



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4110492/2019

Employment Judge: M A Macleod

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Mr M Y Alkozay

Claimant

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Dunblane Enterprise Ltd

Respondent

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

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The Judgment of the Employment Tribunal is that:

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- (1) The respondent's response is struck out in terms of Rule 37(1)(b) of the Employment Tribunals Rules of Procedure;
- (2) The claimant's claims of unfair dismissal and unlawful deductions from wages therefore succeed; and
- (3) The respondent is ordered to pay to the claimant the sum of **Two Thousand Four Hundred and Thirty Pounds and Fifty Eight Pence (£2,430.58)**.

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**REASONS**

1. Following a hearing on the merits listed to take place on 18 February 2020,  
5 the Employment Tribunal issued a Strike Out Warning letter to the  
respondent dated 18 February 2020.
2. The respondent was warned that the sitting Employment Judge was  
considering striking out the response on the grounds that the manner in  
which the respondent had conducted the proceedings had been  
10 unreasonable in terms of Rule 37(1)(b) of the Employment Tribunals Rules  
of Procedure 2013. The reason for this warning being issued was that the  
respondent had failed to attend or be represented at the hearing of 18  
February. It was understood that the reason why the respondent had not  
attended at the hearing was that he had forgotten that the hearing was due  
15 to take place on that date.
3. The respondent was invited to give reasons by no later than 25 February  
2020 as to why he disagreed with the proposal to strike out the response, if  
he did so disagree.
4. No response was received by the respondent following the issue of that  
20 Strike Out Warning.
5. In the absence of any response, the Tribunal had decided to strike out the  
response to this claim. The respondent did not attend at the hearing of 18  
February 2020, though the claimant and his partner, who was representing  
him, did so in a timeous manner, and were clearly prepared and ready to  
25 proceed with the hearing. Following the hearing, where no acceptable  
reason was put forward by the respondent for non-attendance, the  
respondent failed to respond at all to the Strike Out Warning letter issued to  
him.
6. Accordingly, it is my judgment that the respondent's response is struck out  
30 under Rule 37(1)(b).

7. The claimant's claim is for unfair dismissal and unlawful deductions from wages.
8. Following the hearing, the claimant has presented some documents, on the basis of which I consider that it is appropriate to issue a full Judgment in this case.
9. The claimant was employed from May 2014 until 1 June 2019. The respondent presented him with a letter of dismissal dated 1 June which confirmed that his employment was terminated from that date, due to "bad behavior on work".
10. The claimant worked for 16 hours per week as a kitchen porter at the India Gate Tandoori Restaurant, Dunblane, owned and operated by the respondent, and his weekly pay was £131.36.
11. His date of birth is 1 January 1989. He was aged 29 when he was dismissed.
12. The claimant confirmed that he secured new employment, at exactly the same pay, from 19 August 2019.
13. In my judgment, it is just and equitable to make the following awards to the claimant in respect of the unfair dismissal claim:
- Basic award – 5 years' completed service -  $£131.36 \times 5 = £656.80$ .
  - Compensatory award – in my judgment, it is just to award the claimant compensation for a period of 6 weeks following his dismissal -  $£131.36 \times 6 = £788.16$ .
  - Loss of statutory rights - £250.
14. In total, therefore, the respondent is ordered to pay to the claimant the sum of £1,694.96 in respect of his unfair dismissal.
15. The claimant also complains that he was unlawfully deprived of his notice pay. In my judgment, it is not appropriate to make any additional award in

respect of notice pay, having taken that period into account in calculating the claimant's compensatory award.

5 16. Finally, the claimant is complaining that he did not receive holiday pay. It is just and equitable to award the claimant 5.6 weeks' pay in respect of holidays not taken during the final year of his employment with the respondent. Accordingly, the respondent is ordered to pay to the claimant the sum of £735.62 in relation to unpaid holiday pay.

17. The claimant's claim therefore succeeds.

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30 **Employment Judge:**  
**Date of Judgment:**  
**Date sent to parties:**

**M A Macleod**  
**19 March 2020**  
**20 March 2020**