



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 8000210/2025**

**Hearing held by CVP at Dundee on 24 March 2025**

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**Employment Judge McFatridge**

**Ms E Myers**

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**Claimant  
Not present or  
represented**

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**Fonab Castle Hotel Ltd**

**Respondent  
Represented by:  
Mr Smith,  
Counsel  
Instructed by:  
WorkNest Limited**

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## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30 The judgment of the Tribunal is that

1. The correct respondent in the case is Fonab Castle Hotel Ltd.
2. The claim is dismissed.

## REASONS

- 35 1. The claimant submitted a claim to the tribunal on 24 January 2025. She had commenced ACAS conciliation on 26 November 2024 and ACAS conciliation had ceased on 2 December 2024. In her claim form she stated she had been employed by the respondent from 7 July 2024 until 21 September 2024.

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2. In section 8 of the claim form she did not tick any of the boxes stating the specific claim she was making. In the box for “I am making another type of claim which the Employment Tribunal can deal with.” she stated “There many things I had experienced that was unlawful. Loss of possessions and bullying.” In box 8.2 she stated

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“I travelled to Pitlochry from Liverpool because I wanted to secure a permanent role. Here I encountered several unruly behaviour. One of them being I got locked out of accommodation by the colleague I was sharing the place with. She eventually opened the door in her nightie, clearly you could see she was having sex. My suitcase went missing too so I am now facing to have to replace everything. Another colleague exposed herself in front of me and became very aggressive towards me. I found her behaviour unacceptable towards another colleague that was the same age as my son. I finally had to leave because the lack of respect was unacceptable. I didn’t get any support instead I was advised to leave. They also took my holiday pay.”

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3. The respondent submitted a response in which they made the preliminary point that the claim appeared to be time barred. They also noted that apart from the holiday pay claim there were no claims set out which the tribunal would have jurisdiction to deal with. They noted that the holiday pay claim was entirely inspecific. They set out their position which was that the claimant had received 6.4 days’ holiday pay in her final pay packet and that she was not entitled to any further monies. They also made the point that whilst the claim was time barred even on the basis of the leaving date given by the claimant the claimant’s leaving date in her ET1 was in fact incorrect. It was their position that the claimant had resigned on 12 August 2024 and that her effective date of termination of employment was 19 August 2024 which was the last date she worked.
4. A preliminary hearing was fixed to decide whether or not the claim was time barred. On the date and time fixed for the hearing the respondent was present, represented by Counsel and ready to proceed. At the time and place fixed for the hearing the claimant was neither present nor

represented. The respondent's representative forwarded to the tribunal an email which he had received from the claimant at 9:29 that morning which stated:-

5 "I do apologise for any inconvenience. I will not be able to complete the hearing today, as I have not completed the test or been able to get in touch with witnesses. Please let me know what my alternative options are apologies for any inconvenience."

It is unclear whether that email had been copied to the tribunal as well as to the respondent's representatives.

10 5. I decided to commence the hearing. Mr Smith moved that the case be dismissed. It was his position that there were essentially three reasons for doing this.

6. The first was that in terms of section 47 of the Employment Tribunal Rules I had the option of dismissing the claim or proceeding with the hearing in the absence of that party. The second was that in terms of Rule 38 it was clear that as matters stood the claim had no reasonable prospect of success. It was the respondent's position that even if the tribunal accepted the date given by the claimant (which was wrong) the claim was quite clearly time barred. The claimant had not given any reason why it had not been reasonably practicable for her to lodge her claim within three months of the leaving date she gives of 21 September 2024. Secondly, it was the respondent's position that the claim should be struck out on the basis that the claimant was not actively pursuing her claim. The only claim which she had narrated which the tribunal had jurisdiction to deal with was the claim relating to holiday pay. Despite the respondent clearly setting out their position in the ET3 the claimant had not provided any further specification of this claim. This coupled with the fact she had not turned up for the hearing was a clear indication that the claim was not being actively pursued.

30 **Discussion and decision**

7. I considered all of the points made by the respondent's representative to have merit. In terms of Rule 47 I note that the claimant has given

absolutely no explanation for her failure to attend the hearing. I felt it appropriate to continue with the hearing and consider matters on the papers. On the basis of the papers the sole claim being made which the tribunal potentially had jurisdiction to deal with was a claim in respect of holiday pay. The claimant has narrated a series of disputes with her colleagues which have led her to resign but the tribunal does not have jurisdiction to deal with this kind of dispute. She does not seek to link this to any protected characteristic. She had less than two years' service and so cannot make a claim of unfair constructive dismissal.

8. Any claim in respect of holiday pay ought to have been lodged within three months of the date on which the holiday pay payment should have been made. The respondent lodged the claimant's final pay slip which is dated 23 August 2024 and shows that her final pay which included a sum in respect of holiday pay was paid on 30 August. Even in the absence of this however even if one accepted that the last date the claimant was at work was 21 September and that this was accordingly the date on which she should have been paid her holiday pay, the claim is still time barred. Any claim should have been lodged by 20 December. This period could be extended by early conciliation but given that early conciliation commenced on 26 November and ended on 2 December the stop the clock provision would only have the effect of extending the time limit by six days to 26 December. Alternatively, given the maximum extension period of one month from the end of early conciliation allowed, then the claim could have been submitted up until 2 January. It was not in fact submitted until 24 January and is therefore clearly out of time. The claimant has at no point indicated anything which would suggest it was not reasonably practicable for her to submit her claim in time. It therefore appears to me that I am required to conclude on the papers that the claim is out of time. Furthermore, I would agree with the respondent that the claim should be struck out in any event in terms of section 38. I have therefore decided that the appropriate course of action is to dismiss the claim.

**Date sent to parties**

**27 March 2025**