



# EMPLOYMENT TRIBUNALS

**Claimants:** Miss J Brammall (1404313/2020)  
Miss R Fletcher (1404933/2020)  
**Respondent:** Grubs Up  
**Heard at:** Bristol Employment Tribunal (Via VHS)  
**On:** Friday, May 21, 2021  
**Before:** Employment Judge Mr M Salter  
**Representation:**  
**Claimants:** In person  
**Respondent:** Mr N Irvine, Managing Director

## JUDGMENT

It is the judgment of the tribunal that:

1. the Claimants suffered an unlawful deduction from wages;
2. the Claimants suffered a breach of contract;
3. Ms Fletcher is entitled to a Redundancy payment;
4. the Respondent shall pay to:
  - (a) Ms. Brammall the sum of £1,612.25 made up of:
    - a. Week's pay in hand: £403.75;
    - b. Notice pay: £403.75;
    - c. Accrued but untaken holiday: £804.75;
  - (b) Ms. Fletcher the sum of £720.21 being the balance of the money she had been paid after her dismissal by the Respondent and the total of her claimed Redundancy payment, Notice pay and accrued but untaken holiday.

## REASONS

### INTRODUCTION

1. These are my reasons given orally at the final hearing on 21<sup>st</sup> May 2021.
2. The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved online. All judgments and reasons since February 2017 are now available at: <https://www.gov.uk/employment-tribunal-decisions>. The Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there.

### BACKGROUND

The Claimant's case as formulated in their ET1s

3. The Claimants complaint, as formulated in their Forms ET1, presented to the tribunal on 19<sup>th</sup> August 2020 (Ms. Brammall), 19<sup>th</sup> September 2020 (Ms. Fletcher) is in short, they were owed for notice pay, holiday pay and in the

case of Ms Fletcher a redundancy payment. Ms. Brammall also claims for wages for the week she worked "in hand" at the outset of her employment.

#### The Respondent's Response

4. In its Forms ET3, received by the tribunal 23<sup>rd</sup> September 2020 (in relation to Ms Brammall) and 26<sup>th</sup> October 2020 (Ms. Fletcher). The Respondent's position was that the Claimant's had received these payments as they had received payments made after their dismissal. These payments were derived from the furlough scheme and was paid to them after they had been dismissed. The Respondent was, it says, acting in line with the furlough scheme when it was using furlough money to pay its redundancy payments and other associated costs.

#### Relevant Procedural History

5. The matter did not have any case management preliminary hearing, and various correspondence was entered into between the parties and tribunal concerning the progression of this case. In an email dated 17<sup>th</sup> May 2021, the Employment Tribunal noted that the facts in this matter were not disputed, but rather the issue was whether the Respondent was correct in its assertion that payment from furlough can cover the various payments the Claimants were seeking: notice pay, redundancy payment and accrued but untaken holiday pay.

#### TODAY'S HEARING

##### General

6. The matter came before me. The hearing had a three-hour time estimate. The Claimants represented themselves and the Respondent was represented by Mr. N. Irvine, Managing Director.
7. This was a remote hearing which was not objected to by the parties, being conducted entirely by CVP video platform. A face-to-face hearing was not held because it was not practicable and no-one requested the same.

#### DOCUMENTS AND EVIDENCE

##### Witness Evidence

8. I heard evidence from the Claimants, and from Mr Irvine. All witnesses gave evidence by way of written witness statements that were read by the me in advance of them giving oral evidence. All witnesses were cross-examined

##### Bundle

9. I did not have any bundle of documents, but rather had a series of photographs sent by Ms Brammall on 20<sup>th</sup> May 2020 and a collection of papers prepared by Ms Fletcher on 16<sup>th</sup> May 2020. During the hearing Mr Irvine provided a photograph of a year planner that was used for logging holidays. No other papers were provided by the Respondent

#### MATERIAL FACTS

##### General Points

10. From the evidence and submissions, I made the following finding of fact. I make my findings after considering all of the evidence before me, taking into account relevant documents where they exist, the accounts given by the Claimants and Mr Irvine in evidence. Where it has been necessary to resolve disputes about what happened I have done so on the balance of probabilities taking into account my assessment of the credibility of the witnesses and the consistency of their accounts with the rest of the

evidence including the documentary evidence. In this decision I do not address every episode covered by that evidence, or set out all of the evidence, even where it is disputed.

11. Matters on which I make no finding, or do not make a finding to the same level of detail as the evidence presented to me, in accordance with the overriding objective reflect the extent to which I consider that the particular matter assisted me in determining the identified issues. Rather, I have set out my principal findings of fact on the evidence before me that I consider to be necessary in order to fairly determine the claims and the issues to which the parties have asked me to decide.
12. Is a food delivery company, as part of the Coronavirus lockdown it placed its staff on furlough and then, later made a number of them redundant? Those whose employment ended were, it says, paid all monies that were owed to them through the furlough scheme. This includes the Claimants.
13. Ms Brammall worked for the Respondent from 4<sup>th</sup> February 2019 until her employment ended on 24<sup>th</sup> July 2020. Ms. Fletcher worked for the Respondent from 1<sup>st</sup> March 2017 until 20<sup>th</sup> July 2020. Both were employed as delivery drivers.
14. I heard largely unchallenged evidence from Ms Brammall about what happened to her for the period March to July 2020. In April she was asked by Mr Irvine to work as part of the takeaway team, which was a new venture for the Respondent since lockdown was in force. Ms Brammall chased Mr Irvine for an indication of when she would be back at work, she was told this may be June or July 2020.
15. On 8<sup>th</sup> June 2020 Ms Brammall was called by Mr Irvine. He informed her that he was calling to make people redundant, but that her situation was different, and that she would remain on furlough until 29<sup>th</sup> July when she would be deployed on a van at a building site in Bristol, and that when her pay through furlough ends, she could drive the takeaway van.
16. There is no dispute that Ms Fletcher was one of those dismissed on 8<sup>th</sup> June 2020. After her dismissal the Respondent continued to pay her for two months, I am told using money it obtained through the Furlough scheme.
17. On the 23<sup>rd</sup> June 2020, the Respondent announced it was stopping its takeaway service. Ms Brammall saw this announcement and contacted the Respondent asking what was going to happen to her as the takeaway option was not available.
18. On 17<sup>th</sup> July 2020, Ms Brammall saw Mr. Irvine outside of the Respondent's premises and was told by him that everyone had been issued with their P45's "apart from her"
19. On 24<sup>th</sup> July 2020, Mr. Irvine called the Ms. Brammall and offered her work on a new round in Bristol. He said he would not pay her for that week at work. Ms Brammall stated she could not afford to work without pay and later that day contacted the Respondent asking for payment of the week she worked in hand, her notice pay and her accrued but untaken holiday pay. Mr Irvine then called the claimant stating she had been paid all of this through the furlough payments she had received.
20. There were no:

- (a) contracts of employment in place between the Respondent and Claimant;
- (b) furlough agreements in place between the Claimants and Respondent
- (c) policies governing holiday produced before me, or in place.

## THE LAW

### Statute

21. So far as is relevant I have reminded myself of the various sections in the Employment Rights Act 1996 concerning redundancy payments, unlawful deduction from wages and notice pay.

### Guidance

22. I have been taken to various sources of guidance including Acas guides, CAB guides. None of the guidance supports the contention the Respondent seeks to rely upon. I remind myself that these are simply that, guidance, they are not statutory
23. I remind myself that Furlough does not affect the obligations employers have towards employees, it is an agreement between HM Treasury and employers to assist employers meet those obligations towards employees

## CONCLUSIONS ON THE ISSUES

### General

24. Having regard to the findings of relevant fact, applying the appropriate law, and taking into account the submissions of the parties, I have reached the following conclusions on the issues the parties have asked me to determine.

### Liability

25. As stated above there was little, if any dispute of fact, between the parties on the evidence I heard. The Respondent did not deny that these sums were owed by it, rather it stated it had paid these sums.
26. I do not consider that the Respondent is correct in its assertion that money claimed through the furlough scheme can be used to pay notice, redundancy payments or payments for accrued but untaken holiday that is owed on dismissal, these are payments owed by an employer to an employee that fall outside the furlough scheme.

### Remedy

27. There being no furlough agreement in place between the Claimants and Respondent, I find the Claimants are entitled to be paid outstanding wages at 100% of their normal pay.
28. The Respondent accepted it had erred in paying holiday pay at an 80% rate and that it should have been paid at 100%.

### *Ms Fletcher*

29. I find that Ms Fletcher has not received her notice or holiday pay when her employment ended and accept the calculations, she has set out on page 2 of her evidence: Redundancy pay of £1,068.75; notice pay of £1,068.75 and £641.25 for holiday pay.
30. I therefore make a declaration that Ms Fletcher has suffered an unlawful deduction from wages and a breach of contract.

31. However she did receive £2,058.04 from the Respondent after her dismissal. This is money derived from the furlough payments the Respondent received.
32. This is a short fall for Ms Fletcher of some £720.21 from what she is claiming in this matter. I therefore award her that short fall sum.

*Ms Brammall*

33. I find she was entitled for pay for her notice period and for unpaid wages, namely her week in hand, and her holiday she had accrued by the time her employment ended. This totals £1,612.25 as claimed in her bundle of papers (screenshot\_20210505-165440\_Samsung Notes.jpg). This sum comprises: holiday pay (£804.75) as set out, and her one week in hand as claimed (£403.75). I do not agree, however, with her calculation for notice pay. Ms Brammall claimed for four-week notice, being the usual pay period for her wages. However, she had no contract of employment and so the statutory minimum period contained within the Employment Rights Act would apply. Having one complete years' service that is one-weeks' pay (£403.75).
34. At the hearing I miscalculated Ms Brammall's losses by £82.75. the sum I set out above is the correct amount

**Employment Judge Salter**  
**Date: 02 July 2021**

Judgment and Reasons sent to the Parties: 08 July 2021

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.