



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case No: 4100360/21 (A)**

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**Held on 25 May 2021**

**Employment Judge N M Hosie**

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**Mr P Splawski**

**Claimant  
In Person**

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**Paradise Cuisine Ltd**

**Respondent  
No Appearance**

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### **JUDGMENT OF THE EMPLOYMENT TRIBUNALS**

The Judgment of the Tribunal is that:-

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1. the claim under s.23 of the Employment Rights Act 1996 is well-founded and the respondent shall pay to the claimant the sum of Seven Hundred and Sixty-Eight Pounds and Ninety-Five Pence (£768.95) as unlawful deductions from wages;

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2. the claimant was unfairly dismissed by the respondent and the respondent shall pay to the claimant, by way of compensation, the sum of Four Thousand, Nine Hundred and Fifty-Nine Pounds (£4,959);

**E.T. Z4 (WR)**

3. the respondent shall pay to the claimant the sum of Two Thousand, Two Hundred and Thirty-Two Pounds and Eighty-Six Pence (£2,232.86) as a payment in respect of accrued annual leave; and
- 5 4. the respondent shall pay to the claimant the sum of Five Hundred and Twenty-Two Pounds (£522) in respect of the respondent's failure to provide the claimant with a written statement of his terms and conditions of employment.

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## REASONS

### Introduction

- 15 1. The claimant submitted a claim form on 23 January 2021 in which he intimated a number of complaints arising from his employment as a "Bartender" with the respondent Company. The claim was duly intimated to the respondent on 27 January 2021. However, the respondent failed to submit an ET3 Response Form. The claim proceeded, therefore, on an
- 20 undefined basis and on 16 March 2021 a "Rule 21" Judgment was issued in favour of the claimant with a direction that, *"the remedy to which the claimant is entitled will be determined at a hearing to take place by telephone on a date to be advised"*.

### 25 Remedy hearing

2. Accordingly, a remedy hearing was held on 25 May 2021 by telephone conference call. The claimant called at the appointed time. However, although the hearing had been intimated to the respondent, they failed to do
- 30 so.

3. I heard evidence, under oath, from the claimant. His evidence was entirely credible and reliable and following the hearing he submitted copies of his pay slips and his P45 (P) which were consistent with his evidence. I was able, therefore, to determine the nature of his complaints and issue this Judgment.
- 5 I deal with each of the complaints, in turn.

### Unlawful deduction from wages

4. Because of the Covid-19 Pandemic, the claimant was placed on “furlough” from March 2020 until his employment was terminated summarily, with effect from 11 October 2020 when he received a P45 from the respondent (P1). I accepted the claimant’s evidence that he did not receive any wages from the respondent in the period from 12 September 2020 to 11 October 2020. There was an unlawful deduction from his wages in the sum of **£768.95** and this sum should be paid to him by the respondent.
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### Unfair dismissal

5. It was clear that the claimant was unfairly dismissed. Indeed, a Judgment has already been issued to that effect. The claimant received a P45 (P1) without any advance notice and without any consultation. The respondent has failed to show the reason for the claimant’s dismissal as it is required to do and that it was fair. The claimant is entitled to an award of compensation in respect of his unfair dismissal.
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6. So far as the **Basic Award** is concerned, at the time of his dismissal the claimant had been employed by the respondent for 12 complete years. He is entitled, therefore, to 12 weeks’ pay. He earned £261 per week. Accordingly, the **Basic Award** is **£3,132** (12 x £261).
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7. So far as the **Compensatory Award** is concerned, the claimant was able to secure alternative employment on 27 November 2020 earning more than he

earned when he was employed by the respondent. However, he incurred a loss of earnings in the 7-week period from the date of his dismissal on 11 October 2020 to 27 November 2020. I decided that it would be just and equitable, to award him compensation for his loss of income in that period.

5 The **Compensatory Award**, therefore, is **£1,827** (7 x £261).

8. Accordingly, when the Basic Award is added, the total award of compensation to the claimant, for his unfair dismissal, is **£4,959** (£1,827 + £3,132).

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### **Accrued holiday pay**

9. In his final payslip, dated 12 September 2020 (P2), the claimant was advised by the respondent that he had 51.33 days “leave remaining”. Based on a 6-  
15 day working week, the claimant earned £43.50 per day. Accordingly, he is entitled to a payment of **£2,232.86** (£51.33 x £43.50) in respect of accrued annual leave.

20 **Failure to provide the claimant with a written statement of his terms and conditions of employment**

10. The respondent failed to provide the claimant with a written statement of his terms and conditions of employment within two months of him starting work  
25 with them as they were required to do. As he has brought other successful claims, I must award him the “*minimum amount of two weeks’ pay*”, which amounts to **£522** (2 x £261).

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**Redundancy payment**

5 11. Although the Judgment dated 16 March 2021 recorded that the claimant was  
entitled to a redundancy payment, I was advised by the claimant that the  
respondent's business continues to operate. There was no evidence to  
suggest that there was a redundancy situation when he was dismissed. I was  
not persuaded, therefore, that he was entitled to a redundancy payment.  
10 However, he is entitled to a Basic Award in respect of his unfair dismissal  
which is equivalent to a redundancy payment.

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**Employment Judge**

**N M Hosie**

**Dated**

**28<sup>th</sup> of May 2021**

**Date sent to parties**

**28<sup>th</sup> of May 2021**

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