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## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4106876/2020**

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**Held in Glasgow on 29 January 2021  
(By Telephone Conference Call)**

**Employment Judge: P O'Donnell**

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**Mr G S Smith**

**Claimant  
In Person**

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**Inseagan House Hotel Ltd T/a Inseagan**

**Respondent  
Represented by:  
Mr Mukhtar –  
Litigation Executive**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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The judgment of the Employment Tribunal is that the claim of breach of contract relating to notice pay and the claim for holiday pay having both been withdrawn and are hereby dismissed under Rule 52.

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### **NOTE OF PRELIMINARY HEARING**

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1. The following is a Note of the Case Management Preliminary Hearing held by telephone on 29 January 2021.
2. The purpose of this hearing was to clarify the issues in dispute and set further procedure for the claim to be resolved.

3. The first issue I wanted to address was to confirm the claims being pursued. The Claimant clarified that he was only pursuing a claim for statutory redundancy pay and that he had ticked the boxes on the ET1 in respect of “notice pay”, “holiday pay” and “other payments” because he was not sure if these were part of redundancy pay.
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4. I explained to the Claimant that he had raised claims for notice pay and holiday pay which needed to be resolved. He confirmed that he was happy for these claims to be treated as withdrawn and dismissed under Rule 52. I, therefore, dismissed these claims under Rule 52.
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5. The Claimant also confirmed and I have noted that no “other payments” sought except statutory redundancy pay.
6. In relation to the claim for statutory redundancy pay, the Respondent accepts that the Claimant was dismissed by reason of redundancy. The basis on which this claim is defended is that the Respondent alleges that the Claimant was overpaid (the Claimant denies this) and that they have withheld his statutory redundancy pay to cover the overpayment.
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7. I asked Mr Mukhtar for the statutory or other legal authority on which the Respondent relies as entitling them to withhold the Claimant’s statutory redundancy pay. He replied that the Respondent relies on s14 of the Employment Rights Act (ERA) as set out in the ET3.
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8. I explained to Mr Mukhtar that I had some difficulty in following this argument; s14 relates to claim for deduction of wages under Part 2 ERA and excludes certain deductions from being unlawful deductions of wages under s13. However, statutory redundancy pay is not “wages” for the purposes of Part 2 ERA and is specifically excluded from the definition of “wages” by s27(2). Statutory redundancy pay is covered by Part 11 ERA and I could not see the basis on which it was being said that a payment to which the Claimant had a
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statutory entitlement under those provisions of the Act could be withheld from him in the factual circumstances being described.

- 5 9. Mr Mukhtar indicated that he would need to take instructions and consider the matter. I was disappointed that he had not attended the hearing prepared to speak to what is the Respondent's pled case (albeit he was not the one who drafted the ET3) and this was preventing progress being made.
- 10 10. I indicated that I was considering, on my own motion, striking out the response under Rule 37(1)(a) as having no reasonable prospects of success but that, in keeping with the overriding objective, I would give the Respondent the opportunity to address this issue.
- 15 11. I, therefore, made the following directions:-
- 20 a. The Respondent will, within **14 days**, set out the statutory or other legal authority on which they say they are entitled to withhold the Claimant's statutory redundancy pay and why their response in the ET3 should not be struck out under Rule 37(1)(a) as having no reasonable prospects of success.
- b. Within **7 days** of that, the Claimant to make any comments on the Respondent's position that he wishes to make.
- 25 12. A further telephone Preliminary Hearing was listed for 10am on 26 February 2021 to consider the motion for strike-out and the appropriate further procedure.

30 Employment Judge: Peter O'Donnell  
Date of Judgment: 01 February 2021  
Entered in register: 03 February 2021  
and copied to parties

