

RM



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr E McHenry  
**Respondent:** Members Limited t/a Marks Tey Hotel  
**Heard at:** East London (in public, by video)  
**On:** 18 February 2021  
**Before:** Employment Judge Moor  
**Members:** Ms M Long  
Mr M Rowe

## Representation

**Claimant:** In person  
**Respondent:** Mr Teclu, general manager

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V by Cloud Video Platform. A face to face hearing was not held because the relevant matters could be determined in a remote hearing.*

# JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The breach of contract claim succeeds. The Respondent is ordered to pay to the Claimant the sum of **£1163.93** gross, which should be paid via a payslip with tax and national insurance deductions but no deductions for pension.
2. The claim for holiday pay succeeds. The Respondent is ordered to pay to the Claimant **£391.04** paid via payslip as above.
3. The complaint of automatic unfair dismissal (for Trade Union membership) does not succeed.
4. The complaint of automatic unfair dismissal (for assertion of statutory rights) does not succeed.

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5. The complaint of automatic unfair dismissal (for a health and safety complaint) does not succeed.
6. The complaint of automatic unfair dismissal (for making a protected disclosure) does not succeed.
7. The complaint of direct race discrimination does not succeed.
8. The complaint of direct age discrimination does not succeed.
9. The complaint of unlawful deduction of wages does not succeed.

**Employment Judge Moor**

**22 February 2021**

Calculation of Remedy

*Contract Claim (Notice)*

1. The contract required a months' notice of termination. The Claimant was paid £349.20 in lieu of notice. We have found the Claimant was paid £1513.13 gross per calendar month. Therefore he is due:

$$£1513.13 - £349.20 = £1163.93 \text{ gross}$$

This should be paid via a payslip with tax and national insurance deductions from it but no pensions deduction.

*Accrued Holiday Pay*

2. The Claimant is only entitled to be paid for accrued leave in the leave year up to the effective date of dismissal. The agreed leave year was 1 April to 9 July = 99 days. The Claimant was entitled to 5.6 weeks. He had accrued  $99/365 \times 5.6 \text{ weeks} = 1.52 \text{ weeks}$ . 1 week's pay gross = 349.20

$$1.52 \times 349.20 = 530.78.$$

He was paid £139.74 in his final payslip for outstanding holiday

The sum therefore owing is  $530.78 - 139.78 = £391.04$  gross.

This should be paid via a payslip with tax and national insurance deductions from it but no pensions deduction.