EMPLOYMENT TRIBUNALS

Claimant: Mr C Woodthorpe

Respondent: AFC Fylde Limited

Heard at: Manchester **On:** 2 September 2020 and In Chambers on 22 September 2020

Before: Employment Judge Rice-Birchall

REPRESENTATION:

Claimant: Mr M Barrow, Counsel
Respondent: Ms J Connolly, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant was unfairly dismissed by the Respondent. His claim of unfair dismissal succeeds.

2. The claimant was wrongfully dismissed by the Respondent.

3. The claimant was not provided with employment particulars and is awarded two weeks' pay.

REASONS

The Issues

1. The issues for the Tribunal to determine were:

<u>Unfair Dismissal</u>

(1) On what date was the claimant dismissed: 12 October 2019 or 17 December 2019?

(2) What was the reason or principal reason for the claimant's dismissal?

(3) Was it a potentially fair reason? The respondent contends it was a reason related to capability (performance) or some other substantial reason, namely the performance of the Club and the fact that the manager, with whom the claimant was recruited as Assistant Manager, was dismissed.

(4) Did the respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

Remedy for Unfair Dismissal

(5) Is there a chance that the claimant would have been fairly dismissed in any event in light of the performance of the club and dismissal of the manager?

(6) If so, would it be just and equitable to limit compensation to a particular date and/or reduce any compensatory award by a percentage to reflect this? If so, what date or by what percentage?

(7) Alternatively, did the claimant cause or contribute to his dismissal by blameworthy conduct in terms of the performance of the Club?

(8) If so, would it be just and equitable to reduce any basic and/or compensatory award by a percentage to reflect this? If so, by what?

(9) What financial losses has the dismissal caused the claimant?

(10) Has the claimant taken reasonable steps to replace his lost earnings by looking for another job?

(11) If not, for what period of loss should the claimant be compensated?

(12) What basic award is payable to the claimant, taking into account the effective date of termination of his employment (see (1) above)?

Breach of Contract/Notice Pay

(13) What was the claimant's notice period (having regard to the effective date of termination identified in the first issue above)?

(14) Was the claimant paid for that notice period?

Employment Particulars (Schedule 5 EA 2002)

(15) It is accepted that, when these proceedings were begun, the respondent had not given the claimant a statement of employment particulars which complied with the requirements of the ERA 1996 sections 1 and/or 4.

(16) It is accepted that, if the claimant succeeds in his unfair dismissal claim, the Tribunal should award two weeks' pay in this regard.

(17) Would it be just and equitable to award four weeks' pay? The respondent contends it is not just and equitable to award four weeks' pay in respect of a company as small as the respondent where some particulars had been provided.

The Hearing

(18) The hearing was conducted by Cloud Video Platform. The Tribunal reserved its decision. We agreed at the outset that this was a case in which it would be appropriate to hear any evidence as regards contribution/Polkey/mitigation with the evidence on liability.

The Evidence

(19) The Tribunal heard evidence from the claimant and from Jamie Roberts, former Chief Executive Officer of the respondent, on behalf of the claimant. It heard from Mr Haythornthwaite on behalf of the respondent. Mr Haythornthwaite is the chairman of The Tangerine Group. He bought AFC Fylde, the respondent in these proceedings, in 2008.

Factual findings

(20) The respondent, AFC Fylde, is a football club. It started out as a local pub team but was bought by Mr Haythornthwaite in 2008. He intended to develop it into a professional football team, with the aim of reaching the professional leagues by 2022.

(21) The respondent employs approximately 40 members of staff including managers, coaches, footballers and stadium staff.

(22) From November 2011, the claimant was employed to work alongside David Challinor to work as an Assistant First Team Manager. They were recruited jointly, with Mr Challinor being employed as Manager. There was no interview or recruitment procedure with the claimant. It was for Mr Challinor, once he had been appointed, to decide who would be his assistant manager. Effectively, Mr Challinor brought the claimant with him, when he was recruited. It is common, in the football industry, for managers and their coaching team to be appointed together. The claimant and Mr Challinor were effectively a managerial partnership.

(23) The claimant never received a written statement of particulars of employment or an employment contract . However, for the 2015-6 season, he received a document headed "Terms" which set out his job title, the period to which it related (in this case 1 July 2015 to 28 April 2016), his weekly wage and a statement as to bonus and to tax and national insurance. An identical document was in place for the 2016-7 and 2017-8 seasons, save that the claimant's weekly wage had been increased, there was no reference to bonus and the period was different.

(24) Mr Challinor and the claimant worked for the respondent for eight years and had some real success in that time, with three promotions and five playoff appearances, culminating in a very successful 2018/9 season which saw the club reach the play off final for promotion into the Football League and win the FA Trophy, both games involving Wembley appearances.

(25) In football, every season is a new season and it is not enough for a club to say that it did well last year. The 2019/20 season did not start as well, at least according to the respondent. It was agreed by both parties that the sole touchstone of performance is how the team is doing. The claimant also agreed that, if a manager was doing badly, he would risk dismissal, and that in some cases, that could be a hasty termination.

(26) Although the claimant admits that the respondent was three points down on its previous worst position at this level (2017/8) he says, "from the same amount of games we sat crucially the same points away from a playoff position as we did that season and still reached the play offs at the end of the season." The respondent however, considered that it was sat just outside the relegation zone; had lost four games in a row; and was a third of the way through the season. The respondent did not consider it appropriate to compare its performance to the 2017/8 season when the club had just been promoted to the conference league and was finding its feet in a new league. In comparison, in the 2018/9 season they were no longer the "new boys" and had a players' budget of almost twice what it had been in the previous season.

(27) As a result, Mr Haythornthwaite decided that it was time to part ways with his manager and his assistant. Accordingly, he had a meeting with Mr Challinor on 12 October 2019, at which he informed him of the respondent's decision to terminate his employment with immediate effect. Mr Challinor was advised that it was not necessary for him to work his notice. Mr Haythornthwaite believed that by having this conversation with Mr Challinor, he had also dismissed the claimant, as the manager and assistant came as a team and should depart as a team.

(28) It was agreed that the claimant had never received any form of disciplinary or capability warning of any kind. However, Mr Haythornthwaite sought to argue that football is unlike any other business and that such warnings would be very rare indeed. He also confirmed that, if the claimant had been subject to any form of discipline or warning, it would have been for Mr Challinor to deal with it.

(29) The claimant says that on 12 October 2019, when he returned to the ground, he found Mr Challinor visibly angry and upset. He says that Mr Challinor informed him that he, Mr Challinor, had been relieved of his duties but that there was no mention of what that meant for the claimant.

(30) A press release was agreed with Mr Haythornthwaite, which appears in the bundle. The press release confirmed that Mr Challinor and the claimant were no longer employed by the respondent. It was posted on the respondent's website, on its twitter account and was picked up by the

local newspaper. It stated: “Club part company with management team.” It was the Claimant’s evidence that he had never seen or heard of this press release as he doesn’t use social media and had not seen it in any of the football press, nor had any of his contacts or colleagues mentioned it to him.

(31) According to the claimant, when he returned to the ground the following day, he was told that the Strength and Conditioning coach would be taking training. He says that, when he asked what was going on, he was informed that he would hear from the respondent, but no-one ever got in touch, hence why from that day on, he stayed at home and didn’t turn up for work. On that day or the following day (13 or 14 October), Mr Challinor and the claimant attended the respondent’s premises. According to Mr Haythornthwaite and to Mr Roberts, they cleared their belongings. Mr Roberts confirmed that he would have said to both the claimant and Mr Challinor that he was sorry to see them go. The claimant’s case is that he still didn’t realise his employment had been terminated at this stage, and, in fact, at no stage until he received a letter of termination in December 2019; that he didn’t see the press release; and that no-one in the workplace, nor any friend, got in touch to say they were sorry to see him go

(32) One of the factual disputes between the parties is whether or not the claimant was informed that his employment was terminated on or around 12 October 2019. The claimant’s position is that, although he didn’t return to work after that day, no-one told him his employment with the respondent had come to an end and he didn’t think to ask about it, nor did he see any of the public statements which were made to announce the respondent’s decision to part ways with the management team. The respondent’s position is that Mr Haythornthwaite told Mr Challinor that he and the claimant’s employment was terminated and that he made it clear that Mr Challinor should inform the claimant of that decision, the proof of which, he says, is demonstrated by the fact the claimant did not turn up to work again after coming the following day to clear his office. The claimant says he had nothing to clear from his office as he carried everything he needed round with him.

(33) According to Mr Haythornthwaite, it was left to Mr Roberts to deal with the final arrangements. Mr Roberts’ evidence was that, during a telephone conversation some eleven days later, the claimant rang him to ask why he hadn’t been paid. In fact, the claimant was paid for that week and there had been a technical problem, which meant that his pay was received a day late, but Mr Roberts states that he also confirmed that the claimant asked why no one had been in touch to confirm his position, and Mr Roberts apologised to the claimant for what he described as a “piss poor performance” from the respondent. He promised to email the claimant that afternoon but nothing was sent and no further contact made. According to Mr Roberts, this was because he was awaiting approval from Mr Haythornthwaite.

(34) Somehow, it was agreed that the respondent would pay the claimant two months' notice from the date of the day on which Mr Haythornthwaite believed he had terminated the employment of both Mr Challinor and the claimant. The claimant therefore continued to be paid weekly from 12 October 2019. On December 17 2019, however, Mr Roberts instructed the respondent's in-house lawyer to draft a final letter to the claimant to confirm the date his pay would stop and to thank him for his contribution. That letter spoke of a meeting with Mr Challinor which was assumed to have taken place on 12 October but also confirmed that the claimant had been paid his notice up to 12 December 2019. The letter confirmed that the claimant's final salary would be paid at the end of December, thanked the claimant for his contribution to the club and wished him the best for his future career. The letter's content was unusual in that it appeared to refer to a contract which the claimant had never been given.

(35) The claimant responded by a letter dated 5 January 2020 to state that he was unaware that his employment had been terminated until he received the letter of December 17 2019.

(36) The Claimant has now moved to work at the Runcorn Linnets. The press release relating to that job states that the Claimant left the respondent in October. The claimant says he did not give them that part of the story. He says he had conversations with Mr Challinor in the interim about whether they could continue to work together but, according to the claimant, that would only be if he was free of the club. In any event, when Mr Challinor did find alternative employment it was too far away for the claimant to be able to work with him given his family commitments.

The Law

<u>Effective date of termination</u>

(37) The issue as to the date of termination of employment is a question of mixed fact and law. The relevant issue in this case is whether, applying the correct principles of law to the primary facts, the construction or effect of those primary facts lead to the conclusion that the effective date of termination was the 12 October or 19 December.

(38) The essential issue is whether communication to the employee of the dismissal by the employer (or a third party who the employer had informed of the dismissal) was sufficient to satisfy the test, since a contract of employment is not effectively terminated until an employee knows of the dismissal or has had a reasonable opportunity of finding out that he had been dismissed.

(39) There is no reason why the fact that an employer gave notice of dismissal to a third party rather than by a direct route to the employee should have the effect that the knowledge thus acquired could not be treated as sufficient to satisfy the test. The question is when was the knowledge acquired.

<u>Unfair dismissal</u>

(40) An employee has the right under section 94 of the Employment Rights Act 1996 (ERA) not to be unfairly dismissed (subject to certain qualifications and conditions set out in ERA).

Reason for Dismissal

(41) When a complaint of unfair dismissal is made, it is for the employer to prove that it dismissed the claimant for a potentially fair reason, namely a reason falling within section 98(2) ERA or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held (SOSR). At this stage, the employer has the burden of proof in showing that some other substantial reason is the sole or principal reason for dismissal. To satisfy this stage, the employer needs only to establish a reason which could justify the dismissal holding the job in question. It is not necessary to show that it actually did justify the dismissal.

(42) The words "…some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held" are wide words. They require the Tribunal to consider whether the reason advanced by the employer is of a type or kind that might justify dismissal having regard to the particular position of the employee. Such a reason, if found, does not carry with it the connotation that it did justify the dismissal of the employee but it must be of a kind which would permit one to go on to consider reasonableness.

Fairness

(43) If the respondent proves that it dismissed the claimant for a potentially fair reason, the Tribunal must then decide if the employer acted reasonably in dismissing the employee for that reason applying the test in section 98(4) ERA.

(44) Section 98(4) ERA provides that “the determination of the question whether (a) the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances including the size and administrative resources of the employer’s undertaking the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and (b) shall be determined in accordance with equity and the substantial merits of the case”. For this stage of the statutory test, the burden of proof is neutral. Accordingly, the tribunal will need to investigate the reasonableness of the dismissal, but the onus is neither on the employer to prove it was fair, nor on the employee to prove that it was not.

(45) Deciding whether the employer acted reasonably in treating SOSR as a reason to dismiss will involve the tribunal in a consideration of whether the employer followed a fair procedure. Even if procedural safeguards are not strictly observed, the dismissal may be fair. This will be the case where the specific procedural defect is not intrinsically unfair and the procedures overall are fair (**Fuller –v- Lloyds Bank** 1991 IRLR 336 EAT). Furthermore defects may be remedied on appeal if, in all the

circumstances, later stages of a procedure are sufficient to cure any earlier unfairness.

(46) In applying section 98(4), the Tribunal must also ask itself whether dismissal was a fair sanction for the employer to apply in the circumstances. The test is an objective one. It is irrelevant whether or not the Tribunal would have taken the same course had it been in the employer's place, similarly it is irrelevant that a lesser sanction may have been reasonable. Rather section 98(4) requires the Tribunal to decide whether the employer's decision to dismiss the employee fell within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted (**Iceland Frozen Foods Ltd –v- Jones** 1982 IRLR 439). This "range of reasonable responses" test applies equally to the procedure by which the decision to dismiss is reached (**Sainsbury's Supermarkets Limited –v- Hitt** 2003 IRLR 23).

(47) If a claim of unfair dismissal is well founded, the claimant may be awarded compensation under Section 113(4) ERA. Such compensation comprises a basic award and a compensatory award, calculated in accordance with sections 119 to 126 ERA.

(48) Where the Tribunal considers that any conduct of the claimant prior to dismissal was such that it would be just and equitable to reduce the amount of the basic award to any extent, it must reduce the amount accordingly (section 122(2) ERA). In this regard, the question is not whether the employer believed the claimant committed the conduct in question but whether the Tribunal so believes.

(49) So far as the compensatory award is concerned, ERA provides that the amount of compensation shall be such amount as is just and equitable based on the loss arising out of the unfair dismissal. In **Polkey –v- A E Dayton Services Limited** 1987 ICR 142 the House of Lords stated that the compensatory award may be reduced or limited to reflect the chance that the claimant would have been fairly dismissed in any event had a fair procedure been followed. This does not mean that the unfair dismissal is rendered fair, but allows the Tribunal to make a realistic assessment of loss according to what might have occurred in the future. The chances of the actual employer, not a hypothetical reasonable employer, dismissing the employee have to be assessed. This requires consideration of the employer's likely thought processes and the evidence that would have been available to it. Where a *Polkey* deduction is sought on the basis that there has been no disciplinary hearing, the question for the tribunal is not whether, if the employer had conducted a disciplinary hearing, that hearing would have been fair, but whether if there had been a fair disciplinary hearing the result would still have been a dismissal.

(50) Furthermore, where the Tribunal finds that dismissal was to any extent caused or contributed to by any action of the claimant, it must reduce the compensatory award by such proportion as it considers just and

equitable having regard to that finding (s123(6) ERA). As with any reduction under s122(2), the question is not whether the employer believed the claimant committed the conduct in question but whether the Tribunal so believes. An employment tribunal must consider the following four questions:

a. What was the conduct which was said to give rise to possible contributory fault?

b. Was that conduct blameworthy, irrespective of the employer's view on the matter?

c. For the purposes of section 123(6), did the blameworthy conduct cause or contribute to the dismissal?

d. If so, to what extent should the award be reduced and to what extent would it be just and equitable to reduce it?

Written statement of employment particulars

(51) Where an employee or worker has successfully brought one of the substantive claims listed in Schedule 5 to the EA 2002 and, at the time the claim was brought, the employer was still in breach of its duties under section 1(1) or section 4(1) of ERA 1996, the employee or worker may be eligible for an award (or an increase to the award already being made) in respect of the failure to provide particulars. This is so regardless of whether compensation is actually awarded by the tribunal for the substantive claim, provided the claim has been determined in the employee or worker's favour(S*ection 38(2)(a) and section 38(3)(a), EA 2002.*)

(52) Schedule 5 includes unfair dismissal and breach of contract claims.

(53) Section 38 of the EA 2002 provides that in such circumstances the tribunal **must** make an award of the minimum amount (two weeks' pay) unless there are "exceptional circumstances" which would make such an award "unjust or inequitable" (*section 38(5), EA 2002*). The tribunal **may** award the higher amount (four weeks' pay) if it considers it just and equitable in all the circumstances.

Conclusions

Unfair Dismissal

Date of termination

(54) There is no evidence that the Claimant was informed that he was dismissed on 12 October 2019. Whilst Mr Haythornthwaite informed Mr Challinor of the termination of his employment on that date, Mr Haythornthwaite assumed Mr Challinor would take on the role of communicator to the claimant and, further, assumed that it would be clear that, if Mr Challinor was dismissed, so would the claimant be

dismissed, as they had been recruited and employed as a management team. That is not sufficient to overcome the hurdle of communication required for 12 October 2019 to be the effective date of termination. Further, the claimant did return to the workplace the following Monday, albeit to be told that it would be the Strength and Conditioning coach who would be taking training that day. There was no communication from Mr Roberts to confirm that his employment had been terminated. In fact communications from him were to the effect that the respondent would get back to the claimant to confirm the position.

(55) The Tribunal did not find the claimant's evidence about his knowledge of the termination of his employment to be credible in that he maintained: that, in the whole two months, even though he talked to Mr Challinor every day including about new opportunities for work, there was never any discussion about the fact that his employment could have been terminated; that at no point did anyone from the respondent speak to him to say they were sorry to hear about the termination of his employment; that at no point did he see any press release or hear about the fact that his employment had been terminated through social media or the press; and that at no point did any member of his family or a friend or footballing contact say that they had read in the press about the termination of his employment. This was despite the fact that he was not going to work every day, or, in fact, any day.

(56) Despite this, there is no evidence of a date on which the termination of the claimant's employment was clearly and effectively communicated to him until he received the letter of 17 December 2019. There is no date on which he would have had reasonable opportunity to find out that his employment was terminated, particularly as, at the same time, the claimant continued to be paid.

(57) Accordingly, the claimant was dismissed on 17 December 2019.

Principal reason for dismissal

(58) In determining the principal reason for the claimant's dismissal, the Tribunal has taken into account the club's performance and the fact that it was sitting just above the relegation zone having lost four matches in a row. However, the club's performance wasn't the only reason for the claimant's dismissal. Mr Hayhtornthwaite's clear evidence was that it was the club's performance so far in that season which was the catalyst for change and for wanting to change his management team. However, that was not the only reason the claimant was dismissed. It is also significant that he worked as a management team with Mr Challinor, was recruited with him, and therefore, it was expected that he would leave with him, as is common in the football world. This was exemplified by the fact that the respondent didn't even interview the claimant when he joined: it was left to Mr Challinor, having been recruited, to bring the Assistant Manager with him.

(59) The reason, or principal reason was therefore the performance of the Club coupled with the fact that the manager, with whom the claimant was

recruited as Assistant Manager, was dismissed. It is not possible to say that one of those two factors was the principal reason, as without the other, the dismissal would likely not have occurred. The respondent may have decided to manage the claimant's performance if it hadn't decided to terminate Mr Challinor's employment. That said, if the club hadn't been performing badly, the respondent would not have terminated Mr Challinor's employment. The two are inextricably linked.

(60) Does this reason, the performance of the Club and the fact that the manager, with whom the claimant was recruited as Assistant Manager, was dismissed amount to some other substantial reason such as to justify the dismissal of an employee holding the position which the claimant held? If so, it is a potentially fair reason for dismissal. The Tribunal finds that the performance of the Club and the fact that the manager, with whom the claimant was recruited as Assistant Manager, was dismissed could amount to some other substantial reason for the dismissal of an employee and is therefore a potentially fair reason for dismissal. This is on the basis that a club like the respondent could rely on the performance of a management team as a reason for dismissal.

Reasonableness

(61) In determining the reasonableness of the claimant's dismissal, the Tribunal has considered the respondent's size and has also recognised the specific context of the employment, namely within a football club in which the club's performance is the sole indicator of the performance of the management team including the claimant.

(62) In this case, the respondent did not follow a fair procedure in dismissing the claimant. In fact, there was no procedure followed at all. It is a general principle of procedural fairness that applies to most cases, including cases in which an employee is dismissed for some other substantial reason, that an employee should know they are at risk of dismissal and why, and should be allowed to make representations (usually at a meeting or hearing) and should be allowed a right of appeal. That is regardless of whether or not the ACAS Code applies. These are principles of natural justice.

(63) In this case, the claimant was afforded none of those things. In this case, the respondent did not clearly communicate with the claimant the fact of his dismissal until some two months after he no longer turned up for work. Whilst it might be argued that the claimant could have guessed or worked out that he had been dismissed, a reasonable employer would have informed the claimant of his dismissal and the reasons for it, whether or not he was part of a management team. The Tribunal has considered whether this was one of those rare cases in which dismissal could be fair notwithstanding the fact that no procedure was followed at all, and in which no meetings or discussions were held. However, in this case, it considers that such a meeting would not have been pointless, and would have afforded the claimant the opportunity to understand the basis for the decision and raise any points he wished to make. What the

respondent believed and why was not so obvious to the claimant as to render such a meeting pointless. This is particularly so as the club's performance was stated to be the reason for the dismissal of the management team. The Tribunal considers that a reasonable employer would have allowed the claimant, and/or the management team, to have had some warning that, if things didn't improve, they could be dismissed. and/or to offer an explanation for its performance There was none. Accordingly, the claimant's dismissal was unfair.

(64) In applying section 98(4), the Tribunal must also ask itself whether dismissal was a fair sanction for the employer to apply in the circumstances. The Tribunal concludes that the employer's decision to dismiss the employee did not fall within the range of reasonable responses that a reasonable employer in those circumstances and in that business might have adopted. Whilst the Tribunal accepts that performance is key for a football club such as the respondent, it cannot accept that dismissal, without warning or even an opportunity to be informed, is a fair sanction to apply. That is so even if the dismissal is inextricably linked with the dismissal of the manager with whom the claimant formed a management team. Whilst it may have been understood by the respondent that the claimant's dismissal was inevitable in circumstances in which the manager was dismissed, that had never, so far as the Tribunal was aware, been communicated to the claimant by the respondent.

(65) The Tribunal considers that the claimant's dismissal was not the response of a reasonable employer in all the circumstances of the case. Although the respondent believed it needed a fresh management team to run the club if promotion was going to be a realistic prospect, it was not the reasonable response of a reasonable employer to dismiss the claimant after eight years' service without warning or discussion, indeed without even informing him that he was dismissed.

Remedy for Unfair Dismissal

(66) The Tribunal cannot say that there is a chance that the claimant would have been fairly dismissed in any event in light of the performance of the club and dismissal of the manager. This dismissal was conducted without any regard for the claimant. Had he been given the opportunity to discuss the circumstances with his employer, then he may have raised issues to be discussed which could have resulted in an alternative outcome.

(67) As such, it would not be just and equitable to limit compensation to a particular date or reduce any compensatory award by a percentage to reflect this.

(68) Further, the claimant did not cause or contribute to his dismissal by blameworthy conduct in terms of the performance of the Club. The conduct which was said to give rise to possible contributory fault was the respondent's performance. There was no evidence to suggest that the claimant had not done his job properly, or had committed any

blameworthy conduct. The club had simply not had good results. In any event, this was attributed more to the manager, Mr Challinor, than to the claimant, as he was responsible for the purchase of players and so on. Accordingly, any compensatory award should not be reduced to account for the claimant's contributory conduct.

(69) From the evidence available to the Tribunal, the Tribunal was satisfied that the claimant had taken reasonable steps to replace his lost earnings by looking for another job, in particular taking into account his family circumstances. He was still being paid by the respondent until December 2019, and then had to limit his search to a relatively local area because he is a single parent of a child who has particular needs. He has no skills or qualifications other than working in football.

Breach of Contract/Notice Pay

(70) The claimant was not paid for his notice period which commenced on 12 December 2019. The claimant is owed notice pay.

Employment Particulars (Schedule 5 EA 2002)

(71) It was accepted that, when these proceedings were begun, the respondent had not given the claimant a statement of employment particulars which complied with the requirements of the ERA 1996 sections 1 and/or 4.

(72) It was accepted that, if the claimant succeeded in his unfair dismissal claim, the Tribunal should award two weeks' pay in this regard.

(73) The Tribunal does not consider that it would it be just and equitable to award four weeks' pay in circumstances in which the respondent is a small employer and had provided some particulars to the claimant.

Remedy

(74) The case will be listed for a remedy hearing. The parties are requested to inform the Tribunal of any unavailable dates between December 2020 and April 2021 for a half day hearing.

Employment Judge Rice-Birchall
Date: 24 October 2020

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
2 November 2020

FOR THE TRIBUNAL OFFICE

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