



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5

**Case No: 4106237/2022**

**Held at Dundee on 31 January 2023**

10

**Employment Judge W A Meiklejohn**

**Miss Lucy Vickers**

15

**Claimant  
Represented by:  
Mrs C Vickers –  
Claimant's Mother**

20

**Altea 4 Restaurants Ltd**

**Respondent  
Represented by:  
Ms A Turnbull –  
Solicitor**

25

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that the claimant's complaints  
30 relating to holiday pay and particulars of employment do not succeed and are  
dismissed.

**REASONS**

1. This case came before me for a final hearing, to deal with both liability and  
35 remedy. The claimant was represented by her mother and Ms Turnbull  
represented the respondent.

### **Nature of claim**

2. In her ET1 claim form the claimant alleged breach of contract and unlawful deduction of wages. These were in effect the same claim which related to the claimant's entitlement to holiday pay on termination of employment.
- 5 The claimant also alleged a failure to provide her with written particulars of employment. These claims were resisted by the respondent.

### **Evidence**

3. I heard oral evidence from the claimant and from Mr K Dornan, the respondent's Franchise Supervisor. I had bundles of documents from both
- 10 parties. I refer to these by page number, prefixed by C in the case of the claimant and by R in the case of the respondent.

### **Findings in fact**

4. The respondent is a McDonalds restaurant franchisee. It operates four restaurants including one in Forfar.
- 15 5. The claimant was recruited by means of a telephone interview and commenced employment with the respondent as a Part Time Crew member on 12 July 2021. Her employment continued until 23 September 2022, when she resigned after giving notice.

### ***Particulars of employment***

- 20 6. Within the parties' bundles was a copy of a document, in letter format, headed "*Particulars of Employment*" (C50-51/R37-38). It bore to be signed by Danielle Stewart, Shift Manager, on behalf of the respondent, and by the claimant, on 9 July 2021. The claimant's position was that the signature on this document, and on the accompanying "*Orientation Checklist*" (R39), was
- 25 not hers. She said that she had not been in the respondent's Forfar restaurant on 9 July 2021, and that the first time she had done so was on 12 July 2021 when she collected her uniform (although she did not work on that date).
7. Mr Dornan's evidence was that the Particulars of Employment document
- 30 was what it bore to be. He said that the respondent's practice was to have

two copies signed, one of which was given to the employee and the other retained on file, and they had done this in the case of the claimant. Ms Stewart who had signed on the respondent's behalf was no longer employed by them. Mr Dornan asserted that the date of 9 July 2021 was correct, indicating that, contrary to her own evidence, this date was the first time the claimant had been in the restaurant as a newly recruited employee.

8. Also within the claimant's bundle was a copy of Particulars of Employment, in similar format to the claimant's, which bore to have been issued to Mrs Vickers (C52-53). These were signed on behalf of the respondent on 18 October 2021 and recorded that Mrs Vickers' employment (also as a Part Time Crew member) started on 20 October 2021. Mrs Vickers' signature did not appear but there was a handwritten note stating "*Completed online*". Mr Dornan said that this had been written by him.

#### ***Holiday entitlement***

9. The Particulars of Employment document contained the following paragraph dealing with holidays –

*"You will start to accumulate paid holiday entitlement when you join the Company. Your holiday entitlement will be 5 weeks' and 3 days' per holiday leave year (pro rata for part time employees), which will run from your date of joining and will be pro rata for your first year. Holidays not taken cannot be carried forward to the next holiday year. On leaving McDonald's you will be paid for any pro rata holiday entitlement not taken in your current holiday year as detailed in the Hourly Paid Employee Handbook."*

10. Both bundles included a copy of the Employee Handbook (C59-135/R46-122). This contained a section headed "*Holiday Entitlement*" which provided employees with (so far as relevant) the following information –

*"Holiday year runs in line with the calendar year from 1<sup>st</sup> January to 31<sup>st</sup> December.*

*Holiday entitlement is shown in the following table:*

<b>Service</b>	<b>Annual Entitlement</b>	<b>Monthly Entitlement</b>
<i>Under 1 year's continuous service</i>	<i>28* days pro-rata to the number of months remaining in the holiday year in which employment is commenced</i>	<i>This equates to 2.50 days per complete calendar month's service</i>
<i>Over year's continuous service</i>	<i>28* working days per annum</i>	<i>This equates to 2.50 days per complete calendar month</i>

*NOTE: \*28 days includes bank holidays....*

*Holiday entitlement cannot be carried forward to the next year unless holidays have not been taken due to sickness absence....*

*Please refer to your individual Statement of Terms and Conditions for your annual leave entitlement."*

11. A letter from the respondent's solicitors emailed to the Tribunal dated 18 January 2023 (R24-25) provided the following information about holidays taken by the claimant and holiday pay received by her –

*"From 12 July 2021 to 11 July 2022, (the first leave year) the Claimant worked an average of 4.17 days per week. From 12 July 2022 until her effective date of termination on 23 September 2022 (the second leave year) the Claimant worked an average of 3.27 days per week....*

*In the Claimant's first leave year, her pro-rata holiday entitlement was based on weekly hours worked, which totalled 23.4 days holiday. The calculation used is 5.6 (statutory holiday entitlement) x 4.17 (average days worked by the Claimant).*

*The Claimant took and was paid for a total of 12 days holidays in this period on the following dates:-*

- 13-18 December 2021 (4 working days). Holiday pay paid on 19 December 2021: £217.96*
- 28-29 December 2021 (2 working days). Holiday pay paid on 02 January 2022: £109.26*

- 19-20 March 2022 (2 working days). Holiday pay paid on 27 March 2022: £114.52
- 20-26 June 2022 (4 working days). Holiday pay paid on 03 July 2022: £237.84....

5 Whilst there is no contractual right for accrued untaken holidays to be carried over into the next leave year, the Respondent does have an "Hourly Paid Employees Guide" which explains that a maximum of 5 days can be carried over, depending on the Franchise. The Respondent's policy is such that if holidays are permitted to be carried over, they must  
10 be used within the first 6 weeks of the new leave year.

The Claimant was permitted to carry over the maximum 5 days into the second leave year, commencing on 12 July 2022, and thus forfeited the remaining 6.4 days.

15 In the Claimant's second leave year (from 12 July 2022 to her termination date on 23 September 2022) the Claimant accrued 3.7 days holiday.

If the Claimant remained in employment for the duration of the second leave year, she would have accrued 18.31 days holiday. The calculation used is 5.6 (statutory entitlement) x 3.27 (average days worked by the Claimant). However, as the Claimant only worked 10.5 weeks of the  
20 second leave year, between 12 July 2022 and 23 September 2022, the holiday entitlement must be pro-rated based on the proportion of the year in employment. To calculate the Claimant's weekly holiday entitlement, the calculation used is 18.31 (annual holiday entitlement during the second leave year) divided by 52, which equals 0.35. The Claimant was  
25 therefore entitled to 0.35 days holiday per week. As the Claimant was employed for 10.5 weeks of the second leave year, she accrued 3.7 days holiday. The calculation used is 0.35 (weekly holiday entitlement) x 10.5 (weeks in employment in the second leave year).

30 With the additional 5 days which were carried over, the Claimant had 8.7 days holiday to use. The Claimant took and was paid for a total of 8 days holiday in this period on the following dates:-

- 08-13 August 2022 (4 working days). Holiday pay paid on 14 August 2022: £243.24
- 05-10 September 2022 (4 working days). Holiday pay paid on 11 September 2022: £248.24

5        *Upon termination of the Claimant's employment on 25 September 2022, the Claimant was paid a further 0.5 days holiday, an amount of £31.55 (gross). The Claimant therefore received a total of 8.5 days holiday pay in the second holiday leave year amounting to £523.03.*

10        *It is accepted that the Claimant is due 0.2 days holiday in the sum of £12.41 (gross)."*

12. The respondent's solicitors subsequently wrote to Mrs Vickers on 25 January 2023 (R31-36) with a revised calculation of the claimant's holiday pay entitlement. The differences from the figures contained in the letter to the Tribunal of 18 January 2023 were as follows (using the figures  
15 in Appendix 1 which differed slightly from those in the body of the letter) –

(a) The average days worked in the first leave year reduced from 4.17 to 3.3.

(b) The average days worked in the second leave year reduced from 3.27 to 3.05.

20 (c) The number of days of holiday accrued in the first leave year reduced from 23.4 to 18.48 (rounded up to 18.5).

(d) The number of days of holiday unused at the end of the first leave year reduced from 11.4 to 6.5 (and so the number of carryover days remained 5).

25 (e) The number of days of holiday accrued between 12 July and 23 September 2022 reduced from 3.7 to 3.47 (rounded up to 3.5) (both figures excluding the 5 carryover days).

13. The result of this revised calculation was that the claimant's accrued holiday entitlement on termination of employment reduced from 0.2 days to nil. The  
30 letter of 25 January 2023 explained the change in these terms –

5 “Upon further review of the Claimant’s Time Sheets, it has come to light that her average hours of work differed to that included in our email of 18 January 2023. As the Claimant’s average hours were in fact less than previously considered, the Respondent’s position on the Claimant’s holiday entitlement has also reduced.”

**MySchedule and MyStuff**

14. The claimant referred during her evidence to MySchedule and MyStuff. She said this –

10 “I booked holidays online on MySchedule. If I was not sure what I was entitled to I would look at MyStuff where you can see what holidays you have left. But it sometimes changes – your entitlement went up and down.”

I was satisfied that the claimant was aware of MyStuff and had some degree of familiarity with its contents. I accepted Mr Dornan’s evidence that the Employee Handbook was available to employees online and in MyStuff.

15 15. Within the respondent’s bundle I had a document headed “MyStuff 2.0 – My Holidays” and subtitled “Hourly Paid Employees Guide” (the “Guide”) (R40-45). This contained a number of definitions, including these –

20 “Holiday Year                      This is the calendar year in which your holiday allowance will be need to be taken. For McOpCo restaurants, this is 1 January to 31 December. If you work for a Franchisee, please check with your Business Manager as your holiday year may be different.

25 Annual Holiday Entitlement                      This is the number of holiday days that you are entitled to. This will be proportional to the average days worked.

30 Holiday Projection                      If you have more than one year’s service, to allow you to see and take your full entitlement, we have to project your holiday for the year at the start based on your Holiday Reference Period and Average Pay per Day.





18. Information about holidays was also provided in employees' payslips. The claimant's payslips between 19 December 2021 and 25 September 2022 (R123-141) were included in the respondent's bundle. Each payslip contained two boxes described as "*Holiday Entitlement*" and "*Holiday Taken*". I accepted Mr Dornan's evidence that it was the holiday donut rather than her payslips which recorded accurate information about the claimant's holiday entitlement.

19. Mr Dornan explained that an employee's payslip assumed that the hours of work remained constant. If the employee's days/hours of work reduced, it took time for this to be reflected in the payslip. The claimant accepted that she had reduced her hours of work in July 2022.

***Mr Dornan's explanation***

20. Mr Dornan provided this explanation of how the respondent's holiday system worked in the claimant's case –

(a) The first holiday year ran from her start date until the first anniversary of that date (12 July 2021 – 11 July 2022).

(b) The second holiday "*year*" ran from that first anniversary until the end of the calendar year (12 July – 31 December 2022).

(c) The holiday year thereafter coincided with the calendar year.

***Claimant complains***

21. On 8 September 2022 Mrs Vickers emailed the respondent (C41) asserting that the claimant was entitled to more days of accrued holiday on termination of employment than acknowledged by the respondent. Attached to this was the claimant's calculation (C42). The argument appeared to be that the claimant was entitled as at 3 September 2022 to 10 (or perhaps 10.5) days of accrued holidays whereas the respondent's position was said to be that she was entitled to only 7 days.

22. The claimant's evidence was that her calculation was based on the information contained in her payslips. She said that she was "*never told where I could find stuff*". I understood that following the termination of her employment, she would no longer have access to MyStuff.

23. The claimant had a meeting with Ms L McCammon, the respondent's Business Manager, on 19 September 2022. She followed this up with an email to Ms McCammon on the same date (C44) in which she (a) asserted that she (Ms McCammon) had failed to address the matters raised in the  
5 email of 8 September 2022 and (b) stated that she would not be contacting People Services as Ms McCammon had suggested as *"I feel that you, as the restaurant's Business Manager, should be able to give me a definitive answer to the number of holidays I will receive as payment in Lieu"*.

24. Ms McCammon replied on 23 September 2022 (C45). She told the claimant  
10 that People Services were going to provide the relevant details. She explained the claimant's holiday accrual position in these terms –

*"In the first years' service your holiday entitlement runs from July 2021 to July 2022. After one years' service your holiday balance will be re-set and re-projected from Mid July 2022 until the end of the year, 31<sup>st</sup> December  
15 2022. After one years' service our holiday period runs from 1<sup>st</sup> January to 31<sup>st</sup> December. Should any adjustments be made to the number of hours worked then your projected holiday entitlement will be re-calculated on the new information."*

25. I pause to observe that this demonstrated that Ms McCammon understood  
20 exactly how the respondent's holiday accrual system worked, and was capable of explaining it in terms which were not difficult to understand.

26. The claimant replied by email on 26 September 2022 (C46-47). Her email contained this paragraph –

*"My confirmation of employment letter contains some employment details  
25 but fails to include important mandatory information such as;- hours of work being zero, variable or fixed, sick pay procedures and SSP for variable hours workers. Notice periods for those on variable/zero hours, how often wages are paid and the differences between accrued and statutory holidays and how holidays become statutory after a year of employment and the no  
30 obligation to offer or accept work relationship between employer and employee or why work's allocated the week before and why unpaid leave has to be applied for and officially approved rather than just declining work*

*offered. I received no copy of a formal contract and neither my confirmation of employment or Staff Handbook contain this vital information.”*

27. There was an exchange of brief emails between Mr Dornan and the claimant on 29/30 September 2022 (C47). The claimant’s correspondence of 8-29 September 2022 was not understood by the respondent as intimation of a grievance, and no formal grievance procedure was initiated.

### **Comments on evidence**

28. There were two significant conflicts in the evidence. The first related to whether the claimant had been provided with the Particulars of Employment letter dated 9 July 2021. The claimant’s position was that she had not seen this until *“a few weeks ago”*.

29. I noted that the claimant referred in her email of 26 September 2022 to *“My confirmation of employment letter”*. Contained within the claimant’s bundle were a number of communications from the respondent from the time of her recruitment, as follows –

(a) An email dated 2 July 2021 (C35a) confirming the arrangements for her job interview.

(b) An email dated 6 July 2021 (C36) confirming that she had been successful at interview.

(c) An email dated 10 July 2021 (C37) providing a link to <https://www.mcdstuff.co.uk> and advising the claimant of her employee number.

(d) Another email dated 10 July 2021 (C39-40) explaining how the claimant should access her online McDonalds account.

(e) What appeared to be a text message (undated) (C34) in letter format confirming the claimant’s appointment, her start date and rate of pay. This included *“For full terms and conditions please see your contract and employee handbook”*.

30. The claimant’s reference to her *“confirmation of employment letter”* could have meant either the undated text message or her Particulars of Employment, as both were in letter format. I considered that the criticisms

in the paragraph I have quoted above from the claimant's email of 26 September 2022 made more sense if they were directed to her Particulars of Employment rather than the terms of the undated text message.

5 31. I came to this view based on a comparison of how the claimant's criticisms appeared to relate to either the Particulars of Employment or the text message –

10 (a) The Particulars of Employment did refer to hours of work but did not state whether they were "*zero, variable or fixed*". The text message made no reference to hours of work.

15 (b) The Particulars of Employment stated that the respondent did "*not operate an hourly paid sick pay scheme*". The text message made no reference to sick pay. The criticism was that the letter omitted information on "*sick pay procedures and SSP for variable hours workers*". This appeared to me to be more consistent with alleging that the information provided was non-compliant, rather than alleging that no information had been given.

20 (c) The Particulars of Employment included information about notice entitlement. The text message did not. The criticism related to "*Notice periods for those on variable/zero hours*". Again, this appeared to be more consistent with alleging non-compliant, rather than absent, information.

25 (d) In contrast, the reference in the claimant's email of 26 September 2022 to "*how often wages are paid*" made more sense if the claimant was referring to the text message (where there was no reference to frequency of payment) rather than the Particulars of Employment (where the claimant was told that her wages would be paid "*every other week*").

30 32. I considered that there were more pointers towards the claimant referring to the Particulars of Employment than the text message. I therefore considered the claimant's email of 26 September 2022 as supportive of the respondent's position that she had received the Particulars of Employment on 9 July 2021. I found that she had received her copy of the Particulars of Employment on that date.

33. The other area of conflict was whether the claimant had been told how her holiday entitlement was calculated. I decided that she had been told, by (i) receiving her Particulars of Employment, (ii) having access to the Employee Handbook and (iii) having access to MyStuff, including the holiday donut. I say more about this below.

### Submissions

34. I heard oral submissions from Mrs Vickers and Ms Turnbull.

35. The most telling point made by Mrs Vickers was that the respondent's staff should be able to understand how their holidays were worked out. It was not fair to put the information in so many different places.

36. The most telling point made by Ms Turnbull was that the claimant knew about MyStuff and the holiday donut. The information provided to Mrs Vickers on 25 January 2023 was accurate and demonstrated that no holiday pay was due.

### Applicable law

37. Section 1 of the Employment Rights Act 1996 ("ERA") (**Statement of initial employment particulars**) provides for an employer to give a worker a written statement of particulars of employment. In terms of section 1(4) –

*"The statement shall also contain particulars....of –*

*....(d) any terms and conditions relating to any of the following –*

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

38. Section 7A ERA (**Use of alternative documents to give particulars**) includes this provision –

*"(2) The employer's duty under section 1 in relation to any matter shall be treated as met if the document given to the worker contains information which, were the document in the form of a statement under that section,*

would meet the employer's obligation under that section in relation to that matter."

39. Section 13 ERA (**Right not to suffer unauthorised deductions**) provides, so far as relevant, as follows –

5       “(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

10       (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised –

15       (a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

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

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

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

- 30   40. Regulation 13 of the Working Time Regulations 1998 (“WTR”) (**Entitlement to annual leave**) provides for the entitlement to a minimum of 4 weeks' annual leave in each leave year. Regulation 13(9) provides as follows –

*“Leave to which a worker is entitled under this regulation may be taken in instalments, but –*

*(a) subject to the exception in paragraphs (10) and (11), it may only be taken in the leave year in respect of which it is due, and*

5 *(b) it may not be replaced by a payment in lieu except where the worker’s employment is terminated.”*

Paragraphs (10) and (11) of regulation 13 apply where a worker is unable to take leave due to the effects of coronavirus and so are not engaged in this case.

10 41. Regulation 13A WTR (**Entitlement to additional annual leave**) provides for the entitlement to additional annual leave of 1.6 weeks. Regulation 13A(7) provides as follows –

*“A relevant agreement may provide for any leave to which a worker is entitled under this regulation to be carried forward into the leave year immediately following the leave year in respect of which it is due.”*

15

Regulation 2 WTR (**Interpretation**) includes the following –

*“ ‘relevant agreement’, in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer.”*

20

## **Discussion**

42. I required to determine the contractual position in relation to the claimant’s holiday and holiday pay entitlement. The starting point was whether this was regulated by the Particulars of Employment provided by the respondent to the claimant. In view of my finding that the claimant had been given those Particulars, I found that they formed part of the claimant’s contract of employment.

25

43. I next considered whether the provisions relating to holiday and holiday pay entitlement contained in the Employee Handbook and the Guide also

30

formed part of the claimant's contract of employment. I found that they did. That was as a result of the operation of section 7A(2) ERA.

- 5 44. While the respondent had done most of what the law required in terms of providing the claimant with information about her holiday and holiday pay entitlement, I sympathised with Mrs Vickers' point about putting the information in so many different places. The difficulty for the claimant was compounded by the information appearing to be contradictory, and not meeting in full what section 1(4)(d)(i) ERA required.
- 10 45. The statement in the Particulars of Employment that "*Your holiday entitlement....will run from your date of joining and will be pro rata for your first year*" begged the question of what "*pro rata for your first year*" actually meant. Was it the year from the start date to the first anniversary of that date, or was it the period to the end of the calendar year?
- 15 46. The Employee Handbook stated that the holiday year was the calendar year (see paragraph 10 above). That this might not in fact be the case was addressed in the Guide by the sentence "*If you work for a Franchisee, please check with your Business Manager as your holiday year may be different*". It was apparent that the claimant's Business Manager, Ms McCammon, was able to articulate the position about the holiday year. She did so in admirably clear and concise terms in her email of 20 23 September 2022 (see paragraph 24 above).
- 25 47. What was missing within the contract documentation was information which allowed the claimant's entitlement to holidays and holiday pay to be "*precisely calculated*". To do that, she needed to know that her holiday year started off by being her first full year of employment, then became the part year to 31 December, then became the calendar year. The claimant could not have known this without being told.
- 30 48. Fortunately for the respondent, the failure to provide the claimant with documentation from the contents of which her holiday entitlement could be "*precisely calculated*" made no difference in this case. That was because the default position under WTR was that a worker's holiday year began on the start date and ran to the anniversary of that date, ie the same as the first stage of the system operated by the respondent.



49. The real point at issue here related to the carrying over of accrued but unused holiday entitlement at the end of the claimant's first year of employment. She did not use her full holiday entitlement during that year. I accepted the respondent's revised figures (see paragraph 12 above).  
5 During that year, the claimant accrued 18.42 days of holiday entitlement. She used 12 days, leaving 6.44 days (which the respondent rounded up to 6.5) potentially available to carry over.
50. This was not a case – as in ***King v Sash Window Workshop Ltd and another [2018] ICR 693*** – where the employer had refused to pay the  
10 worker for leave. The claimant did not allege that she had asked to take holidays in the year to 11 July 2022 and had been refused permission to do so. The evidence indicated that the claimant was aware (a) of how to book holidays on MySchedule and (b) that she could find out what holidays she had left on MyStuff (see paragraph 14 above). The information provided in  
15 the Guide was clear in relation to the availability of carryover of unused holiday entitlement from one holiday year to the next. There was nothing to suggest that the claimant had been discouraged from using her holiday entitlement.
51. The contractual position was that accrued but untaken holidays could not  
20 be carried over, unless the fact that the holidays were not taken was due to sickness absence (see paragraph 10 above) which did not apply in this case. Notwithstanding that, and irrespective of the contractual status of the arrangement, the respondent accepted that 5 days could be carried over. These 5 days were included in the respondent's calculation of the claimant's  
25 holiday pay position on the termination of her employment. I found that this calculation was correct and I agreed with the result that the claimant had no accrued but untaken holiday entitlement.
52. This meant that the claimant's argument, that she had submitted a  
30 grievance with which the respondent had failed to deal, became academic as there was no award of compensation which could be subject to an uplift for unreasonable non-compliance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the "Code").

53. However, for the sake of completeness, I record that I considered that the claimant had submitted a grievance such as to engage the respondent's grievance procedure. The Code defines grievances in these terms –

5 *“Grievances are concerns, problems or complaints that employees raise with their employer.”*

54. Mrs Vickers' email of 8 September 2022 (C41), sent on the claimant's behalf, did raise a complaint about holiday entitlement. The complaint was reiterated in the claimant's text message of 16 September 2022 (C43).  
10 When the issue was not resolved informally the respondent should have asked the claimant if she wished to have it dealt with as a formal grievance. However, the failure to do so had no consequences in this case.

55. I understood that the claimant's allegation that the respondent had failed to provide her with written particulars of employment was included in her claim with a view to securing an award under section 38 of the Employment Act  
15 2002 (**Failure to give statement of employment particulars etc**). This was apparent from her schedule of loss (C3). It was not contended that I should determine what particulars ought to have been included. In any event, I found that (apart from the *“precisely calculated”* point mentioned above) the respondent had complied with its obligation to provide a  
20 statement of employment particulars.

### **Decision**

56. My decision is that, for the reasons set out above, this claim has to fail and is dismissed.

25 **Employment Judge: A Meiklejohn**  
**Date of Judgment: 8<sup>th</sup> February 2023**  
**Date sent to parties: 9<sup>th</sup> February 2023**