



# EMPLOYMENT TRIBUNALS

**Claimants:** Mrs J Peck, Mr D Box, Mr C Charters,  
Mrs L Charters, Mrs S Evans, Mr T Garbutt, Ms C Hall  
Miss P Liversidge, Ms D Metcalfe, Ms S Owen,  
Mrs Julie Parsons, Ms Justine Parson, Ms K Ransford  
Mr M Rouse, Mr D Sims, Mr S Sims, Mrs L Waite,  
Mr L White, Mr J Moulds, Mrs A Wallace

**Respondent:** GS Trading VI (Chesterfield) Limited

## RULE 21 JUDGMENT

Further to the tribunal's Judgments of 5 May 2016 and 9 November 2017, and to the 'unless' order under rule 38 contained in the tribunal's letter of 19 February 2018, which was not complied with by the specified date (or at all), resulting in the respondent's entire remaining response, including any defence to remedy, being dismissed, judgment is given in the claimants' favour in relation to the remaining parts of their claims without holding a hearing, pursuant to rule 21(2):

- (1) In relation to **Jennifer Peck** (2600945/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£5,775.18**, made up as follows:
    - a. £1,292.80 damages for breach of contract [notice pay];
    - b. £2,714.88 as a protective award (being pay over the additional 60 days of the protected period);
    - c. £474.70 in compensation for accrued but untaken holiday;
    - d. £1,292.80 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.
- (2) In relation to **Daniel Box** (2600946/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for



compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;

- (iii) he is awarded, and the respondent must pay him, an additional sum of **£5,383.48**, made up as follows:
- a. £225 in deducted wages;
  - b. £2,788 as a protective award (being pay over the additional 60 days of the protected period);
  - c. £1,042.48 in compensation for accrued but untaken holiday;
  - d. £1,328 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(3) In relation to **Carl Charters** (2600948/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) he is awarded, and the respondent must pay him, an additional sum of **£5,312.36**, made up as follows:
  - a. £175 in deducted wages;
  - b. £3,484 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
  - c. £581.36 in compensation for accrued but untaken holiday;
  - d. £1,072 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(4) In relation to **Linda Charters** (2600949/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) she is awarded, and the respondent must pay her, an additional sum of **£5,359.01**, made up as follows:
  - a. £175 in deducted wages;
  - b. £3,380 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
  - c. £764.01 in compensation for accrued but untaken holiday;



d. £1,040 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(5) In relation to **Sylvia Evans** (2600950/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) she is awarded, and the respondent must pay her, an additional sum of **£4,396.62**, made up as follows:
  - a. £1,286.40 damages for breach of contract [notice pay];
  - b. £1,800.96 as a protective award (being pay over the additional 60 days of the protected period);
  - c. £426.66 in compensation for accrued but untaken holiday;
  - d. £857.60 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(6) In relation to **Tegan Garbutt** (2600951/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) she is awarded, and the respondent must pay her, an additional sum of **£5,518.92**, made up as follows:
  - a. £175 in deducted wages;
  - b. £3,484 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
  - c. £787.92 in compensation for accrued but untaken holiday;
  - d. £1,072 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(7) In relation to **Cherise Hall** (2600952/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;



- (iii) she is awarded, and the respondent must pay her, an additional sum of **£5,224.85**, made up as follows:
- a. £269.25 in deducted wages;
  - b. £3,380 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
  - c. £535.60 in compensation for accrued but untaken holiday;
  - d. £1,040 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.
- (8) In relation to **Pauline Liversidge** (2600945/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£3,198.00**, made up as follows:
    - a. £780 damages for breach of contract [notice pay];
    - b. £1,638 as a protective award (being pay over the additional 60 days of the protected period);
    - c. £780 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.
- (9) In relation to **Debbie Metcalfe** (2600954/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£4,020.82**, made up as follows:
    - a. £250 in deducted wages;
    - b. £2,535 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
    - c. £455.82 in compensation for accrued but untaken holiday;
    - d. £780 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.



- (10) In relation to **Samantha Owen** (2600955/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£4,948.13**, made up as follows:
    - a. £3,380 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
    - b. £528.13 in compensation for accrued but untaken holiday;
    - c. £1,040 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.
- (11) In relation to **Justine Parsons** (2600957/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£5,003.00**, made up as follows:
    - a. £175 in deducted wages;
    - b. £3,692 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
    - c. £1,136 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.
- (12) In relation to **Kerry Ransford** (2600958/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£4,564.04**, made up as follows:



- a. £3,484 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
- b. £8.04 in compensation for accrued but untaken holiday;
- c. £1,072 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(13) In relation to **Martin Rouse** (2600959/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) he is awarded, and the respondent must pay him, an additional sum of **£5,808.57**, made up as follows:
  - a. £425 in deducted wages;
  - b. £3,749.20 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
  - c. £480.77 in compensation for accrued but untaken holiday;
  - d. £1,153.60 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(14) In relation to **Dean Sims** (2600960/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) he is awarded, and the respondent must pay him, an additional sum of **£11,369.24**, made up as follows:
  - a. £4,866.41 damages for breach of contract [notice pay];
  - b. £3,716.16 as a protective award (being pay over the additional 60 days of the protected period);
  - c. £1,044.07 in compensation for accrued but untaken holiday;
  - d. £1,769.60 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(15) In relation to **Simon Sims** (2600961/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;



- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) he is awarded, and the respondent must pay him, an additional sum of **£4,318.32**, made up as follows:
  - a. £368 damages for breach of contract [notice pay];
  - b. £2,251.20 as a protective award (being pay over the additional 60 days of the protected period);
  - c. £627.12 in compensation for accrued but untaken holiday;
  - d. £1,072 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(16) In relation to **Linda Waite** (2600962/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) she is awarded, and the respondent must pay her, an additional sum of **£4,916.56**, made up as follows:
  - a. £1,154.40 damages for breach of contract [notice pay];
  - b. £2,424.24 as a protective award (being pay over the additional 60 days of the protected period);
  - c. £183.52 in compensation for accrued but untaken holiday;
  - d. £1,154.40 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

(17) In relation to **Leon White** (2600963/2015):

- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
- (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
- (iii) he is awarded, and the respondent must pay him, an additional sum of **£4,420.00**, made up as follows:
  - a. £3,380 as a protective award (being pay over the whole 90 day period; the previous judgment did not specify the value of 30 days' pay);
  - b. £1,040 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.



- (18) In relation to **Jordan Moulds** (2601014/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) he is awarded, and the respondent must pay him, an additional sum of **£4,138.40**, made up as follows:
    - a. £150 deducted wages;
    - b. £2,184 as a protective award (being pay over the additional 60 days of the protected period);
    - c. £764.40 in compensation for accrued but untaken holiday;
    - d. £1,040 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.
- (19) In relation to **Alicia Wallace** (2601134/2015):
- (i) the protected period, previously specified to be at least 30 days, is 90 days, beginning on 31 January 2015;
  - (ii) the respondent failed to provide an itemised pay statement for November 2014 to January 2015, but the basis of the claim for compensation in respect of that failure is unclear and accordingly judgment is not given for the sum claimed under rule 21 at this time;
  - (iii) she is awarded, and the respondent must pay her, an additional sum of **£4,334.07**, made up as follows:
    - a. £780 damages for breach of contract [notice pay];
    - b. £2,184 as a protective award (being pay over the additional 60 days of the protected period);
    - c. £330.07 in compensation for accrued but untaken holiday;
    - d. £1,040 (4 weeks' pay) for failure to provide a statement of employment particulars / statement of changes.

## ORDER

- (20) Within 14 days of the date this is sent to the parties:
- (i) the claimants must either withdraw their claims for compensation for failure to provide itemised pay statements, or set out in writing in detail the legal and factual basis for those claims and/or request a remedy hearing to deal with those claims;





- (ii) the respondent must either provide in writing detailed submissions on the question of whether a financial penalty should be imposed on it under section 12A of the Employment Tribunals Act 1996 or request a hearing, to be attended by the respondent only, to decide that question.

## REASONS

1. As with the previous rule 21 Judgment, I think it would be helpful to provide short Reasons.
2. By way of background, I refer to the previous Judgment and my reasons for it, and to the tribunal's letters of 29 December 2017 and 19 February 2018, the latter of which contained an 'unless' order. That order was not complied with and the preamble to the above Judgment formally notifies the parties, in accordance with rule 38(1), that the unless order has therefore taken effect. In light of this, the remedy hearing listed for today [9 April 2018] and tomorrow was postponed at the direction of acting Regional Employment Judge Milgate. And on my return this morning to the Nottingham Employment Tribunals from sitting elsewhere and holiday, I looked at the file and decided that, pursuant to rule 20(1), I could properly determine what remains of the claims, apart from the complaints seeking compensation for failure to provide itemised pay statements in breach of section 8 of the Employment Rights Act 1996.
3. Most of the above Judgment and Order is self-explanatory. The figures in the Judgment come from the claimants' latest schedules of loss, the accuracy of which I have no good reason to doubt, particularly in light of concessions previously made by the respondent.
4. The respondent has not communicated with the tribunal, directly or indirectly, since the last hearing, in September 2017. It is in breach of a number of tribunal orders. Its solicitors apparently told the claimants' representatives that they were coming off the record, but they have not done so. The tribunal has been writing both to its solicitors and directly to the respondent (to its registered office address and to an address in Southampton that is understood to be the centre of operations of its sole registered director, Mr Daniel James O'Doherty) since February 2018. There is a sorry history, both in these proceedings and in previous proceedings, of lack of communication, broken promises, excuse-making, non-compliance with tribunal orders, and non-payment of sums accepted to be owed, by the respondent.



5. Two things in the above Judgment perhaps require further explanation:
- a. I have decided the protected period should be 90 days on the basis that Susie Radin Ltd v GMB [1994] ICR 893 suggests a proper approach where, as here, there has been no consultation is to start with the maximum period of 90 days and reduce it only if there are mitigating circumstances justifying a reduction. The respondent has denied itself the opportunity to rely on any such mitigating factors by its failure to comply with my unless order;
  - b. I don't think the respondent ever really had a defence to the claims for compensation under section 38 of the Employment Act 2002. Even if the claimants were at some stage provided with statements of employment particulars, they don't seem to have been given statements of changes when their employment TUPE-transferred to the respondent. In any event, any defences to the claims were dismissed when the unless order was breached. I have decided to award 4 weeks' and not 2 weeks' pay to reflect what seems to be the respondent's cavalier attitude to its obligations as an employer.
6. I should perhaps make clear that I have not yet decided whether or not this is a case for a financial penalty and I should welcome submissions from the respondent in that respect. I don't envisage the claimants having any say in relation to this, unless they positively wanted me not to impose one – and they have previously indicated, through their representative, that that is not their position. If the respondent fails to comply with the above Order, I shall make a decision about a financial penalty on paper, based on the information I presently have and without holding a further hearing.

Employment Judge Camp  
9 April 2018

SENT TO THE PARTIES ON  
17 April 2018

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S.Cresswell.....  
FOR THE TRIBUNAL OFFICE