



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: S/4123877/2018**

**Hearing Held at Dundee on 18 April 2019**

**Employment Judge: I McFatridge (sitting alone)**

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**Mr D Bil**

**Claimant  
In person**

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**JD Coffee Scotland Ltd**

**Respondents  
Not present or  
represented –  
no ET3**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is

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1. The respondents shall pay to the claimant the sum of Three Hundred and Sixty Pounds (£360) as damages for breach of contract (failure to pay notice pay).

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2. The claim under Regulation 30 of the Working Time Regulations 1998 is well-founded the respondents shall pay to the claimant the sum of One Hundred and Sixty Two Pounds and Fifty Six Pence (£162.56) in respect of leave accrued but untaken at the date of termination in terms of Regulation 14(2) of the said Regulations.

3. The claim of unfair dismissal is dismissed following withdrawal.

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E.T. Z4 (WR)

## REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed he had been unfairly dismissed. He only had 3 months' qualifying service. He also claimed that he was due various sums following the termination of his employment with the respondents. The respondents did not lodge a response within the statutory period. A hearing was fixed and at the hearing the claimant gave evidence on his own behalf. At the commencement of the hearing he withdrew his claim of unfair dismissal. He also lodged various documentary productions. On the basis of the evidence and the productions I found the following factual matters relevant to the claim to be proved or agreed.

### **Findings In Fact**

2. The claimant commenced employment with the respondents on or about 10 August 2018. He was employed as a Chef de Partie at their restaurant in Dundee. He was paid an hourly rate of £8.00 per hour. He worked on average 45 hours per week and his weekly gross pay was £360.
3. On 1 November 2018 the claimant was at work in the restaurant. He sent an e-mail to his employers indicating that he was leaving and giving them notice that he would be leaving with effect from 19 November. This e-mail was lodged (C6). During the course of the evening of 2 November whilst the claimant was at work there was an exchange of text messages between himself and the respondents' Head Chef. The claimant was told by text message that he should not work his notice and that he would finish up after today. The chef made reference to complaints about the claimant's performance. He promised that he would pay the claimant his entitlement in respect of holiday pay and in respect of hours worked.
4. The claimant left work on 2 November because he had been dismissed by the respondents without notice. That was the effective date of termination of his employment.

5. The respondents subsequently paid the claimant for the hours he had worked up to 2 November but did not make any payment to him in respect of notice pay.
- 5 6. The claimant met with CAB and they assisted him in calculating his entitlement to holiday pay. He used the calculator on the government website which indicated that he had accrued holiday pay equivalent to 62 hours of work. From this he deducted the figure for 10.93 hours which he had been paid on or about 9 October and the sum of 23.05 hours which he had received in his final pay slip. This left a balance of 28 hours. Having pointed this out to the respondents the respondents paid the claimant for a further 7.68 hours' holiday pay. The claimant is entitled to be paid a further 20.32 hours and as at the date of the hearing this had still not been paid by the respondents. The holiday pay which the claimant is due and remains unpaid is 20.32 hours at his hourly rate of £8.00 amounting to £162.56.
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### **Observations on the Evidence**

7. At the hearing the claimant confirmed that although he had ticked the box on the form claiming unfair dismissal he was not pursuing this claim given his length of service. The claimant went through the history of matters. He had helpfully lodged the relevant documents including a transcript of the exchange of text messages on 2 November. He gave his evidence in a patently straightforward and honest manner and I had absolutely no hesitation in accepting his evidence as being both credible and reliable.
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### **Discussion and Decision**

8. It is clear from the documents that the claimant gave notice of termination which would involve him continuing to work for the respondents up to 19 November. It is also clear to me that the respondents did not accept this but instead dismissed the claimant without any notice at all on 2 November. In terms of Section 86 of the Employment Rights Act 1996 the claimant was entitled to one week's notice. This was not paid. In my view the claimant is entitled to be paid one week's pay in lieu of the notice he was entitled to.
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The claimant worked 45 hours per week at £8.00 an hour and is therefore due to be paid the sum of £360 under this head.

9. I accepted the claimant's evidence regarding holiday pay. He indicated that he had sat down with the CAB and worked out the total entitlement using the form on the government website. I accepted the figure he gave me in relation to this which showed that following termination of his employment he was due pay for a further 28 hours in respect of his holiday entitlement. The claimant accepted that the respondents had since paid him the sum in respect of 7.68 hours leaving 20.32 outstanding. The claimant is therefore entitled to £162.56 in respect of annual leave accrued but untaken as at the termination of his employment.

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30 **Employment Judge:**  
**Date of Judgment:**  
**Entered in register:**  
**and copied to parties**

**Ian McFatridge**  
**24 April 2019**  
**25 April 2019**