



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106290/2022

Final Hearing in person held in Glasgow on 9 October 2023

Employment Judge I McPherson

Ms Christine Brown

Claimant
In Person

The Management Committee of
Leithland Neighbourhood Centre

Respondents
Not Present and
Not Represented

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

1. The claimant having been dismissed by reason of redundancy, is entitled to a redundancy payment, and the respondents are ordered to pay to her the sum of **SEVEN THOUSAND, FOUR HUNDRED AND SIXTEEN POUNDS [£7,416.00]**.
2. In respect of the claimant's unfair dismissal by the respondents, the Tribunal awards no basic award of compensation for unfair dismissal to the claimant, in terms of **Section 118 of the Employment Rights Act 1996**, payable to her by the respondents, because the Tribunal has ordered them to pay to her a redundancy payment, and that payment reduces her basic award to £ nil, in terms of **Section 122(4) of the Employment Rights Act 1996**.
3. Further, in respect of her unfair dismissal by the respondents, the Tribunal awards a compensatory award of compensation to the claimant, in terms of **Section 123 of the Employment Rights Act 1996**, payable to her by the

respondents, in the amount of **TWO THOUSAND, NINE HUNDRED AND FIFTY-SEVEN POUNDS, TWENTY-SEVEN PENCE [£2,957.27]**.

4. For the purposes of the **Employment Protection (Recoupment of Benefits) Regulation 1996**, as amended, the claimant having been in receipt of Jobseekers' Allowance in the amount of **£319.00** paid by the Department for Work and Pensions, the prescribed element, applicable to the claimant's past loss of wages in the period between 29 September 2022 and 1 December 2022, is **£2,457.27**, and **£500.00** is the amount by which the monetary award exceeds the prescribed element. The Secretary of State may seek to recoup that benefit by service of a Recoupment Notice upon the respondents.
5. The claimant was dismissed in breach of contract in respect of notice and the respondents are ordered to pay damages to the claimant in the sum of **EIGHT HUNDRED AND NINETEEN POUNDS, NINE PENCE [£819.09]**.
6. The claimant has not satisfied the Tribunal as to the respondents having made an unauthorised deduction from the claimant's wages, in the sum of **£615**, as alleged, and accordingly no award is made by the Tribunal under this head of claim.
7. The respondents having failed to pay the claimant's holiday entitlement accrued and unused at the effective date of termination of employment, they are ordered to pay the claimant the further sum of **THREE HUNDRED AND SEVENTY-FOUR POUNDS, NINETY-TWO PENCE [£374.92]**.
8. In total, the respondents are ordered to pay the claimant a total amount of **£11, 567.28**, and to make payment within no more than 14 days from date of issue of this reserved Judgment.

REASONS

Introduction

1. Following ACAS early conciliation between 15 and 21 November 2022, by
5 ET1 claim form received at the Tribunal office on 21 November 2022, the
claimant brought a claim against the respondents (then designed as Leithland
Neighbourhood Centre), claiming unfair dismissal, claiming a redundancy
payment, and stating that she was owed notice pay, holiday pay, and arrears
of pay, all said to be arising from the termination of her employment with them
10 as cook come caretaker on 29 September 2022.
2. The claim was accepted by the Tribunal administration, and Notice of Claim
was served on the respondents on 23 November 2022, requiring them to
enter a response (by form ET3) within 28 days if they wished to resist the
claim. No ET3 response was lodged by the respondents by the due date of
15 21 December 2022, or at all.
3. On 11 January 2023, on instructions from Employment Judge Hoey, a letter
was sent to both parties, stating that no response to the claim had been
received, and that it was therefore possible to issue a judgment without the
need for a Hearing. Further information was requested from the claimant,
20 within 14 days, to set out what compensation she was seeking for each
complaint raised, showing how those sums had been calculated, and
providing evidence in support of her sums claimed.
4. On 16 January 2023, a Mr Alistair Richmond, former chairperson of the
respondents' Management Committee, emailed Glasgow ET, seeking an
25 extension of time to respond, as he stated that they were in the process of
seeking legal advice. His email was acknowledged by the Tribunal, on 20
January 2023, and a copy sent to the claimant.
5. Mr Richmond was informed that if the respondents intended to defend the
claim, then they must lodge a draft ET3 response, with an extension of time
30 application, and copy that to the claimant. Thereafter, no application for any

extension of time, under **Rule 20**, was presented by or on behalf of the respondents.

- 5 6. On 27 January 2023, a letter from the claimant dated 24 January 2023 along with supporting documents for the claimant's claim were emailed to Glasgow ET by her partner's daughter, Amanda Winters, who was not acting as her representative. That email and attachments were not copied to the respondents, until after a reminder sent to the claimant, by the Tribunal on 13 February 2023, that she should send a copy of her correspondence to the respondents, as required by the Tribunal's **Rule 92**.
- 10 7. Thereafter, on 15 February 2023, Ms Winters emailed, on the claimant's behalf, to inform the Tribunal that a copy of all correspondence had been sent to the respondents by recorded delivery on 14 February 2023, and a copy Post Office certificate of posting was produced to the Tribunal to vouch that fact.
- 15 8. On 20 February 2023, on instructions from Employment Judge O'Donnell, having considered the claimant's correspondence, a further letter was sent to both parties, stating that the information provided by the claimant required further clarification, as the correspondence of 27 January 2023 only appeared to seek an award in respect of redundancy pay and holiday pay, but there
20 were other claims raised in the ET1 claim form which required determination. Further information was therefore requested from the claimant, within 14 days.
- 25 9. A reminder was sent, on 10 March 2023, for a reply within 7 days. Again, there being no reply, a further reminder was sent, on 24 March 2023, for a reply within 7 days. On 28 March 2023, Ms Winters emailed Glasgow ET, on behalf of the claimant, to confirm that she wished to claim any monies owed by the respondents.
- 30 10. As that email did not reply to various points (5 no.) in the Tribunal's letter of 20 February 2023, a copy of that earlier letter was again sent to the claimant, on 3 April 2023, for reply within 7 days. On 6 April 2023, Ms Winters emailed Glasgow ET again, on behalf of the claimant, to provide a letter explaining

the sums sought, and providing some documents, in reply to the Tribunal's email of 3 April 2023.

- 5 11. Following referral to Employment Judge Whitcombe, on 18 April 2023, a further letter was sent to the claimant, asking for clarification whether she had received any benefits after dismissal, and if so, between which dates, and what was the amount of the shortfall from her final payment of wages on 23 September 2022.
- 10 12. By email sent by Ms Winters, on 19 April 2023, the Tribunal was informed that the claimant had received 4 weeks' Jobseekers Allowance totalling £308, and by further email, on 3 May 2023, the Tribunal was informed that there was a shortfall of **£615**, for the period where the claimant received Jobseekers, and that this was in addition to any other funds due.
- 15 13. That correspondence was acknowledged by the Tribunal and, on instructions from Employment Judge Whitcombe, a further letter was sent to the claimant, on 16 May 2023, stating that since the charity employing the claimant was an unincorporated association, that Judge proposed to amend the respondents' name to The Management Committee of Leithland Neighbourhood Centre, unless a reasoned objection was received within 7 days.
- 20 14. After a further copy of the letter of 16 May 2023 was sent to the claimant, on 19 June 2023, no response was received by the Tribunal. Accordingly, on 12 July 2023, following no objections, the name of the respondents was changed on the Tribunal's casefile, and both parties informed, on instructions from Employment Judge Wiseman, by letter from the Tribunal confirming the change of respondents' name.
- 25 15. On 13 July 2023, Employment Judge Kearns decided that a **Rule 21** Judgment could not be issued, and she directed that the case proceed to a 3-hour in person Final Hearing. Notice of Final Hearing was issued to both parties on 27 July 2023, setting aside 3 hours before an Employment Judge sitting alone on Monday, 9 October 2023, starting at 10:00am, for its full disposal, including remedy, if appropriate. Copy was sent to the respondents,
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for information only, as they had not lodged any ET3 response defending the claim.

Final Hearing before this Tribunal

5 16. When the case called before me for that assigned Final Hearing, the claimant was in attendance, in person, accompanied by her partner, Gerald Winters. The respondents were not present nor represented. As such, the hearing of the claim proceeded as undefended, on the basis that the respondents had not lodged any ET3 response defending the claim. I heard evidence from the claimant herself, on the basis of which I have made the following findings in
10 fact.

17. Although not subject to any cross-examination, the claim proceeding as undefended, and the respondents not being in attendance, by office-bearer from their Management Committee, or otherwise represented, the claimant was questioned by me as the presiding Employment Judge. I found her to be
15 a credible and reliable witness as to the essential facts surrounding termination of her employment, and monies she believes are due to her from the respondents, although her evidence was vague in several respects, where she was unable to clarify, or explain, the calculation used for some sums she was asking for from the Tribunal.

20 18. The claimant spoke in detailed evidence to the narrative of her claim as only briefly set forth in the claim form (ET1) presented to the Tribunal, providing further detail to what was there stated, under reference to the various documents lodged previously on her behalf with the Tribunal, by emails from Ms Winters, and further documents which she brought to the Hearing, hard
25 copy, and which I had the Tribunal clerk photocopy for my use, and to put on the casefile, or emailed in during the course of the Hearing, from payslips held on her mobile phone, and a bank statement obtained from her bank during an adjournment granted to her to provide further necessary vouching documents as to what sums she had actually been paid by the respondents,
30 and when.

19. On account of the fact that the claimant had not, despite the Notice of Final Hearing's clear written direction that she should bring 3 copies of documents she considered relevant to her case, and which she wished the Judge to take into account, she explained that she was unsure what was required, and so there was no paper Bundle of Documents provided to the Tribunal. In these circumstances, after seeking to clarify with her the basis and extent of her claim against the respondents, what was listed as a 3-hour Hearing to finish by 1:00pm, in fact lasted until just after 3pm, although, in duration, only 2 & ½ hours were in public Hearing.

10 Findings in fact

20. On the basis of the sworn evidence from the claimant heard by the Tribunal, and the various productions lodged by the claimant with the Tribunal, I have found the following essential facts established:-

21. The claimant, aged 63 at the date of the Tribunal Hearing, was previously employed by the respondents as a cook come caretaker at their Leithland Neighbourhood Centre in Glasgow.

22. The respondents are a Scottish Charity, registered with OSCR (Office of the Scottish Charity Regulator) as Scottish charity **SCO 17617**, being an unincorporated association, with objectives to promote social welfare, for the inhabitants of certain areas of Pollok, Glasgow, according to a search of the OSCR register carried out by the Tribunal.

23. On the evidence before the Tribunal, they continue to exist, and, on the claimant's evidence, the Centre continues to operate, having re-opened sometime after her redundancy, with effect from 29 September 2022. She recalled the Centre having been closed for about one and a half-months, before re-opening at some later date, which she could not identify.

24. The claimant in her evidence to this Tribunal stated that she is not aware of the identity of the current members of the respondents' Management Committee, and they are not identified on the OSCR register. As at 23 March 2023, the last update to the OSCR register, the respondents had not filed

annual accounts since 18 December 2018, for the year ended 31 March 2018.

5 25. The respondents employed several paid staff at the Centre, of whom the claimant was one. The Management Committee, who operate as trustees of the charity, are understood to be volunteers. The claimant described Alistair Richmond, the then chairperson, as "*my biggest boss*", but she explained that he was a volunteer, not an employee, and not her immediate line manager, who had been a Julie Edminston, the co-ordinator.

10 26. When Ms Edminston left, while the claimant was off sick, and the staff previously of 5 or 6, reduced to 4, then reduced to 3, the claimant stated that she took on additional duties as caretaker, cleaner and cook at the Centre, but still working 30 hours per week.

15 27. While, at the time of her redundancy, the claimant was aware that the respondents had financial difficulties, for then then chairperson of the Management Committee, Alistair Richmond, had written to her, referring to "*the fraught financial position*", withdrawing discretionary company sick pay with effect from 12 September 2022, she informed the Tribunal that she had no information about their current financial standing, or solvency, but understood they continue to operate as a going concern at present. A copy
20 of Mr Richmond's (undated) letter to the claimant was produced to the Tribunal as an attachment to Ms Winters' email of 6 April 2023

25 28. The claimant's employment with the respondents started on or about 3 July 2006, according to the copy contract of employment terms & conditions provided by her to the Tribunal, rather than 1 July 2006, as stated in her ET1 claim form, and ended on 29 September 2022, when her employment with the respondents was terminated, and ended on account of redundancy, when the Centre closed.

30 29. In her oral evidence to the Tribunal, the claimant stated that for a few weeks before the termination of her employment with the respondents, she was off work, unwell with work related stress, but she was due to be starting back on 2 October 2022, but on 29 September 2022, she got a call from Angela

McNaught, one of the respondents' Management Committee, to say there was no job.

5 30. The claimant produced to the Tribunal, as an attachment to Ms Winters' email of 27 January 2023, a one-page copy terms and conditions of employment (undated, but showing in the header a 2009 standard T&C template document was used) issued to her by the respondents confirming her employment with them as from 3 July 2006, with line management by the Project Co-ordinator, for 30 contractual hours per week, but with job title and salary / hourly rate, left blank.

10 31. While it referred to a contract of employment letter, no such letter was produced to the Tribunal, nor was any fuller version of whatever may have been her full employment terms and conditions. At the Hearing, the claimant produced pages 37 to 39, entitled "*Code of Conduct*", from another document issued by the respondents, but the claimant could provide no further details, nor could she provide a full copy of whatever document these 3 pages were
15 extracted from.

20 32. In her ET1 claim form, the claimant had advised the Tribunal that she worked a 30-hour week, and she was paid monthly, with **£1,236** gross pay before tax, and **£1,092.14** net normal take home pay, and when her employment ended, she did not receive any notice pay. Other than stating in her ET1 form that she was in the employers' pension scheme, and that she received no employee benefits, no further information was provided by the claimant about her earnings, benefits, or pension arrangements, from the respondents. At this Hearing, she clarified that her wages were paid 4-weekly by the
25 respondents, into her TSB bank account, and not monthly, as had been stated in her ET1 claim form, and in her correspondence to the Tribunal.

30 33. Two copy payslips were produced to the Tribunal, as an attachment to Ms Winters' email of 6 April 2023, vouching some of the claimant's earnings from the respondents. The first, dated 10 April 2020, shows a gross payment of **£1,236.00**, deductions of **£143.86** for tax, NI and Peoples Pension, and net pay of **£1,092.14**. These are the amounts provided by the claimant in her ET1

claim form. The other, dated 23 September 2022, being her final pay from the respondents, shows gross pay of **£835.92**, deductions of **(-£13.83)**, and net pay of **£849.75**. The claimant stated that she received paper, hard copy payslips from the respondents, but she only had these two to produce to the Tribunal.

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34. The claimant also produced to the Tribunal, again as another attachment to Ms Winters' email of 6 April 2023, copy of her employers' P60 end of year certificate for the tax year to 5 April 2022, showing that in that employment, that tax year, she had been paid **£16,068.00**, less tax deducted of **£676.63**. Following the termination of her employment by the respondents, the claimant stated that she never received any P45 from her former employer, although she had tried to do so through Alistair Richmond, the chairperson.

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35. In her ET1 claim form, at section 8.2, the claimant had detailed the background and details of her claim, as follows: *"I have been employed as a cook come caretaker for 15 years at leithland neighbourhood centre, for a few weeks I was unwell with stress relating to my work, but I was starting back on 2nd October 22, but on 29th September 22 I got a call to say there was no job, this was from Angela, one of the committee, there had been a meeting, but my boss who was chairperson could not make it, because he was working that night, the old committee stood down, and the new committee asked our mp Christopher Stephens to stand in, this is when this all came about. I have not been able to get anyone to help me, I feel I have been unfairly treated after doing this job all this time, I have had no income since 22nd September 22."*

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36. At section 9.1, she had sought an award of compensation from the respondents, if her claim was successful, but she did not detail how much she was claiming, only saying: *"I should be owed redundancy, and holiday pay."*

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37. Finally, she provided additional information, at section 15, stating: *"I just wanted them to know the hurt I went through, I was ill for nearly 2 weeks with the stress of all this, I felt worthless, and I was passed from pillar to post ,*

trying to get something done about all this, I really hope something can be sorted thank you.”

38. The respondents did not lodge any ET3 response defending the claim. However, by email to Glasgow ET, on 16 January 2023, Mr Alistair Richmond, former Chairperson, had informed the Glasgow Tribunal, as follows:

“Claimant Ms C Brown V Leithland Neighbourhood Centre

Further to our telephone conversation of Monday 16th January 2022, were [sic] I was asked to put my request in either writing or by email.

Your letter dated 11 January 2023 gives a deadline of 14 days from that date to reply. However, I would request an extension to that deadline.

Ms Brown has been employed by Leithland Neighbourhood Centre, which [is] run by a voluntary, elected Management Committee. There was an election on 26th September 2022 and some time between that date and the 5th October 2022, staff were told that there was no jobs for them and the Centre was closed with the newly elected committee, or at least the officers resigning.

I was, before September the Chairperson of the management committee and I was contacted by someone from Glasgow City Council asking if I was interested in trying to get the Centre opened again. I have met with this individual, local Councillors and the local MP for this purpose.

On Friday 13th January 2023 was in fact the first we have been able to get into the Centre to have a meeting. To add to the issue, I had a call from Miss Brown early October asking me for advice, as I was no longer on the committee that employed her, I advised her to contact ACAS for advice, which she did. She then contacted myself to ask if she could pass on my details for ACAS to speak to me. As a result, I received a call from Paul Bluett who confirmed that any liability was likely to lie with the newly elected committee.

Based on this we would like an extension to this deadline as we are in the process of seeking legal advice.

Alistair Richmond

Former Chairperson (to September 2022)”

5 39. On 27 January 2023, an email was sent to Glasgow ET on the claimant's behalf by her partner's daughter, Amanda Winters. It attached a letter from the claimant, dated 24 January 2023, and some supporting documents, being copy of the Tribunal's letter to her on 11 January 2023, seeking further information, one-page document entitled "*Terms & Conditions of*
10 *Employment*", and one-page document entitled "*Annual Leave Entitlement 2022*" for the claimant, being her leave record card for that year held by the respondents.

40. In that letter dated 24 January 2023 to the Tribunal, the claimant had stated as follows:

15 *"To whom it may concern,*

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CHRISTINE BROWN V LEITHLAND NEIGHBOURHOOD CENTRE

I was employed at Leithland Neighbourhood Centre since 03/07/2006 (16 years), my payroll number 03110017.

20 *I would like to make a claim for redundancy and holiday pay I am due. On 29th September 2022 I received a phone call to advise I no longer have a job and was given a number to contact ACAS. I was devastated at this news. Following this I made enquiries. A few days before this call there was a meeting in order to have old
25 *committee stand down and to reinstate a new committee. My Boss who was the chairperson could not make this meeting, so the new committee asked out local MSP Chris Stephens to stand in for my Boss.**

Prior to the call on 29th September I have been on sick leave due to work related stress, I was due to start back work on Sunday 2nd October 2022.

5 *After receiving the call on 29th September I contacted my chairperson Alistair Richmond to ask for written confirmation of my redundancy and was instructed that I had to go to the new committee, I was passed from pillar to post, I thereafter contacted my local MSP Chris Stephens, I had a meeting with him 2 weeks later when he told me he would look into things for me. My MSP let me down by not*
10 *turning up the next meeting which we had arranged.*

I have never to date received any letter from my employer nor have I ever received my P45. There is now no one to contact as the Centre is now closed. The issue was to that there was a shortage money have been left in limbo with no answers or explanations regarding the
15 *whole thing. I can't believe it after working with the company for 16 years how they can treat their staff like this. I have been left with no income and faced with financial difficulties which has impacted on my life significantly. I feel I am entitled to 16 years of service redundancy together with any holiday pay I am due which is roughly 18 days of*
20 *holiday pay.*

I was a loyal and committed member of staff and always gave 100%. I feel to be treated like this is unacceptable.

I started looking and applying for jobs immediately as I feared my financial position would be impacted upon which it was greatly. I had
25 *to rely on financial help from family & friends.*

I have now started my new employment as of 1st December 2022.

I hope you can take all of the above into account when reviewing this case.

I have attached a copy of my annual leave entitlement for 2022 form together with a copy of my signed contract from Leithland Neighbourhood Centre.”

5 41. The claimant gave sworn evidence to the Tribunal to that effect. She clarified that while, in section 3 of her ET1 claim form, she had identified a **Donna MacArthur** as another person with a claim against the respondents, arising from the same, or similar circumstances, she had had no subsequent contact with Ms MacArthur, and so she stated that she unaware that following a Final Hearing before Employment Judge MacLean, at Glasgow ET, on 25 May 10 2023, a judgment dated 29 May 2023, was entered in the register and copied to parties in that other claim (case no: **4100204/2023**) on 31 May 2023.

15 42. Judge MacLean had found that the respondents (who were not present and not represented at that Final Hearing, they having not lodged a response, although Alistair Richmond had attended and observed the proceedings) were liable to pay Mrs MacArthur a redundancy payment of **£2,959.61**, but the Tribunal did not have jurisdiction to consider her other complaints of non-payment of holiday and notice pay, as they were presented out of time to the Tribunal. That judgment was published publicly on the ET decisions part of the Gov.UK website on 21 June 2023.

20 43. The claimant's Annual Leave Entitlement card for 2022, showed her name, contracted 30 hours, and statutory leave entitlement of 28 days (1 day = 6 hrs), plus 3.5 days c/f = 31.5 (days). In the calendar year from 1 January 2022, which she informed the Tribunal was the respondents' holiday year, the card showed she had taken 4 days from 11 to 14 April 2022, and a further 10 25 days leave from 6 June to 19 June 2022, leaving 17.5 days remaining to the end of the calendar year.

30 44. While she had booked leave for an additional 9 days, between 12 and 22 September 2022, those dates were deleted on her record card, as she was recorded as "sick", and so instead of 8.5 days remaining, the claimant still had 17.5 days remaining to the end of the calendar year.

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CHRISTINE BROWN V LEITHLAND NEIGHBOURHOOD CENTRE

5 I can confirm that the claimant does NOT wish to withdraw claim for
unfair dismissal as she strongly feels she was unfairly dismissed as
stated in previous correspondence. The claimant was contacted by
telephone on 29th or 30th September to advise her that upon her return
from sick leave, which was work related stress, she would not have a
job to return to and was given the number to contact ACAS. This was
the last the claimant heard from them. On the above grounds
10 she believes this is unfair dismissal and her last pay she received
from the respondent was 23/09/2022 where she received a
payment of £849 which seemed to have a shortfall. The sum
sought in relation to unfair dismissal would be around £7308 which
relates to 3 months unpaid at £1236.00 per month x 3 months.

15 During the claimant's three months of unemployment, she applied
for numerous jobs in the catering sector and also housekeeping
(these were through Total Jobs, Indeed & Just Jobs)

In relation to notice of pay. The Claimant did not get any notice period.
Her employment was simply terminated by telephone call during sick
20 leave. I believe your notice period should be 4 weeks notice. So the
loss here of earning would be 1 month's salary at £ 1236.00.

The claimant seeks to claim unpaid "arrears of pay" for the
months where she was out of work October 2022 until January
2023 which is three months of no income. Claimant's earning
25 were £1236.00 per months x 3 months = £7308.

Finally in relation to redundancy, the claimant was employed by the
Respondent for 16 years and was paid £1,236.00 per month. The
claimant also had 14 days holiday pay left and I believe for every year
worked you are entitled to a week for every year worked.

30 I look forward to hearing from you."

50. Along with that email of 6 April 2023, there was produced a further copy of the claimant's letter of 24 January 2023, payslips dated 10 April 2020 and 23 September 2022, P60 for end of tax year 2021/22 (to 5 April 2022), and undated letter to claimant from Alistair Richmond entitled "*Discretionary Company Sick Pay.*"

51. That letter had stated:

"Following an emergency meeting of the Management Committee on Tuesday 1st September and subsequent consultation with ACAS, the difficult decision was made to withdraw the Discretionary Company Sick Pay with effect from Monday 12th September 2022.

This is not a decision we wanted to make but the fraught financial position the Neighbourhood Centre is in at the moment has left us with no choice.

Statutory Sick Pay will continue to be paid where entitlement criteria are met.

We do hope that we will be able to reverse this decision in the future and will keep you up to date with any further developments.

I trust you will understand the reason for this.

Yours sincerely

Alistair Richmond

Chairperson

Leithland Neighbourhood Centre Management Committee."

52. Being advised that her employment with the respondents was terminated, on 29 September 2022, the claimant started looking and applying for jobs immediately as she feared her financial position would be impacted upon. She had to rely on financial help from family & friends. She spoke of it being "*a massive shock*", and "*horrible*" when it happened to her, as it was a job she had thought she would retire from.

53. Although no vouching documentation was produced to the Tribunal, other than the statement to that effect in her letter to the Tribunal on 6 April 2023, the claimant informed the Tribunal at this Hearing that she had applied for jobs in the catering sector and also housekeeping, through Total Jobs, Indeed & Just Jobs. She informed the Tribunal that she was successful in obtaining new employment as from 1 December 2022, having been unemployed for about two months.

54. As regards her new employment, which started on 1 December 2022, the claimant informed the Tribunal that she had obtained new employment as a housekeeper at Ross Hall private hospital in Crookston, Glasgow, where she is still employed, on the basis of 37.5 hours per week, at a rate of £11.15 per hour. She informed the Tribunal that her weekly gross and net pay with her new employer is more than she was receiving while employed by the respondents.

55. She produced to the Tribunal, at this Hearing, by email sent during the Hearing, a copy of her first payslip from Circle Health Group, dated 30 December 2022, showing a basic gross pay of **£1,666.63** (based on an annual salary of £19,987.50, and hourly rate of £10.25), less deductions of £74.11 NI, producing net pay of **£1,591.52**; and her most recent payslip dated 30 September 2023, showing a basic gross pay of **£1,811.88** (based on an annual salary of £21,742.50, and hourly rate of £11.15), plus basic pay adjustment for holidays, premium and unsocial hours, producing gross of £1,910.61, less deductions of £274.3 for tax and NI, producing net pay of **£1,636.30**.

56. In her evidence to the Tribunal, the claimant also informed this Hearing that she had received Jobseekers' Allowance, following termination of her employment with the respondents, and up to the start of her new job.

57. While no vouching documentation was lodged by the claimant, prior to this Hearing, to show when she was in receipt of State benefits, and for how long, she provided the Tribunal at this Hearing with two vouching documents: (a) a copy of a letter to her from DWP dated 23 November 2022, advising her that

she would be paid Jobseekers' Allowance from 26 October 2022 at the rate of £77.00 a week; and (b) a copy of the P45 issued to her by HM Revenue & Customs, dated 30 November 2022, showing that on that date, her benefit ceased, she having received £319 in Jobseekers' Allowance.

- 5 58. As regards her earnings while employed by the respondents, while the claimant did not have other copy payslips from the respondents to produce to the Tribunal, she did provide, after an adjournment to allow her to get a printed bank statement from the TSB, a copy of her bank statement dated 9 October 2023 showing transactions between 1 April and 30 September 2022, including her receipt of the following net wages payments from the respondents, all paid to her through GCVS (Glasgow Council for Voluntary Services), another charity that provides payroll services to many charities and voluntary organisations operating in the Glasgow city area, as follows:

Date	Transaction	Amount
07/04/2022	Direct Credit GCVS BACS Clearing	£ 1,091.24
05/05/2022	Direct Credit GCVS BACS Clearing	£ 1,090.75
01/06/2022	Direct Credit GCVS BACS Clearing	£ 1,090.27
30/06/2022	Direct Credit GCVS BACS Clearing	£ 1,090.76
28/07/2022	Direct Credit GCVS BACS Clearing	£ 1,117.98
25/08/2022	Direct Credit GCVS BACS Clearing	£ 1,118.18
22/09/2022	Direct Credit GCVS BACS Clearing	£ 849.75

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Reserved judgment

59. In concluding proceedings, I reserved Judgment. I advised the claimant, and her partner, that I would issue my written Judgment, with reasons, as soon

as possible, after taking time for private deliberation in chambers, to review the evidence, and apply the relevant law, to come to my final decision.

5 60. The issues for the Tribunal, in the absence of any ET3 resistance by the respondents, were to assess the respondents' liability (if any) to the claimant, for each of the various claims brought by the claimant against them and, if liability established, to assess the sums payable to the claimant.

10 61. My consideration thus turned to look at each of the claims for redundancy payment, compensation for unfair dismissal, and any monies owed for unpaid notice pay, arrears of pay, and holiday pay. I deal with each of these heads of claim in the remainder of this Judgment.

Redundancy payment

62. In terms of **Section 135 of the Employment Rights Act 1996**, an employer shall pay a redundancy payment to an employee if the employee is dismissed by the employer by reason of redundancy.

15 63. Redundancy is defined in **Section 139**, which provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy, if the dismissal is wholly or mainly attributable to the fact that his employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed by him, or to carry on that business in the place
20 where the employee was so employed, or the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

25 64. The claimant's claim to the Tribunal for a redundancy payment constitutes a reference to the Tribunal under **Section 163**. For the purposes of any such reference, an employee who has been dismissed by their employer shall, unless the contrary is proved, be presumed, in terms of **Section 163 (2)**, to have been so dismissed by reason of redundancy.

65. The respondents did not contest the claim, and while the statutory presumption of redundancy therefore applies, I am satisfied on the evidence available to the Tribunal from the claimant in her oral evidence that there was indeed a redundancy situation in the respondents' business as at 29
5 September 2022. On the evidence before the Tribunal, it is clear that the respondents' business ceased trading on that date, when the Centre closed, the claimant's post was accordingly made redundant with immediate effect.

66. **Section 155** further provides that an employee does not have any right to a redundancy payment unless they have been continuously employed for a
10 period of not less than 2 years ending with the date of redundancy. Again, on the evidence before the Tribunal, it is clear that the claimant had qualifying service to be entitled to a redundancy payment.

67. The amount of a redundancy payment is calculated in accordance with
15 **Section 162**, and it is based on the individual claimant's wages, age and length of continuous employment with the respondents.

68. As at 29 September 2022, the claimant was aged 62, and she had 16 years' continuous employment, giving a right to a redundancy payment of 24 weeks' pay. Her gross wages were **£309.00** per week – based on 4 weekly wage of £1,236.00.

20 69. Accordingly, I have ordered that the respondents shall pay to the claimant a redundancy payment in the sum of **£7,416**, being £309 for 24 weeks, which is the appropriate sum.

Compensation for unfair dismissal

25 70. Being satisfied that the claimant was unfairly dismissed by the respondents, because they have put forward no fair reason for dismissal, and as, on the evidence available to the Tribunal, there was no prior consultation with the claimant about redundancy, no proper procedure to her dismissal, and no attempt to find her other alternative employment, as also no right of appeal offered to her to challenge her dismissal, the next issue for this Tribunal was

to assess the claimant's compensation for that unfair dismissal. The claimant is entitled to a basic award and a compensatory award of compensation.

71. In the letter of 6 April 2023 provided to the Tribunal, as noted earlier in these Reasons, it had been stated that: *"The sum sought in relation to unfair dismissal would be around £7308 which relates to 3 months unpaid at*
5 *£1236.00 per month x 3 months."*

72. That letter is mathematically incorrect, because 3 times £1,236 is actually £3,708, and not the figure stated by the claimant as being £7,308. In legal terms, it is also incorrectly calculated.

10 73. As at the effective date of termination of her employment on 29 September 2022, the claimant (date of birth 12 July 1960) was aged 62, and she had 16 year's continuous service with the respondents, her employment with them having started on or around 3 July 2006.

15 74. Given her age and length of service with the respondents, in terms of **Section 119 of the Employment Rights Act 1996**, the claimant is entitled to 24 week's gross pay, by way of a basic award for unfair dismissal.

75. On that basis, the basic award payable here to the claimant is therefore 24 weeks at £309, producing **£7,416**, which sum I would have awarded to the claimant by way of her basic award for unfair dismissal.

20 76. However, where a redundancy payment is awarded, then that payment is deducted from the amount of any basic award in terms of **Section 122 (4)**. As such, the basic award in the present case must be reduced to nil.

25 77. With regard to the claimant's compensatory award for unfair dismissal, I have decided to award the claimant compensation for loss of earnings. The Tribunal's duty, under **Section 123 of the Employment Rights Act 1996**, is to assess the amount of the compensatory award as being such amount as the Tribunal considers just and equitable, in all the circumstances, having regard to the loss sustained by the claimant in consequence of the dismissal, insofar as that loss is attributable to action taken by the employer.

78. In determining the compensatory award, the Tribunal must proceed on the basis of the claimant's weekly net pay with the respondents at **£273.03** per week (based on **£1,092.14** net wages every 4 weeks). In her evidence to the Tribunal, and as per her letter of 6 April 2023, the claimant sought an award for past loss of earnings to date of this Hearing, but not any future loss for any further period.

79. The claimant's partner, Mr Gerald Winters, seeking to assist the claimant, although present only as an observer, and not as her lay representative, suggested that the Tribunal should consider awarding the claimant some compensation for the stress caused to her since her dismissal by the respondents.

80. As presiding Employment Judge, I stated that the Tribunal has power to make what is known as an "*injury to feelings award*", for non-pecuniary loss, but such awards are only available where a Tribunal has upheld a complaint of discrimination, or unlawful detriment, but not for any ordinary claim for unfair dismissal, such as the claimant's complaint here.

81. The claimant explained to me that it was 3 month's loss of wages sought, as although she started her new job on 1 December 2022, she did not get her first pay from that new job until 30 December 2022.

82. In assessing an appropriate compensatory award, the Tribunal has had regard to past loss of earnings, and future loss. The claimant has confirmed that she has no future loss, as her earnings in new employment exceed what she was earning while employed by the respondents.

83. One of the other heads of loss for which a Tribunal may award compensation is the value of accrued statutory employment rights that have been lost. Where an employee begins a new job following the termination of their employment, they will need to accrue 2 years' continuous service before they have acquired the right to claim unfair dismissal, or a statutory redundancy payment.

84. The sum generally awarded by Tribunals for “*loss of statutory rights*” is a nominal amount between one and two week’s pay. In the present case, I consider it would be appropriate to award the claimant for “*LOSR*” the sum of **£500** for this head of loss.

5 85. As regards past loss of earnings, I calculate that the claimant is due loss of earnings between 29 September and 1 December 2022 is a period of **9 weeks**, which, based on weekly net wages of **£273.03**, produces a figure of **£2,457.27**, which adding on **£500** for LOSR, gives a total compensatory award of **£2,957.27**.

10 86. No information was provided to the Tribunal about the claimant’s Peoples Pension, nor any claim for loss of pension. Taking account of all of these figures, including the basic award at £ nil, the total monetary award due to the claimant for her unfair dismissal is **£2,957.27**, which is the sum I have ordered the respondents to pay to the claimant as a monetary award in respect of her
15 unfair dismissal.

87. In respect that the claimant advised the Tribunal that she had been in receipt of State benefits (namely Jobseekers’ Allowance) after her dismissal by the respondents, and she produced vouching documentation to this effect, the **Employment Protection (Recoupment of Benefits) Regulations 1996**
20 apply to the monetary award made in terms of this Judgment. The Secretary of State may seek to recoup that benefit by service of a Recoupment Notice upon the respondents.

Claim for breach of contract, and notice pay

88. In her letter of 6 April 2023 to the Tribunal, it was stated that:

25 *“In relation to notice of pay. The Claimant did not get any notice period. Her employment was simply terminated by telephone call during sick leave. I believe your notice period should be 4 weeks notice. So the loss here of earning would be 1 month’s salary at £ 1236.00.”*

89. In her evidence to this Tribunal, in the absence of any full written statement
30 of employment particulars from the respondents to produce to the Tribunal,

the claimant candidly stated that she had "*just plucked it out of the air*" as being 4 weeks' notice to due to her.

5 90. She stated that she was not aware that, having 16 years' continuous employment with the respondents, the statutory minimum period of notice in terms of **Section 86 of the Employment Rights Act 1996** equates to 12 weeks' pay, and that her statutory minimum entitlement was thus three-times what she was asking for.

10 91. Given the monetary award made for unfair dismissal, 9 out of 12 weeks has already been compensated for by the loss of earnings awarded to her in the compensatory award for unfair dismissal.

15 92. It is not appropriate to compensate twice by further payment of damages for breach of contract for failure to pay the statutory minimum period of notice in terms of **Section 86 of the Employment Rights Act 1996** which, for the claimant, equates to 12 weeks' pay, so instead I award her damages for the additional period of 3 weeks, being a further **£819.09** (being 3 x £273.03 per week net).

Unlawful deduction from wages, and holiday pay

20 93. I turn now to the claimant's claim in respect of an unlawful deduction from wages, in respect of arrears of pay. The relevant law in respect of unlawful deductions from wages is to be found in **Section 13 of the Employment Rights Act 1996**.

94. In her letter of 6 April 2023 to the Tribunal, it was stated that:

25 *"The claimant seeks to claim unpaid "arrears of pay" for the months where she was out of work October 2022 until January 2023 which is three months of no income. Claimant's earning were £1236.00 per months x 3 months = £7308."*

95. That letter is mathematically incorrect, because 3 times £1,236 is actually £3,708, and not the figure stated by the claimant as being £7,308. In legal terms, it is also incorrectly calculated. Once employment is terminated, there

is no continuing obligation on an employer to continue to pay wages to a former employee.

96. It is also clear, from the evidence before the Tribunal, that the claimant secured a new job, from 1 December 2022, and her first pay from that new job was paid to her on 30 December 2022. Her time unemployed was therefore between 29 September 2022 and 1 December 2022, a period of two months, not 3. She has been compensated for that loss as part of her compensatory award for unfair dismissal.

97. Further, in that same letter of 6 April 2023, the claimant also said as follows:

10 “... her last pay she received from the respondent was 23/09/2022 where she received a payment of £849 which seemed to have a shortfall.”

98. In the subsequent email of 3 May 2023, sent in on her behalf by Amanda Winters, it was stated that there was a shortfall of **£615**. The quoted shortfall is however not explained in either of these two items of correspondence received by the Tribunal. In her oral evidence at this Hearing, the claimant was unable to shed any real light on the matter, other than to suggest it was maybe the difference between full pay and SSP.

99. What I gleaned from her oral evidence is that there was confusion on her part between arrears of pay, not paid, and loss of earnings arising from her employment ending.

100. The shortfall, as I understood her case, arises from the fact that she received no payment from the respondents after her last pay (paid into her bank on 22 September 2022) in the sum of £849.75, and the fact that that included no wages for 23 to 29 September 2022, and not full sick pay. As that was the end of a 4 week-period, as I see it, any remaining wages should have been paid in a further payslip, but the claimant's evidence was that there was no further payment made to her.

101. From the copy final payslip produced to the Tribunal, dated 23 September 2022, what it shows, against gross pay, is a gross payment

of £923.76, less sickness absence of 54 hours at £10.30 per hour = (£556.20), and SSP of £468.36, producing total gross pay of £835.92, and net pay of £849.75.

102. I am satisfied, on the basis of the evidence led before the Tribunal,
5 that there was an unlawful deduction from wages properly due and payable by the respondents to the claimant in regard to arrears of pay from 23 to 29 September 2022, but in the absence of any further information from the claimant, or the respondents' payroll service provider at GCVS, to explain the pays processed, and the information received by
10 them from the respondents, when instructing payment to the claimant, all I have is the final payslip, and it is not at all clear to me how that has been calculated.

103. Further, the claimant in her oral evidence could not assist me in this regard. In these circumstances, the claimant has not satisfied the
15 Tribunal as to the respondents having made an unauthorised deduction from the claimant's wages, in the sum of **£615**, as alleged, and accordingly no award is made by the Tribunal under this head of claim.

104. Similarly, no figure was suggested to me as regards the sum properly due and payable to the claimant for the unpaid wages for 23 to 29
20 September 2022, when, on her own evidence, she was off work and on sick leave. There is no evidence before me as to whether or not the claimant, for that period, met the established criteria for SSP, or contractual sick pay. Accordingly, no award is made by the Tribunal under this head of claim, as I have incomplete information to assess what, if
25 anything, might be due to her.

105. As regards holiday pay, where the claim proceeds in terms of **Regulation 30 of the Working Time Regulations 1998**, the claimant confirmed in evidence before the Tribunal that there was an outstanding entitlement due to her.

30 106. In her letter to the Tribunal, on 24 January 2023, the claimant stated that she felt that she was entitled to "*roughly 18 days of holiday pay.*" Her

further letter of 6 April 2023 said she had 14 days left, and in her oral evidence at this Hearing, she suggested that she was due about 2 weeks' holiday pay unpaid.

5 107. According to the 2022 Annual Leave card, as produced to the Tribunal, the claimant had 17.5 days holidays still to take to the end of the calendar year on 31 December 2022. In discussion with me, she accepted that her employment having ended on 29 September 2022, her holiday entitlement needed to be pro-rata'd, to her actual end date. She also advised that her 30 hours per week was 5 days per week, with 6
10 hours per day, and she thought her holidays were worked out in hours, not days.

108. Using the information provided by the claimant, and applying it to the online Gov.UK holiday entitlement calculator, with leave year starting on 1 January 2022, and employment ending on 29 September 2022, for a
15 30-hour week, worked over 5 days per week, that gives a statutory entitlement of **125.2 hours** holiday.

109. Of her annual entitlement, the Annual Leave card produced to the Tribunal shows that she had used 14 days (multiplied by 6 hours), gives 84 hours used, leaving a balance of **41.2 hours**. Taking a week's pay at
20 £273.03 net for 30 hours, that gives an hourly rate of £9.10 net.

110. As such, I calculate that the claimant is entitled to an order from the Tribunal against the respondents for payment to her of the unpaid holiday pay sum in the amount of **£374.92**, being 41.2 hours @ £9.10.

25 **Employment Judge: G I McPherson**
Date of Judgment: 24 October 2023
Entered in register: 24 October 2023
and copied to parties

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