EMPLOYMENT TRIBUNALS

Claimant: **Mr R Anderson**

Respondent: **Car Carrying Limited**

Heard at: **East London Hearing Centre**

On: **21 June 2018**

Before: **Employment Judge Russell**
Members: **Mr G Tomey**
Mrs G Everett

Representation
Claimant: **In person**
Respondent: **Mr P Glander (Director)**

JUDGMENT

It is the judgment of the Employment Tribunal that:-

1. **The reason for dismissal was conduct.**

2. **The claim for unfair dismissal because of a protected disclosure and/or for asserting a statutory right fails.**

3. **The Claimant was entitled to payment in lieu of 3 days holiday accrued but not taken on termination in the sum of £165.15.**

4. **The claim for unauthorised deduction from wages and/or breach of contract fails.**

5. **The claim for failure to provide written particulars of employment fails.**

6. **The Respondent failed to give the Claimant an itemised payslip at or before the time of payment. No financial award is made.**

REASONS

1. By a claim form presented to the Tribunal on 14 July 2017, the Claimant brought complaints of automatic unfair dismissal, wrongful dismissal, unauthorised deduction from wages, outstanding holiday pay and a failure to provide a written statement of particulars and/or itemised payslips. The Respondent resisted all claims. The issues to be decided were recorded by Employment Judge Moor at a Preliminary Hearing on 29 September 2017. In the interests of brevity, they are not repeated here but the Tribunal applied them when deciding the case.

2. The preparation for this hearing has been beset by difficulty. Both the Claimant and Mr Glander, conducting proceedings on behalf of the Respondent, have made applications for the other to be struck out for failure to comply with case management orders relating to disclosure and witness statements. These applications were dismissed by Employment Judge Foxwell on 1 March 2018. It is clear from his reasons that he considered that each had engaged in conduct which was counter-productive, including sending frequent emails and letters to the Tribunal. Further, Employment Judge Foxwell found it concerning that the Claimant thought that compliance with the strict letter of an Order was sufficient when it was clear what was in fact required of him. We find it similarly concerning that such a considerable amount of Tribunal time was taken dealing with bank statements which were not even included in the bundle, let alone referred to in evidence. Mr Glander says that the statements are required for possible criminal proceedings. Whether or not that is so, or whether it is an inappropriate threat in the context of this litigation, disclosure is these proceedings is limited to that which is relevant to the issues and not to be used for collateral purposes.

3. We heard evidence from the Claimant on his own behalf and from Mr Glander on behalf of the Respondent. Even this morning, there was no agreed bundle and the Claimant maintained that Mr Glander's witness statement was deficient as it did not satisfy legal requirements despite Employment Judge Hyde disagreeing. At the outset of the hearing, Mr Glander asked us to give the Claimant a warning about the risks of perjuring himself. The Tribunal had not even begun to hear evidence and declined to do so. We permitted the Claimant to rely upon his supplementary documents which we accepted were relevant and we did not permit the Respondent to adduce new evidence beyond the contents of the very brief witness statement other than when requested by the Tribunal. Taking this pragmatic approach, the case was able to be heard.

4. Overall we consider that the parties have materially failed in their duty to cooperate generally with each other or to assist the Tribunal to further the overriding objective. Both men have allowed their sense of being in the right to cloud their judgment. Neither comes out of these proceedings with any degree of credit.

Findings of Fact

5. The Respondent is a small, family run business delivering motor vehicles on trade plates. It employed up to 60 drivers who are paid for time spent collecting and delivering the vehicles. The Claimant commenced employment as one such driver on 31 July 2015. It is common ground that the position is one requiring great trust as the drivers work unsupervised and are regularly entrusted with new vehicles worth large

amounts of money. Drivers are allocated work by telephone and travel independently to and from collection and delivery points. Communication between the Respondent and its drivers is conducted mostly by telephone. Email is not an authorised method of communication. Whilst at first glance this may seem unusual, we bear in mind that the drivers are, quite literally, on the road. They have a mobile telephone but this is not necessarily a "smart" telephone which permits access to email. The Claimant accepted that he had never had a response to an email and it was well known amongst drivers that the Respondent communicated by telephone rather than in writing.

6. The drivers are paid weekly. There are weekly payslips with itemised deductions and an attached schedule of the work for which payment is made. The weekly payslips are not provided to the drivers each week but are sent out in a batch at the end of each calendar month. For example, for February 2017 there were four payments of wages and four payslips (one for each payment) but all four payslips were sent together on the final payday of the month. Generally, but not invariably, drivers use their own money to pay for their fuel and other related expenses which are then reimbursed by the Respondent on a weekly basis. Drivers notify the Respondent's office by telephone when they have collected and delivered a vehicle which permits a record of their time to be kept. Calculation of pay and expenses to be reimbursed is based upon the content of a Vehicle Condition Report submitted by the driver.

7. The Claimant was interviewed by the manager, Mr Barry Moore. The offer of employment was made by Mr Moore on the day of the interview. The Claimant signed a Statement of Terms and Conditions of Employment pursuant to the Employment Rights Act 1996 the same day. It set out in writing the names of the employer and employee, the date employment commenced and the job title. It provided for remuneration, paid weekly, at £6.50 per hour calculated upon a set number of hours for each vehicle delivered including travel, other than to and from home. There were no set working hours, it depended on the hours calculated for delivery. The particulars provided that the employee was entitled to 20 days holiday per annum plus 8 bank holidays with the holiday year running from 5 April to 4 April. It was an express term of the contract that holiday dates must be agreed in advance with the manager and upon termination there would be payment in lieu of outstanding holiday. The statement set out a procedure for sickness absence and payment of statutory sick pay. The statement provided that there was no pension scheme and set out the notice required of both parties for termination. The statement set out a basic grievance procedure and referred to a disciplinary procedure in an appendix. The term of the statement dealing with expenses read:

> "**A claim for fuel and/or travel expenses must be made in the relevant box on the vehicle delivery report and receipts/tickets attached. The completed report therefore constitutes a claim for expenses for that delivery and further claims cannot be submitted retrospectively. Travel expenses are reimbursed on the basis of the cheapest fare possible and all claims will be reviewed was the claim is received in the main office."**

8. The Claimant's evidence is that although he signed the statement of particulars, he was not given a copy to take home with him. The Respondent's evidence is that a copy was provided on the day of signature along with other relevant documents and that a further copy was kept on the Claimant's file in the office and was readily accessible to him. In resolving this dispute, we had little contemporaneous documentation to assist us. In an email sent on 20 March 2016, the Claimant raised a

concern about a request for receipts and the consequent delay in payment. He asked for greater clarity around protocols in place to resolve issues about terms and conditions of employment, referring to confusion amongst drivers about time worked. At that point the Claimant did not suggest that he had received no terms and conditions and we consider that he would have done so if he did not have or had never had a copy. On balance, we prefer the evidence of the Respondent and find that the Claimant was given a copy of the written statement of particulars upon commencing employment.

9. Shortly after commencing employment, the Claimant completed a form to request holiday which was then authorised by his manager. Thereafter, the Claimant took only odd days off which he agreed in advance with his manager.

10. In or about late February or early March 2017, Mr Moore retired and was replaced as manager by Mr Adam Murphy. Mr Murphy informed Mr Glander that the Claimant was not providing receipts for train or bus travel when claiming his expenses. Ms Lija Glander, the administrator, raised the lack of receipts with the Claimant in a telephone call on or around 12 March 2017. The Claimant replied by sending an email on 13 March 2017 stating that he considered matter a little absurd as he and other drivers did not submit receipts for train or bus travel. He did not offer to provide the receipts but instead suggested that the Respondent issue company credit and fuel cards.

11. The Respondent did not reply to the Claimant in writing. However, on or about 19 March 2017, Mr Murphy informed the Claimant that he could not process the claim for expenses without submission of relevant receipts. The Claimant maintains that he was being singled out. In his evidence, he accepted that although he was the first, he had heard within a few days that other drivers had been similarly challenged. We do not accept that the Claimant was being singled out.

12. The Claimant's position was set out in an email sent on 19 March 2017 as follows:

> "**I think we all know it is common practise for bus/train travel receipts not to be handed in as it is regarded as a 'perk' of the job; particularly by those with passes etc. who benefit the most."**

13. The Claimant was entitled by reason of his age to an Oyster Freedom pass which granted him free travel in the London area. He also had a Senior Railcard which he used to obtain discounts on rail travel nationwide. The Claimant used these passes when travelling on behalf of the Respondent. He then claimed for the full cost of the journey on his Vehicle Condition Reports. In other words, he was reimbursed for the notional cost of the journey which he had not in fact paid and, in London, had made free of charge. This was the "perk" to which he referred in his email.

14. The Respondent did not reply in writing to the Claimant's email. The telephone records show multiple calls between the Claimant and the Respondent on 21, 22, 23 and 24 March 2017, including one which lasted over 12 minutes.

15. The Claimant emailed again on 27 March 2017, stating:

> "**As you will see from my paperwork, I have decided to continue the practise of not providing bus/train receipts; this is until all drivers are reading from the same rule book, the issue clarified, and a solution arrived at.**
>
> **Apparently, according to Lija, I have 18 holiday days to take and think it opportune to use this to assist – if I'm on holiday there will be no receipts from me due to me being on holiday and not because I'm not providing them.**
>
> **I hope this helps; it is an matter that requires resolution but I have a feeling that other issues may rise to the surface because of it."**

16. It is clear from the content of that email that Claimant had received a response to his questions about holiday entitlement raised in an earlier email on 22 March 2017. From this we infer that the Respondent did read the emails sent by the Claimant but chose to respond by telephone. This is consistent with Mr Glander's evidence, which we accept, that he read the Claimant's email on 27 March 2017 and asked Ms Lija Glander to telephone the Claimant to require him to attend a meeting at the office to discuss his failure to provide receipts and stated intention to continue this practice. The Claimant categorically denied that there had been any request to attend a disciplinary hearing.

17. In resolving this dispute of evidence, we had regard to the Claimant's email on 28 March 2017. This confirmed that there had been a telephone conversation between the Claimant and Ms Glander on 27 March 2017 in which the absence of receipts had been discussed. It included the following:

> "**Lija brought up contract of employment regarding this matter – apparently it is addressed therein. I think it would be helpful if I could be provided with a copy of this as soon as possible as I have never received one.**"

18. In his initial evidence to the Tribunal, the Claimant categorically denied that during that call Ms Glander had told him to attend a disciplinary hearing. When pressed to say whether in the call on 27 March 2017 Ms Glander had asked him to attend a meeting to discuss the receipts issue (i.e. not expressly called a disciplinary hearing), the Claimant's answer was that: "**it is possible, it is likely I would have said 'let me see when I get a copy of my contract of employment because then we can discuss matters in black and white.**" This is consistent with the contents of the email on 28 March 2017 and of an email sent later (on 25 April 2017) when the Claimant said that he would attend a meeting provided he was given his contract of employment and other information in advance The Claimant's attempt to avoid the question by focusing on whether or not the word "disciplinary" was used appeared to us to be consistent with the behaviour described by Judge Foxwell in connection with the disclosure of bank statements. On balance, we find that the Claimant was asked by Ms Glander to attend a meeting to discuss his failure to provide receipts for expenses claimed and his statement that he would not change his practice, but that he refused to do so as he did not have a copy of his contract of employment.

19. Mr Glander was informed of the Claimant's refusal. He formed the strong belief that the Claimant had admitted claiming money fraudulently, had stated that he intended to continue to do so and refused to attend a meeting to discuss the issue. Mr Glander believed that the Claimant's request for a copy of the contract was disingenuous as he had been provided a copy on commencement of employment. In

essence, Mr Glander believed that the Claimant was using this as an excuse to avoid a meeting to discuss what he considered to be clear financial impropriety.

20. On 29 March 2017, the Claimant emailed the Respondent to inform them that he intended to take his 18 days holiday from that day. He repeated his request for a copy of the contract of employment.

21. The Claimant's request for holiday was not authorised by a manager. The matter was not discussed on the telephone in the numerous calls shown between 22 March and 29 March 2017. Nevertheless, after 29 March 2017 the Claimant undertook no further assignments for the Respondent and there was no further telephone contact.

22. On 5 April 2017 the Claimant emailed again, complaining that he had not yet received a copy of his contract of employment and stating:

> "**I am sure you are aware that under section 1 of the Employment Rights Act 1996, an employee is entitled to be given a written statement of their particulars of employment not later than two months after the commencement of their employment. I have never received this, and to the best of my knowledge, neither has any other driver.**
>
> **It is of considerable importance that employees are provided with this document not least because it can aid issue resolution; the most recent of which, in my case, is a Congestion Charge Penalty Notice, received two months after the 'offence'.**"

23. The Claimant continued to email the Respondent who continued not to reply. The Claimant contacted ACAS on 11 April 2017. Upon request by ACAS, the Respondent provided a copy of the statement of terms and particulars signed by the Claimant.

24. During April 2017, the Respondent issued its drivers with new contracts. This made clear that a valid ticket or receipt must be provided and reimbursement was of the cheapest fare possible, including the use of travel cards such as a Senior Railcard or 60+ Oyster Card. We find that this was a response to the ongoing problem with the Claimant's expenses and is evidence of the Respondent's genuine concern that it was wrong for the Claimant, or indeed any other driver, to claim reimbursement for monies not in fact spent by them.

25. Mr Glander gave evidence that from April 2017, the basis for calculating holiday pay also changed. He asserted that prior to 5 April 2017 (i.e. the previous leave year), pay to the drivers included an element to represent holiday pay. In other words, 'rolled up' holiday pay in addition to which the drivers were paid £20 per day for each day of leave taken. The Claimant's statement of particulars contained no reference to rolled up holiday pay. The Claimant's payslip for January 2016 were included in his supplementary bundle; this showed an hourly rate of £6.70 which was the National Minimum Wage in force at the time. Both the original contract and the April 2017 contract referred only to "20 days paid holiday per annum plus all recognised bank and public holidays". The Claimant's evidence was that he had never been told that his pay contained any rolled up element for holiday. On this issue, we prefer the evidence of the Claimant and find that his salary contained no additional element for holiday; when authorised leave was taken prior to 5 April 2017, drivers were paid only £20 per day.

26. In his email on 25 April 2017, and again on 9 May 2017, the Claimant informed the Respondent that he was available for work. The Claimant required detail of the expenses being queried, clear instructions about travel receipt provision and stated a willingness to attend the office to discuss the issues provided he was given his contract of employment and other requested information. The Claimant did not telephone the Respondent to ask for work or to discuss the outstanding issues.

27. The Respondent did not telephone the Claimant to allocate any work. Instead, by letter dated 10 May 2017 (referred to by error as 10 March in Mr Glander's witness statement), the Claimant was informed that he was summarily dismissed for gross misconduct for his repeated refusal to supply receipts, fraudulent expenses claims and his assertion that such conduct would continue. The date of termination is given as 28 March 2017.

28. The letter of dismissal received by the Claimant differs from that included in the bundle by the Respondent insofar as the letter in the bundle includes figures for the sums said to have been improperly claimed whereas the letter received by the Claimant refers to substantial sums without specific quantification. Otherwise the two letters are the same. Whilst it is surprising that the Respondent has included in the bundle a draft of the dismissal letter (whether produced earlier or later) rather than the actual letter, the substance of the reasons for dismissal do not differ.

29. The Claimant submitted Vehicle Condition Reports for job numbers: 85506 (24 March 2017), 85542 (27 March 2017), 78102 (28 March 2017), 78139 (28 March 2017) and 19175 (28 March 2017). The Claimant claims that he was underpaid for each of these jobs as the actual time spent by him travelling between collection and delivery was not fully paid by the Respondent. The Reports do not include any record of time spent travelling nor has the Claimant adduced any other evidence to support his assertions that he spent more time travelling than that for which he was paid. The Respondent relies upon a record showing each of the Claimant's jobs between 23 March and 28 March 2017, the miles travelled, time taken, means of transport, the applicable rate (set by the contract depending on the distance between jobs) and the amount paid to the Claimant.

Law

30. For there to be a protected disclosure, there must be a disclosure of information which, in the reasonable belief of the worker, tends to show that the Respondent has, is or will breach a legal obligation, s.43B(1)(b) Employment Rights Act 1996. Recent guidance was today confirmed by the Court of Appeal in **Kilraine v London Borough of Wandsworth** [2018] EWCA Civ 1436. The Tribunal must look at the words used by the Claimant to decide whether they convey information (and an allegation may contain information); words which are too general and devoid of factual content tending to show breach of a legal obligation will not amount to information. Words which otherwise fall short may be boosted by context or surrounding communication. The assessment is an objective evaluation in all of the circumstances of the case.

31. The Claimant must reasonably believe that the information tends to show a relevant breach and that it is in the public interest to make the disclosure. The belief that a disclosure is in the public interest must actually be held at the time of the disclosure; whether or not it was a reasonable belief may include consideration of

matters not in his mind at the time and it need not be the only or predominant motivation in making the disclosure, see **Chesterton Global Ltd v Nuromohamed** [2017] IRLR 837 at paragraphs 27 to 31 and 37.

32. An employee must have two years' continuous service to bring a claim for ordinary unfair dismissal. There is no qualifying period for automatic unfair dismissal either because of a protected disclosure (s.103A Employment Rights Act 1996) or assertion of a statutory right (s.104 ERA). The prohibited reason must be the sole or principal reason for dismissal and the burden will lie on the Claimant to prove that reason where he has less than 2 years' continuous service, **Fecitt v NHS Manchester** [2012] IRLR 64, CA (in relation to protected disclosure but the same will apply to other prohibited reasons).

33. The reason for dismissal is the set of facts known to the employer or beliefs held by him which cause him to dismiss the employee, **Abernethy v Mott, Hay and Anderson** [1974] ICR 323, CA.

34. The Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 Article 3 provides "that proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum if the claim arises or is outstanding on the termination of the employee's employment". Claims for wages, contractual holiday pay and/or notice fall within the scope of art.3.

35. It is for the Respondent to show on the balance of probabilities that the Claimant was in fact guilty of the misconduct alleged to amount to a repudiatory breach of contract entitling it to dismiss without notice or pay in lieu. To be sufficient, the conduct must so undermine the trust and confidence inherent in that particular contract of employment that the employer should no longer be required to retain the employee, **Neary v Dean of Westminster** [1999] IRLR 288. Relevant to this determination will be the nature of the employer, the role of the employee and the degree of trust required.

36. The Employment Rights Act 1996 ("ERA") s.13 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deductions are required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. A deduction occurs when an employee or worker is paid less than the amount due on any given occasion including a failure to make any payment, s.13(3) ERA.

37. An employee's entitlement to paid annual leave is set out in regulations 13, 13A, 14 and 16 of the Working Time Regulations 1998. In particular, regulation 14 provides that where the employment is terminated during the course of a leave year, the Tribunal must determine the amount of any payment in lieu of accrued but untaken holiday by multiplying the statutory entitlement by the proportion of the leave year expired and then deducting the actual amount of leave taken.

38. An employee is entitled to a written statement of particulars in respect of matters identified in section 1 of the Employment Rights Act 1996. Section 3 provides that in respect of disciplinary procedures it will be sufficient to refer the employee to a document specifying the procedure so long as it is reasonably accessible.

39. Section 8 of the Employment Rights Act 1996 entitles an employee to an itemised pay statement which must be given at or before the time at which any payment of wages or salary is made to him.

40. The rights conferred by sections 1 and 8 are exercised by way of complaint under section 11. If successful, the Tribunal shall make a declaration to that effect and may (on a section 8 claim) award an amount not exceeding the aggregate of any unnotified deductions made by the employer in the preceding 13 week period. Section 32 of the Employment Act 2002 provides that the Employment Tribunal shall award a sum of either two weeks' or four weeks' pay where another relevant claim by the employee succeeds and the employer has failed to give the employee a written statement of employment particulars.

Conclusions

Unfair Dismissal

41. The Claimant does not have two years' continuous employment and therefore the unfair dismissal claim can only succeed if the reason for dismissal was either a protected disclosure or the assertion of a statutory right. In substance, the factual basis of both is the same as the Claimant relies upon his emails requiring a copy of his written statement of terms and conditions as required by s.1 Employment Rights Act 1996.

42. Dealing first with protected disclosure, the Claimant relies upon the contents of his emails on 28 March 2017 and 5 April 2017 which we have set out above. In both the Claimant states that he has never received a copy of his contract of employment. Mr Glander submits that the assertion was dishonest in that the Claimant knew that he had received a written statement of terms and conditions of employment but was seeking to hide behind the absence of a document with the word "contract" on it. We do not accept that submission. Whilst we have accepted that the Claimant was in fact provided with a copy of his written statement on starting employment, his mistaken recollection is not the same as dishonesty. The information provided by the Claimant did tend to show breach of the legal obligation in s.1 and the Claimant reasonably believed that to be the case.

43. On public interest, the Claimant's case at Tribunal is that he reasonably believed that this was a disclosure of information tending to show a breach of legal obligation and that it was in the public interest because a breach of employment law might invalidate insurance cover for drivers and there was therefore an issue of public safety. When asked to clarify by the Tribunal, the Claimant accepted that he had no idea whether or not a breach of employment law would invalidate the insurance. We do not accept that the Claimant had insurance in mind at all when he sent his emails on 28 March 2017 or on 5 April 2017. Having regard to the deterioration in the working relationship and the Claimant's willingness to express his concerns, if possible insurance implications had entered his mind at the time, he would have said so. He did not, referring only to his own circumstances in connection with a Congestion Charge penalty notice. As such, we conclude that the Claimant was asserting a breach of the legal obligation owed to him as an individual employee and held no belief at the time that it was in the public interest. The amendment to the legislation introducing the

requirement of public interest was intended to remove protection from disclosures serving the private or personal interest of the person making it. Accordingly, there was no protected disclosure.

44. As for assertion of a statutory right, we are satisfied that the Claimant's email of 5 April 2017 was a clear assertion of his right under s.1 ERA. We have not accepted that it was disingenuous or made in bad faith (although we accept that Mr Glander at the time thought both). The issue is therefore whether or not the principal reason for dismissal was assertion of the right.

45. We have accepted that Mr Glander was informed of the Claimant's refusal on 27 March 2017 to attend a meeting to discuss the lack of receipts for expenses claimed. Mr Glander had read the Claimant's emails and took particular exception to those sent on 19 March 2017 (his belief that reimbursement of bus and train travel without receipts and, by implication, not in fact paid was a perk) and 27 March 2017 (his statement of intention to continue the practice until a solution was found). Mr Glander formed the strong belief that the Claimant had admitted claiming money fraudulently, had stated that he intended to continue to do so and refused to attend a meeting to discuss the issue. Mr Glander believed that the Claimant's request for a copy of the contract was disingenuous as it he had been provided a copy on commencement of employment. In essence, Mr Glander believed that the Claimant was using this as an excuse to avoid a meeting.

46. If this had been an ordinary unfair dismissal case, it would undoubtedly have succeeded. The Respondent failed to set out the allegations in writing, failed to provide relevant documents as requested and failed formally to invite the Claimant to a disciplinary hearing. The Tribunal considered whether we should draw any adverse inference about the reason for dismissal from these procedural failures. We decided that it was neither safe nor necessary to do so. The Respondent is a small family run employer with no dedicated legal or HR team and what might be fairly described as a lack of formal procedures or communication, relying on more informal telephone or face to face discussions. It is entitled to run its business in this way despite the Claimant's evident disapproval so long as it complies with its legal obligations when they arise. The Claimant had been employed for less than two years and, as such, whilst it is good industrial practice to follow a fair procedure there is no legal obligation to do so.

47. We also considered whether to draw an inference from the chronology of events from 12 March 2017 until the eventual dismissal on 10 May 2017. We again decline to do so. The fact that the Respondent had attempted to convene a meeting before 29 March 2017 is consistent with it regarding the issue as serious. The Claimant was absent from the workplace from 29 March 2017 so the issue was not pressing for the Respondent. It only became so on 25 April 2017 and again on 9 May 2017 when the Claimant made clear his intention to return to work. This is consistent with the letter of dismissal claiming that the last day of employment was 28 March 2017 (which it was not, the contract did not in fact terminate until 11 May 2017 when the Claimant received the dismissal letter).

48. For all of these reasons, we accept Mr Glander's evidence and find that the reason for dismissal was conduct and not the Claimant's assertion of a statutory right.

The claim of unfair dismissal (both contrary to section 103A or section 104) fails and is dismissed.

Breach of Contract – wrongful dismissal

49. The claim for notice pay is not a discrimination claim depending upon how others were treated nor is it a question of fairness or reasonableness. The issue for the Tribunal is whether as a matter of contract law there was a repudiatory breach sufficient for summary dismissal.

50. It is common ground that the nature of the Claimant's employment was one requiring great trust. The contract of employment signed by the Claimant obliged him to submit tickets and receipts; it provided that he was only entitled to reimbursement on the basis of the cheapest fare possible. The Claimant has admitted, both to the employer and to the Tribunal, that he claimed and was reimbursed for sums greater than what he had in fact spent (either by not passing on the discount or even claiming in full for journeys which he took free) and for which he submitted no tickets or receipts. We took into account the Claimant's submission that other drivers did likewise and that this was accepted practice. Even if this were the case, and we do not accept that it was, the Respondent gave the Claimant a clear instruction to provide receipts from 12 March 2017. The Claimant refused to do so on more than one occasion between then and 28 March 2017 whilst maintaining his entitlement to the expenses in issue; initially requiring the Respondent to provide company credit or fuel cards, then asserting that they were a perk and finally as he believed the rules were not being applied to all drivers.

51. The tone of the Claimant's emails throughout appear peremptory and confrontational. Whilst absent from the workplace, his emails give no objective basis to conclude that the Claimant had changed his position and accepted that he was not entitled to be reimbursed for sums he had not in fact paid out. The Claimant requires clarity yet, to our mind, the situation is entirely clear: an employee is not entitled to be reimbursed for sums of money which he has not in fact paid out. There was no contractual term or agreed practice to the contrary at the Respondent. We conclude that the Claimant did not agree then and does not agree now with the removal of what he regarded as a perk. Even in his witness statement, he regards the change in the new contract to clarify the position to be an act of exploitation by the Respondent.

52. Even if a practice had developed where the employer did not strictly require receipts, it is still fundamental that an employee is honest and claims only money which he has in fact paid. The Claimant's reluctance to accept this basic principle and equivocation about changing his practice in future was such that, objectively considered, we consider that the conduct of the Claimant so undermined the trust and confidence inherent in the contract of employment that the Respondent should no longer be required to retain him.

Annual Leave outstanding at termination – Working Time Regulations

53. As set out in the agreed List of Issues, this claim is in respect of holiday accrued during the holiday year which started on 5 April 2017. It is brought under the Working Time Regulations and not the contract of employment which includes a term about forfeiture of holiday in the event of summary dismissal.

54. The Tribunal has found that the contract of employment was not terminated until the Claimant received the letter of termination on 11 May 2017 (deemed receipt of a letter sent by post). In other words, five weeks of the leave year had elapsed. The entitlement under Regulations 13 and 13A is to 28 days per annum. Pro rata, this equates to 2.69 days (28/52 x 5); rounded up this gives an accrued entitlement to 3 days holiday at the date of termination.

55. Whilst the Claimant did not work during the period from 5 April to 11 May 2017, nor was he paid. He did not refuse work, rather none was offered by the Respondent and none requested by the Claimant. On the Respondent's own case no question of "rolled up holiday pay" arises for this leave year. It follows that the Claimant is entitled to three days' net pay. The Claimant has calculated his net pay in his Schedule of Loss as £275.25 per week. The Respondent has adduced no evidence to challenge that calculation. For these reasons the Claimant is awarded the net sum of **£165.15.**

Unauthorised deductions/Breach of contract - wages

56. The Claimant claims wages in respect of the 18 working days he says were taken as holiday from 30 March 2017. The claim is brought either under s.13 ERA or under the contract of employment. Both therefore require the Tribunal to decide whether or not the Claimant was contractually entitled to payment for such holiday. It was an express term of the contract that holiday dates must be agreed in advance with a manager. This was a condition precedent to payment. Here, there was no such agreement. The Claimant indicated his intention to take holiday in his various emails; at no stage did he request permission to take holiday, whether orally or by completing a form as he had done at all earlier times of his employment.

57. We considered whether the failure to reply to the Claimant's emails with their clear statement of intent to take holiday could be construed as agreement by conduct (or rather omission). We do not consider that it could on the facts of this employment relationship. The Claimant was aware of the process for requesting holiday; he and the Respondent were aware that his emails did comply with that process. The Claimant knew that the Respondent did not reply to emails and that communication with his employer was undertaken by telephone. The Claimant had a number of conversations with his manager and Ms Glander in the days before 28 March 2017 in which he did not raise the issue of his intended holiday, far less ask for permission to take such leave. In the circumstances, there was no authorisation for his holiday and he is not entitled to be paid.

58. As for the wages properly payable for the jobs identified in the List of Issues, again the claim depends upon there being a failure to pay the Claimant what was due to him under the contract. This is not a matter of whether or not the Claimant believes that he should have been paid more money nor is it a minimum wage claim (Employment Judge Moor having refused leave to include such complaints). Clause 6 of the contract entitled the Claimant to payment for a set number of hours for each vehicle delivered and provided that a reduced rate would be paid where there was less than 20 miles between jobs to reflect reduced hours travelling.

59. Whereas the Claimant relies upon his general recollection of time spent on jobs, some of which include errors in the calculation (for example job 85506 where he claims he worked 9 hours but the times given add up only to 8 hours), others include waiting

time between jobs for which there is no contractual entitlement to pay (for example job 85542). The Respondent relies upon its report with details of each job required by the contract to calculate pay. It is for the Claimant to prove that he is contractually entitled to more pay than he in fact received. He has not done so and the claim fails.

Written Statement of Particulars and Itemised Payslips

60. We have found as a fact that the Claimant was provided with a copy of his written statement of terms upon signing it on the day of his interview. The terms within that statement satisfied the requirements of section 1 ERA. The disciplinary procedure is referred to as contained in an appendix which was not provided to the Claimant in May 2017. Section 3 ERA which permits that a disciplinary procedure be included in another document so long as readily accessible to the employee. A copy of the particulars and, we infer, the disciplinary procedure were kept in the office. We are satisfied that they were readily accessible to the Claimant.

61. As for payslips, we have found that the Claimant was paid weekly but that the itemised payslips were batched together and sent to him monthly. This is a breach of section 8 ERA which requires the payslip to be provided before or at the time of payment. The Claimant is entitled to a declaration to this effect.

62. Whilst the declaration of breach is mandatory, the Tribunal has a discretion as to whether or not to award up to 13 weeks' worth of unnotified deductions. Other than for PAYE and National Insurance, we were provided with no evidence of any variable or fixed deductions which should have been included in the payslips in the relevant 13 week period prior to termination. PAYE and National Insurance are deductions which the employer is required to make when income reaches a particular threshold. Payslips were provided but on three weeks of a given month, they were late. In the circumstances, we are satisfied that the breach of section 8 by the Respondent was minor and technical in nature and that no award is appropriate.

Next Steps

63. The Tribunal has determined that the Respondent owes the Claimant the sum of £165.15. This must be paid within 28 days of the date on which this Judgment is sent to the parties. The Respondent has ceased trading. Mr Glander informed the Tribunal that it is not in liquidation or administration and this is confirmed by the register at Companies House. Even if not trading, the debt is due and owing. Mr Glander is seriously unwell. It is hoped that the debt will be paid swiftly so that the case may finally be concluded without any of the procedural game-playing in which both Mr Glander and the Claimant have indulged during the preparation of this case.

Employment Judge Russell

22 June 2018