



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4104863/2024 Hearing by Cloud Video Platform (CVP) at Edinburgh  
on 4 December 2024**

**Employment Judge: M A Macleod**

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**Jamie Cochrane**

**Claimant  
Represented by  
Mr R Lawson  
Solicitor**

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**Satine Edinburgh Limited**

**Respondent  
Represented by  
Ms J Gillespie**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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**The Judgment of the Employment Tribunal is that the claimant's claim  
succeeds, and that the respondent is ordered to pay to the claimant the sum  
of One Thousand Four Hundred and Fifty Eight Pounds and Thirty Four  
Pence (£1,458.34) by way of unlawful deductions from wages, subject to the  
deduction of tax and national insurance.**

## REASONS

1. The claimant presented a claim to the Employment Tribunal on 2 May 2024 in which he complained that he had been unlawfully deprived of notice pay, holiday pay and arrears of pay.
2. The respondent submitted an ET3 in which they resisted the claimant's claims.
3. A Hearing was listed to take place by CVP on 4 December 2024. The claimant was represented by Mr Lawson, solicitor, and the respondent by their Director, Ms Gillespie.
4. A Joint Bundle of Documents was produced to the Tribunal.
5. The claimant gave evidence, and Ms Gillespie also gave evidence on her own account.
6. Mr Lawson confirmed that the claim relating to holiday pay was withdrawn and has been dismissed, but that the remaining claims proceeded.
7. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

## Findings in Fact

8. The claimant, whose date of birth is 3 July 1988, commenced employment with the respondent as a Head Chef on 5 July 2023. He was provided with a contract of employment by the respondent, which ran a restaurant at 112 St Stephen Street, Edinburgh (33ff). the claimant's contract provided that he would work a minimum of 40 hours per week, and that his "qualifying days" were Thursday, Friday, Saturday and Sunday.
9. His contract was a permanent, full-time contract, and his salary was £35,000 per annum, payable monthly on the 28<sup>th</sup> day of each month. The contract provided that he would require to complete a monthly time sheet and submit it to the respondent on the 25<sup>th</sup> day of each month. The claimant

was to have a probationary period of 12 weeks, during which his notice period to be given by either party, would be one week. After satisfactory completion of the probationary period, he would be required to give 4 weeks' notice irrespective of length of service.

5 10. The claimant's holiday entitlement was to 28 days per year, pro-rata according to completed months of employment, and the holiday year ran from 1 September until 31 August each year.

11. When the claimant commenced, and during his employment, there were 2 other employees in the restaurant, namely Esteban Sauli-Gignet, the front  
10 of house manager, and Lewis, a waiter.

12. On 25 November 2023, the claimant's employment ended. The claimant and Ms Gillespie gave divergent evidence as to how his employment ended.

13. The claimant's position was that on that date, there was 1 reservation for dinner in the evening. As a result, he sent Esteban home, Esteban having  
15 been unwell. The claimant took the view that this was normal practice within the restaurant sector, and that it was unnecessary to keep Esteban at work when he had not been feeling well. When Ms Gillespie arrived (which was unusual) on the premises, in the late afternoon, at approximately 4.30pm, she was surprised that Esteban was not present. The claimant explained  
20 that he had sent him home. Ms Gillespie reacted aggressively and angrily towards the claimant. As a result, he decided that he was no longer prepared to work for her.

14. At 5.11pm the claimant emailed Ms Gillespie (60) to say:

*"Hi Jennifer*

25 *Further to our conversation earlier please accept this email as notice of resignation from my contract, effective 25<sup>th</sup> November 2023. I will work the four weeks, as stipulated in my contract. My final shift will be 23<sup>rd</sup> December 2023.*

*Kind regards,*

*Jamie”*

15. Ms Gillespie did not reply to that email by email.

5 16. Ms Gillespie’s version was different. She said that when she arrived at the premises at 4.30pm on 25 November, she was “shocked” to find out that the claimant had sent Esteban home. She said that the claimant was angry because he had been caught, and she told him that he was dismissed, and that she would follow this up in writing. She said that she told him to go and not come back. She maintained that there were in fact 13 covers booked for that evening, according to an online system used to record the bookings.

10 17. She maintained that while she did not know whether or not the claimant left the premises as instructed (since she left at 5pm), there were sales taken that evening. She presumed that Lewis was able to provide food for the customers who attended, but that her understanding was that the restaurant would be closed that evening.

15 18. On 26 November 2024, Ms Gillespie had a text exchange with Esteban at 10.23am (61), in which Esteban said “Good morning sorry I went straight to bed I was feeling unwell.” Ms Gillespie then asked him if he was off sick the previous night, or whether the claimant had sent him home. Esteban replied “Send me home but I felt (sic) asleep straight away once at home that’s why  
20 I didn’t pick my phone.”

19. It should be noted that Ms Gillespie relied upon this exchange as evidence confirming that Esteban had not been unwell on the previous day. My conclusion is that it confirms the opposite, as Esteban explicitly said that he had been feeling unwell on the previous day, and had gone straight to bed  
25 as a result.

20. However, although she did not reply by email to the claimant’s email of 25 November, she produced a letter dated 27 November 2023 (62) in which she invited him to a meeting “to discuss your dismissal from the role as Head Chef”, to take place on 4 December 2023.

21. The claimant said that he never received this letter, and only saw it when he was sent it as part of the bundle for this Hearing. He did not attend at a meeting on 4 December 2023 in any event.

5 22. Further, Ms Gillespie produced a letter dated 11 December 2023 (63), in which she told the claimant that he had been dismissed due to gross misconduct following the incident which occurred on 25 November 2023. She confirmed that the claimant had not accepted the invitation to the meeting of 4 December to discuss his dismissal, and that "You will be paid in full for this disciplinary period, up to and including Sunday, 10<sup>th</sup> December  
10 2023."

23. Again, the claimant maintained in evidence that he had not seen this letter until it was forwarded to him as part of the bundle for this Hearing.

24. The claimant sent a text message to Ms Gillespie on 16 December 2023 (64) in which he said:

15 "Hi Jennifer,

*I have sent an email following on from our conversation and the email giving my resignation as there appears to be some confusion regarding my exit. My initial email stated my months notice ending on 23<sup>rd</sup> December. However in our conversation you stated that either I was to finish on the 17<sup>th</sup> or 22<sup>nd</sup>  
20 December. Could you confirm the date of my exit please? Could you also confirm when I (sic) my final salary, holiday pay and p45 will be issued."*

25. On 17 December, Ms Gillespie sent a message on the restaurant staff WhatsApp group (65) to say "Jamie – can you give your keys and the expenses bank card to Lewis when you finish today. Lewis – I'll let you  
25 know the plan for the week tomorrow once I get confirmation. I hope that's ok – thank you."

26. The claimant replied to ask for confirmation that he would be paid for the notice period as set out in his resignation email, and Ms Gillespie responded to say that any further questions regarding the end of his  
30 employment should be sent to the restaurant email address. She advised

him that one of the new management team would take any action necessary.

5 27. On 22 December 2023, Ms Gillespie sent a message at 10.32pm to Mark Holgate, a food critic who had been scheduled to attend the restaurant on 23 December to carry out a review. In it she said: *"Firstly, apologies for sending this message so late – we wanted to inform you as soon as we possibly could. Unfortunately our chef is unwell and will be unable to come to work at the restaurant tomorrow morning. We are extremely sorry to have to cancel your reservation with us. Please accept our sincere apologies – if*  
10 *you would like to make another reservation with us again in the future – we would like to offer this fully complimentary from us."*

28. The chef was not unwell. Ms Gillespie's position was that she did not wish to risk the claimant coming into the restaurant while a prestigious critic was present.

15 29. Following the incident on 25 November 2023, the respondent's position was that the restaurant was not operating, other than as a bar providing drinks and snacks. The claimant's position was that he was working until the point when the respondent told him not to return to the restaurant, on 17 December, though his employment continued until the end of the notice  
20 period on 23 December 2023.

30. On 28 December 2023, the claimant sent a message to Ms Gillespie (78). She had sent him his p45 by that point, together with his service charge (understood to mean the gratuities to which he was entitled at the end of his employment). He noted that he had been paid £1,446.76 whereas he  
25 should have been paid £2,916.67. In addition, he pointed out that there was a discrepancy in his holiday pay. He considered that 36.67 days of annual leave had been used by him.

31. He said that he understood that he was to be paid in full for his notice pay, with all holiday pay accrued during his employment.

32. On 28 November 2023, the claimant was paid £2,997.89 net by the respondent, according to his payslip (81).

33. On 28 December 2023, the claimant was paid £2,048.59, including a payment in relation to 36.6665 hours for holiday pay (£636.57 gross), according to his payslip (82).

### **Submissions**

34. Mr Lawson, for the claimant, made a brief oral submission to the Tribunal, as did Ms Gillespie for the respondent. It is not necessary to summarise these submissions but where appropriate I refer to them in my decision below.

### **Discussion and Decision**

35. In this case, the only issues before the Tribunal are whether or not the respondent made unlawful deductions from the claimant's wages in respect of arrears of pay, and notice pay. The claimant's holiday pay claim was withdrawn and dismissed prior to the Hearing.

36. It is appropriate at this stage to make some observations about the evidence given by the parties in this case. There was a significant divergence between the parties as to what happened between them, especially at the point when the claimant's employment ended and thereafter.

37. I found the claimant to be a straightforward and honest witness. He gave his evidence in a measured manner and I found no reason not to believe his evidence.

38. Ms Gillespie was less measured in her manner, and I accept that this was partly occasioned by the stress of recalling events which clearly caused her a degree of upset. She gave evidence to the effect that she had contacted the police at one point as she considered that the claimant was acting in an intimidatory manner towards her, though I did not make any findings of fact to this effect as there was so little evidence about the matter.

39. Considering her evidence as a whole, however, there were some inconsistencies which were difficult to reconcile.

40. Firstly, Ms Gillespie insisted that she had dismissed the claimant verbally on 25 November; however, she accepted that he was due to be paid thereafter, and asserted that his employment ended on 10 December, which were inconsistent with her assertion of verbal dismissal.

41. Secondly, notwithstanding her evidence about verbal dismissal, she said that in fact he was to be the subject of a disciplinary process, and produced two letters purporting to invite him to a hearing for this purpose. If he had already been dismissed, there was no reason to invite him to a hearing. The claimant's evidence was that he never received these letters, and Ms Gillespie accepted under cross-examination that she did not know and could not say that he had received the letters. In my judgment, these letters were not received by the claimant, and I cannot find that they were sent at the time nor indeed at all.

42. Thirdly, Ms Gillespie asserted that the restaurant ceased operation when she dismissed the claimant (as head chef), but it is clear that the business continued thereafter, and Ms Gillespie herself asked the claimant to hand in his keys and credit card "when you finish today" on 17 December 2023. While Ms Gillespie suggested that the business continued to operate merely as a bar serving drinks and snacks, her text message on 16 December is completely inconsistent with that evidence.

43. Fourthly, when communicating with Mark Holgate, Ms Gillespie accepted that she had been untruthful when telling him that the chef was unwell, when even on her own version of events, the reason why she cancelled the reservation was that she was concerned that the claimant would turn up at the restaurant, causing her embarrassment. That admission that she had not told the truth to Mr Holgate undermines her credibility in general.

44. Taken together, these inconsistencies lead me to conclude that Ms Gillespie's evidence was not credible and could not be relied upon. As a



result, where there was a conflict between the claimant and Ms Gillespie in their evidence, I preferred that of the claimant.

45. Accordingly, while this is not an unfair dismissal claim, the means by which the claimant's employment ended is a matter of some importance, in  
5 determining when his employment actually ended, and the pay to which he was consequently entitled.

46. In my judgment, the claimant's employment came to an end when he resigned with notice on 25 November 2023 by email at 5.11pm that day. He gave four weeks' notice, as required by his contract of employment, and  
10 further it is my finding that he continued to work for the respondent until she required him to hand in his keys on 17 December 2023.

47. The claimant claims that he was entitled to £2,916.67 gross between 25 November and 23 December 2023, but was paid £1,458.34 gross by the respondent. As a result, he was entitled to receive a further £1,458.34 gross  
15 in pay to cover the balance of his notice pay.

48. I find that the respondent did withhold this sum of £1,458.34 unlawfully from the claimant, without any good reason, when it was clear that he had given four weeks' notice and was only prevented from working that full notice period by the instruction of the respondent to hand in his keys and credit  
20 card on 17 December 2023.

49. The claimant also seeks an uplift under the ACAS Code of Practice on the basis that the respondent failed to deal with his grievance, submitted on 28 December 2023. It is quite correct to say that the respondent did not deal with this grievance in any way, but at that point the claimant's employment  
25 had ended. As a result I do not consider it in the interests of justice to make any uplift to the award, since it had no impact on any of these events. I appreciate that if the respondent had heard the grievance and upheld it, there may not have been any need for the proceedings to have been raised, but it is plain from the implacable insistence of the respondent that the  
30 claimant had been dismissed for gross misconduct, without any proper

evidence, that it is unlikely to have had any impact on this process. I do not consider it to be just and equitable to award an uplift for this reason.

50. Accordingly, the claimant's claim succeeds, and the respondent is ordered to pay to the claimant the sum of £1,458.34 in respect of an unlawful deduction of wages, subject to the deduction of tax and national insurance.

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**Employment Judge: M A Macleod**  
**Date of Judgment: 6 January 2025**

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Date sent to parties

07/01/2025

I confirm that this is my Judgment in the case of Cochrane v Satine Edinburgh Ltd and that I have signed the Judgment by electronic means.

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