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## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4107369/2020**

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**Hearing Held by Cloud Video Platform (CVP) on 28 April 2021 and concluding  
in Chambers on 26 May 2021  
Employment Judge A Strain**

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**Ms Zahra Motahar-Talemi**

**Claimant  
Represented by:  
Mr Liam McKay,  
Solicitor**

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**The Park Hotel Ayrshire Limited**

**Respondent  
Represented by:  
Mr Gordon Anthony,  
General Manager**

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## **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal is that:

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- (1) the claimant's claims in respect of notice pay, holiday pay, pension loss and unlawful deductions succeed.
- (2) the Tribunal makes an award of £4,518.14 in favour of the claimant and orders the respondent to pay her that amount.

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## REASONS

### Background

1. The claimant was represented by Mr Liam McKay, Solicitor. She asserted claims in respect of unpaid notice pay, unlawful deductions from wages,  
5 accrued unpaid holiday pay and pension loss.
2. The respondent was represented by Mr Gordon Anthony, General Manager.
3. The parties had lodged an Agreed Joint Bundle of Documents with the Tribunal and, following conclusion of the evidential hearing, a Schedule of Loss which was not disputed.
- 10 4. The claimant gave evidence on her part. The respondent led evidence from Mr Gordon Anthony, General Manager.

### Findings in Fact

5. Having heard the evidence of the claimant and Mr Anthony and considered the documentary evidence before it the Tribunal made the following findings  
15 in fact:
  - a) The claimant commenced employment with the respondent on 11 March 2020.
  - b) The claimant was employed by the respondent as a Waitress. She was employed to work 35 hours per week at £8.21 (Gross) per hour for the  
20 first two weeks and then £8.72 (Gross) thereafter.
  - c) She signed a written contract of employment on 11 March 2020.
  - d) At the end of March 2020 the claimant was put on furlough by the respondent. She did not agree to any reduction wages during the furlough period.
  - 25 e) The claimant remained on furlough until the respondent terminated her employment on 6 September 2020.

f) During the furlough period the claimant received Gross Wages of £3,154.75. She ought to have received £7,594.30. She suffered a deduction of £4,439.55 (Gross) or £3,419.50 (Net).

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g) The claimant did not receive payment of any notice pay which would have been £262.99 (Net).

h) The claimant did not receive payment of accrued holiday pay of £374 (Net).

i) The claimant suffered loss of pension contributions of £524.65 (Net).

### **The Relevant Law**

10 6. The claimant asserts claims for notice, holiday pay, pension loss and unlawful deductions from her wages by failing to pay her full rate of pay during furlough.

#### *Notice pay*

15 7. Section 86(1) of the Employment Rights Act 1996 (“**ERA**”) provides for minimum statutory notice periods to be given to employees at the rate of 1 week per year of employment. 1 week’s notice pay applies where an employee has less than 1 year’s service.

#### *Holiday Pay*

20 8. In terms of Regulations 13(3)(b)(ii) and 14 of the Working Time Regulations 1998 employees are entitled to be paid accrued untaken leave on termination of employment calculated in accordance with Regulation 16.

#### *Unlawful Deductions*

9. In terms of Section 13 of ERA an employer cannot make deductions from an employee's pay unless it is required or authorised by statute or the employee's contract or the employee consents.

## Submissions

- 5 10. Both parties made submissions.

## Discussion and Decision

### *Observations on the Evidence*

11. There was no material conflict on the evidence rather it was the interpretation of that evidence which was called into question.
- 10 12. The Tribunal generally found both witnesses to be credible and reliable.
13. Mr Gordon did not accept that the claimant had been recruited on a 35 hours per week contract without that contract having been run past and agreed to by him. The claimant had not been put on paid furlough leave due to her employment only having commenced on 11 March. At the commencement of furlough she was not eligible. It was only when the UK Government changed the eligibility dates that she became eligible. No agreement to furlough leave had been sought or obtained from her. Her holiday pay ought to be calculated on the hours she worked at the start of her employment.
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14. The claimant asserted that she had been given a 35 hour per week contract. She had signed and returned this.
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15. It clearly was not in dispute that the claimant had not agreed to go on furlough and as such had not agreed to accept only 80% of her pay.
16. The Tribunal accepted the claimant's evidence that she was given a 35 hour per week contract by the respondent.

*Notice pay*

17. The Claimant's employment was terminated without notice so she is entitled to one week's pay (£262.99).

*Holiday pay*

- 5 18. The claimant having been employed on a 35 hours per week contract is entitled to have her paid holiday leave calculated on the basis of her contractual week's pay.
19. She is entitled to £374 (Net).

*Unlawful Deductions*

- 10 20. No written contract or statutory enactment permitted the respondent to make deductions from the claimant's pay. No consent had been obtained from the claimant to the deductions. Whilst the Tribunal understands and appreciates the unique circumstances that prevailed due to the pandemic in the end of the day the respondent did not obtain the claimant's consent to the furlough leave
- 15 and she is accordingly due her full pay for the period under deduction of the payments received.
21. During the furlough period the claimant received Gross Wages of £3,154.75. She ought to have received £7,594.30. She suffered a deduction of £4,439.55 (Gross) or £3,419.50 (Net).
- 20 22. The claimant also suffered loss of pension contributions of £524.65 (Net).

*Total Award*

23. The Tribunal makes a total award of £4,581.14.

5 Employment Judge: Alan Strain  
Date of Judgment: 26 May 2021  
Entered in register: 21 June 2021  
and copied to parties

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