "*employment was terminated early due to just and lawful reasons*". It also stated that "*the reason for the claimant's dismissal was not solely because his duty slot had been refused but rather his continued and total failure to adhere to any processes and policies and reasonable instructions asked of him*".

6. The respondent denied that any monies were owing to the claimant. It denied that it failed to provide a written statement of terms of employment, which it said were included in draft from as sent to the claimant on 18 May 2022.

Issues

7. The issues to be determined by the Tribunal were discussed and agreed at the outset of the hearing.

8. The claimant stated that he was no longer pursuing a claim under section 10 of the Employment Relations Act 1999 regarding the right to be accompanied and that this claim was therefore withdrawn by consent.

9. The claimant further clarified that his claim in respect of "other payments" related to outstanding holiday pay, but that no claim in respect of owed expenses was being pursued.

10. The issues to be determined were therefore:

    a. What were the terms of the contract in place between the respondent and the claimant and what was the claimant's notice period?

    b. Was the claimant entitled to receive notice pay?

       The respondent says that he was not, as he was dismissed for a lawful reason in accordance with his contract and had insufficient service to be entitled to statutory notice.

       The claimant says that his contract could only be terminated prior to the expiry of a 6-month fixed term in circumstances where he was guilty of gross misconduct and in repudiatory breach of contract. It says that claimant was not guilty of gross misconduct and that he was entitled to notice pay for the remainder of the 6-month fixed term contract under which he was employed.

    c. Was the claimant paid for that notice period?

    d. When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

    e. Does the respondent owe the claimant holiday pay?

Procedure, documents and evidence

11. I heard evidence from the claimant for himself. I heard evidence from Ms N Mundy (Director) and Mr O Gardner (Managing Partner) for the respondent.

12. There were witness statements for all of the witnesses.

13. There was an agreed electronic bundle of documents, running to 214 pages.

14. I heard oral submissions from Mr Bronz and Ms Veimu and Mr Bronz also provided skeleton submissions in writing.

Findings of Fact

15. In making my findings of fact, I have taken account of the witness statements, the oral evidence and the documents that I have been provided with. Where

there was a conflict of evidence, I have determined it on the balance of probabilities.

The claimant

16. The claimant is a Criminal law solicitor.

The respondent

17. The respondent is a firm of solicitors. The respondent operates as a company by joining the duty solicitor scheme, with its solicitors having a slot on the duty solicitor rota, which is an important source of work for the respondent.

18. Applications for a solicitor to join the duty solicitor rota are made in advance by their employing firm. Applications for the respondent's solicitors to join the duty solicitor rota were made in May 2022 for the 3-month duty rota running from 1 October 2022.

Offer of employment

19. In May 2022, discussions took place between Mr Gardner and the claimant about the possibility of him becoming employed by the respondent. I find that terms of employment were verbally discussed, although these discussions were not extensive in scope or length and primarily took place during a phone call between them. Taking into account the evidence of Mr Gardner, I accept that these discussions were prompted by the claimant expressing that he was unhappy in his current employment and the respondent having resource needs to be met.

20. The claimant's evidence was that, during these discussions, he informed Mr Gardner that he had yet to resign from his current employment and that he was listed as a duty solicitor for his current firm. He states that Mr Gardner assured him that he would resolve any issues regarding the duty solicitor rota.

21. Mr Gardner's evidence was that a 6-month period of employment for the claimant was referred to during these discussions, which aligned with the duty solicitor slots. He explained that the claimant had concern that the respondent would secure a duty solicitor slot in advance of him joining, but not then retain him for the duration of that slot. Mr Gardner accepted in cross examination that he assured the claimant that this would not happen. Mr Gardner's evidence was also that he informed the claimant that the respondent would find work for him, in the event that his current employer dismissed him on discovering that the respondent had applied for a duty solicitor slot for him.

22. From this I find that Mr Gardner was aware that the claimant was listed as a duty solicitor for his current employer and had yet to resign. I also find that it was not a condition imposed on the claimant that he resign from his current employment before the respondent applied for a duty solicitor slot for him, nor

did the claimant need to ensure that his employer did not register him for the duty solicitor scheme; the concern was more about what his employer might do once it found out about an application having been made by the respondent.

23. On balance, however, I find that Mr Gardner did not assure the claimant that it would resolve *any* issues with the duty solicitor rota as suggested by the claimant. What Mr Gardner did assure the claimant of, however, was that if an issue arose with his current employer, as a result of the respondent making an application for the claimant to be on the duty solicitor scheme, the respondent would support the claimant.

24. It was also agreed between the claimant and Mr Gardner that for the first 6 months of his employment, the claimant would receive an annual salary of £32,500, to increase to £35,000 after 6 months.

25. On 18 May 2022, Mr Gardner sent an email to the claimant to follow up their discussions, setting out the terms of the offer of employment.

26. On 18 May 2022, Mr Gardner also sent to the claimant a document entitled "statement of main terms of employment", which was a template contract of employment with various fields left blank for completion. This document was never populated and / or finalised.

27. I find that the document setting out the terms on which the claimant was to be employed is the email dated 18 May 2022.

28. The template document (also sent on 18 May 2022) is of no value when establishing the claimant's terms and conditions of employment and whilst it is not in dispute that the claimant was in receipt of this document, I find that it did not have the effect of supplementing or replacing the terms set out in the 18 May email.

<u>18 May 2022 email</u>

29. For completeness, this email stated as follows:

Mike,

Further to our conversation earlier I confirm the details of our offer:

What we will do:

We will employ on a full time basis as a duty solicitor

We will pau you a pro rata rate of £32500 per annum

We will allow 25 days holiday plus bank holidays and if we close over the xmas period you get those days in addition

We will provide ad hoc training as necessary

We will provide a cjsm email address, egress account and firm email address

We will provide access to crimeline training subscriptions

We will reimburse reasonable expenses incurred in the carrying out of your role for the firm.

You will do:

You will at all times be competent and authorised to work as a duty solicitor

You continuing status as a duty is central to your employment and to your role

You will work from one of our various offices (Stockport, Cheshire, Tameside, Bury, Salford, Altrincham) and as directed. Likely to be Stockport in the main.

You will be expected to cover police stations and courts local to the above offices and occasionally may eb required to travel further afield

You will be required to partake in the firm out of hours rota and cover any out of hours jobs that come in on your turn unless an approved agent is otherwise instructed

At all times you will be presentable and represent the firm in a positive manner

You will comply with firm standards, handbook for employees, case management systems and office manual at all times during your employment.

We have agreed that you will commit to us for a minimum period of 6 months and thereafter, subject to some other lawful reason to end your employment early, we will increase your salary to £35k pro rata per annum.

Out of hours police stations will be paid at £70 per police station attendance (out of hours is any attendance, full or in part after 17.30 and prior to 09.00hrs)
Saturday and bank holiday courts will be paid at the rate of £100 per court attendance.

Pay day is the last Friday of each month or sooner.

We have agreed that you will start with us in August unless you are released from your current employment by virtue of them finding out you have moved your duty slots to us for the October start date in which case we will discuss an earlier start date to mitigate any potential loss to you when being out of work in the interim.

Let me know if there is anything else?

Oliver Gardner
Howards Solicitors
72-74 Wellington Road South
Stockport
SK1 3SU
01618729999

30. The sections of this email highlighted in bold (my emphasis) are those on which there was much focus during this hearing, the meaning of which I address in my conclusions below.

31. Mr Gardner, the author of this email, was questioned at length about this email. He explained that the claimant wanted the security of 6 months' employment, and that the respondent needed him to commit for 6 months, to coincide with the duty rota.

32. Mr Gardner also accepted, however, that the respondent did not want or need the claimant as a duty solicitor until 1 October 2022. I find that the respondent did not, therefore, need the claimant to be working for the respondent with duty status for 6 months, but rather took him on with the expectation that he would have duty solicitor status with effect from 1 October 2022.

33. It is therefore my finding that reference in the contract to the requirement that the claimant be authorised to work as a duty solicitor was not absolute.

34. It is also my finding that the contract did not make any express reference to the requirement that the claimant have duty solicitor status with effect from 1 October 2022.

35. I further find that the respondent did not make the offer conditional upon the claimant resigning from his employment by a certain date and / or ensuring that his then employer did not register him for the duty solicitor scheme (consistent with my findings at paragraph 22 above).

36. In terms of the content of the contract, I make the following further findings of fact:

    a. It does not set out the date when the employment will commence, as accepted by Mr Gardner.
    b. It does not state the date on which the claimant's period of continuous employment began.
    c. It does not set out any terms and conditions relating to hours of work.
    d. It sets out terms and conditions relating to entitlement to holidays, although not to holiday pay.
    e. It does not set out any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay.
    f. It does not set out any terms and conditions relating to any other paid schemes.

g. It does not set out any terms and conditions relating to pensions and pension schemes.
h. It does not provide particulars of any collective agreements which directly affect the terms and conditions of employment.
i. It does not provide particulars of work outside of the UK, or a statement that no such particulars to be entered into.

37. As it was put to Mr Gardner that the email does not set out the name of the employer and the worker, I find that it does, with it being signed off by Mr Gardner or Howards Solicitors.

Claimant's employment with the respondent

38. The claimant commenced employment with the respondent on 8 August 2022 as a Criminal Solicitor.

39. In the meantime, on 25 May 2022, the respondent applied for the claimant to be on the Duty Solicitor scheme.

40. During the summer of 2022, the claimant undertook work for the respondent on an agency basis.

41. Prior to the commencement of the claimant's employment, I accept the uncontested evidence of Mr Gardner that he had asked the claimant to attend the office to collect his laptop and undertake case management training. I also find that this did not take place. On the evidence before me, however, I cannot find that the claimant failed to attend the respondent's offices to complete his induction and to receive his contract of employment as asserted by the respondent.

42. On 9 August 2022, the claimant attended the respondent's office, to be greeted by Mr David Johnson (Director). The claimant's evidence is that he was offered some training on the respondent's case management system, but that this was limited to 10 minutes and that Mr Johnson was busy. I did not hear from Mr Johnson, but I find that the claimant received only limited case management training on this date.

43. On or slightly before 9 August 2022, the respondent became aware that its application for the claimant to be included on the duty solicitor's rota had been rejected. On 9 August 2022, Mr Gardner established that this was because a duplicate application had been made by the claimant's former employer, prior to the respondent's application on 25 May 2022. Mr Gardner was not happy about this, and his evidence is that the claimant had led him to believe he had handed in his notice and left his former firm in June / July 2022 (as opposed to when he did, in August 2022).

44. I accept that the issue with the claimant's duty solicitor status came as a surprise to the respondent. I also find, however, that the respondent did not act

immediately upon becoming aware of this issue and the claimant's employment with the respondent continued for a further 2 weeks from the respondent becoming aware.

45. On 10 August 2022, the claimant attended Warrington Magistrates court on the instruction of the respondent. The claimant did not take his laptop. The claimant's evidence is that he did not do so, given that he had received only limited training.

46. It is not in dispute that a complaint was raised by a court clerk about the claimant on 10 August 2022, which included a complaint about the claimant not having a laptop. This complaint was raised with Ms Mundy, who brought this to the attention of the claimant, setting out a detailed email of what was expected of him on 11 August 2022, letting him know that she would contact him the following week about training.

47. The evidence of Ms Mundy is that she asked the claimant on a number of occasions to collect his laptop and that she had to remind the claimant about taking his laptop to court, which she would not expect to have to do for someone of the claimant's experience. I accept this evidence and it is my finding, both taking account of the documentary evidence and the claimant's oral evidence at this hearing, that the claimant was not proactive in collecting his laptop and although he did so, this was with reluctance, as reflected by his oral evidence to this Tribunal.

48. In his evidence, the claimant accepted that he was "more bothered about doing the job and getting hearings covered and advocacy done. It wasn't my priority". His belief that the use of technology was not a priority may have been genuinely held, but I find that he was not demonstrating a willingness to adopt the practices of the respondent in conducting its case work, particularly in terms of IT use and case management.

49. On 11 August 2022, the claimant was again in court for the respondent and there was a message exchange between the claimant and Ms Hilton (paralegal) of the respondent, in which the claimant was asked to come into the office for some training. At 10.27am, the claimant having indicated that he expected to be finished at court in 30 minutes, Ms Hilton messaged him as follows: "*Ok, come into the office afterwards. With your notes from yesterdays duty! Will sit with you for an hour and how you the system on the laptop*". The claimant replied (at 12.23): "*Its too hot*", followed by a message at 16.25 reading: "See you tomorrow! Anything pending?" to which Ms Hilton did not reply.

50. I therefore find that, on 11 August 2022, the claimant did not come into the office for training as requested by Ms Hilton, his reason being the hot weather.

51. It was put to the claimant during cross examination that he was asked but refused to attend training on multiple occasions. His attention was drawn to the

message exchange with Ms Hilton on 11 August 2022 and I find that on this occasion the claimant failed to attend training as requested by the respondent.

52. He was also taken to a previous email from Ms Hilton (dated 10 August 2022) in which she said to the claimant "*if you are struggling to get the hang of it [the ALB case management system], call in the office and I can help you*…". I find that this was not a request that the claimant failed to comply with, but an offer of help which the claimant did not act upon. Whilst the claimant may not have been proactive in addressing any training needs, I therefore do not find that the claimant refused to attend training on multiple occasions.

53. In his witness evidence, the claimant stated that he attended the offices at 8am on 12 August 2022 and that "*Amy had not turned up as promised*". It is my finding, however, that no promise had been made by Ms Hilton to provide training to the claimant on Friday 12 August 2022, supported by a message exchange that day in which the claimant asked her "*You off today*?", to which she replied "*Yeah don't work Fridays*", which the claimant responded to with: "*I'm coming in later*!".

54. On 17 August 2022, the claimant attended Warrington Magistrates court and on his evidence, he took the laptop that had been provided to him by the respondent, but it would not connect to the government wifi.

55. It was put to the claimant that he failed to collect his laptop at all, but I find that he did, since even if he was unable to successfully use it on 17 August 2022 he had it with him on that date.

<u>Meeting with the claimant: 24 August 2022</u>

56. On 24 August 2022, the claimant was attending court in Stockport and by an email sent late afternoon, was asked to attend the firm's office for a meeting, which he did. The claimant was not informed in advance what the purpose of the meeting was, he was just asked by Mr Johnson if he minded coming back into the office.

57. The meeting took place with Mr Johnson and Ms Mundy present and at the meeting, it was communicated to the claimant that his employment with the respondent was being terminated with immediate effect.

58. Considering the records of this meeting that I have had sight of (in the form of notes prepared by the respondent and the claimant) I find that the claimant was informed at this meeting that it was not economically viable for the respondent to continue to employ him if he was not on the duty solicitor rota. The claimant's lack of duty solicitor status was, I find, the primary reason for the respondent terminating the claimant's employment.

59. In addition, the claimant's conduct and performance was taken into account by the respondent when reaching its decision to dismiss, namely its concerns

about him failing to take his laptop to court, refusing training and refusing to use the case management system. Ms Mundy in her witness evidence relied on these as being breaches of the contractual requirements that the claimant "*at all times be presentable and represent the firm in a positive manner*" and "*comply with firm standards, handbooks for employees, case management systems and office manual at all times during your employment*".

60. I accept the evidence of Ms Mundy, that the respondent was only prompted to explore these issues with the claimant at the meeting and to rely on them in reaching its decision, in response to the claimant asking what would happen if the duty status issue could be overcome.

61. At the close of the meeting there was some discussion with the claimant about what might happen if he could get onto the October rota and also the January rota, which the claimant was informed would be discussed by the directors.

62. The claimant was also informed that he would still be an approved agent and may therefore be used by the respondent for agency work.

63. The claimant was not sent anything in writing confirming his dismissal, although a series of communications between the claimant and the respondent (primarily about outstanding agency payments) subsequently took place.

64. The claimant's employment terminated on 24 August 2022.

65. On termination of his employment, the claimant received one week's notice pay, along with his pay for 8 August 2022 – 24 August 2022.

66. Throughout his employment with the respondent, on the evidence of Mr Gardner, the claimant was working without duty solicitor status.

Law

Breach of Contract

67. At common law, every employee is entitled to notice of the termination of his or her contract of employment, regardless of how long he or she has worked for the employer. The only exception is where one side has broken a fundamental term of the employment contract, thereby repudiating it, in which case the other side has an option to terminate immediately. This will be the case if the employee commits an act of gross misconduct. If the employee was not in fundamental breach of contract, the contract can only lawfully be terminated by the giving of notice in accordance with the contract or, if the contract so provides, by a payment in lieu of notice.

68. The amount of notice that must be given by either party will normally be found in the express terms of the contract. If there is no expressly agreed period of contractual notice, there is an implied contractual right to reasonable notice of

termination. This must be not less than the statutory minimum period of notice set out in section 86 ERA. For someone who has been employed for at least one month but less than two years, this is one week's notice.

69. When considering the terms of a contract, as per Lord Hoffman in **Investors Compensation Scheme Ltd v West Bromwich Building Society (no. 1) 1998 WLR 896, HL**, it should be interpreted in line with the meaning it would convey to " a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract".

70. A failure to give proper notice will amount to a breach of contract, and in the case of a failure by an employer, will give rise to a claim for damages for wrongful dismissal.

Section 38 Employment Act 2002

71. A section 1 statement of employment particulars should be provided to an employer "not later than the beginning of the employment" (section 1(2)(b) ERA).

72. Where a Tribunal finds in favour of an employee in a complaint of breach of contract, and the Tribunal finds that the employer has failed to provide the employee with a written statement of employment particulars in accordance with section 1 ERA, the Tribunal must award the employee an additional two weeks' pay, unless there are exceptional circumstances which would make it unjust or inequitable, and may, if it considers it just and equitable in all the circumstances, order the employer to pay an additional four weeks' pay.

Holiday pay

73. The Working Time Regulations 1998 provide for minimum periods of annual leave and for payment to be made in lieu of any leave accrued but not taken in the leave year in which the employment ends. The Regulations provide for 5.6 weeks leave per annum. The leave year begins on the start date of the employment in the first year, unless a relevant agreement between the employee and the employer provides for a different leave year.

74. There will be an unauthorised deduction of wages if the employer fails to pay the claimant on termination of employment in lieu of any accrued but untaken leave.

Decision and Reasons

75. It is not in dispute that the claimant was dismissed by the respondent. I therefore move on to determine the issues by applying the law, in light of my findings of fact.

Breach of contract

What were the terms of the contract in place between the respondent and the claimant and what was the claimant's notice period?

76. As per my findings of fact, the terms of the contract in place between the respondent and the claimant are set out in the email dated 18 May 2022.

77. The relevant section dealing with notice is as follows: ***We have agreed that you will commit to us for a minimum period of 6 months and thereafter, subject to some other lawful reason to end your employment early, we will increase your salary to £35k pro rata per annum.***

78. I accept the respondent's submission in terms of what the meaning of that paragraph is. It envisages an initial 6-month fixed-term, which can be brought to an end prior to the expiry of that fixed term if there is a "lawful reason" to do so. Inclusion of the word "early" only makes sense in this way. It cannot refer to what will happen only once the initial fixed term has expired, when an indefinite contract comes into place, since a contract that is running indefinitely could not be terminated "early" (raising the question "earlier than what?"). With an indefinite end date, such contract could simply be "terminated".

79. However, when considering what a "lawful reason" means in this context, I accept the claimant's submissions and that any ambiguity should be construed against the respondent as the prospective employer drafting the relevant contractual wording. My decision is that reference to a "lawful reason" in this email does not mean "any lawful reason that would entitle the employer to terminate the employment", but means "any lawful reason that would entitle the employer to terminate the employment early (ie without notice)".

80. In other words, I determine the contractual wording as meaning that the respondent could only terminate the claimant's employment without notice and prior to the expiry of the initial fixed-term if there had been a fundamental breach of contract on the part of the claimant and an actual repudiation by the claimant.

81. If a situation arose during the initial 6-month fixed-term that would entitle the respondent to terminate with notice, I do not accept that the default position would be an entitlement to minimum statutory notice only. In such circumstances, the respondent would need to honour the initial six-month term, in the absence of any notice provisions setting out the contrary. I reach this view, in the context of the evidence of the claimant and the respondent that the claimant needed, and the respondent wanted to offer, assurances that he would have some financial security and certainty on taking the decision to join the respondent.

82. Moving on to consider then, whether or not the claimant committed an actual repudiatory breach of contract, I conclude that he did not.

83. In terms of his duty status, whilst I accept that the 18 May email stated that "*your continuing status as a duty is central to your employment and your role*", this does not mean that not having such status amounted to a repudiatory breach of contract by the claimant. I reach this conclusion, given my findings of fact including (a) the claimant having been able to undertake work for the respondent for the period from 8 August 2022 – 24 August 2022 without duty status, (b) the respondent accepting in its evidence that it was willing and able to employ the claimant for the period from 8 August 2022 – 1 October 2022 without him having duty status and (c) the respondent not acting immediately upon discovering the duty status issue and continuing to employ the claimant for a further 2 weeks.

84. As for the requirements that he "*at all times…be presentable and represent the firm in a positive manner*" and that he "*comply with firm standards, handbook for employees, case management systems and office manual at all times*", considering my findings of fact, I conclude that the extent to which he breached these requirements also did not amount to a repudiatory breach of contract.

85. He did not attend an induction course or collect his laptop prior to the commencement of his employment but on the evidence my finding is that this did not amount to a failure by him to make himself available. He did not collect his laptop immediately on commencing employment, but he did not fail to collect his laptop at all. He did not receive training and he did not attend the office for this purpose, but he did not refuse to attend training on multiple occasions. He did not embrace the use of technology in performing his duties and was not proactive in addressing training needs. I am not satisfied, on the balance of probabilities, that the claimant's shortcomings amounted to an actual repudiation of the contract by him.

Was the claimant entitled to receive notice pay?

86. It is my decision that the claimant, who had not acted in repudiatory breach of contract, was entitled to notice pay for the period up to the end of the initial 6-month fixed-term contract.

Was the claimant paid for that notice period?

87. No. The claimant was paid for only one week's notice.

When these proceedings were begun, was the respondent in breach of its duty to give the claimant a written statement of employment particulars or of a change to those particulars?

88. Given my decision that the claimant's employment was terminated by the respondent in breach of contract, an award of additional pay under section 38 Employment Act 2002 for failure to provide a written statement of particulars is, therefore, possible.

89. The claimant was entitled under section 1 ERA to be provided with a written statement of employment particulars and although the 18 May 2022 email satisfied some of the requirements of section 1, as per my findings of fact, several particulars were not set out in this email.

90. The respondent has not put forward any evidence of any exceptional circumstances which would make it unjust or inequitable to order them to any the claimant an amount for this failure, in accordance with section 38 Employment Act 2002. I must, therefore, order the respondent to pay an additional two weeks' pay and may, if I consider it just and equitable in all the circumstances, order the respondent to pay an additional four weeks' pay.

91. I shall address this at the forthcoming remedy hearing.

Did R owe C holiday pay?

92. The respondent's position is that the claimant had no holiday pay entitlement, given that the template contract issued on 18 May 2022 stated that "*in the event of termination of employment holiday entitlement will be calculated as 1/12th of the annual entitlement for each completed month of service during the holiday year…*".

93. On the basis of my finding of fact, that the terms of the claimant's employment were governed by the 18 May 2022 email, I conclude that the claimant was entitled to accrue holiday from the outset of his employment and as such, the claimant is owed holiday pay for the period from 8 – 24 August 2022.

94. The amount to which he is entitled shall be determined at the remedy hearing to follow.

Employment Judge Peck
23 May 2023

JUDGMENT SENT TO THE PARTIES ON
5 June 2023

FOR THE TRIBUNAL OFFICE

Notes

1. Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.