



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4103102/2019 Hearing at Edinburgh on 8 July 2019

Employment Judge: M A Macleod

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James Green

Claimant  
In Person

Forresters Arms

Respondent  
Not Present and  
Not Represented

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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1. The claimant's claims, being undefended, succeed, and the Judgment of the Employment Tribunal is that the respondent is ordered to pay to the claimant the sum of **Six Thousand Seven Hundred and Sixty Nine Pounds and Thirty Pence (£6,769.30)**.

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2. The Employment Protection (Recoupment of Job Seeker's Allowance and Income Support) Regulations 1996 apply to this award. The monetary award in this case is £2,145.28. The prescribed element is £2,145.28, and the dates to which that prescribed element applies are 12 January 2019 until 6 March 2019 (8 weeks). The monetary award does not exceed the prescribed element.

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### **REASONS**

3. The claimant presented a claim to the Employment Tribunal on 20 March 2019 in which he complained that the respondent had dismissed him unfairly and unlawfully deprived him of certain payments which he claimed he was due.
- 5 4. The respondent did not submit an ET3 response.
5. A Hearing was therefore listed to take place on 8 July 2019. The claimant appeared on his own behalf, and the respondent, though not entitled to participate, neither attended or was represented in any event.
6. The claim was therefore undefended.
- 10 7. The claimant gave evidence, and provided documents in support of his claim. From that information, I was satisfied that I was able to reach certain conclusions about this case.

### **Decision**

- 15 8. The claimant was unfairly dismissed. His employment was terminated in circumstances, and for reasons, which remain very unclear. He worked as a barman in the respondent's bar. During the course of the evening of 12 January 2019, there was a fight involving a number of customers, which spilled into the street outside the bar. After the claimant and others had sought to calm the situation down, he was informed by David King, husband of Roberta (Sylvia) King, the licensee, that he should "get his coat", and  
20 "never set foot in there again".
9. No explanation was given to the claimant for his dismissal. He was not invited to a meeting at which he was told what allegations were being made against him, nor did he have the opportunity to advance any explanation in  
25 response to such allegations. He was not provided with a letter of dismissal explaining the reasons, nor was he permitted a right of appeal against his dismissal.
10. In these circumstances, his claim of unfair dismissal succeeds.
11. The Tribunal then considered the information relating to his losses.

12. The claimant's date of birth is 15 July 1965, and he was therefore aged 53 as at the date of his dismissal. He commenced employment with the respondent on 20 January 2012 (or thereabouts). He had 6 completed years' service with the respondent as at the date of his dismissal.

5 13. The claimant was paid £268.16 per week by the respondent, working 35.5 hours per week.

14. The claimant was paid on 19 January 2019 up to the date of his dismissal, plus a further week's pay by way of his "lie-in" week. That week's pay represented his first week's working with the respondent, which was unpaid until his employment ended. He received no pay by way of notice payment.

15. Following his dismissal, the claimant has received Universal Credit. He has obtained new employment, working as a cleaner for the University of Edinburgh, commencing on 6 March 2019, earning £135 per week basic, and on 2 weekends a month since April he has worked 6 hours on top of his basic 15 hours per week.

16. Universal Credit ceased in March when he took up his new employment.

17. It is my judgment that the claimant is entitled to receive the following awards in respect of unfair dismissal:

20 • Basic award – in terms of section 119 of the Employment Rights Act 1996, the claimant is entitled to receive one and half weeks' pay for each year of service in which he was not below the age of 41. His employment began in 2012, when the claimant was 47, and accordingly he is entitled to  $1.5 \times 6 \times £268.16 = £2,413.44$ ;

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• Compensatory award – in my judgment, it is just and equitable to award the claimant compensation until 6 March 2019, when he obtained alternative employment, and that therefore accounts for a

period of 8 weeks from his dismissal. That award is therefore 8 x £268.16 - £2,145.28;

- Loss of statutory rights – it is just and equitable that the claimant is also awarded a sum of £350 in respect of the loss of his statutory rights following dismissal.

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18. The respondent is therefore ordered to pay to the claimant the total sum of £4,908.72 in respect of his unfair dismissal.

19. There is no basis before me for any reduction of this award based on the claimant's own conduct in this matter.

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20. The claimant is due to receive a payment in respect of notice. He worked for 6 completed years for the respondent, and in terms of section 86(1)(b) of the Employment Rights Act 1996 he is entitled, therefore, to 6 weeks' pay by way of notice of termination. This amounts to £1,806.96.

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21. The claimant also complains that he was entitled to holiday pay accrued but untaken as at the date of termination of his employment. He had not taken any holidays as at 12 January 2019, but the holiday year began on 1 January 2019. As a result, he was, by that stage, only entitled to 1 day's leave. The respondent must therefore pay to the claimant the sum of £53.62 by way of a day's pay in respect of annual leave accrued but untaken as at the date of termination of his employment.

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22. Accordingly, the claimant's claim succeeds, and the respondent is ordered to pay to the claimant the sum of £6,769.30.

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23. The Employment Protection (Recoupment of Job Seeker's Allowance and Income Support) Regulations 1996 apply to this award. The monetary award in this case is £2,145.28. The prescribed element is £2,145.28, and the dates to which that prescribed element applies are 12 January 2019

until 6 March 2019 (8 weeks). The monetary award does not exceed the prescribed element.

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**Date of Judgment: 11<sup>th</sup> July 2019**

**Employment Judge: Murdo MacLeod**

**Date Entered in Register: 12<sup>th</sup> July 2019**

**And Sent to Parties**