



# **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4104273/2023**

**Final Hearing heard in Dundee remotely on 5 April 2024**

**Employment Judge A Kemp**

**Mr Richard Stevenson**

**Claimant  
Represented by:  
Mr P Kissen  
Solicitor**

**Black Wolf Brewery Ltd**

**Respondent  
No appearance**

## **JUDGMENT**

The respondent unfairly dismissed the claimant under sections 94 and 98 of the Employment Rights Act 1996; the reason for the dismissal was redundancy; the termination was a breach of contract; no written particulars of employment were provided to the claimant in breach of section 1 of the Employment Rights Act 1996 and the respondent made unauthorised deductions from the claimant's wages under section 13 of the Employment Rights Act 1996 as it failed to pay the claimant for annual leave due to him under Regulation 14 of the Working Time Regulations 1998.

The Tribunal awards the claimant the total sum of THIRTEEN THOUSAND FOUR HUNDRED AND FORTY FOUR POUNDS FIFTY PENCE (£13,444.50), payable by the respondent, which is comprised of the following:

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- (i) A basic award of £2,893.50, increased by 25% under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 to £3,616.87,
  - (ii) A compensatory award of £4,570.56, increased by 25% under said section 207A to £5,713.20,
  - (iii) An award for failing to provide written particulars of employment of £2,780, under section 38 of the Employment Act 2002 and
  - (iv) An award for said unauthorised deductions from wages £1,334.43.
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## REASONS

### Introduction

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1. This was a Claim originally presented against two respondents. The claim against the second respondent was earlier withdrawn, leaving only that against the respondent above.
  2. The respondent did not enter any Response Form timeously. It was sent Notice of the present hearing, but did not seek to attend. The hearing was fixed as it was not considered appropriate to give a Judgment under Rule 21 without hearing evidence.
  - 20 3. The Final Hearing was heard remotely, in order to assess remedy in particular, given the absence of a defence, but there was also evidence given as to the facts in relation to liability for the claims made. So far as remedy is concerned the claimant had tendered a Schedule of Loss, and had also intimated a Bundle of Documents, to which he spoke.

### 25 The facts

4. I found the following facts, material to the issues before me, to have been established:
5. The claimant is Mr Richard Stevenson. His date of birth is 16 August 1962.
6. The respondent is Black Wolf Brewery Ltd.

7. The claimant was employed by the respondent 6 January 2020 as a Warehouse Production Manager at premises at 7D Banded Industrial Estate, Throsk, Stirling. At no stage did the respondent provide him with written Particulars of Employment. Initially the claimant had been employed on a three month temporary basis, and when it was agreed that it would continue the claimant asked for a written statement of particulars, or a contract of employment, which the respondent said that it would provide. It did not do so.
8. On 11 May 2023 the claimant was given a letter by the respondent suspending him from employment in relation to allegations of misconduct. The five other staff at the said warehouse were also suspended and received letters of suspension. The claimant was invited orally to a meeting on 15 May 2023. No documents were provided to him in advance of that meeting. No letter was sent to him in relation to it, offering him representation. At the meeting the claimant denied all the allegations.
9. By letter of 19 May 2023 the claimant was dismissed summarily, purportedly for misconduct issues. The said five other staff were also dismissed summarily. The claimant intimated an appeal in writing but received no response, despite a reminder, and no appeal hearing was arranged.
10. The respondent ceased to trade from the said warehouse after said dismissals.
11. During his employment with the respondent the claimant was paid a gross wage of £695 per week, a net sum of £567.36 per week. There was no pension. The claimant did not receive payslips from the respondent, but the gross pay figure stated is a reasonable estimate of the same.
12. The claimant initially claimed benefits, and received £24 for same. He sought new employment, and was successful in doing so at a company named OCS. His pay was variable dependent on hours worked. He received net income from OCS for the period 5 June 2023 to on or around 5 February 2024 in the total sum of £12,068.98. He then secured new employment on or around 6 February 2024 with My Life Bathrooms. He was paid the net sum of £1,689.86 for that month, and £1,985.04 for the

month of March 2024. The weekly equivalent of his net earnings is £458.08, which he continues to receive.

13. During his employment with the respondent the holiday year ran from 1 April. The annual entitlement was to 28 days. In the period to the date of termination on 19 April 2024 the claimant had accrued 3.76 days of annual leave, and had not taken any. The claimant had an agreement with the respondent that he would be entitled to carry forward unused leave from the previous leave year, of which 1.6 weeks was as to additional annual leave under Regulation 13A of the Working Time Regulations 1998.
14. The claimant commenced Early Conciliation on 8 August 2024, the Certificate was issued on the same day, and the Claim Form was presented on 10 August 2024.

### **The law**

15. There is a right not to be unfairly dismissed under section 94 of the Employment Rights Act 1996 (“the Act”). Under section 98 of the Act the reason for the dismissal must be proved by the respondent, and if potentially fair the issue of fairness is determined by section 98(4).
16. Redundancy is defined in section 135 of the Act.
17. There is a minimum period of notice provided for in section 86 of the Act.
18. There is a right to paid annual leave under the Working Time Regulations 1998 (“the Regulations”). Under Regulation 14 a payment in lieu may be an entitlement where a worker’s employment terminates part way through a leave year. If not paid it may be an unauthorised deduction from wages under section 13 of the Act, for which a claim may be made to the Tribunal under section 23.
19. An employer is under a duty to provide written particulars of employment under section 1 of the Act. If it does not do so, an award may be made under section 38 of the Employment Act 2002 of between 2 and 4 weeks.

20. If a dismissal is unfair a basic award may be made under section 119 of the Act, and for a compensatory award under section 123. If the ACAS Code of Practice on Disciplinary and Grievance Procedures is not followed the Tribunal has a discretion as to whether to increase or reduce the awards made by up to 25% under section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

### Discussion

21. I was entirely satisfied that the claimant was a credible and reliable witness, and that the Tribunal had jurisdiction in the case.
22. The first claim is for unfair dismissal. It was not defended, and I was satisfied that the claimant had been unfairly dismissed. There had been no proper procedure and the ACAS Code of Practice on Disciplinary and Grievance Procedures was breached in a wholesale manner. There was no investigation, no letter calling him to a meeting providing the evidence gathered, no proper disciplinary meeting, no offer of being accompanied at it by a fellow employee or trade union representative, and no action taken on the appeal.
23. I was also satisfied that the reason for dismissal was redundancy, given that the respondent ceased to trade at the warehouse and dismissed the other staff in what on the face of it, and as the claimant alleged, was an attempt to avoid paying redundancy payments improperly. In addition I was satisfied that the termination of employment summarily was a breach of contract. The issues of redundancy and breach of contract do not however affect the award in my view as the basic award is the same as that for the statutory redundancy payment, and the losses from the breach of contract (which is an award of damages as there was no written contract) are fully addressed by the compensatory award I make below.
24. On remedy for unfair dismissal the **basic award** is calculated correctly in the Schedule of Loss at £2,893.50. I consider that the estimate of a weekly gross wage, calculated by the claimant's solicitor extrapolating from the net pay as no payslips were provided, is reasonably accurate and can be used for this purpose. The reason such an estimate is required is the

failure of the respondent to provide payslips. It is subject to the matter of an increase addressed below.

- 5 25. The **compensatory** award is I consider only partly correctly set out in the Schedule of Loss. The net sums that would have been earned to the date of the hearing had the employment with the respondent continued were £24,396.48. In the calculation of the actual earnings I accepted the claimant's evidence. The income received after dismissal was not however fully accurate. That was addressed in the evidence.
- 10 26. The claimant had a period without work during which he claimed benefits. His evidence was that he received Workplace Allowance, which appears to me not a benefit to which the recoupment provisions apply. I do however deduct from the figure for loss the £24 he received as it reduces his loss.
- 15 27. He then worked for OCS and received pay for a period of eight months or thereby. His net income in this period I assess at a total of £12,068.98, as provided for above. That was a figure derived from three payslips, not fully accurately dated, which the claimant confirmed was representative of his income during that employment. I was prepared to accept that evidence. It is also deduced from the loss.
- 20 28. He then started work at another company named My Life Bathrooms. The net income in the period to 31 March 2024 was £3,574.90. It continues at the rate of £458.04. It appears to me to be appropriate to calculate loss to today, as Mr Kissen sought, and add one further week. That reduces the loss further.
- 25 29. The total income received is therefore £20,325.92. That is deducted from the income that there would have been with the respondent had that employment continued, being £24,396.48, for this period, leading to a loss of £4,070.56.
- 30 30. There is a claim for loss of statutory rights at £500 which I consider to be appropriate. The total compensatory award I make, subject to what follows, is £4,570.56.
31. Mr Kissen also sought an **increase** in the level of compensation for the respondent's failure to comply with the ACAS Code of Practice. It appears

to me appropriate to do so, and given the widespread failures to increase the level of compensation for unfair dismissal for both the basic and compensatory awards by 25%. The awards are therefore increased to **£3,616.87** for the **basic award**, and **£5,713.20** for the **compensatory award**.

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32. There is a claim for the lack of **written particulars** of employment. I am satisfied that the award should be the sum claimed, having regard to the claimant's evidence that he raised that with the respondent and was told that it would be issued, but then was not, being four week's pay at £695 gross per week, the sum of **£2,780**.

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33. There is a claim for **holiday pay** in the sum of **£1,334.43** which I consider is correctly stated in the Schedule of Loss and as the claimant spoke to in his evidence.

34. The total sum I award is therefore **£13,444,50**. The awards made are net of tax, and no deductions are due from them. With some hesitation I decided against raising with the respondent the issue of a potential penalty under section 12A of the Employment Tribunals Act 1996.

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**A Kemp**

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**Employment Judge (signature)**

**Alexander Kemp**

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**Employment Judge (Name)**

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**9 April 2024**

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**Date of judgment**

**Date sent to parties**

\_\_\_\_\_  
**11 April 2024**