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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4113813/2021**

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**Held in chambers in Glasgow on 18 March 2022**

**Employment Judge Ian McPherson**

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**Mr Gary Walls**

**Claimant  
Represented by:  
Mr Ben Doherty  
Solicitor**

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**Giacomo Wynd  
Limited**

**Respondents  
No ET3 response**

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## **JUDGMENT**

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**Rule 21 of the Employment Tribunal Rules of Procedure 2013**

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No response has been presented to this claim and an Employment Judge has decided to issue the following judgment on the available material under **Rule 21**, amending the name of the respondents from "**Glaomo Wynd Limited**", as shown on the ET1 claim form, to correct a typographical error and show its full registered name at Companies House (company number SC 646826) being "**Giacomo Wynd Limited**", as shown on the ACAS early conciliation certificate R194038/21/40 issued on 13 December 2021, and referenced in the ET1 claim form, and having taken into account the claimant's additional information provided to the Tribunal by the

claimant's solicitor in his schedule of loss, and further information, dated 4 and 11 March 2022, further to the Tribunal's request for further information on 17 February and 11 March 2022.

### REASONS

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1. A copy of the claim form setting out the claimant's complaints was sent to the respondents by the Tribunal on 5 January 2022.

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2. In accordance with the terms of **Rule 16 of the Rules to be found in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013** the respondents were required to enter a response within twenty eight days of the date on which a copy of the claim was sent to them by post, but they failed to do so, by the due date of 2 February 2022, or at all.

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3. The claimant was formerly employed by the respondents from 22 June 1998 as a baker. On 27 November 2021, he gave the respondents written notice terminating his contract of employment with immediate effect. His effective date of termination of employment was 27 November 2021, on which date the claimant, aged 60 years, had 23 complete years of continuous service with the respondents.

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4. The claimant was advised verbally by the respondents that his position was redundant but that the respondents could not afford to make him redundant. He contends that his post was redundant, that he was constructively dismissed and that the dismissal was, in all the circumstances, unfair, and that he was wrongfully dismissed, his pay for October and November 2021 was unlawfully deducted, and that he claims compensation, including a basic award and a compensatory award for unfair dismissal, unpaid holiday pay, notice pay and unpaid wages.

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5. After termination of employment with the respondents, the claimant did not claim State benefits so that the Recoupment Regulations do not apply. He has obtained new employment with another employer paying him less than he earned in his former job with the respondents.
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6. On the information available to the Tribunal, the claimant was entitled to terminate his contract without notice by virtue of the respondents' conduct towards him, which constituted a repudiatory breach of the claimant's contract of employment with the respondents, where he tendered his resignation as the respondents were in fundamental breach of the express terms of his contract of employment in respect of hours of work and pay, and the implied term of trust and confidence due to the respondents' failure to respond to his grievance of 26 October 2021 timeously and their threatening him with dismissal for some other substantial reason.
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7. The claimant was dismissed in breach of contract in respect of notice and the respondents are ordered to pay damages to the claimant of 12 weeks' contractual notice pay in the sum of **£5,301.60 (Five Thousand, Three Hundred and One Pounds, Sixty Pence)**, being 12 weeks at £441.80 gross weekly pay.
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8. The respondents have made an unauthorised deduction from the claimant's wages and they are ordered to pay the claimant the sum of **£922 (Nine Hundred and Twenty Two Pounds)** in respect of unpaid wages for October and November 2021.
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9. The claimant was unfairly dismissed by the respondents and he is entitled to a basic award of compensation in the sum of **£13,033.10 (Thirteen Thousand and Thirty Three Pounds, Ten Pence)**, being 29.5 weeks' pay, based on his age 60 years at effective date of termination on 27 November 2021, with 23 years' continuous employment with the respondents, and gross weekly pay of £441.80 per week.
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10. Further, the claimant is entitled to a compensatory award for his unfair dismissal by the respondents, and the respondents are ordered to pay to him in that regard the further sum of **£2,673.42 (Two Thousand, Six Hundred and Seventy Three Pounds, Forty Two Pence)**, calculated as follows:

Past Losses:

Loss of basic salary to date of Schedule of Loss

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14 weeks x £338.53 net weekly basic pay £4,739.42

Loss of statutory rights £300.00

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Sub-total £5,039.42

Less sums obtained through mitigation (£3,770.00)

Total past loss £1,269.42

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Add future loss of earnings

The claimant has obtained a new job paying less than his job with the respondents. He earns £88.80 less a week gross and £54 a week net.

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The claimant estimates that it will take 26 weeks before he finds a job paying the same salary.

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Future loss is 26 weeks x £54 = £1,404.00

**Grand total of compensatory award = £2,673.42**

11. While the claimant alleged that the respondents failed to pay his holiday entitlement, no information was provided to the Tribunal to assess any award in that respect, so the Tribunal makes no award in that respect.

5 12. In total, the respondents shall pay to the claimant a grand total of **£21,930.12 (Twenty One Thousand, Nine Hundred and Thirty Pounds, Twelve Pence)**, and not £21,930.02, as shown on the Schedule of Loss, which sum has been wrongly miscalculated.

10 Employment Judge: Ian McPherson  
Date of Judgment: 21 March 2022  
Entered in register: 22 March 2022  
and copied to parties

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