



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4118274/2018

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Held in Glasgow on 23 November 2018

Employment Judge: F Jane Garvie

10 **Mr R Duncan**

**Claimant
In Person**

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Lochmaben Brewery Company Ltd

**Respondent
No Appearance**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that

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1. The respondent has made an unauthorised deduction from the claimant's wages and is ordered to pay to the claimant the sum of £210;

2. The claimant was dismissed in breach of contract in respect of notice and is ordered to pay to the claimant the sum of £488.56;

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3. The respondent has failed to pay to the claimant accrued holiday entitlement and is ordered to pay to the claimant the sum of £182.79;

4. In relation to unfair dismissal the claimant is entitled to a basic award of £732.84 and the respondent is ordered to pay this amount to the claimant;

E.T. Z4 (WR)

5. In relation to a compensatory award he is entitled to future loss of 33 weeks which is the sum of £6,930 and the respondent is ordered to pay this amount to the claimant;
- 5 6. No award is made in relation to losses to the date of the remedy hearing and to 3 December 2018 as the claimant was unfit to work and accordingly the recoupment regulations do not apply;
- 10 7. The claimant is entitled to loss of statutory rights amounting to £500 and the respondent is ordered to pay this amount to the claimant and
- 15 8. The claimant is entitled to 10% uplift in respect of the respondent's failure to follow the Acas Code which applies to the above amounts with the exception of the basic award and the loss of statutory rights. It therefore amounts to £781.12 as set out in the table below under the Tribunal's reasons. The respondent is ordered to pay the said uplift of £781.13 to the claimant.

REASONS

1. In this case, a default Judgment in terms of Rule 21 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 was issued as the claim from the claimant had been sent to the respondent on 6 September 2018. The respondent failed in accordance with Rule 16 of the said rules to enter a response and accordingly the Employment Judge David Hoey directed that a determination could properly be made without a hearing as to the liability of the respondent for the claim but not in respect of remedy.
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2. The remedy sought was in relation to the claim for unfair dismissal to be determined at a remedy hearing. He also directed that liability in respect of wages due, notice pay due and holiday pay due would be considered at that hearing.
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3. There was no appearance for or on behalf of the respondent on 23 November 2018.

4. As indicated above, the claimant attended in person. The clerk was present throughout the proceedings. Following preliminary enquiries made of the claimant, he gave evidence.

Findings of Fact

5. The Tribunal found the following essential facts to have been established.
6. The claimant commenced employment with the respondent on 3 July 2016. He was employed as a barman at a public house operated by the respondent at 1593 Paisley Road West, Glasgow. The claimant gave as the employer the respondent Lochmaben Brewery Company Limited. He gave his effective date of termination as 23 July 2018. He specified that his gross pay per week was £241.80 and his normal take home pay £210.
7. He complained of unfair dismissal and sought also a redundancy payment, notice pay, holiday pay and arrears of pay and indicated that, if successful with his claim of unfair dismissal, he was seeking reinstatement that is his former job and compensation.
8. He had also set out at 8.2 information as to the position.
9. The claimant duly attended for work on 18 July 2018, having been told by the bar manager that he was to arrive earlier than his normal start time. Having done so, he arrived to meet the manager, Ms Cairns. He understood that she had been the manager of this public house for about 26 years. Mr Richard (Ricki) Cabrey who the claimant understood was the owner of the business arrived to meet him and said he wanted to have a discussion with Ms Cairns also in attendance. The claimant agreed to do so. There was no one present for or on behalf of the claimant. Mr Cabrey told the claimant that another member of staff had told him that the claimant had been leaving early on Sunday evenings. The claimant was to state his case. He said that "yes" he had left early on four Sundays but he had asked permission from Mr Cabrey on one occasion and from the manager on the other occasions. He had been told on each occasion that he could leave early.

10. Mr Cabrey said that he believed there were seven occasions when the claimant had left early. The claimant denied this and said that he had not done so. He had left early on four occasions but each time he was given permission to do so.
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11. Mr Cabrey then told the claimant that he was suspending him without pay pending further enquiries and that he would meet with him the following Monday or Tuesday. The claimant questioned what was to happen about his pay as his pay was always paid to him one week in arrears. He was told that he was being suspended without pay and that his wages would be paid the next day. Mr Cabrey did not do so.
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12. The claimant later received a text informing him that there was no need for him to attend a meeting as he had been dismissed.
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13. The claimant could not understand why this decision had been reached as on each occasion that he had left early had asked for permission and he did not understand that he had done anything wrong in doing so and being given permission to leave.
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14. The claimant understood that the present respondent was incorporated in June 2016. He also understood that there may have been another company called Birkhall Brewery Limited but he did not believe that he had been transferred from the present respondent to Birkhall Brewery Limited. According to Companies House, that Company was incorporated on 6 June 25 2018. It has the same registered office as the present respondent. The present respondent was incorporated on 21 June 2016. The claimant confirmed that he was not suggesting that there had been a failure to transfer him from the present respondent to Birkhall Brewery Limited. He did not seek to add them as another party to the proceedings.
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15. The claimant confirmed that, in accordance with the claim form, (the ET1) he is seeking two weeks' notice which is his statutory entitlement and this

amounts to 31 hours which was the number of hours worked per week at £7.88 per hour, giving a total of £488.56.

- 5 16. The respondent's holiday year ran from April 1. The claimant believed that he was entitled to an outstanding balance of 27 hours, having accrued 58 hours in total and taken 31 hours as holiday. He therefore calculated the holidays due as £212.76 being 27 hours at £7.88 per hour.
- 10 17. The claimant also seeks unpaid wages for the week commencing 16 July to 22 July 2018 when he worked 31 hours, again at £7.88 per hour, giving a total of £244.28.
- 15 18. In relation to reinstatement the claimant confirmed that he had ticked this in the ET1 as his desired remedy. He was asked if he wanted to take time to consider this further.
- 20 19. He had provided to the Tribunal a Schedule of Loss which had been prepared for him by the local Citizens Advice Bureau. After further consideration, the claimant confirmed that he was no longer seeking reinstatement or re-engagement and would prefer the remedy to be that of compensation.
- 25 20. In relation to compensation, the claimant saw his General Practitioner on 12 July 2018 and was told that he would require to be referred to a hospital for an investigation. He was not signed off as unfit to work at that stage. He later saw his General Practitioner again which he thought was approximately around 23 July 2018 and he was then signed off work as unfit to work for four weeks. He then received a further medical certificate, again for another four weeks followed by a third certificate for a period of eight weeks. The claimant continues to be unfit to work and believes that his present medical certificate or fit to work note expires on 3 December 2018.
- 30 21. The claimant was admitted to hospital for a surgical procedure which took place in October. Fortunately, he has been given the results of that procedure

and he has been advised that he does not have bowel cancer which had been the reason for the investigation and surgical procedure.

22. In relation to quantification of the claim, he seeks a basic award.

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23. The claimant has been unable to find alternative work. By way of a compensatory award, he seeks past losses up to the date of the remedy hearing.

10 24. In relation to ongoing losses in his Schedule of Loss he seeks a further period of 34 weeks from which he has indicated that benefits should be deducted again for the same period at £73.10 giving a total of £5,820.12.

15 25. He also seeks £500 by way of loss of statutory rights and accordingly a total compensatory award of £3,581.24 to include the ongoing loss uprated to £9,401 .36. (see below).

20 26. He also argues that an increase of 10% should be made because of a failure by the respondent to follow the ACAS Code of Practice which would give a figure either of £358. 12 or £940 and would then uplift the award to £10,341 .49.

Deliberation and Determination

25 27. Since this was a remedy hearing the Tribunal does not require to consider the evidence in detail except in relation to how to quantify the claim as set out to it by the claimant at the remedy hearing. The Tribunal noted that the claimant now seeks compensation rather than reinstatement or re-engagement.

30 28. In relation to a basic award the claimant is entitled to £732.84 which is the statutory amount based on his gross weekly pay of £244.28, his age (45) and 2 years' full service as at termination of his employment. It has been calculated using the gov.uk redundancy calculator.

29. Turning to a compensatory award and, having taken into consideration the claimant's ill-health, the Tribunal concluded that it could not make an award

in relation to compensation up to the date of the remedy hearing and to 2
December 2018 as the claimant is still to see his General Practitioner on 3
December 2018. The claimant accepted that he was signed off as unfit to
work from on or about 23 July 2018 but he anticipates that he will be fit to
5 work on or after 3 December 2018 after he has seen his General Practitioner.
Since no award is made for losses to the remedy hearing and to 2 December
2018 the recoupment regulations do not apply.

30. However, in relation to a compensatory award for future loss, the Tribunal
10 noted that the claimant expects to be signed back as fit to work on 3
December 2018 when he next sees his General Practitioner. He continues to
be in receipt of benefits. In relation to ongoing losses, it is not clear whether
the claimant will find alternative employment soon after 3 December 2018.

15 31. The issue for the Tribunal therefore was whether to make an award in relation
to future loss. Having given careful consideration to this, the Tribunal
concluded that in the event that the claimant's General Practitioner is satisfied
that he is now fit to work, he will not be in a position to do so until on or after
3 December 2018. Thereafter, the claimant will have to seek alternative
20 employment.

32. In all the circumstances, the Tribunal concluded that it would be appropriate
to make a future award going forward with effect from 3 December 2018 and
to do so for a period of 33 weeks that is to 22 July 2019 which is one day short
25 of the anniversary of the claimant's dismissal. This amounts to £6,930 (being
33 multiplied by £210, this being the net amount shown in the ET1).

33. The claimant is also entitled to two weeks' notice pay (based on his gross
weekly pay of £244.28 so £488.56. He is also entitled to one week's unpaid
30 wages being the net amount so £210.

34. In relation to accrued but untaken holiday pay he seeks 27 hours but this is
calculated based on the net weekly pay which is £210 divided by 31 which is
an hourly rate of £6.77 and this multiplied by 27 is £182.79.

35. The claimant also seeks loss of statutory rights and a figure of £500 is sought. That is the amount which the Tribunal awards.
36. The Tribunal was satisfied that there should be an uplift of 10% in relation to the failure to follow the ACAS Code. This is awarded in relation to the compensatory award, the non payment of wages, notice pay and the accrued holiday pay. It does not apply to the basis award nor to the loss of statutory rights.
- io 37. The Tribunal therefore orders the respondent to pay to the claimant the following amounts:

Basic Award (No uplift under S207A)	£732.84
Loss of Statutory Rights (No uplift under s 207A)	£500.00
Compensatory Award	Nil for loss to date of the remedy hearing
Future loss to 22 July 2019 33 weeks at £219 per week	£6,930.00
Unpaid wages (net)	£210.00
Notice pay 2 weeks (gross)	£488.56
Accrued unpaid holiday 27 hours x £6.77	£182.79

10% uplift on £6,930 + £210 + £488.56+ £182.79	£7,811.35.
10% thereof	£781.13

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**Employment Judge:
Date of Judgment:
Entered in register:
and copied to parties**

**J Garvie
30 November 2018
30 November 2018**

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