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EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Number: 4104745/2018

Held in Glasgow on 21 December 2018

Employment Judge: Laura Doherty

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Mrs J Stewart

Claimant
By Written Submission

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Austins (Dalbeattie) LLP

First Respondent

**Secretary of State for Business, Energy
& Industrial Strategy**

Second Respondent
By Written Submission

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that;

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- 1 The first respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay the claimant the sum of **Three Hundred and Sixty-Five Pounds and Thirty Eight Pence (£365.38)**.

E.T. Z4 (WR)

- 2 The claimant was dismissed in breach of contract in respect of notice and the first respondent is ordered to pay damages to the claimant of the sum of **Seven Hundred and Thirty Pounds and Seventy Six Pence (£730.76)**.
- 5 3 The claimant was dismissed by reason of redundancy and is entitled to a redundancy payment of **Ten Thousand, Nine Hundred and Sixty One Pounds and Forty Pence (£10,961.40)**.
- 4 The first respondent has failed to pay the claimants holiday entitlement and is ordered to pay the claimant the sum of **One Hundred and Eighty Two Pounds and Sixty Nine Pence (£182.69)**.
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REASONS

- 1 The claimant presented a claim to the Employment Tribunal on the 18th of May 2018, claiming unauthorised deduction of wages, breach of contract in respect of failure to give notice, a redundancy payment, and holiday pay in respect of leave which had accrued but not been taken, upon termination of her employment.
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- 2 The 1st respondent did not lodge a response to the claim but wrote to the Employment Tribunal explaining that a Judicial Factor had been appointed by the Law Society, and that the principal of the LLP, had been personally sequestrated.
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- 3 The 2nd respondents lodged a response to the claim. The basis of the defence was that it was not admitted that the 1st respondents were insolvent within the meaning of Sections 166 and 183 of the Employment Rights Act.
- 25 4 There has been considerable interlocutory correspondence between the claimant's representative, the principal of the 1st and 2nd respondents, and the judicial factor. Ultimately it was determined by the Tribunal that the claimant's claim would be considered by way of written submissions.

5 A direction was made for the production of written submissions. The Tribunal was in a position to determine the claim on the basis of the information which had been provided in the ET1 and the responses to it, and in correspondence sent to the tribunal.

5 **Findings in Fact**

6 On the basis of information contained ET1, which was not challenged, the Tribunal was able to reach the following findings in fact.

7 The claimant, whose date of birth is 27th of July 1955, was employed by the 1st respondents as Property Manageress.

10 8 The claimant work 35 hours per week, over 5 days per week, and was paid £365 gross per week, which was £312 net per week.

9 The claimant had been employed by the 1st respondents since 1 September 1980.

10 10 At the commencement of the employment the claimant worked for a week, for
15 which she was not paid any wages.

11 The claimant's employment was terminated on 8 February 2018, because the 1st respondents ceased trading. David Currie, the principal of the 1st respondents was made bankrupt. The Law Society of Scotland appointed a Judicial Factor to the 1st respondents in March 2018. There are no funds to
20 pay any claims, including a claim for a redundancy payment, which the claimant has made. This was confirmed by the Judicial factor, and the Tribunal accepted that this was the position as a matter of fact.

12 At the point when the claimant's employment came to an end she was given no notice of the termination of employment. The claimant was entitled to 2
25 weeks' notice in terms of her contract of employment.

13 At the point when the claimant's employment came to an end she had accrued 2 ½ days of annual leave for which she was not paid.

14 The claimant did not receive a redundancy payment upon the termination of employment

Consideration

5 15 The Tribunal was satisfied that the claimant's position was redundant in that the 1st respondents business ceased trading, and therefore there was no longer a requirement for the role of Property Manageress which the claimant had performed.

10 16 That being the case the Tribunal was satisfied that the claimant was dismissed by reason of redundancy, as defined in Section 136 of the Employment Rights Act 1996 (the ERA) and the claimant is entitled to a Redundancy Payment. That payment is calculated under Section 162 of the ERA and is based on the claimant's age, her gross weekly wage, and length of service. The claimant had been employed by the first respondent for over 30 years and therefore the maximum multiplier is applied. The Redundancy payment which the claimant is entitled to is £10,961.40 which is the award the Tribunal shall make.

15 17 The Tribunal was also satisfied that the first respondents had made unauthorised deduction of wages, contrary to Section 13 of the ERA, in that they had withheld wages due to her for her 1st week of work, and the Tribunal shall make an award against the first respondent of £365.38 in respect of this.

20 18 On the basis of what is said by the claimant in the ET1, the Tribunal was satisfied that she is has a contractual entitlement 2 weeks' notice of termination of her employment, and that she did not receive this as she was summarily dismissed. Accordingly, the Tribunal shall make an award in respect of damages for breach of contract of £730.76 against the first respondent.

25 19 On the basis of the information in the ET1 the Tribunal was also satisfied that the claimant was entitled to payment in respect of 2 ½ days leave which had accrued but had not been taken on the termination of employment. The

claimant's weekly wage was £312 net, and therefore the Tribunal shall make an award of hundred is £182.69 in respect of this against the first respondent.

Employment Judge:

Laura Doherty

5 Date of Judgement:

21 December 2018

Entered in Register,

Copied to Parties:

27 December 2018

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