



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113609/2021 (V)

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Held via Cloud Video Platform (CVP) on 30 June 2022

Employment Judge Murphy

10 Ms S Zafar

Claimant
Represented by:
Ms R Mohammed -
Solicitor

15 Multicultural Elderly Care Centre

Respondent
Not present and
Not represented

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent has unfairly dismissed the claimant contrary to sections 94 – 98 of the Employment Rights Act 1996 (“ERA”) and shall pay to the claimant compensation in the sum of **TWELVE THOUSAND THREE HUNDRED AND TWENTY-TWO POUNDS STERLING (£12,322)**. This
25 sum includes an uplift of **ONE THOUSAND AND TWENTY-EIGHT POUNDS STERLING (£1,028)** representing four weeks’ pay pursuant to section 38 of the Employment Act 2002, the respondent having failed to provide the claimant with a statement of employment particulars or statements of changes thereto under sections 1(1) and 4(1) of ERA.
- 30 2. The respondent has made unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of **SIX THOUSAND EIGHT HUNDRED AND EIGHTY SEVEN POUNDS STERLING (£6,887)** in respect of short paid and unpaid wages in the period between 1 December 2020 and 30 September 2021.
- 35 3. The respondent has made unauthorised deductions from wages contrary to section 13 of the Employment Rights Act 1996 and is ordered to pay to the claimant the sum of **ONE THOUSAND AND SEVENTY-NINE POUNDS STERLING AND FORTY PENCE (£1,079.40)** in respect of accrued leave

accrued but untaken in the annual leave year in which the claimant's employment terminated.

4. The sums awarded at items 2 and 3 are expressed gross of tax and national insurance. It is for the respondent to make any deductions lawfully required to account to HMRC for any tax and national insurance due on the sums, if applicable.
 5. The claimant brought a claim for breach of contract in respect of the respondent's failure to give the statutory minimum notice period of twelve weeks of the termination of her employment as incorporated into his employment contract by section 86 (4) of the Employment Rights Act 1996. There are no recoverable losses arising from such breach as such losses have been compensated under the claimant's compensation for unfair dismissal at paragraph 1 above. The claimant's breach of contract claim is, therefore, dismissed.
- 15 The claimant's claim for automatic unfair dismissal pursuant to section 103A of the Employment Rights Act 1996 is dismissed following the claimant's withdrawal of that claim at the hearing.

BACKGROUND

Introduction

- 20 1. The claimant brought claims as follows:
 - (i) A claim for damages for breach of contract in respect of the alleged failure by the respondent to serve the statutory minimum notice period;
 - (ii) A claim for unauthorised deductions from wages in respect of accrued untaken holidays outstanding at the termination of her employment;
 - (iii) A claim for unfair dismissal because of a protected disclosure pursuant to section 103A of ERA;
 - (iv) A claim for 'ordinary' unfair dismissal pursuant to sections 94 to 98 of ERA;
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- (v) A claim for unauthorised deductions from wages in respect of arrears of wages;
 - (vi) A claim for a statutory redundancy payment;
 - (vii) An application for an uplift in the claimant's unfair dismissal compensatory award as a result of the respondent's failure to provide the claimant with written particulars of his employment pursuant to section 38 of the Employment Act 2002.
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2. The respondent did not enter an ET3 response.
 3. The claimant withdrew her claim for a statutory redundancy payment prior to the hearing and a judgment dismissing that claim was issued on 16 June 2022.
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 4. During the preliminary discussion, the claimant's representative confirmed the claimant's withdrawal of her complaint of automatic unfair dismissal because of a protected disclosure but clarified that she continued to rely upon her claim of 'ordinary' unfair dismissal under sections 94 to 98 of the Employment Rights Act 1996.
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 5. The hearing under Rule 21 of the Employment Tribunal rules 2013 took place remotely by video conferencing.
 6. A notice of the hearing was sent to the respondent's postal address on 18 May 2022. The Notice informed the respondent of the date of the hearing and of the fact it would take place by videoconference. It invited the respondent to provide an email address within 7 days for joining the hearing. The respondent failed to provide any email address or to make any contact with the Tribunal regarding the arrangements to attending the hearing. The respondent did not attend and was not represented at the hearing. It was elected to proceed with the hearing in the respondent's absence under Rule 47, having considered all information available, including the respondent's failure to enter an ET3, and having made such enquiries as were practicable as to the reasons for the respondent's absence.
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7. Oral reasons were given at the hearing. Written reasons will not be provided unless they are asked for by a party within 14 days of the sending of this written record of the decision.

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Employment Judge: Lesley Murphy
Date of Judgment: 01 July 2022
Entered in register: 01 July 2022
and copied to parties