



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4104852/2017**

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**Held in Glasgow on 20, 21, 22 and 28 August 2018 (Final Hearing);  
and 17 December 2018 (Members' Meeting)**

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**Employment Judge: Ian McPherson  
Members: Kenneth Thomson  
Donald Frew**

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**Mr Peter Docherty**

**Claimant  
In Person**

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**Houston Bottling And Co-Pack Ltd**

**Respondents  
Represented by:  
Mr Ciaran Robertson  
Solicitor**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The **unanimous** Judgment of the Employment Tribunal is that: -

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(1) The claimant was unfairly dismissed by the respondents, and so his complaint of unfair dismissal by the respondents, contrary to **Sections 94 and 98 of the Employment Rights Act 1996**, is successful, and it is upheld by the Tribunal.

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(2) The Tribunal rejects, as not well-founded, the respondents' argument that the claimant's leaving the respondents' factory on 24 July 2017, after the start of his shift, when he was assigned a new team, amounted to an immediate resignation of his employment, on the basis that later that same afternoon, the claimant phoned the respondents, advising that he would return to work the next day, which he did, when he was then suspended on full pay whilst a

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disciplinary investigation was instructed, leading to his summary dismissal from employment by the respondents on 1 August 2017.

5 (3) Further, in respect of the claimant's unfair dismissal, the Tribunal finds that the claimant did not, by culpable or blameworthy conduct, cause or contribute to his dismissal, and so the Tribunal rejects, as not well-founded, the respondents' further argument that the claimant's compensation for unfair dismissal should be reduced on the basis of his contributory conduct.

10 (4) In respect of the respondents' further **Polkey** argument that the claimant's compensation for unfair dismissal should be reduced on the basis that he would have been dismissed fairly, in any event, if a fair procedure had been followed by the respondents, the Tribunal rejects that argument as not well-founded.

15 (5) The respondents having unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures, by the way they conducted the investigation, disciplinary and appeal meetings held with the claimant, and by their repeated failures to investigate the claimant's mitigating  
20 circumstances, and his complaint about Liz Pryde, the Tribunal finds that it is just and equitable in all the circumstances that the claimant's compensatory award from the Tribunal be increased by **15%**, in accordance with the Tribunal's powers under **Section 207A of the Trade Union and Labour Relations (Consolidation ) Act 1992.**

25 (6) Accordingly, in respect of his unfair dismissal, the Tribunal orders the respondents to pay to the claimant the total sum of **FIVE THOUSAND, SIX HUNDRED AND THIRTY-TWO POUNDS, AND ONE PENCE (£5,632.01)** by way of compensation for unfair dismissal, as per the calculation schedule  
30 shown below at paragraph 2 of the undernoted Reasons.

(7) The claimant having been in receipt of State benefits after his dismissal by the respondents, the **Employment Protection (Recoupment of Benefits)**

**Regulations 1996** apply, and their effect is explained in the accompanying Recoupment Schedule.

5 (8) The prescribed element is **£2,577.40** and relates to the period from 1 August 2017 to 28 August 2018, and the monetary award exceeds the prescribed element by **£3,054.61**.

10 (9) Further, in respect of the claimant's complaints of unlawful disability discrimination against him by the respondents, namely discrimination arising from disability, contrary to **Section 15 of the Equality Act 2010**, failure to make reasonable adjustments, contrary to **Section 20 of the Equality Act 2010**, and harassment contrary to **Section 26 of the Equality Act 2010**, the Tribunal finds that those heads of complaint are not well-founded, and so they are all dismissed by the Tribunal.

15 (10) In respect of the respondents' representative's failure to comply with certain case management orders of the Tribunal, prior to the start of this Final Hearing, the Tribunal finds that failure to have been unreasonable conduct of the proceedings by the respondents' representative, being a failure to comply  
20 with an Order of the Tribunal, as also a failure to assist the Tribunal to further the overriding objective under **Rule 2 of the Employment Tribunals Rules of Procedure 2013**, but their failure to do so having been remedied, in the course of this Final Hearing, the Tribunal makes no further order as regards Wasted Costs against them, as the Final Hearing was thereafter conducted  
25 and concluded within the allocated sitting.

30 (11) Finally, there being no application made at the Final Hearing by the claimant for a Preparation Time Order against the respondents, the Tribunal notes that the claimant has 28 days from date of issue of this Judgment to intimate any such application, in terms of **Rules 75 to 79 of the Employment Tribunals Rules of Procedure 2013**, to the Tribunal, with a copy sent at the same time to the respondents' representative, and, in that event, if application is made by the claimant, and opposed by the respondents, the Tribunal will

thereafter determine any appropriate further procedure before the Tribunal to deal with that matter.

### REASONS

1. Written Reasons for this reserved Judgment of the Tribunal are reserved,  
5 and they will be issued in writing, at a later date, in terms of **Rule 62 of the Employment Tribunals Rules of Procedure 2013.**

2. Meantime, for the assistance of both parties, the amount of unfair dismissal compensation payable to the claimant, and how it has been calculated, is  
10 set forth in the following Schedule:

**A. Basic Award:** 6 weeks @ £386 gross per week = £2,208.

The claimant as employed by the respondents from 21 February 2011 to 1  
15 August 2017. He was aged 41 at the time of his dismissal, and he had 6 years' continuous employment with the respondents as at that effective date of termination. His gross weekly wage was £386 per week with the respondents.

**B. Compensatory Award:**

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Past Loss of Earnings:

Net weekly pay with the respondents at **£313** per week.

25 Date of dismissal to the last day of Final Hearing: 1 August 2017 to 28 August 2018 = 56 weeks: 56 @ £313 = £17,528, if the claimant had been at work with the respondents during that period.

30 But, on account of the claimant not being fit to work during that period, and there being no enhanced contractual sick pay scheme in operation, that amount falls to be reduced, in terms of **Section 123 of the Employment Rights Act 1996**, to 28 weeks of Statutory Sick Pay @ **£92.05** per week = **£2,577.40**, being the "prescribed element".

35 Future Loss of Earnings:

**Nil award** by the Tribunal, on the basis that the claimant, as at the last day of the Final Hearing, was still not fit to work, and he had no new employment obtained, or contemplated.

5 **Loss of Statutory Rights: £400**

**Total Compensatory Award = £2,977.40**

10 **C. Statutory Uplift to Compensatory Award for unreasonable failure to comply with ACAS Code of Practice**

**15% x £2,977.40 = £446.61**

15 **Total Monetary Award (A + B+ C) = £5,632.01**

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25 **Employment Judge: I McPherson**  
**Date of Judgment: 19 December 2018**  
**Entered in register: 20 December 2018**  
**and copied to parties**

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