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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100061/2021

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Hearing Held via Cloud Video Platform (CVP) on 7-8 September 2021

Employment Judge Murphy

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Ms N Mazouni

**Claimant
Represented by
Ms Page,
Solicitor**

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Pure Bites Ltd

**Respondent
Not present
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The Tribunal declares that the claimant has been unfairly dismissed. The respondent shall pay to the claimant, subject to the Employment Protection (Recoupment of Benefits) Regulations 1996, a monetary award of TEN THOUSAND SIX HUNDRED AND THIRTY-EIGHT POUNDS AND TEN PENCE (**£10,638.10**). The prescribed element is FIVE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR POUNDS STERLING AND SEVENTY

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PENCE (**£5,854.70**) and relates to the prescribed period from 12 October 2020 to 26 April 2021. The monetary award exceeds the prescribed element by FOUR THOUSAND SEVEN HUNDRED- AND EIGHTY-THREE- POUNDS STERLING AND FORTY PENCE (**£4,783.40**).

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2. The respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the

claimant the sum of ONE THOUSAND EIGHT HUNDRED AND THIRTY FOUR POUNDS STERLING AND NINETY FOUR PENCE (**£1,834.94**) in respect of unpaid wages relating to one week of unpaid annual leave in September 2019 and 6.45 weeks' accrued untaken holiday outstanding as at the termination of employment on 12 October 2020.

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3. The respondent has made an unauthorised deduction from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of TWO THOUSAND ONE HUNDRED AND SIXTY SEVEN POUNDS STERLING AND FORTY FOUR PENCE (**£2,167.44**) in respect of unpaid wages relating to the claimant's period of furlough between 8 May and 19 June 2020 and between 7 September and 12 October 2020.

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4. The sums awarded at item 2 and 3 are expressed gross of tax and national insurance. It is for the respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.

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5. The respondent breached the claimant's contract of employment in failing to give the statutory minimum notice period of twelve weeks of the termination of the claimant's employment as incorporated into her employment contract by section 86 (4) of the Employment Rights Act 1996. There are no recoverable losses arising from such breach as any such losses have been compensated under the claimant's award for unfair dismissal at paragraph 1 above. The claimant's breach of contract claim is, therefore, dismissed.

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REASONS

Introduction

1. The claimant brings a claim for damages for failure to serve the statutory minimum notice period, a claim for an unauthorised deduction from wages in respect of accrued untaken holidays outstanding at the termination of her employment as well as a claim for one week of statutory holiday taken in September 2019 during which no pay was received.
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2. The claimant also has a complaint of unfair dismissal.
3. At the outset of the hearing, her representative identified that she believed the claimant had a breach of contract claim in respect of her notice period. It was pointed out that no such claim was disclosed by his ET1. In the circumstances, the claimant's representative was informed if she wished to pursue such a claim, she would require to make an application to amend her claim form to introduce the legal claim. An application was made and permission to amend was granted. The Tribunal considered the balance of hardship favoured the granting of the amendment in circumstances where the ET1 disclosed facts which could give rise to such a claim and such a claim was, in effect, a relabelling exercise. The claimant had been unrepresented when she prepared the claim form and mistakenly believed she had asserted such a claim when she referred to 'lying time'. The respondent was not present to be given notice of the application and oppose it if so advised, but the Respondent chose not to attend.
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4. This final hearing took place remotely by video conferencing. The parties did not object to this format. A face-to-face hearing was not held because of the Covid 19 pandemic and issues were capable of determination by a remote hearing.
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5. A notice of the claim was sent to the respondent. The respondent's (then) representative entered a response and grounds of resistance. Due to an

administrative error, the Respondent's 'Grounds of Resistance' document was not sent to the claimant. It was located during the hearing and an adjournment given to allow the claimant's representative to take instructions from the claimant upon its terms. The claimant was content to proceed with the hearing following the adjournment.

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6. A notice of the hearing was sent to the respondent's representative on 23 July 2021. The respondent did not attend and was not represented at the hearing.

7. The Tribunal wrote to the respondent on 1 September following receipt of a letter from the respondent's representative to advise that his firm had withdrawn from acting. The Tribunal asked the respondent to confirm in writing by return if it intended to resist the claim. No response was received to that inquiry. Further attempts were made in advance of the hearing to contact the respondent to arrange a CVP test. The Clerk emailed the respondent on 30 August 2021. The only response from the respondent was an email dated 3 September 2021 to the effect that the respondent company had ceased trading. The clerk attempted to call the respondent on 6 September 2021 and emailed the respondent on 7 September 2021 to clarify whether the respondent would attend the hearing. The respondent did not answer the calls or reply to the Clerk's email.

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8. It was elected to proceed with the hearing in the respondent's absence under Rule 47, having considered all information available and made such enquiries as were practicable as to the reasons for the respondent's absence.

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9. Oral reasons were given at the hearing. Written reasons will not be provided unless they were requested at the hearing or are asked for by any party within 14 days of the sending of this written record of the decision.

Employment Judge: Lesley Murphy

Date of Judgment: 09 September 2021

5 Entered in register: 15 September 2021
and copied to parties