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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4100354/2021**

**Hearing Held on 7 April 2021 by Cloud Video Platform (CVP)**

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**Employment Judge B Campbell**

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**Ms LesleyAnne Taylor**

**Claimant  
In Person**

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**Hasta Manana Limited**

**Respondent  
Represented by  
Mr Kamal Zakaria,  
Director**

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**JUDGMENT**

The Judgment of the Tribunal is that:

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1. The claimant was not paid for her full statutory entitlement to notice of termination of her employment by virtue of section 86(1) of the Employment Rights Act 1996 and the respondent is ordered to pay her the sum of £493.27 in compensation;
2. The claimant was entitled to a statutory redundancy payment of £3,399.15 pursuant to sections 135 and 162 of the Employment Rights Act 1996 which the respondent is ordered to pay to her; and

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3. The claimant was entitled to payment of £632.40 in respect of accrued annual leave under the Working Time Regulations 1998 which was unpaid on the termination of her employment and the respondent is ordered to pay that further sum.

### REASONS

1. This claim arose out of the claimant's employment by the respondent which began on 29 March 2005 and ended on 23 October 2020 with her dismissal by reason of redundancy.
2. The claimant represented herself at the hearing and gave evidence. The respondent was represented by Mr Kamal Zakaria, a director, who also gave evidence.
3. The parties' evidence was found to be credible and helpful, and the relevant background facts were largely capable of agreement. The following findings in fact were made.
4. The respondent operated a food service shop in the Gorbals area of Glasgow. The claimant worked there, with her duties involving preparing and selling food to customers and cleaning.
5. The claimant's date of birth is 20 August 1966.
6. The claimant worked 17 hours per week and latterly was paid £9.30 per hour.
7. The claimant had not been given a written statement of particulars of her employment, nor had she entered into any written contract. Her terms were largely agreed verbally. She was entitled to four weeks of annual leave per calendar year. Her notice entitlement was established by reference to section 86 of the Employment Rights Act 1996, namely 12 weeks by the time of her dismissal as by then she had worked continuously for more than 12 years.

8. As with many similar businesses, the respondent had to close its premises in later March 2020 in light of measures implemented in response to the Covid-19 pandemic. The claimant was placed on furlough under the UK government's Coronavirus Job Retention Scheme (CJRS) and received furlough pay at 80% of her normal amount.
9. The respondent's business did not subsequently reopen. On the advice from its accountants the respondent considered it would not be economical to resume trading. The company itself is still active but no activities are being carried out.
10. The claimant received a letter from the respondent dated 3 August 2020 which confirmed she was being given notice of the termination of her employment, to take effect on 23 October 2020. The letter stated the following in particular:
- 10.1. That she was entitled to 12 weeks' notice of termination of employment, which she was receiving by way of the letter;
  - 10.2. That she was entitled to a redundancy payment of £3,557.25 but that the respondent did not have the funds to pay her; and
  - 10.3. That she was entitled to £632.40 gross in respect of her annual leave entitlement, which the respondent was similarly unable to pay.
11. The claimant's employment came to an end on 23 October 2020 once the notice given in the letter was served.

**The claims – redundancy pay**

12. The claimant was dismissed from her role with the respondent. The reason for her dismissal was redundancy as provided for in section 139 of the Employment Rights Act 1996 which states as follows:

**139 Redundancy.**

(1) *For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—*

10 (a) *the fact that his employer has ceased or intends to cease—*

*(i) to carry on the business for the purposes of which the employee was employed by him, or*

*(ii) to carry on that business in the place where the employee was so employed, or*

15 (b) *the fact that the requirements of that business—*

*(i) for employees to carry out work of a particular kind, or*

*(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.*

20 13. The claimant was entitled to a statutory redundancy payment and that was acknowledged by the respondent. Applying the method set out in section 162 of the 1996 Act and based on her date of birth, gross weekly earnings and length of service she was entitled to the sum of £3,399.15. This is less than the figure provided by the respondent's letter of 3 August 2020, which stated  
25 a multiplier of 22.5 rather than 21.5 based on the claimant's age and length of service.

### Accrued annual leave

14. By virtue of the Working Time Regulations 1998 the claimant was also entitled to payment for any accrued holidays not taken by the date of termination of her employment. She was entitled to four weeks of paid leave per year and that had been the arrangement between her and the respondent for a number of years. The respondent acknowledged the claimant was due this amount and had calculated it to be £632.40 gross, which is the correct amount.
15. The claimant's weekly earnings would not exceed the threshold for income tax nor the primary earnings threshold at which employee National Insurance contributions are made, and accordingly she is entitled to the full amount.

### Notice pay

16. The claimant's claim in relation to notice pay requires to be addressed in two ways.
17. First, the amount of notice given to her fell short of her entitlement. The letter serving notice was sent on 3 August 2020. The earliest notice could begin running was therefore 4 August 2020. That being so, her notice period would have taken her to 27 October 2020 had it been fully served. As her employment was ended on 23 October 2020 she was unpaid for the balance of 4 days. This is calculated to be £126.48.
18. Secondly, under the rules of the CJRS as read in conjunction with section 86 of the Employment Rights Act 1996, the claimant was entitled to full pay (i.e. not the reduced furlough rate) for her notice period. She therefore was underpaid the balance of the two sums. This equates to 20% of her gross weekly pay figure of £158.10 for 11 weeks and 3 days, namely £347.82 plus £18.97 making £366.79.

19. Adding the two totals in the paragraphs immediately above brings out a figure of £493.27. Again, this is treated as not being subject to deductions for the same reasons as for the holiday pay claim.

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Employment Judge: B Campbell  
Date of Judgement: 14 April 2021  
10 Entered in register: 28 April 2021  
and copied to parties

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