



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4100536/2024

Hearing Held by Cloud Based Video Platform on 15 May 2024

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Employment Judge McFatridge

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Joshua Richardson

**Claimant
In Person**

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Auld Reekie Foodie Ltd

**Respondent
Not present or
represented
No ET3 lodged**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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1. The respondent unlawfully withheld wages from the claimant in the sum of £3409.92. The respondent shall pay the claimant the said sum of £3409.92 (Three Thousand Four Hundred and Nine Pounds and Ninety Pence) in respect of an unlawful deduction of wages.

2. The respondent shall pay to the claimant the sum of £1733.48 (One Thousand Seven Hundred and Thirty Three Pounds and Forty Eight Pence) in respect of annual leave accrued but unpaid as at the date of termination of the claimant's employment.
- 5 3. The respondent shall pay to the claimant the sum of £538.35 (Five Hundred and Thirty Eight Pounds and Thirty Five Pence) as damages for breach of contract (failure to pay notice pay).
- 10 4. The respondent shall be at liberty to deduct from the above sums prior to making payment to the claimant such amounts of income tax and employee National Insurance contributions (if any) as it may be required by law to deduct from a payment of earnings of that amount made to the claimant and if it does so duly remits such sums so deducted to HM Revenue and Customs and provides to the claimant written evidence of the fact and amount of such
15 deductions and evidence of the sums deducted having been remitted to HMRC. In that case payment of the balance to the claimant after such deduction shall satisfy the requirements of this Judgment.

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REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that various sums were due to him following the termination of his employment. No response was lodged within the statutory period. A Hearing took place
25 over CVP on 15th May 2024 at which the claimant gave evidence on oath. The claimant also lodged various productions. On the basis of the evidence

and the productions I found the following facts to be established.

FINDINGS IN FACT

2. The claimant was employed as a Kitchen Manager by the respondent from
5 20th January 2023 until 28th November 2023. The claimant was due to be
paid £2333 per month (£27996 per year). This was on the basis of an
average 5 day week. The claimant was due to be paid the sum of £2333 in
his November pay which was due to be paid on 25th November. Whilst he
received the payslip he did not receive the payment of the sum due. He was
10 due to be paid a further sum of £1076.92 in the December payroll run on
25th December following the termination of his employment. This sum
included a week's lying time as well as pay accrued since the November
payroll run. Once again although the claimant received a payslip he did not
receive payment of the actual sum due to him.
- 15 3. The claimant was unaware of any relevant agreement regulating the annual
leave year. Accordingly in terms of statute the respondent's annual leave
year ran from 20th January in each year to 19th January the following year.
The claimant was due 28 days annual leave per annum. He was due 24.1
20 days annual leave for the period from 20th January 2023 to his effective date
of termination on 28th November 2023. The claimant had taken 8 days
holiday during this period and was therefore due a balance of 16.1 days pay.
4. The claimant did not receive any notice of termination or any payment in lieu
25 of notice. In terms of the Employment Rights Act he was due one week's
notice of termination of employment.

5. The claimant's daily rate of pay was £107.67.
6. The claimant was due £1733.48 in respect of holidays accrued but untaken
5 as at the date of termination of employment (16.1 x £107.67).
7. The claimant was entitled to notice pay of £538.35 (£107.67 x 5) as at the date of termination of his employment.
- 10 8. Following the termination of the claimant's employment the claimant was briefly in correspondence with the company owner who advised him that he was having financial difficulties but that the claimant would be paid in due course. Since then the claimant has not been paid and has had no further contact with the company. He understands the company is no longer trading
15 but the company still appears as live on the Companies House website.

Discussion and Decision

- 20 9. I took the claimant through the various claims and calculations and he confirmed the figures with me. I had no hesitation in accepting his evidence as truthful. On that basis I have made the awards set out in the Judgment above. The awards have been made gross since given what the claimant has advised regarding the company there can be no confidence that the
25 company will remit any deductions made to HMRC. I have however provided in the Judgment that if the company does provide evidence that it has made

such deductions from the sums payable then they will be entitled to simply pay the balance to the claimant.

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Employment Judge:	McFtridge
Date of Judgment:	11 June 2024
Entered in register:	11 June 2024
and copied to parties	11/06/2024

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