



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103305/2023, 4103306/2023, 4103307/2023, 4103308/2023,
4103309/2023 and 4103310/2023

5

Held via Cloud Video Platform (CVP) in Glasgow on 23 August 2023

Employment Judge R King

10 **Ms Patricia Goodfellow**

**First Claimant
Represented by:
Ms S Mechan -
Solicitor**

15

Ms Joanne Wallace

**Second Claimant
- as above**

20

Ms Elizabeth Arthur

**Third Claimant
- as above**

25

Ms Lindsey Sheree Hayes

**Fourth Claimant
- as above**

30

35 **Ms Lisa Marie Harkins**

**Fifth Claimant
- as above**

40

Ms Fiona Shields

**Sixth Claimant
- as above**

45

Café Su Ltd

**Respondent
No appearance and
No representation**

5

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claims succeed, and the claimants are entitled to the following awards:

- 10 • Patricia Goodfellow – (1) a redundancy payment of £5,826.60 (2) an award in respect of pay in lieu of notice of £2,689.20 - this payment to be made gross, the claimant being liable to HMRC for any payments of tax and national insurance thereon (3) an award in respect of the respondent's failure to provide written statement of particulars of £896.40.

- 15 • Joanne Wallace – (1) a redundancy payment of £943.69 (2) an award in respect of pay in lieu of notice of £629.13 – this payment to be made gross, the claimant being liable to HMRC for any payments of tax and national insurance thereon (3) an award in respect of the respondent's failure to provide a written statement of particulars of £838.94.

- 20 • Elizabeth Arthur – (1) a redundancy payment of £5,150.49 (2) an award in respect of pay in lieu of notice of £3,635.64 - this payment to be made gross, the claimant being liable to HMRC for any payments of tax and national insurance thereon (3) an award in respect of the respondent's failure to provide written statement of particulars of £1,211.88.

- 25 • Lindsey Shereee Hayes – (1) a redundancy payment of £2,283.26 (2) an award in respect of pay in lieu of notice of £2,283.26 - this payment to be made gross, the claimant being liable to HMRC for any payments of tax and national insurance thereon (3) an award in respect of the respondent's failure to provide written statement of particulars of £1,304.72.

- 30 • Lisa Marie Harkins – (1) a redundancy payment of £4,049.36 (2) an award in respect of pay in lieu of notice of £3,470.88 - this payment to be made gross, the claimant being liable to HMRC for any payments of tax and national

insurance thereon (3) an award in respect of the respondent's failure to provide written statement of particulars of £1,156.96.

- Fiona Shields - (1) a redundancy payment of £7,925.40 (2) an award in respect of pay in lieu of notice of £3,178.32 - this payment to be made gross, the claimant being liable to HMRC for any payments of tax and national insurance thereon (3) an award in respect of the respondent's failure to provide written statement of particulars of £1,059.44.

REASONS

1. In all of these claims the respondent had failed to lodge a response and therefore the case was capable of being determined in terms of Rule 21. A hearing was fixed in order for representations to be made on behalf of the claimants in respect of the valuation of each of their claims.
2. The respondent was provided with notice of today's hearing at which Ms Mechan appeared on behalf of all the claimants, none of whom were in attendance. Ms Mechan produced schedules of loss and relevant supporting documents on behalf of all the claimants.

Application to amend

3. In advance of today's hearing, Ms Mechan had made an application on behalf of all the claimants to amend their claims to include a claim for compensation in terms of section 38 of the Employment Act 2002. The Tribunal was satisfied that the claimant's representative had provided the respondent with notice of its application to amend in advance of the hearing. The respondent had not provided any comments in response to the amendment application.
4. The Tribunal considered the nature of the amendment, the applicability of time limits and the timing and the manner of the application. It also considered any injustice or hardship that may be caused to the parties if the proposed amendment were allowed, or as the case may be, refused.
5. The Tribunal was satisfied that the claims in respect of the respondent's alleged failure to provide written the claimants with written statements of their

employment particulars were foreshadowed in the original ET1, albeit those claims were not fully particularised.

6. Specifically, in section 9.2 of the ET1 the claimants stated that *“None of the Claimants can produce current contracts of employment from which any contractual information can be gleaned.”*
7. It was appropriate therefore that those claims should be clarified in advance of the hearing. In the circumstances it concluded that the timing and manner of the application were acceptable in the circumstances.
8. The respondent had been given an opportunity to respond to the original claims and to the subsequent amendment and had taken neither opportunity. On the other hand, the claimants would be left without a remedy if the application was refused, in circumstances where the application was not opposed.
9. In those circumstances the Tribunal concluded that more injustice would be done to the claimants if the amendment was not allowed than would be suffered by the respondent if the amendment was allowed. In the circumstances, the amendment was allowed.

The closure of the respondent’s business on 10 February 2023

10. It was not disputed that the respondent informed all six claimants on 8 February 2023 that its business was closing imminently and that it subsequently closed its doors on 10 February 2023, which was the last day of employment for all of the claimants.
11. There is no doubt that all the claimants were dismissed by reason of redundancy and that their dismissals were without notice. Although they were all paid up to 10 February 2023, none of the claimants received any redundancy pay or pay in lieu of notice on the termination of their employment.
12. The claimants’ schedules of loss indicated no earnings had been received by any of them during their respective statutory notice periods.

13. At no time prior to the termination of their employment were any of the claimants provided with a written statement of the terms of their employment. Further, that breach was not remedied in respect of any of the claimants prior to the commencement of these proceedings.

5 **The relevant law**

Redundancy payments

14. Employees who are dismissed by reason of redundancy may be entitled to a statutory redundancy payment, subject to their having at least two years' continuous employment – section 135 Employment Rights Act 1996.
10 Statutory redundancy payments are calculated according to a formula set out in section 162 of that Act, which is based on age, length of service and pay.

Notice pay

15. Where an employee's contract is terminated without notice, the damages period is equivalent to the period of notice that ought to have been given.

15 Failure to provide written statement of terms and conditions

16. An employee or worker may make a complaint to an employment tribunal where an employer fails to provide a section 1 statement of written particulars. Where an employee or worker also has a successful substantive claim (as listed in Schedule 5 to the Employment Act 2002) they may also claim
20 compensation.

17. Section 38 of the Employment Act 2002 provides that in such circumstances the tribunal must make an award of the minimum amount (two weeks' pay) unless there are "exceptional circumstances" which would make such an award "unjust or inequitable" (section 38(5)).

25 18. The tribunal may award the higher amount (four weeks' pay) if it considers it just and equitable in all the circumstances (section 38(3)).

Redundancy pay

19. The Tribunal finds that the claimants are entitled to the following redundancy payments:

Claimant	Start Date	Termination Date	Age at termination	Completed years of service	Weekly Gross Pay	Redundancy Payment
Patricia Goodfellow	3 May 1992	10 February 2023	53	30	£224.10	£5,826.60
Joanne Wallace	5 August 2019	10 February 2023	45	3	£209.71	£943.69
Elizabeth Arthur	1 April 2005	10 February 2023	40	17	£302.97	£5,150.49
Lindsey Shereee Hayes	2 March 2015	10 February 2023	33	7	£326.18	£2,283.26
Lisa Marie Harkins	1 August 2008	10 February 2023	36	14	£289.24	£4,049.36
Fiona Shields	19 February 2001	10 February 2023	61	21	£264.86	£7,925.40

5 **Notice pay**

20. The Tribunal makes the following awards in respect of the claimants' notice pay. These payments are to be made gross and the Claimants shall be liable to HMRC for any payments of tax and national insurance thereon.

Claimant	Completed years of service	Weekly Gross Pay	Statutory notice payment due (gross)
Patricia Goodfellow	30	£224.10	12 weeks - £2,689.20

Joanne Wallace	3	£209.71	3 weeks - £629.13
Elizabeth Arthur	17	£302.97	12 weeks - £3,635.64
Lindsey Shereee Hayes	7	£326.18	7 weeks - £2,283.26
Lisa Marie Harkins	14	£289.24	12 weeks - £3,470.88
Fiona Shields	21	£264.86	12 weeks - £3,178.32

Failure to give statement of employment particulars

21. The claimants' substantive claims fall within Schedule 5 of the Employment Act 2002.
22. It was not disputed that none of the claimants had ever been issued with written statements of their employment particulars, as required by section 1 of the Employment Rights Act 1996.
23. By reference to section 38(3) of the Employment Act 2002, Ms Mechan submitted that it would be just and equitable to award each of the claimants four weeks' pay in respect of the respondent's failure.
24. The Tribunal accepted that in all the circumstances it would be just and equitable to make an award of four weeks' pay in respect of each of the claimants. This was an egregious failure on the respondent's part and significantly disadvantaged this group of relatively low paid loyal female employees.
25. The claimants had been faithful, diligent employees who had given their full commitment to the respondent for a considerable time. However, throughout those times they had not been provided with any written contract or handbook and as a result they had never been informed of their employment rights. That had disadvantaged them throughout their employment, but the impact of this failure had been most serious when the respondent's business closed with

almost no notice in circumstances where they were left with no idea of their employment rights. An award of four weeks' pay for each claimant would therefore be just and equitable.

26. In the circumstances their awards are as follows:

- 5 • Patricia Goodfellow – 4 weeks at £224.10 - £896.40
- Joanne Wallace – 4 weeks at £209.71 - £838.94
- Elizabeth Arthur – 4 weeks at £302.97 - £1,211.88
- Lindsay Shereee Hayes – 4 weeks at £326.18 - £1,304.72
- Lisa Marie Harkins – 4 weeks at £289.24 - £1,156.96
- 10 • Fiona Shields – 4 weeks at £264.86 - £1,059.44

Holiday pay

27. Only Fiona Shields had made a claim for holiday pay. In the course of the hearing Ms Mechan conceded that she had no evidence to support that claim and therefore she withdrew it on the claimant's behalf. That claim was
15 therefore dismissed.

20 **Employment Judge: R King**
 Date of Judgment: 15 September 2023
 Entered in register: 21 September 2023
 and copied to parties

25