



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100624/2020 (V)**

**Held via Cloud Video Platform (CVP) on 5 February 2021**

**Employment Judge: M Sutherland**

**Members: D Massie**

**N Richardson**

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**Teodor Asaftei**

**Claimant  
Represented by:  
Mr F Levere  
(Solicitor)**

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15 **Reliance (AB) Limited**

**First Respondent  
Represented by:  
Mr M Cohen  
(Employee)**

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**Deeside Food Limited (Dissolved)**

**Second Respondent  
No response and  
no appearance**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The unanimous judgment of the Tribunal is that –

1. The First Respondent was in breach of contract for failure to pay pension contributions and is ordered to pay to the Claimant the sum of £429.93.
2. The First Respondent was in breach of contract for failure to give notice of termination and is ordered to pay to the Claimant the sum of £1,664.65.
3. The First Respondent failed to make a payment in lieu of accrued holidays and is ordered to pay to the Claimant the sum of £806.72.

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4. The First Respondent failed to issue a written statement of employment particulars and is ordered to pay to the Claimant the sum of £1,846.16.
5. The claim against the Second Respondent is dismissed.

### REASONS

- 5 1. The Claimant has lodged complaints for breach of contract related to pension contributions and notice pay, for holiday pay, and for failure to issue a written statement of employment particulars.
- 10 2. The Claimant was represented by Mr F Lefevre, Solicitor. The First Respondent was represented by Mr M Cohen, employee of the First Respondent.
- 15 3. Following discussion, the Claimant confirmed that he was not bringing a complaint for failure to pay national minimum wage (which had been included in his schedule of loss but not in his claim). The Claimant also confirmed that he was not bringing a complaint for unlawful deduction from wages (notwithstanding an apparent discrepancy between his payment up until 15 December 2019 and his effective date of termination of arguably 31 December 2019).
- 20 4. Following discussion, the First Respondent accepted that there had been a transfer of the Claimant's employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 from the Second Respondent to the First Respondent in about September 2019 and accordingly any complaint against the Second Respondent (now dissolved in any event) falls to be dismissed.
- 25 5. Following discussions the First Respondent confirmed that it accepted both liability and the remedy sought in respect of the complaint of breach of contract for failure to pay employer pension contributions. The First Respondent accepted liability to pay notice pay but disputed remedy. The First Respondent accepted that the Claimant was entitled to be paid in respect of 10.5 days holiday as sought but asserted that this had already been
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paid. The First Respondent accepted liability in respect of a failure to issue a written statement of employment particulars but disputed the remedy sought.

6. The Claimant gave evidence on his own behalf. Mr Leo Chong, employee and Mr Man Phu, Director gave evidence on behalf of the First Respondent.
7. Parties had prepared a joint bundle of documents.
8. Parties gave oral submissions.

### Findings of Fact

9. The Claimant was employed by the First Respondent as an Assistant Manager working latterly in Valentino's Italian Bar & Restaurant. He reported to the General Manager. He was employed full time on a salary of £24,000. The Claimant had commenced employment with the Second Respondent in 5 July 2019 working initially in Soju Bar & Restaurant. He had completed a probationary period. His employment had transferred from the First Respondent to the Second Respondent in October 2019.

10. The Claimant was not provided with any written statement of any of his terms and conditions of employment at any time during his employment.

11. The First Respondent had agreed to make employer pension contributions of 4% but had failed to do so for a period of 23.29 weeks up to and including his termination date.

12. On 4 October 2019 and at the Claimant's request, the First Respondent made a loan of £1000 to the Claimant. That loan was repaid by the Claimant by deductions from his wages in October.

13. The Claimant was suspended on 15 December 2019. On 31 December 2019 he was advised of his dismissal without notice by intimation of his P45. That P45 erroneously stated that his leaving date was 15 December 2019. The restaurant burned down on 23 December and all other staff were subsequently made redundant.

14. There was no written or oral agreement between the parties as to the notice to be given by the employer to terminate the contract. It is customary in the restaurant trade for an assistant manager to be given at least 1 month notice of termination after completion of a probationary period.

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15. As at his termination date the Claimant had accrued 10.5 holidays which he had not taken and in respect of which he had not been paid.

### Observations on the evidence

10 16. The standard of proof is on balance of probabilities, which means that if the Tribunal considers that, on the evidence, the occurrence of an event was more likely than not, then the Tribunal is satisfied that the event did occur.

15 17. The Claimant was considered to be a credible and reliable witness. He was measured and reasonable in his testimony which was consistent with the documentary evidence. He gave clear evidence that over the course of his career that once he had completed his probationary period his notice period would increase to one month.

20 18. Mr Leo Chong was not considered to be a credible or reliable witness. His testimony on a material issue was not consistent with the other evidence. He asserted that the payment of £1000 to the Claimant was made in respect of holiday pay. At the date of payment on 4 October there was no liability to pay holiday pay (the Claimant's employment having not yet been terminated and accordingly there were no accrued holidays which could not simply be taken).  
25 In any event there was incontrovertible evidence that the Claimant had repaid that loan in October.

30 19. Mr Man Phu, Director was not considered to be a credible or reliable witness. His testimony on a material issues was not consistent with the other evidence. Drawing upon his considerable experience in the restaurant trade he insisted in chief that Assistant Managers are only ever entitled to 1 weeks' notice of

5 termination. However, he accepted in cross that this was not consistent with the requirement and practice of increasing notice with length of service. The entire workforce was made redundant around that time following the fire but there was no evidence as to what notice period the redundant staff had received upon termination and this was considered conspicuous by its absence.

10 20. It is considered more likely than not that in the restaurant trade an assistant manager is normally entitled to one month's notice on successful completion of a probationary period.

### **Discussion and decision**

#### Breach of contract - pension contributions

15 21. The First Respondent accepted both liability and the remedy sought in respect of the complaint of breach of contract for failure to pay employer pension contributions in sum of £429.93.

#### Breach of contract – notice pay

20 22. The First Respondent accepted liability to pay notice pay but disputed remedy. In the absence of express agreement an employee is entitled to reasonable notice. Having regard to general practice in the industry a notice period of 1 month is considered reasonable in the circumstances. The Claimant is therefore entitled to £1,664.65 in respect of a failure to give notice of termination.

#### Holiday pay

25 23. The First Respondent accepted that the Claimant was entitled to be paid £806.72 in respect of 10.5 days accrued holiday as sought but asserted that this had already been paid on 4 October 2019. This payment had not in fact already been paid and accordingly the First Respondent is liable to pay to the  
30 Claimant £806.72 in respect of holiday pay.

#### Failure to issue written statement of terms and conditions

24. The First Respondent accepted liability in respect of a failure to issue a written statement of employment particulars but disputed the remedy sought. The Claimant was not provided with any written statement of any of his terms and conditions of employment at any time during his employment. It is considered  
5 just and equitable in all the circumstances to increase the award to the higher amount of 4 week's pay namely £1,846.16.

**Employment Judge**

**M Sutherland**

**Date**

**12<sup>th</sup> of February 2021**

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**Date sent to parties**

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