

**Case Numbers: 1401187/2018  
1401255/2018  
1401269/2018  
1401318/2018  
1401858/2018  
1401949/2018**



# **EMPLOYMENT TRIBUNALS**

**Claimants:** Mrs S Rowe (1)  
Mrs R Blewett (2)  
Mrs A Rowe (3)  
Miss M Grose (4)  
Mrs G Kennell (5)  
Mr N Bryant (6)

**Respondent:** THE ITSTIBBITS FOOD CO LTD

**Heard at:** Bodmin **On:** 19 September 2018

**Before:** Employment Judge Maxwell

**Representation:**

**Claimants:** Mrs S Rowe, in person (1)  
no attendance or representation (2)-(6)

**Respondent:** no attendance or representation

# JUDGMENT

1. As to the claimant **Mrs S Rowe**:
  - 1.1. her claims of unfair dismissal and for a redundancy payment are dismissed because she lacks the necessary 2 years of qualifying employment to bring the same;
  - 1.2. her claim of unlawful deductions is well founded and succeeds, she is entitled to £398.40;
  - 1.3. her claim for breach of contract is well-founded and succeeds, she is entitled to £332;
  - 1.4. her claim for accrued untaken annual leave is well-founded and succeeds, she is entitled to £664.
2. As to the claimant **Mrs A Rowe**:
  - 2.1. her claim for a redundancy payment is dismissed because she lacks the necessary 2 years of qualifying employment to bring the same;
  - 2.2. no award is made on the unlawful deductions claim;
  - 2.3. no award is made on the breach of contract claim;
  - 2.4. no award is made on the annual leave claim.
3. As to the claimant Mrs **R Blewett**:
  - 3.1. her claim for unlawful deductions is well-founded and succeeds, she is entitled to £126;
  - 3.2. her claim for breach of contract is well founded and succeeds, she is entitled to £252;
  - 3.3. her claim for accrued untaken annual leave is well-founded and succeeds, she is entitled to £252
  - 3.4. her claim for a redundancy payment is well-founded and succeeds, she is entitled to a payment of £378;
  - 3.5. her claim of unfair dismissal is well-founded and succeeds, although no monetary sum is due in this regard;

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4. As to the claimant **Miss M Grose:**
  - 4.1. the name of the respondent to her claim is amended to reflect that set out above;
  - 4.2. her claim for unlawful deductions is well-founded and succeeds, she is entitled to £169.42;
  - 4.3. her claim for breach of contract is well-founded and succeeds, she is entitled to £282.38;
  - 4.4. no award is made on the annual leave claim;
  - 4.5. her claim for a redundancy payment is well-founded and succeeds, she is entitled to a redundancy payment of £141.19;
  - 4.6. her claim of unfair dismissal is well-founded and succeeds, although no monetary sum is due in this regard.
5. As to the claimant **Mrs G Kennell:**
  - 5.1. her claim for unlawful deductions is well-founded and succeeds, she is entitled to £49.20;
  - 5.2. her claim of breach of contract is well-founded and succeeds, she is entitled to £150;
  - 5.3. her claim for accrued untaken annual leave is well-founded and succeeds, she is entitled to £450.
6. As to the claimant **Mr Bryant:**
  - 6.1. his claim for unlawful Deductions is well-founded, he is to entitled £345.17 / 5 x 2 = £138.07;
  - 6.2. his claim of breach of contract is well-founded, he is entitled to £345.17;
  - 6.3. his claim for accrued untaken annual leave is well-founded, he is entitled to £690.34.

# REASONS

## Preliminary

7. Notice of hearing was sent to all the claimants and the respondent by the Tribunal on 22 August 2018. The only party to attend today was, however, Mrs S Rowe. Attempts by the Tribunal administration to contact the other parties this morning using the information provided in their claim and response forms were unsuccessful.

## Generally

8. All of the claimants were summarily dismissed on 6 March 2018, when Mr Tibbles of the respondent said that he was resigning as a director due to personal bankruptcy and closing the business. The company is still shown as active on the Companies House website.
9. I read and took into account the claim forms presented by the claimants, the response form submitted in connection with the claim (although expressly stated within the body of the same to have been submitted by Mr Tibbles in his personal capacity rather than on behalf of the respondent) and heard oral evidence from Mrs S Rowe.

## Mrs S Rowe

10. Mrs S Rowe brings claims for:
  - 10.1. Unfair dismissal;
  - 10.2. Redundancy payment
  - 10.3. Arrears of pay;
  - 10.4. Notice pay;
  - 10.5. Holiday pay.
11. Mrs S Rowe was employed between 2 April 2017 and 5 March 2018. Having less than 2 years' service, Mrs S Rowe cannot pursue an unfair dismissal claim or redundancy payment and these claims are dismissed.
12. Mrs S Rowe was paid £400 per week gross, which equated to net take home pay of £332 per week.

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### Unlawful Deductions

13. Mrs S Rowe was not paid for the 1 week and 1 day she worked immediately prior to her dismissal. For that period, she was paid less than was properly payable. She is entitled to 1 week's net pay £332 + 1 day's net pay £332/5 = £398.40

### Breach of Contract

14. Mrs S Rowe was entitled to 1 week's notice of dismissal. She was summarily dismissed on 6 March 2018. She is entitled to damages for breach of contract in the amount of 1 week's net pay, which is £332.

### Annual Leave

15. Shortly before her dismissal the claimant asked Mr Tibbles how much annual leave she had left. She asked this question because she understood the leave year ran from 1 April to 31 March, she wasn't allowed to take leave during the summer as this was the respondent's busy period, and she was keen to ensure she used up any outstanding leave before it was lost. The claimant said she did not keep a record of leave taken herself, that she and her colleagues trusted Mr Tibbles, accepting what he told them about their annual leave entitlement. Mr Tibbles told her that she had 2 weeks left, which she accepted as being correct. She did not, however, take that leave before being dismissed.
16. I am satisfied that as at the time of her dismissal that claimant had an outstanding right to 2 weeks' leave (i.e. that was the balance left after deducting the leave taken from the leave accrued in the year to date). She is entitled to a payment in that regard of 2 weeks at £332 = £664.

### **Mrs A Rowe**

17. Mrs A Rowe brings claims for:
  - 17.1. A redundancy payment;
  - 17.2. Arrears of pay;
  - 17.3. Notice pay;
  - 17.4. Holiday pay.
18. Mrs A Rowe does not give dates of employment in her claim form. Despite sharing the same surname, Mrs S Rowe and Mrs A Rowe are not related. Mrs S Rowe told me that Mrs A Rowe started in the respondent's employment a couple of months after she had done, in about June 2015, which evidence

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I accept. From this it follows that Ms A Rowe did not have the 2 years qualifying employment necessary to pursue a redundancy payment claim.

#### Unlawful Deductions

19. Mrs A Rowe was on holiday the week before her dismissal (i.e. taking annual leave) and was not paid for this. For that period, it would appear she was paid less than was properly payable. Unfortunately, however, as Mrs A Rowe has provided no information or evidence about the pay to which she was entitled, I cannot quantify her loss in this regard. The burden is on her to prove her loss. No award is made.

#### Breach of Contract

20. Mrs A Rowe was entitled to 1 week's notice of dismissal. She was summarily dismissed on 6 March 2018. She would be entitled to damages for breach of contract in the amount of 1 week's net pay. Unfortunately, however, as Mrs A Rowe has provided no information or evidence about the pay to which she was entitled, I cannot quantify her loss in this regard. The burden is on her to prove her loss. No award is made.

#### Annual Leave

21. Mrs A Rowe claims unpaid annual leave in the amount of 18 days. Whilst it would appear that at the time of her dismissal Mrs A Rowe had an outstanding right to annual leave, I cannot quantify the same. It is unclear whether the 18 days claimed is the balance left after the week that she took immediately prior to dismissal. Furthermore, given the lack of pay information I could not quantify this loss in any event. No award is made.

#### **Mrs R Blewett**

22. Mrs R Blewett brings claims for:

- 22.1. Unfair dismissal;
- 22.2. Redundancy payment;
- 22.3. Arrears of pay;
- 22.4. Notice pay;
- 22.5. Annual leave.

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23. Mrs Blewett was employed from 14 June 2015 to 6 March 2018. This is more than 2 years and as such, she has the right to complain of unfair dismissal and to pursue a redundancy payment. She cannot, however, recover both a basic award for unfair dismissal and a redundancy payment.
24. Mrs Blewett was paid £126 per week gross and did not pay tax or NI, so her net pay was also £126 per week.

#### Unlawful Deductions

25. Mrs Blewett was not paid for the week she worked immediately prior to her dismissal. She was, for that period, paid less than was properly payable. She is entitled to 1 week's net pay at £126.

#### Breach of Contract

26. Mrs Blewett was entitled to 2 weeks' notice of dismissal. She was summarily dismissed on 6 March 2018. She is entitled to damages for breach of contract in the amount of 2 week's net pay, which is £252.

#### Annual Leave

27. I am satisfied by the information in the claim form that as at the time of her dismissal that Mrs Blewett had an outstanding right to 2 weeks' leave (i.e. that was the balance left after deducting the leave taken from the leave accrued in the year to date). She is entitled to a payment in that regard of 2 weeks net pay, which is £252.

#### Redundancy Payment

28. Mrs Blewett had 2 complete years of employment and was not below the age of 41 during that time. She is entitled to a redundancy payment calculated as 2 years x 1.5 weeks x £126 = £378.

#### Unfair Dismissal

29. Given the closure of the respondent business and dismissal of all the staff, Mrs Blewett would have been dismissed by no later than this point even if a fair procedure had been followed. She has suffered no financial loss from the unfairness of the dismissal, as opposed to the fact of it. I make no compensatory award.

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**Miss M Grose**

30. Ms Grose brings claims for:
- 30.1. Unfair dismissal;
  - 30.2. Redundancy payment;
  - 30.3. Arrears of pay;
  - 30.4. Notice pay;
  - 30.5. Annual leave.
31. Miss Grose was employed from 8 June 2015 to 6 March 2018. This is more than 2 years and as such, she has the right to complain of unfair dismissal and to pursue a redundancy payment. She cannot, however, recover both a basic award for unfair dismissal and a redundancy payment.
32. Mrs Grose was paid £7,845 per annum gross [wrongly stated in the claim form as weekly], which equated to net take home pay of £7,362 [wrongly stated in the claim form as weekly]. On a weekly basis this amounts to £150.45 gross and £141.19.

Amendment

33. The name of the respondent to Miss Grose's claim is amended to "The ITSTIBBITS FOOD CO LTD", which was her former employer and is the correct respondent to this claim.

Unlawful Deductions

34. Miss Grose worked the same pattern of hours as Mrs S Rowe. In the week before her dismissal she would have worked Monday to Friday followed by the Sunday or the Monday and, on either basis, will have worked 6 days after being last paid and before her summary dismissal. In not receiving payment for those 6 days she received less than was properly payable. She is entitled to £141.19 plus  $\frac{£141.19}{5} = £169.42$ .

Breach of Contract

35. Miss Grose was entitled to 2 weeks' notice of dismissal. She was summarily dismissed on 6 March 2018. She is entitled to damages for breach of contract in the amount of 2 week's net pay, which is £282.38.

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Annual Leave

36. Miss Grose has provided no evidence or information as to how much annual leave she says was outstanding. I cannot be satisfied that any sum was due in this regard.

Redundancy Payment

37. Mrs Grose had 2 complete years of employment and was below the age of 22 during that time. She is entitled to a redundancy payment calculated as 2 years x 0.5 weeks x £141.19 = £141.19

Unfair Dismissal

38. Given the closure of the respondent business and dismissal of all the staff, Mrs Rowe would have been dismissed by no later than this point even if a fair procedure had been followed. She had suffered no financial loss from the unfairness of the dismissal, as opposed to the fact of it. I make no compensatory award.

**Mrs G Kennell**

39. Mrs G Kennell brings claims for:

39.1. Arrears of pay;

39.2. Notice pay;

39.3. Annual leave.

40. Mrs Kennell was employed between 2 March 2017 and 5 March 2018.

41. Mrs Kennell was paid £150 per week gross, which equated to net take home pay of £150 per week in her case.

Unlawful Deductions.

42. In the week before her dismissal, Mrs Kennell worked only 6 hours. She was not paid for those hours. She was, for that period, paid less than was properly payable. Whilst Mrs Kennell has not provided any information or evidence as to her hourly rate, I accept the evidence of Ms S Rowe that she would have been paid not less than £8.20 an hour. On this basis, she is entitled to 6 x £8.20 = £49.20.

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Breach of Contract

43. Mrs Kennell was entitled to 1 week's notice of dismissal. She was summarily dismissed on 6 March 2018. She is entitled to damages for breach of contract in the amount of 1 week's net pay, which is £150.

Annual Leave

44. I am satisfied by the information in the claim form that as at the time of her dismissal Mrs Kennell had an outstanding right to 15 days' leave (i.e. that was the balance left after deducting the leave taken from the leave accrued in the year to date). She is entitled to a payment in that regard of 3 weeks net pay, which is £450.

**Mr N Bryant**

45. Mr Bryant was employed between 23 May 2016 and 6 March 2018.
46. Mr Bryant was paid £440 per week gross, which equated to net take home pay of £345.17 per week.

Unlawful Deductions.

47. Mr Bryant was not paid for the work he did on 5 and 6 March 2018. He was, for that period, paid less than was properly payable. He is entitled £345.17 / 5 x 2 = £138.07

Breach of Contract

48. Mr Bryant was entitled to 1 week's notice of dismissal. He was summarily dismissed on 6 March 2018. He is entitled to damages for breach of contract in the amount of 1 week's net pay, which is £345.17.

Annual Leave

49. I am satisfied by the information in the claim form that as at the time of his dismissal that Mr Bryant had an outstanding right to 2 weeks' leave (i.e. that was the balance left after deducting the leave taken from the leave accrued in the year to date). He is entitled to a payment in that regard of 2 weeks net pay, which is £690.34.

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Employment Judge Maxwell

Date: 19 September 2018