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EMPLOYMENT TRIBUNALS (SCOTLAND)

**Case Numbers: 4106029/2024
4106030/2024**

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**Final Hearing held in Glasgow by CVP
on 24 September 2024**

Employment Judge: R Sorrell

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Mrs A M Costa Machado

**First Claimant
In Person**

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Miss T Rodrigues

**Second Claimant
In Person**

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Mozza Group Ltd

**Respondent
No Appearance**

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FINAL HEARING

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ORDER AND JUDGMENT OF THE EMPLOYMENT TRIBUNAL

CASE MANAGEMENT ORDER

In accordance with Rule 29 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 as amended, it is the Order of the Tribunal that the

E.T. Z4 (WR)

claims submitted by the First and Second Claimant are combined for the purposes of this hearing.

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

5 The Judgment of the Tribunal is that:

First Claimant

10 (i) The claim for unauthorised deductions from wages is well founded and upheld and the respondent is ordered to pay to the claimant the gross sum of £625.00 (Six Hundred and Twenty Five Pounds).

15 (ii) The claim for holiday pay is well founded and upheld and the respondent is ordered to pay to the claimant the gross sum of £329.59 (Three Hundred and Twenty Nine Pounds and Fifty Nine Pence).

(iii) The claim for notice pay is not well founded and is dismissed.

Second Claimant

20 (iv) The claim for unauthorised deductions from wages is well founded and upheld and the respondent is ordered to pay to the claimant the gross sum of £364.98 (Three Hundred and Sixty Four Pounds and Ninety Eight Pence).

25 (v) The claim for holiday pay is well founded and upheld and the respondent is ordered to pay to the claimant the gross sum of £408.54 (Four Hundred and Eight Pounds and Fifty Four Pence).

30 (vi) The claim for notice pay is not well founded and is dismissed.

35 The respondent shall be at liberty to deduct from the above sums prior to making payment to each of the claimants 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 each of the claimants, and if it does so, duly remits such sums so deducted to HM Revenue and Customs, and provides to each of the claimants written evidence of the fact and amount of such deductions

and of the sums deducted having been remitted to HMRC, payment of the balance to each of the claimants shall satisfy the requirements of this judgment.

REASONS

5 Introduction

1 The claimants lodged claims for unauthorised deductions from wages,
holiday pay and breach of contract.

2 The respondent has not entered a response to the claims and did not
10 appear at the hearing.

3 This hearing was therefore scheduled to determine liability and remedy in
terms of the claims brought. It was a remote hearing held by way of the Cloud
Video Platform.

4 The burden of proof is on the claimants and the standard of proof is on the
15 balance of probabilities.

5 The purpose and procedure for the hearing was explained to the claimants.

6 As the claims were submitted together, the claimants agreed their claims
could be formerly combined for the purposes of this hearing.

7 Prior to the hearing, the claimants had produced supporting documents.
20 Additional documents were lodged during the course of the hearing.

Findings in Fact

The following facts are found to be proven or admitted;

First Claimant

8 The First claimant's date of birth is 16 May 1982.

25 9 The respondent is a restaurant group.

- 10 She commenced employment with the respondent as a kitchen porter at their Leeds restaurant on 6 December 2023.
- 11 She had a zero hours contract. She worked an average of 25 hours per week over a 5 day period and was paid £10.42 gross per hour.
- 5 12 The respondent's pay week ran from Sunday to Saturday and she was paid one week in arrears on a weekly basis.
- 13 On 4 March 2024 she received a group text from her manager, Daniele Teti. (D1) This stated that the respondent had decided to close the Leeds restaurant and 10 March 2024 would be the last working day.
- 10 14 Her effective date of termination of employment was 10 March 2024 which was also her last working day.
- 15 15 For the week of 25 February – 2 March 2024 she worked 28.8 hours. She received a pay slip for this week's work which stated: "*Week Ending 9 March 2024.*" This recorded her gross pay as £300.10 and her net pay due as £287.08. (D2) She did not receive this payment from the respondent.
- 16 16 For the week of 3 – 9 March 2024 she worked 25.2 hours. (D3) The respondent did not pay her for these hours.
- 17 17 On 10 March 2024 she worked 5.98 hours. She received a pay slip for this work which stated: "*Week Ending 16 March 2024.*" This recorded her gross pay for these hours as £62.31. (D4) She did not receive this payment from the respondent.
- 20 18 Towards the end of her employment, the respondent did not pay her on time. On 13 March 2024 she was paid £295.86 by the respondent for the hours she worked for the week of 18-24 February 2024. (D5)
- 25 19 In accordance with her statement of terms and conditions of employment, she was entitled to 28 days per holiday year accrued on a pro rata basis. (D6) She did not know the start or end date for the leave year. She did not take any holiday during her employment.

20 The respondent notified her that she would receive a gross payment in respect of holiday pay of £296.45 for 5, 7 and 9 March 2024. The respondent did not state how this payment was calculated. (D3) She did not receive this payment from the respondent.

5 21 It was further recorded in the pay slip: "*Week Ending 16 March 2024*" that she would receive a gross payment of £33.14 for holiday pay. The pay slip did not state how this payment was calculated. (D4) She did not receive this payment from the respondent.

22 In accordance with her statement of terms and conditions of employment and
10 the duration of her employment, the respondent was required to provide her with one week's notice of the termination of her employment. (D6)

23 She worked her average number of weekly hours during the notice period.

Second Claimant

24 The Second claimant's date of birth is 9 November 1984.

15 25 The respondent is a restaurant group.

26 She commenced employment with the respondent as a waitress at their Leeds restaurant on 16 October 2022 and latterly worked as a supervisor.

27 She had a zero hours contract. She worked an average of 33 hours per week over a 5 or 6 day period and was paid £11.00 gross per hour.

20 28 The respondent's pay week ran from Sunday to Saturday. She was paid one week in arrears on a weekly basis. Towards the end of her employment, the respondent did not pay her on time.

29 On 4 March 2024 she received a group text from her manager, Daniele Teti.
(D1) This stated that the respondent had decided to close the Leeds
25 restaurant and 10 March 2024 would be the last working day.

30 Her last working day was 9 March 2024. Her effective date of termination of employment was 10 March 2024.

- 31 For the week of 25 February – 2 March 2024 she worked 33.18 hours. She received a pay slip for this week's work which stated: "*Week Ending 9 March 2024.*" This recorded her gross pay as £364.98 and her net pay due as £289.68. (D7) She did not receive this payment from the respondent.
- 5 32 On 13 March 2024 she was paid £322.25 by the respondent for the one and a half week's lie in pay due to her from the start of her employment. (D8)
- 33 In accordance with her statement of terms and conditions of employment, she was entitled to 28 days per holiday year accrued on a pro rata basis. (D9) She did not know the start or end date for the leave year. She did not take any holiday during her employment.
- 10 34 She received a pay slip which stated: "*Week Ending 16 March 2024.*" This recorded a gross payment of £408.54 for holiday pay and her net pay due as £318.34. The pay slip did not state how this payment was calculated. (D10) She did not receive this payment from the respondent.
- 15 35 In accordance with her statement of terms and conditions of employment and the duration of her employment, the respondent was required to provide her with one week's notice of the termination of her employment. (D9)
- 36 She worked her average number of weekly hours during the notice period.

Relevant Law

20 *Breach of Contract*

- 37 If an employee is dismissed with no notice or inadequate notice in circumstances which do not entitle the employer to dismiss summarily or it is determined that an employee is constructively dismissed with no notice, this will amount to a wrongful dismissal and the employee is able to bring a breach of contract claim to recover damages in respect of the contractual notice period. Damages in a wrongful dismissal claim will be limited to the employee's losses occurring during the period between the date of dismissal and the date at which the contract could lawfully have been brought to an end
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by the employer in accordance with the contractual notice period or an implied reasonable notice period.

Holiday Pay

38 The Working Time Regulations 1998 SI 1998/1833 provide workers with a
5 guaranteed statutory right to paid holiday. Under Regulations 13 and 13A,
workers are entitled to a minimum of 5.6 weeks paid holiday in each leave
year beginning on or after 1 April 2009. Regulation 16(1) provides that a
worker is entitled to be paid at the rate of a week's pay in respect of each
week of annual leave to which a worker is entitled.

10 39 Regulation 14 provides that where a worker's employment is terminated
during the course of their leave year and at the date of termination, the
proportion of leave the worker has taken to which the worker is entitled under
Regulation 13(1) is less than the proportion of the leave year which has
expired, the employer shall make a payment in lieu of leave for a sum equal
15 to the amount that would be due to the worker under Regulation 16.

Unauthorised Deductions from Wages

40 The law relating to unauthorised deductions from wages is contained in section
13 of the Employment Rights Act 1996.

41 This provides that: "*An employer shall not make a deduction from wages of a
20 worker employed by him unless:-*

(i) *The deduction is required or authorised to be made by virtue of a
statutory provision or a relevant provision of the worker's contract
[Section 13(1)(a)]; or*

(ii) *The worker has previously signified in writing his agreement or consent
25 to the making of the deduction [Section 13(1)(b)]."*

42 Section 13 (2) states: *“In this section “relevant provision,” in relation to a worker’s contract, means a provision of the contract comprised –*

(i) *In one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question or, [Section 13(2)(a)]*

(ii) *In one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion [Section 13(2)(b)].”*

43 Section 13 (3) provides that: *“Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.”*

Issues to be Determined by the Tribunal

44 The Tribunal identified the following issues required to be determined:

(i) Has the respondent made unauthorised deductions from the claimants’ wages?

(ii) If so, how much compensation are the claimants’ entitled to?

(iii) Are the claimants’ entitled to holiday pay?

(iv) If so, how much compensation are the claimants’ entitled to?

(v) Has there been a breach of contract by the respondent in failing to pay the claimants’ notice pay?

(vi) If so, how much compensation are the claimants' entitled to?

Conclusions

5 First Claimant

(i) Unauthorised Deductions from Wages

45 I decided the claim is well-founded. This is because I accepted the First
claimant's evidence as credible that she has not received the wages claimed
10 and the respondent has not entered a response. In reaching this view, I am
satisfied that the payment made to her by the respondent on 13 March 2024
did not relate to the unauthorised deductions and that these deductions were
not authorised by statute, her consent, or the statement of terms and
conditions of her employment. (D6)

15 Compensation

46 I decided the respondent shall pay to the First claimant the sum of £625.00
(gross) in respect of the unauthorised deductions from her wages. This has
been calculated as follows:

25 February – 2 March 2024: 28.8 hours x £10.42 = £300.10

20 3 – 9 March 2024: 25.2 hours x £10.42 = £262.59

10 March 2024: 5.98 hours x £10.42 = £62.31

(ii) Holiday Pay

47 I decided the claim is well-founded. This is because I accepted the First
25 claimant's evidence as credible that she has not received the holiday pay
claimed and the respondent has not entered a response.

Compensation

48 I decided the respondent shall pay to the First claimant the sum of £329.59 (gross) in respect of the payment of holiday pay. On the basis of the information before me, this has been calculated as follows:

5 5,7,9 March 2024 = £296.45

Week Ending 16 March 2024 = £33.14

(iii) Breach of Contract

49 I decided there is no breach of contract by the respondent and that the First claimant is therefore not entitled to a notice payment. This is because on 4
10 March 2024, the respondent gave her one week's notice of the termination of her employment and I am satisfied that she worked her average number of weekly hours during the notice period.

50 For these reasons the claims for unauthorised deductions from wages and holiday pay are well founded and upheld and the claim for breach of contract
15 is not well founded and dismissed.

Second Claimant

(i) Unauthorised Deductions from Wages

20 51 I decided the claim is well-founded. This is because I accepted the Second claimant's evidence as credible that she has not received the wages claimed and the respondent has not entered a response. In reaching this view, I am satisfied that the payment made to her by the respondent on 13 March 2024 did not relate to the unauthorised deductions and that these deductions were
25 not authorised by statute, her consent, or the statement of terms and conditions of her employment. (D9)

Compensation

52 I decided the respondent shall pay to the Second claimant the sum of £364.98 (gross) in respect of the unauthorised deductions from her wages. This has been calculated as follows:

5 25 February – 2 March 2024: 33.18 hours x £11.00 = £364.98

(ii) Holiday Pay

53 I decided the claim is well-founded. This is because I accepted the Second claimant's evidence as credible that she has not received the holiday pay claimed and the respondent has not entered a response.
10

Compensation

54 I decided the respondent shall pay to the Second claimant the sum of £408.54 (gross) in respect of the payment of holiday pay. On the basis of the information before me, this has been calculated as follows:

15 Week Ending 16 March 2024 = £408.54

(iii) Breach of Contract

55 I decided there is no breach of contract by the respondent and that the Second claimant is therefore not entitled to a notice payment. This is because on 4 March 2024, the respondent gave her one week's notice of the termination of her employment and I am satisfied that she worked her average number of weekly hours during the notice period.
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56 For these reasons the claims for unauthorised deductions from wages and holiday pay are well founded and upheld and the claim for breach of contract is not well founded and dismissed.

Employment Judge R Sorrell

2 October 2024

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Date sent to parties

03 October 2024

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