



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4111310/19 (V)**

**Held on 5 February 2021**

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**Employment Judge J M Hendry**

**Mr S Conway**

**Claimant  
In Person**

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**Ian King, Meet the Meat Ltd**

**Respondent  
Represented by:  
Ian King,  
Director**

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### JUDGEMENT OF THE EMPLOYMENT TRIBUNAL

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**The Respondent company shall pay to the Claimant the sum of One Hundred and Forty Pounds sterling (£140) is settlement of accrued holiday pay.**

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### REASONS

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1. The claimant in his ET1 sought findings that he was due accrued but unpaid holiday pay. His former employers, the respondent company denied that the claimant was due any accrued holidays. Their position was that the accrued holidays had been taken or paid for.

2. The case proceeded to a CVP hearing on 13 November 2020. It became apparent during that hearing that various documents lodged by the claimant

**E.T. Z4 (WR)**

had not been copied to Mr King although he had been aware of the terms of the Employment Contract which was one of the documents concerned. I was anxious that he was able to see and consider the other documents consisting principally of photographs of rotas. The consequence of this is the case was set down for a further hearing on 5 February 2021 and for Mr King to comment on these documents and conclude the evidence and submissions.

### Issues

3. The issues for the Tribunal were generally straight forward. It was whether or not the claimant had taken a number of days as holiday leave or whether there was any accrued holiday due to him on termination.

### Evidence

4. I heard evidence from the claimant Stuart Conway and from Ian King, the owner and director of the respondent company. I considered the documents sent by the claimant to the Tribunal in his e-mail of 25 November (JB 1 to 5).

### Facts

5. The claimant is a butcher by trade. He worked for the respondents from November 2018 until 14 July 2019. He got on well with his employer Ian King.

6. The respondent's business is a relatively new business. Mr King works as a mechanical engineer. He often worked offshore. He had learned the butchery trade as a student and occasionally worked in the shop. He left much of the day-to-day running to his employees such as the claimant.

7. The claimant and other members of staff were on a rota. The rota was initially prepared one week in advance and then two or three weeks in advance where possible. Staff would work a 7 day week with 2 days off. The shop was open 7 days per week.

8. The claimant left his employment on 14 July 2019.

9. The company's holiday year began on 1 January. The respondent company gave employees 28 days holiday. The claimant worked for 6½ months and accrued 15 days holiday in 2019.

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10. The respondent had noted that the claimant had taken the following days leave:

- a) 1 and 2 January;
- 10 b) 5 February;
- c) 5 days from 16 February onwards;
- d) Easter – 2 days;
- e) May - 1 day (2 half days).
- f) July -two days deducted.

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(The two days in July were later altered to 1.5 days in the course of the hearing)

11. When the claimant resigned he spoke to Mr Ian King who told him that he had 2.46 days holiday remaining (rounded up to 2.5). He was offered time off or being paid for these days. The claimant elected to take the 10 and 11  
20 July as holiday. He was paid for 0.46 days rounded up to 0.5 days in his last month's pay.

12. On 2 July the claimant received a verbal warning ending his shift early. The employers estimated this as 1.5 days of lost time which was deducted from  
25 the claimant's holiday entitlement. The claimant denied he had taken time off and did not agree with the proposed deduction.

### Witnesses

13. The claimant was hampered by the fact that he had a poor recollection of  
30 many of the circumstances surrounding the taking of leave. He argued for example, he had only taken 3 days leave in February but 2 days of his holiday being made up of days he was voted not to work. He finally conceded that

he had taken 5 days. In relation to half days he had taken off he had no recollection of asking Mr King at short notice to take time off for family reasons. Mr King had however no recollection of these time periods because he had to work at short notice on one of the afternoons the claimant had taken off. In contrast Mr King had a greater grasp of the circumstances surrounding the taking of leave and in most matters was a more credible and reliable witness than the claimant.

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14. The differences between the parties came down to differences over their recollection of various events. The claimant denied that he had taken the 1 February off and pointed to the rota that showed he was due to work. Mr King however, recalled that the claimant at short notice had asked for a day's leave for personal reasons and the rota had to be re-organised because of this. I preferred Mr King's evidence in that regard.

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15. I have already mentioned 5 days leave taken in February in relation to what was a holiday in the Canary Islands. Mr King had a recollection of these events and ultimately his view that the claimant had taken 5 days holiday was accepted over the claimant's initial position that two days were made up of the two days that week that he was not rota'd to work. In relation to the Easter weekend the claimant pointed to the rota which showed he was due to work certain days. His photograph of the rota was taken prior to the days in question being worked and Mr King suggested that the claimant had taken the Friday and the Monday off and had not produced the previous rota which would have shown the true position. On balance the rota does seem to suggest that the claimant is correct in relation to the Monday. None of these changes were recorded at the time. It maybe that he took a day's holiday on the Friday, the Monday according to the rota appeared to be a day when he was not due to work. Accordingly, I prefer his evidence on the balance of probabilities and his claim succeeds in relation to one day.

16. We then looked at two half days he had deducted from his leave entitlement. The respondents had argued that the claimant had taken in May. Mr King's

evidence was persuasive in relation to these matters as he had first-hand experience of this period. He could remember details of the events and the reasons given by the claimant to justify the days off at short notice whereas the claimant could not. I had no difficulty preferring Mr Kings evidence in this regard and accordingly accept that one day's leave requires to be deducted.

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17. A slightly more tricky issue arose in relation to the 2 July 2019 when the claimant received a verbal warning for allegedly ending his shifts early. The claimant said he had no recollection of these matters but when the background was put to him he conceded that "it" rang a bell. His position was that he had left the shop early by no more than 10 minutes and he often worked later than his strict hours. Mr King's evidence was that he had heard from others that the claimant had left early. Unfortunately, details were not recorded at the time or followed up in writing of the position. Mr King's discussion with the claimant was not noted or recorded in any way. The claimant was adamant that he did not agree firstly that 1.5 days were lost and secondly, that it was agreed to be classed as an unauthorised holiday. In the circumstances I think Mr Conway's position has to be preferred. He has demonstrated that he was due 1.5 day's holiday and the onus passed to the employer to show why these 1.5 days should not be paid. I was not satisfied with the evidence on this matter.

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18. The claimant's employment ended with balance of his holiday pay being used up appropriately, 2 days being taken and half a day being paid. Accordingly, the claimant's claim succeeds to the extent of 2½ day's pay. It was accepted that the claimant worked 8 hours a day and that his hourly rate was £7 an hour.

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19. The respondent company can pay the £140 gross and leave it to the claimant to account for tax but perhaps a better way of proceedings is for them to deduct tax (National Insurance and PAYE) and pay the balance while accounting as it were for the deductions by issuing a payslip. If the claimant does not accept this the respondent can apply to the Tribunal to reconsider the Judgment and substitute the net figure which is not available today.

**Employment Judge**      **JM Hendry**

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**Dated**                      **15<sup>th</sup> of February 2021**

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**Date sent to parties**      **16<sup>th</sup> of February 2021**