



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001356/2025

Held in Glasgow on 13 October 2025

Employment Judge S MacLean

Ms L A Murning

**Claimant
In Person**

Only Scranz Ltd

**Respondent
Represented by:
Ms L Mitchell -
Manager**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The respondent unfairly dismissed the claimant. The respondent is ordered to pay the claimant the monetary award of £2,994. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply. The protected period is from 15 April 2025 to 22 July 2025. The prescribed element is £2,562.

REASONS

Introduction

1. Early conciliation commenced on 14 April 2025 with an ACAS certificate being issued on 9 May 2025. The claimant sent a claim form to the Tribunal on 28 May 2025 in which she complained that the respondent had unfairly terminated her employment on 15 April 2025. The claimant seeks compensation.
2. The respondent is a limited company (company number SC758886). James Mitchell is the sole director of the respondent company which operated a burger van at Brown Street, Coatbridge. His mother, Lorraine Mitchell managed the business on a day to day basis. She is the claimant's aunt.
3. The respondent admits that the claimant was dismissed. It asserts that the reason for dismissal was the claimant's conduct.

4. Notwithstanding the Tribunal's orders about collating and producing documents for the hearing neither party produced a file of documents.
5. As both parties were unrepresented, I explained that the claim being heard was for unfair dismissal. It was agreed that the claimant was an employee with more than two years' service and had been dismissed by the respondent.
6. I outlined that the respondent must first establish the reason for dismissal and that it falls within one of the potentially fair reasons under section 98 of the Employment Rights Act 1996 (ERA). If the respondent is successful at that stage, I must then consider whether the dismissal was fair in all the circumstances, including whether the respondent acted reasonably in treating that reason as sufficient to dismiss, having regard to the size and administrative resources of the business.
7. For the respondent, I heard evidence from Ms Mitchell who managed the business. I also heard evidence from the claimant. As the witnesses referred to documents on their mobile telephones, with their agreement I collated the relevant correspondence during the hearing.
8. I found the following facts to be agreed or established and relevant to the issues I required to determine.

Findings in fact

9. The respondent is a limited company, of which James Mitchell is the sole director and shareholder. The respondent operated a burger van located at Brown Street, Coatbridge. The business was managed on a day-to-day basis by Lorraine Mitchell.
10. The burger van operated from 7:00am to 2:00pm, Monday to Saturday, and from 8:00am to 2:00pm on Sundays. Ms Mitchell worked regularly and was supported by two other employees.
11. On 17 February 2023, the respondent employed the claimant to work in the burger van serving customers. She worked 16 hours per week.
12. On 12 February 2025, the claimant handed in a fit note for four weeks. The fit note stated that she was absent from work due to being anxious. The claimant had been previously attending work with pleurisy but her absence coincided the anniversary of a bereavement.
13. The claimant provided another fit note covering 5 to 18 March 2025. Ms Mitchell, aware of the circumstances surrounding the claimant's absence, arranged statutory sick pay and sought to manage the impact of her absence. As the absence continued, the respondent engaged another employee to cover the claimant's shifts.

14. The claimant informed Ms Mitchell that she intended to return to work at the end of March 2025. While Ms Mitchell was supportive, Mr Mitchell had received information suggesting the claimant fit to work and did not plan to return.
15. Around 18 March 2025, the claimant submitted a further fit note, expiring on 15 April 2025. At this point, Mr Mitchell considered the ongoing absence unsustainable.
16. On 26 March 2025, he wrote to the claimant stating that the respondent "needed to terminate her employment due to ill health on the expiration of her current sick note on 15 April 2025." The letter explained that the business could not continue paying statutory sick pay while also covering her shifts and noted that, "It will not be possible to dismiss the new staff by the time you finally decide to come back, which is very uncertain."
17. Upon receiving the letter, the claimant wrote to the respondent alleging unfair dismissal. Mr Mitchell replied the same day, stating that the respondent expected regular communication during long-term sickness absence. He noted that the claimant had indicated she would not return due to ill health, which he doubted, and requested a report on how best to support her. He explained that the letter of 26 March 2025 was intended to set out the company's position and encourage her return, as continuing to pay both statutory sick pay and cover for her role was unsustainable. Mr Mitchell added that he was willing to discuss matters, but if not, the decision to end her employment after the current fit note expired remained. The claimant responded that day, confirming she was signed off sick by her GP and receiving statutory sick pay. She further asserted that the respondent was not entitled to request private medical records or challenge her GP's advice.
18. On 11 April 2025, the claimant informed Mr Mitchell that she would not attend the meeting scheduled for 14 April 2025. During subsequent exchanges, the claimant suggested she might return if offered a pay increase.
19. The claimant ultimately declined to attend the meeting, citing other commitments, and obtained a further fit note covering 16 April to 5 May 2025.
20. The claimant's employment ended on 15 April 2025. At the date of termination, she was 34 years of age and had been continuously employed by the respondent for two years. She received gross pay of £216 per week and was paid £183 net pay.
21. The claimant received Universal Credit. She remained unfit for work but later sought alternative employment on May 2025. She has no ongoing loss. The respondent's business ceased trading on 31 July 2025.

Observation of witnesses and conflict of evidence

22. Ms Mitchell attended the hearing at short notice and helpfully clarified the respondent's position. Her evidence was that in March 2025 she had supported the claimant during her sick leave and accepted the genuineness of her absence, while recognising the strain on the business. She was candid about now understanding Mr Mitchell's view that the claimant could have returned but chose not to, and confirmed that the decision to dismiss was taken by Mr Mitchell alone. Ms Mitchell stated that Mr Mitchell had heard the claimant was reluctant to return to work while receiving sick pay and did not intend to do so. Mr Mitchell doubted the genuineness of the claimant's absence, based on reports of what she was doing during her time off.
23. The claimant also gave candid evidence. She said that her absences were certified by her GP. The claimant maintained that, despite the fit note covering until 15 April 2025, she intended to return at the end of March but did not do so because she believed the letter of 26 March 2025 had terminated her employment.
24. I was satisfied, given the supporting fit notes, that the claimant was medically certified as absent from work from 12 February to 15 April 2025 and that her absence was genuine.
25. Matters became more complex in mid-March when the claimant indicated an intention to return at the end of March, despite holding a fit note until 15 April 2025. Mr Mitchell had also received reports suggesting the claimant was fit to work and she did not intend to return. Although he expressed doubts about the absence, those doubts were not shared by Ms Mitchell, and the claimant's absence remained medically certified. The issue was ultimately overtaken by the respondent's letter of 26 March 2025.
26. There was conflicting evidence regarding the letter of 26 March 2025. The claimant's position was that the letter gave notice of termination of employment, whereas the respondent maintained that this was not its intention. The respondent stated that the purpose was to encourage the claimant to return to work, as her continued absence was unsustainable. While I accept that may have been the respondent's intention, in my judgment that is not what the letter conveyed. The letter expressly stated that her employment will terminate on when the fit note expired on 15 April 2025.

Discussion and deliberation

27. This is a claim of unfair dismissal. The respondent admitted that the claimant was dismissed on 15 April 2025. I referred to section 98 of the ERA, which governs the fairness of dismissals.
28. Under section 98(1), it is for the employer to show the reason (or, if there is more than one, the principal reason) for the dismissal and that it was a potentially fair reason falling within section 98(2). The respondent asserted that the reason was conduct. The claimant contended that the dismissal was due to ill health and that she had been replaced.
29. The reason for dismissal is determined by the facts known to the employer or the beliefs held by them that led to the decision to dismiss. It refers to the factors operating on the mind of the decision-maker at the time the decision was taken.
30. There was no suggestion that anyone other than Mr Mitchell dismissed the claimant. The difficulty was that he did not give evidence. Ms Mitchell's evidence was that Mr Mitchell doubted the genuineness of the claimant's absence and believed she did not intend to return to work. At that time, the claimant held a fit note until 15 April 2025. The letter of 26 March 2025 stated that her employment would be terminated on expiry of the current fit note due to ill health, which suggests capability as the reason.
31. Although the respondent asserted that the letter of 26 March 2025 was intended to encourage the claimant's return, she, correctly in my view, interpreted it as notice of termination effective 15 April 2025. She considered there was no point in returning at the end of March as her role had been filled. Subsequent correspondence indicates Mr Mitchell believed the claimant was able to return but was unwilling to do so without a pay increase and refused to attend a meeting. Based on the contemporaneous correspondence and Ms Mitchell's evidence, I concluded that the principal reason for dismissal was conduct, as Mr Mitchell believed the claimant was fit to return but refused to do so or meet with him. Conduct is a potentially fair reason for dismissal.
32. I then considered whether the dismissal was fair or unfair under section 98(4) ERA. This involves having regard to the reason shown by the employer and whether, in the circumstances (including the size and administrative resources of the employer's undertaking), the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and it must be in accordance with equity and the substantial merits of the case.
33. The test for conduct dismissals is whether the employer had reasonable grounds for the belief in the alleged misconduct and, at the time it formed that

belief, had carried out as much investigation as was reasonable in the circumstances.

34. From Ms Mitchell's evidence, I am satisfied that Mr Mitchell believed the claimant was fit to return to work and had no intention of doing so. However, I am not persuaded that, at the time he formed that belief, he had carried out as much investigation as was reasonable in the circumstances.

35. The claimant indicated that she was returning at the end of March but had submitted a fit note on 18 March 2025 for four weeks. Mr Mitchell relied on reports about what the claimant was doing and saying while absent, but there was no evidence of who made these reports or what was said. The claimant was unaware of what had been reported and had no opportunity to respond. Mr Mitchell did not wait to see if the claimant returned at the end of March, nor did he arrange a meeting to discuss this before issuing notice of termination.

36. I appreciated that the respondent was a small family business, and it was challenging to manage the claimant's absence. In my view, a reasonable employer would have taken these steps before forming a view on the genuineness of the claimant's absence, particularly given that she held a fit note until 15 April 2025.

37. While Mr Mitchell may have been willing to review his decision at the meeting he proposed in April 2025, it was understandable that the claimant considered this unlikely given that she had received notice of termination and someone was performing her role. In any event, the relationship between her and Mr Mitchell deteriorated in April 2025. From the messages exchanged, Mr Mitchell considers that the claimant's statement that she would return if given a pay increase indicated she was fit to return but wanted more money. I therefore found that the dismissal was unfair.

38. The only claim is unfair dismissal, for which the claimant seeks a basic award and a compensatory award.

39. The claimant's length of service was two years. She was 34 years old and her gross weekly pay was £216. The basic award is therefore £432 (£216 × 2).

40. Turning to the compensatory award, I adopted a broad-brush approach, considering what was just and equitable in the circumstances. The compensatory award is for financial loss and is not punitive.

41. The claimant remained unfit for work until 6 May 2025 and obtained alternative employment on 22 July 2025. She has no ongoing loss.

Accordingly, I award compensation for loss of earnings from 15 April 2025 to 22 July 2025, amounting to £2,562 (14 weeks at £183 net per week).

42. I considered whether to adjust the compensatory award for failure to comply with the ACAS Code of Practice. While before giving notice of termination, the respondent failed to invite the claimant to a formal meeting with the right to be accompanied and did not offer an appeal, Mr Mitchell did invite her to a meeting in April to discuss matters, which she declined. I therefore concluded that it was not just and equitable to uplift the award.
43. I then considered contributory fault. This applies if the claimant's conduct before dismissal was such that it would be just and equitable to reduce the basic or compensatory award. While the claimant's messages were hostile and disrespectful, my impression was that Mr Mitchell's conduct was similarly poor. I therefore made no reduction for contributory fault.
44. The total monetary award is £2,994 (£432 basic award + £2,562 compensatory award).
45. The claimant received Universal Credit. Under the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, the prescribed period is 15 April 2025 to 22 July 2025. The prescribed element is the compensatory award of £2,562.

Date sent to parties 25 November 2025