



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4106260/2024, 4106262/2024 & 4106261/2024 Hearing at Edinburgh  
on 28 October 2024**

**Employment Judge: M A Macleod**

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**(1) Aneta Broncel**

**Claimants  
In Person**

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**(2) Dereick Rushton**

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**(3) Ashley Macmillan**

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**Ensigner Scotland Ltd**

**Respondent  
Not Present and  
Not Represented**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

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**The Judgment of the Employment Tribunal is that the claimants' claims of unfair dismissal and unlawful deductions from wages all succeed, and that the respondent is ordered to pay to:**

ETZ4(WR)

1. **Ms Broncel the sum of Twelve Thousand and Nine Pounds and Fifty Six Pence (£12,009.56);**
2. **Mr Rushton the sum of Four Thousand Six Hundred and Seventy Nine Pounds and Sixty Pence (£4,679.60); and**
- 5 3. **Mr Macmillan the sum of Eight Thousand Seven Hundred and Thirty Five Pounds and Thirty Two Pence (£8,735.32).**

**The Employment Protection (Recoupment of Job Seeker's Allowance and Income Support) Regulations 1996 apply to the award in relation to Ms Broncel. The monetary element does not exceed the prescribed element of the award.**

### **REASONS**

- 15 1. The claimants presented claims to the Employment Tribunal on 25 July 2024 in which they complained that the respondent had unlawfully deprived them of wages and unfairly dismissed them.
2. No ET3 was presented by the respondent to any of the claims.
3. A Hearing was listed to take place on 28 October 2024 by CVP to determine the merits of the cases.
- 20 4. The claimants all appeared, and each spoke on their own behalf. No appearance was made by or on behalf of the respondent.
5. Each of the claimants presented documents in support of their claims, and gave evidence before me.
- 25 6. Based on the unchallenged evidence led and the information presented, I found the following facts proved.

### **Findings in Fact**

7. The claimants were employed by the respondent in different capacities.

8. Ms Broncel was employed for 14 years as Kitchen Manager. Her date of birth is 16 August 1981. She was not provided with a contract of employment by the respondent.
9. Mr Rushton was employed from 26 March 2022 by the respondent as a Chef Tutor. His date of birth is 3 August 1962. He was not provided with a contract of employment by the respondent.
10. Mr Macmillan was employed by the respondent for approximately 6 and a half years, as Head Chef Tutor. His date of birth is 3 January 1980.
11. The claimants were due to be paid on 28 March 2024, but received no salary. On 1 April 2024, they received an email confirming them that the respondent did not have the funds to pay them, but would be attempting to resolve the situation over the weekend.
12. On 4 April 2024, the claimants received a further email from the respondent saying that they had been unable to raise any funds, and accordingly that the claimants could not be paid. The respondent advised the claimants that they did not require to attend the workplace from then on.
13. The respondent has not made any payment to the claimants.

## Decisions

14. **Ms Broncel** was employed for 14 completed years' service. Her employment was terminated with effect from 4 April 2024 without notice or warning, and no process was followed. Her dismissal was accordingly unfair.
15. The Tribunal finds that Ms Broncel is entitled to compensation in respect of her claims.
16. She was paid £1,492.10 per month (net), and £1,688.50 per month (gross).
17. Ms Broncel was entitled to a basic award reflecting her 14 years' completed service. As at the date of dismissal, Ms Broncel was 42 years of age when her employment was terminated. Her weekly gross pay was £389.65. her

basic award is calculated by reference to section 119 of the Employment Rights Act 1996. 1 year is calculated at 1.5 x £389.65, and 13 years at £389.65, bringing out a total basic award of **£5,649.93**.

5 18. Ms Broncel found another job which commenced on 22 April 2024, earning £2,100 net each month.

19. She applied for Universal Credit and received one payment of £1,350.

20. No compensatory award is made to Ms Broncel on the basis that she was able to mitigate her loss by securing alternative employment at a higher salary within such a short period of time.

10 21. Ms Broncel also claimed outstanding salary which was due but unpaid as at her date of dismissal, namely the March pay which was not provided to her. She was unlawfully deprived of this payment of **£1,492.10**.

15 22. Ms Broncel was also unlawfully deprived of notice pay. She claimed £4,476 in relation to this period, based on the statutory notice period of 12 weeks, based on her 14 years' completed service. The claimant's net weekly pay was £344.33, and accordingly her notice pay should have been £334.33 x 12, coming to **£4,131.96**.

20 23. Finally, Ms Broncel claimed that she was entitled to holiday pay which was outstanding as at the date of termination. Her evidence was that she still had 11 days' outstanding annual leave as at the date of termination of her employment. On the basis that her daily rate of pay was £66.87, her holiday entitlement was therefore **£735.57**.

24. In total, therefore, the respondent is ordered to pay to Ms Broncel the sum of **£12,009.56**.

25 25. **Mr Rushton** was terminated on 4 April 2024. He was employed for 2 completed years. As at the date of termination of his employment, Mr Rushton was 61 years of age.

26. Mr Rushton's monthly pay was variable, depending on the number of hours worked. In January 2024, he earned £1,332.64 (net) and £1,763.31 (gross);

in February 2024, he earned £1,211.25 (net) and £1,588.75 (gross); and in March 2024, he earned £1,211.25 (net) and £1,588.75 (gross)(though of course he was not paid this sum by the respondent).

5 27. Taking the average from these payments, Mr Rushton was paid £380.06 gross weekly, and accordingly would be entitled to 1.5 x 2 x £380.06, which amounts to a basic award of **£1,140.18**.

10 28. Mr Rushton sought compensation of £1,461.25, relating to losses he sustained by having to take monies from his savings account. I consider that this amounts to a reasonable and just and equitable sum to award Mr Rushton in respect of compensatory loss, that is **£1,461.25**.

29. Mr Rushton was deprived unlawfully of his March salary, of **£1,211.25**.

30. He sought a payment of £945 in relation to notice pay. Given that he was employed for 2 completed years, and his net weekly salary was £289.01, I find that the claimant was entitled to a notice payment of **£578.02**.

15 31. Finally, Mr Rushton sought a payment in respect of annual leave accrued but untaken as at the date of termination. He claimed 39.7 hours' holiday, amounting to £694.75. His calculation was based on gross salary, however, and accordingly his net entitlement would be less than that figure. He maintained that he worked 27 hours per week on average. His net weekly  
20 pay was £289.01, giving a net hourly rate of £10.70. Accordingly Mr Rushton is entitled to a payment of 27 x £10.70, amounting to **£288.90**.

32. The respondent is therefore ordered to pay to Mr Rushton the sum of **£4,679.60**.

25 33. **Mr Macmillan** was terminated on 4 April 2024. He was employed for 6 completed years, having commenced employment with the respondent as Head Chef Tutor on 3 September 2018. His date of birth is 3 January 1980, and accordingly he was 44 years of age when his employment ended with the respondent.

34. Mr Macmillan's monthly pay was variable in the 3 months to termination. On 31 January, his gross pay was £2,242.66, and his net pay was £1,873.92; on 29 February, his gross pay was £2,286.49, and his net pay was £1,900.09; and on 31 March, his gross pay was £2,242.66, and his net pay was £1,873.92. He did not receive pay in relation to March.

35. Mr Macmillan is entitled to a basic award in respect of his unfair dismissal by the respondent. His average weekly gross pay was £520.91. His basic award is calculated on the basis that, given his age on termination, he was entitled to 3 years at £520.91, and 3 years at 1.5 x £520.91, which brings out a total of **£3,906.82**.

36. He was unlawfully deprived of his pay in respect of March 2024, which, on his payslip, amounted to **£1,874.12**.

37. He also claims unpaid notice pay. He had 6 year's completed service with the respondent, and accordingly he was entitled to 6 weeks' net pay, amounting to **£2,606.82**.

38. Mr Macmillan was due 4 days' annual leave untaken as at the date of termination of his employment. His net daily pay was £86.89, and accordingly he is entitled to holiday pay of **£347.56**.

39. Mr Macmillan was able to find alternative employment commencing on 26 April 2024 with a bakery called Patina, working full time, earning £1,800 net per month. Accordingly, I make no compensatory award since he was able to mitigate his losses very soon after his employment ended.

40. The respondent is therefore ordered to pay to Mr Macmillan the total sum of **£8,735.32**.

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**Employment Judge: M A Macleod**  
**Date of Orders: 18 December 2024**

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Date sent to parties

19/12/2024

I confirm that this is my Judgment in the case of Broncel and others v Enseigner Scotland Ltd and that I have signed the Judgment by electronic means.