



EMPLOYMENT TRIBUNALS

Claimants: Mrs R Gill Tomaz
Mr A E Tinum

Respondent: Churrasco Ltd

Heard at: Leeds (by Cloud Video Platform) **On:** 3 November 2021

Before: Employment Judge Bright

Representation

Claimants: In person

Respondent: Not in attendance

CORRECTED JUDGMENT

1. The claimants' complaint of automatic unfair dismissal under section 99 of the Employment Rights Act 1996 is well founded. The respondent shall pay to the first claimant compensation of **£10,956.25 net**. The respondent shall pay to the second claimant compensation of **£13,475 net**.

2. The Recoupment Regulations apply as follows:

First claimant

a. Grand total of compensatory award	£10,956.25
b. Prescribed element	£5,400.00
c. Period of prescribed element from 31.12.20 to 03.11.21.	
d. Excess of grand total over prescribed element	£5, 556.25

Second claimant

a. Grand total of compensatory award	£13,475.00
b. Prescribed element	£10,035.00
c. Period of prescribed element from 31.12.20 to 03.11.21	
d. Excess of grand total over prescribed element	£3,440.00

3. The claimants' complaint of pregnancy/maternity discrimination is well founded. The respondent shall pay to the first claimant compensation for injury to feelings of **£9,720** (of which £720 is interest). The respondent shall pay to the second claimant compensation for injury to feelings of **£6,480** (of which £480 is interest).

4. The claimants' complaints of breach of contract in respect of notice are well founded. The respondent shall pay to the first claimant damages of **£2,200**

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gross and to the second claimant damages of **£2,200 gross**.

5. The respondent made unauthorized deductions from the claimants' wages. The respondent shall pay to the first claimant of **£7,048.55 net** and shall pay to the second claimant compensation of **£6,819.65 net**.

Calculations Annex

Unauthorised deductions from wages

First claimant

1. From 23.03.20 (date of furlough) to 31.08.20 (date of final furlough payment received) = 4.25 months x £79.57 (difference between agreed furlough amount 80% net monthly wages of £1,440 and amount actually received net £1,360.43) = £338.17 net.
2. From 01.09.20 (start of zero wages) to 31 December 2020 (effective date of termination ("EDT")) = 4 months x £1,440 (agreed furlough amount 80% of net monthly wages) = £5,760 net.
3. Holiday accrued from 01.03.2020 to EDT 31.12.20 = 2.86 weeks x £332.30 weekly net wages = 950.38 net.
4. Total: £7,048.55 net

Second claimant

5. From 23.03.20 (date of furlough) to 31.08.20 (date of final furlough payment received) = 4.25 months x £25.71 (difference between agreed furlough amount 80% net monthly wages of £1440 and amount actually received net £1,414.29) = £109.27 net.
6. From 01.09.20 (start of zero wages) to 31 December 2020 (effective date of termination ("EDT")) = 4 months x £1,440 (agreed furlough amount 80% of net monthly wages) = £5,760 net.
7. Holiday accrued from 01.03.2020 to EDT 31.12.20 = 2.86 weeks x £332.30 weekly net wages = 950.38 net.
8. Total: £6,819.65 net.

Wrongful dismissal

First claimant

9. £2,200 (gross wages for one months' contractual notice).

Second claimant

10. £2,200 (gross wages for one months' contractual notice).

Automatically unfair dismissal:

First claimant

Basic award

11. No entitlement

Compensatory award

12. From 31.01.21 (end of notice period and start of maternity leave) to 31.07.21 (end of maternity leave) – no entitlement owing to government payment of statutory maternity pay.

13. From 31.07.21 (end of maternity leave) to 03.11.21 (date of assessment) = 3 months x £1,800 monthly net wages = £5,400 net.

14. From 03.11.21 (date of assessment) to 13.12.21 (start of new job) = 1.5 months x £1,800 monthly net wages = £2,700 net.

15. From 13.12.21 (start of new job) to 31.12.21 (anniversary of EDT and cut off for losses) = 0.5 months x £500 net (difference between net old monthly pay £1,800 and net new monthly pay £1,300) = £250 net.

16. Loss of statutory rights (1 week) £415 net

17. Sub-total £8,765.00 net x 25% uplift for employer's failure to follow ACAS Code (Grievance) x 1.25 = £10,956.25 net

Second claimant

Basic award

18. No entitlement

Compensatory award

19. From 31.01.21 (end of notice period) to 16.05.21 (date workplace re-opened) = 3.5 months x £1,440 agreed net monthly furlough pay = £5,040 net.

20. From 17.05.21 (date workplace re-opened) to 31.07.21 (start of new job) = 2.5 months x £1,800 agreed net monthly furlough pay = £4,500 net.

21. From 31.07.21 (start of new job) to 03.11.21 (date of assessment) = 3 months x £165 (estimated difference between old wages (£2,200 gross) and new wages (£1950 gross) calculated net of tax and national insurance at 33%) = £495 net.

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22. From 03.11.21 (date of assessment) to 31.12.21 (anniversary of EDT/cut off for losses) = 2 months x £165 (estimated differential in net pay between old and new jobs) = £330 net.

23. Loss of statutory rights (1 week) £415 each

24. Sub-total £10,780 net x 25% uplift for employer's failure to follow ACAS Code (Grievance) x 1.25 = £13,475 net.

Discrimination

First claimant

25. Injury to feelings of £9,000 plus £720 interest (at 8%) = £9,720.

Second claimant

26. Injury to feelings of £6,000 plus £480 interest (at 8%) = £6,480

Employment Judge Bright

28 February 2022

Note

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.