EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002613/2025

Held in Aberdeen via hybrid hearing on 15, 16, 17 and 19 June 2026

Employment Judge R Phillips

Mrs E Booth	**Claimant** **In Person**
Mirage Restaurant Limited	**Respondent** **Represented by:** **Ms McQuade** **Advocate** **Instructed by:** **Mr L Anderson,** **Solicitor**

JUDGMENT

1. The Tribunal finds:
   a. that the claimant was constructively and unfairly dismissed.
   b. the complaint concerning failure to provide written particulars of employment succeeds.

2. The respondent shall pay the claimant the sum of £34,312.89, consisting of:
   a. Basic award of £17,556, calculated based on a gross weekly wage of £616 multiplied by 1.5 (given the claimant's age) and by 19 (given the claimant's length of continuous service);
   b. Compensatory award of £14,911.09, calculated as follows:
      i. Loss of earnings of £28,037.35 (being 55 weeks at £509.77 (being £494.89 plus £14.88)), less earnings in mitigation of (a) £900 net from Bannockburn Inn and (b) £6,937.50 net for earnings from the Tearoom (being 37 weeks at 187.50 net); and
      ii. Loss of statutory rights of £500;
      iii. 25% discount on £20,699.85 for unreasonable failure to comply with ACAS Code of Practice for Discipline & Grievance (deduction of £5,174.96).
   c. Award of £1,232 for failure to provide written employment particulars.

SUMMARY WRITTEN REASONS

Introduction

1. These summary written reasons are prepared from the summary oral reasons delivered by Employment Judge Phillips on 19 June 2026 following the conclusion of the final hearing but some additional remarks have been included to explain the reasoning and clarify any arithmetical errors in the remedy section.

2. The Tribunal delivered summary reasons orally at the hearing and informed the parties of their right to request written summary reasons. These written summary reasons do not constitute full written reasons.

3. If either party wishes to obtain full written reasons, they may make the appropriate written request in accordance with the Tribunal Rules of Procedure 2024. Full written reasons would necessarily be more detailed than these summary written reasons and may be framed differently (and would appear on the online Public Register).

Findings in fact

4. The Tribunal considered the productions lodged by the parties and heard evidence from witnesses who attended both in person and remotely. The key witnesses were subject to cross-examination.

5. The respondent is a Scottish company operating La Mirage Restaurant in Helmsdale. The claimant was employed as a cook and had long service and continuity of employment.

6. On 24 May 2025, the claimant walked out of the workplace and her employment ended immediately.

7. The Tribunal first considered the specific allegations relied upon by the claimant in support of her complaint of constructive unfair dismissal.

8. In relation to the allegation that Mr Baran resented the claimant because she had statutory rights, fixed contractual hours and associated employment protections, or because those rights might make the business less attractive to a prospective purchaser, the Tribunal did not find sufficient evidence to support those allegations. Those matters were not established and did not form part of the Tribunal's reasoning in determining the complaint of constructive dismissal.

9. Similarly, the Tribunal was not satisfied that the evidence established that Mr Baran's conduct towards the claimant arose from any disregard for her caring responsibilities for her husband. Whilst there were difficulties in the employment relationship, the Tribunal does not find this allegation proved.

10. The Tribunal also did not find evidence that the claimant was instructed to falsify environmental health records. Nor did the Tribunal find evidence supporting

allegations of regular covert audio recording of staff through the respondent's CCTV system.

11. The Tribunal did, however, find a number of matters supported by the evidence which, viewed cumulatively, demonstrated a deterioration in the working relationship between Mr Baran and the claimant and ultimately amounted to conduct undermining trust and confidence.

Transfer of Alcohol Licence

12. The first matter was the unilateral transfer of the alcohol licence into Mr Baran's name with no consultation. The claimant had held the alcohol licence in the premises for many years prior to Mr Baran becoming the owner and for a number of years after he acquired the business. Mr Baran acquired an alcohol licence and removed the claimant’s alcohol licence certificate from display in the premises and put his certificate on display. This was how the claimant was informed of this change; it was a public statement and the claimant found it to be undermining of her role.

13. The Tribunal accepted that operationally the respondent and Mr Baran were entitled to take that step and may have had sound business reasons for doing so. The issue was not the decision itself but the manner in which it was communicated to the claimant and the impact that had on her standing within the workplace.

14. The Tribunal found that the way in which the matter was handled undermined the claimant's position and standing within the organisation and, in her perception, diminished her status in the eyes of colleagues. The licence transfer was the start of a pattern whereby responsibilities previously exercised by the claimant were reduced or altered, without consultation or adequate explanation by Mr Baran.

Food Safety Incident Concerning Scampi

15. The second matter concerned a food safety incident involving scampi during 2024.

16. When a box of frozen scampi was opened, frozen flies were discovered by the claimant in the box with the frozen scampi. The claimant showed this to Mr Baran. Afterwards, Mr Rostyslav Popovsky, kitchen porter, removed the frozen scampi from the box and placed them in a plastic box.

17. The Tribunal wishes to make clear that the evidence did not establish that contaminated scampi was cooked and served to customers, and no finding to that effect is made.

18. However, the Tribunal considered that issue to be significant for a different reason. Where concerns arise regarding food products supplied to a restaurant, particularly where only a limited number of individuals possess Level 3 Food

Hygiene qualifications, like the claimant, appropriate investigation, documentation and explanation is required.

19. The Tribunal found that the matter was investigated by Mr Baran with the supplier and he raised the matter with them, the incident was not documented, explained or communicated within the respondent's business in a manner which adequately addressed the concerns of the claimant, who might reasonably be expected to answer questions if environmental health concerns subsequently arose.

20. The significance of this incident therefore lies not in whether contaminated food was served, but in the respondent's failure to document that contaminated scampi was received, returned to the supplier and replaced at the supplier's cost. Without transparently setting out these actions, the claimant reasonably apprehended that the contaminated scampi was to be cooked and sold, as well as the replacement scampi.

21. The Tribunal considered this to be one of the more serious matters relied upon by the claimant. The claimant was a long-serving and experienced cook holding a Level 3 qualification whose views would reasonably be expected to be sought and communicated with on food-safety matters. Mr Sinclair was the only other Level 3 qualified cook working at the respondent at the time. The Tribunal considered it important that concerns of this nature were not properly recorded and communicated to those responsible for food preparation and regulatory compliance. The respondent's failure to do so contributed significantly to the claimant's loss of confidence in the respondent's approach (and, Mr Baran's, in particular) to food safety and regulatory compliance.

Mayonnaise Incident

22. The Tribunal also considered a further food safety issue involving a damaged bucket of mayonnaise in 2025.

23. The claimant was informed by Mr Baran that the mayonnaise delivery had been placed in the bin because it was damaged on delivery. The Tribunal found that this was not in fact the position and that the mayonnaise was decanted into different tubs and used in food preparation.

24. The Tribunal did not accept that Ms Denoon had instructed Mr Popovsky to decant the mayonnaise into another bucket, store it in the fridge and use it. This was not put to Ms Denoon in cross examination by Ms McQuade. It was first raised by Mr Baran in his evidence in chief. It was corroborated by Mr Popovsky in his evidence. The Tribunal did not find Mr Baran or Mr Popovsky reliable witnesses on this point. The Tribunal preferred the evidence of Ms Denoon. The respondent also called Mr Sinclair who had a hygiene certification and stated that he would have decanted the mayonnaise into another tub if only the lid had been damaged.

25. The Tribunal also took account of the fact that the mayonnaise was decanted into separate tubs and subsequently used despite Mr Baran having informed the claimant that it had been placed in the bin. The Tribunal therefore found that inaccurate information had been communicated to the claimant regarding the disposal of the product.

26. Again, the significance of this matter was not that the claimant was instructed to falsify records. Rather, the Tribunal found that the incident further undermined confidence in the respondent's handling of food safety concerns.

Mushy Peas Incident of 24 May 2025

27. The Tribunal considered the final incident concerning “mushy peas” that occurred on 24 May 2025.

28. The Tribunal finds that there was a significant miscommunication between the claimant and Mr Baran regarding the serving of meals and the provision of mushy peas to customers.

29. When regular customers arrived, there were two other customers with orders in the kitchen.

30. The evidence established that Mr Baran wished regular customers to be served first. However, that intention was not clearly communicated to the claimant. As a consequence, she became confused as to why she was being asked for mushy peas when the order she was preparing (the first one taken and presented) did not require mushy peas. Mr Baran wanted the claimant to serve regular customers first. The claimant had seen the regular customers come in and had mushy peas ready and warming. When the claimant did not provide mushy peas, Mr Baran overruled the claimant and insisted that she provide mushy peas and delivered the order to the regular customers, instead of the order which the claimant was preparing.

31. The Tribunal further finds that responsibility for the preparation, plating and sequencing of dishes ordinarily fell within the claimant's operational sphere as the cook. The Tribunal considered it significant that Mr Baran’s intervention occurred during service and in the presence of other staff. By overriding her decision-making without explanation in front of colleagues, Mr Baran's actions tended to diminish her authority and standing within the kitchen operation. Whilst Mr Baran was entitled to intervene and prioritise customers for legitimate business reasons, any such intervention required to be communicated clearly and appropriately.

32. The Tribunal finds that Mr Baran’s miscommunication and intervention undermined the claimant's operational authority within the kitchen. The business justification for the change in serving sequence was not adequately explained at the time.

33. Although the mushy peas incident on 24 May would not by itself have entitled the claimant to treat herself as constructively dismissed, when taken with the other events (the alcohol licence, the food safety concern re scampi and the mayonnaise incident), it revived and formed part of the earlier course of conduct by Mr Baran. The Tribunal's finding in relation to this incident is based upon the earlier communication failures that occurred and the undermining effect of them and this “mushy peas” intervention.

34. The Tribunal did not consider it necessary to make any separate finding regarding the allegation that Mr Baran shouted at the claimant.

Relevant Law

35. This was a complaint of constructive unfair dismissal under sections 94 and 95(1)(c) of the Employment Rights Act 1996 and a complaint concerning the failure to provide written particulars of employment.

36. Under section 95(1)(c), an employee is constructively dismissed where she terminates her contract in circumstances in which she is entitled to do so without notice by reason of the employer's conduct.

37. The applicable test derives from *Western Excavating (ECC) Ltd v Sharp*. A constructive dismissal arises where the employer commits a fundamental breach going to the root of the contract, thereby entitling the employee to regard herself as discharged from further performance.

38. An employment contract contains an implied term that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence.

39. A breach of that term may arise from a single act or from a course of conduct. A series of acts may cumulatively amount to a repudiatory breach, with a final "last straw" contributing to that breach. The last straw need not itself be a repudiatory breach provided that it is not utterly trivial and is linked to the earlier conduct relied upon.

40. The Tribunal adopted the structured approach identified in *Leeds Teaching Hospitals NHS Trust v Rankin* and considered:
    a. What was the most recent act or omission relied upon?
    b. Had the contract been affirmed?
    c. Was that act itself repudiatory?
    d. If not, did it form part of a course of conduct amounting to a repudiatory breach?
    e. Did the claimant resign in response to that breach?

Conclusions

41. The Tribunal next considered the questions identified within the agreed List of Issues.

42. The Tribunal accepted that a number of the factual allegations relied upon by the claimant were not established. In particular, the Tribunal rejected allegations concerning resentment of the claimant's employment rights, disregard of her caring responsibilities and instructions to falsify environmental health records.

43. The Tribunal nonetheless accepted the claimant's case in relation to the alcohol licence issue, the respondent's handling of the scampi incident, the mayonnaise incident and the events of 24 May 2025.

44. The Tribunal considered carefully whether those incidents amounted to ordinary workplace disagreements or management shortcomings, or whether they crossed the higher threshold required to establish a breach of the implied term of mutual trust and confidence. The Tribunal reminded itself that employers are entitled to make decisions with which employees may disagree, provided there is reasonable and proper cause for doing so and the manner in which those decisions are implemented does not seriously damage the employment relationship.

45. The Tribunal accepted that some of the individual decisions taken by Mr Baran were capable of being justified by legitimate business considerations. The Tribunal accepts, for example, that there were potentially legitimate operational reasons for Mr Baran obtaining his own personal alcohol licence following his acquisition of the business. Similarly, there were potentially legitimate reasons for Mr Baran personally dealing with supplier issues arising from the scampi and mayonnaise incidents. The Tribunal's criticism is therefore not directed at those decisions in themselves.

46. Rather, the Tribunal found that the incidents were linked by a common underlying theme. They concerned matters falling within, or closely connected to, areas in which the claimant had longstanding experience, qualifications and responsibilities. Following the alcohol licence incident, the claimant repeatedly experienced decisions affecting those areas being taken, implemented or communicated without adequate consultation, explanation or engagement. The Tribunal found that there was no reasonable and proper cause for those repeated communication failures.

47. The Tribunal found that the cumulative effect of those matters was to cause the claimant reasonably to conclude that her experience, judgment and responsibilities were no longer being afforded proper weight. The significance of the scampi and mayonnaise incidents was not that contaminated food was served to customers or that the claimant was instructed to falsify records. Rather, they reinforced the claimant's concern that food safety matters affecting areas in which she had responsibility were not being adequately communicated to her. The mushy peas incident had significance not because of the subject matter itself, but because it represented a further example of intervention in an area of the claimant's responsibility without any clear explanation being provided at the time. The Tribunal's focus was not upon whether the claimant's

perception was itself determinative, but whether the respondent's conduct, viewed objectively, was capable of destroying or seriously damaging trust and confidence. The Tribunal considered that these incidents were not isolated examples of managerial shortcomings. Rather, they demonstrated a continuing pattern over a sustained period whereby matters falling within the claimant's area of expertise or responsibility were repeatedly dealt with without consultation, explanation or engagement, causing a progressive erosion of trust and confidence. Although some of the underlying decisions may have been justified by legitimate business considerations, there was no reasonable and proper cause for the repeated failures to communicate those decisions appropriately to the claimant.

48. By May 2025, the Tribunal finds that the claimant had experienced a sustained pattern of communication failures affecting matters connected to her role and responsibilities. The Tribunal finds that she had genuinely and reasonably lost confidence in the respondent's willingness to communicate with her openly and appropriately regarding those matters.

49. Viewed objectively and cumulatively, the Tribunal concludes that the respondent's conduct was likely seriously to damage the relationship of trust and confidence and was without reasonable and proper cause. The Tribunal therefore concludes that the respondent acted in breach of the implied term of mutual trust and confidence.

50. Whilst none of those incidents, viewed individually, would necessarily have amounted to a repudiatory breach, taken together they amounted to a fundamental breach going to the root of the employment relationship.

51. The Tribunal further concludes that the claimant did not affirm the contract after the events of 24 May 2025.

52. The Tribunal finds that the claimant resigned in response to the respondent's breach and that she did so promptly following the final incident on 24 May 2025.

53. The Tribunal therefore concludes that the claimant was constructively dismissed.

54. The respondent's position was that the claimant resigned voluntarily; it did not contend that, if a dismissal occurred, it was for a potentially fair reason within section 98 of the Employment Rights Act 1996. The complaint of unfair dismissal accordingly succeeds.

Remedy

55. The Tribunal therefore considered remedy.

56. The parties agreed that the claimant was entitled to a basic award of £17,556. That figure was calculated using gross weekly pay of £616, multiplied by 1.5 and by 19 years' service.

57. The Tribunal next considered the compensatory award.

58. The claimant sought compensation for approximately one year following termination. The Tribunal assessed loss by reference to the period advanced in the Claimant's Schedule of Loss, namely approximately 55 weeks following termination. No separate claim for future loss beyond that period was advanced and therefore no such award was made. The Tribunal notes that the compensatory award assessed on that basis falls well below the statutory maximum compensatory award, namely 52 weeks' gross pay calculated at £616 per week (£32,032).

59. The respondent contended that the claimant had failed adequately to mitigate her loss. The Tribunal rejected that submission. The evidence established that the claimant had obtained alternative employment. However, account required to be taken of earnings received from that employment. Having regard to the duty to mitigate, the Tribunal considered it appropriate to assess compensation by reference to 55 weeks from the effective date of termination.

60. The Tribunal calculated loss of earnings at £28,037.35, being 55 x (494.89 + 14.88), including pension loss and using the figures (of £494.89 net weekly pay and £14.88 as the employer’s pension contribution) contained within the schedule of loss, which the Tribunal understood to be agreed.

61. The Tribunal then deducted earnings received from alternative employment.

62. In relation to employment at the Bannockburn Inn, the Tribunal understood that approximately three weeks' earnings had been received. As no precise agreed figure was identified during submissions, the Tribunal estimated those earnings at £900 net.

63. The Tribunal further took account of earnings from employment at the tea room, which the Tribunal understood to be £187.50 per week from July 2025 onwards. The Tribunal calculated those earnings over a period of 37 weeks.

64. Taking account of post-dismissal earnings, the Tribunal calculated deductions totalling £7,837.50.

65. The Tribunal also awarded £500 for loss of statutory rights.

66. However, the Tribunal concluded that there had been an unreasonable failure by the claimant to comply with the ACAS Code of Practice. The Tribunal considered that the claimant was aware that she could raise her complaints with Mr Baran, was aware of a grievance policy, had multiple opportunities to raise formal grievances regarding the various concerns she had, including the communication failures associated with the scampi incident, the mayonnaise incident and related matters, and provided no persuasive explanation for failing to do so. The Tribunal accepted the respondent's submission that the maximum

reduction of 25% (of £5,174.96) should be applied to £20,699.85. Applying that reduction, the compensatory award was reduced to £15,524.89.

67. The Tribunal further found that the respondent had failed to provide a written statement of employment particulars. Accordingly, pursuant to section 38 of the Employment Act 2002, the Tribunal awarded two weeks' gross pay in the sum of £1,232.

68. The Tribunal concluded that two weeks was the just and equitable award in the circumstances, given that the material contractual terms relevant to these proceedings were largely contained within the original contract.

69. Adding the basic award of £17,556 and the compensatory award of £15,524.89 to the £1,232 for section 38 award, the total award was £34,312.89.

Disposal

70. The Tribunal therefore finds:
    a. The complaint of constructive unfair dismissal succeeds. The respondent was in breach of the implied term of mutual trust and confidence. The claimant was constructively and unfairly dismissed.
    b. The complaint concerning failure to provide written particulars of employment succeeds.

71. The respondent shall pay the claimant the sums set out above.

72. These summary written reasons are provided as a written record of the summary oral reasons delivered by Employment Judge Phillips on 19 June 2026.

73. They do not constitute full written reasons. Any party wishing to request full written reasons should do so in accordance with the Tribunal Rules of Procedure.

Date sent to parties 24 September 2026