



IN THE EMPLOYMENT TRIBUNAL (SCOTLAND) AT EDINBURGH

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Order and Judgment of the Tribunal in Case No: 4101979/2020 (A) Issued Following Closed Preliminary Hearing and converted Final Hearing Held at Edinburgh on 1st July 2020, by Telephone Conference, at 2 pm

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Employment Judge J G d'Inverno

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Miss J Burgess

**Claimant
In Person**

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The Dug House Ltd

**Respondent
Represented by:-
Josalin Greig, Director**

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ORDER OF THE TRIBUNAL

Edinburgh 1st July 2020 at 2.30 pm

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The Employment Judge, having heard the claimant and the respondent's representative ("the parties") in Case Management Discussion, and being satisfied that the only issue which the Tribunal had jurisdiction to determine was now the subject of agreement between the parties:-

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(First) Records parties' confirmation, made orally in the course of Case Management Discussion, that parties were agreed that as at the Effective Date of Termination of the claimant's employment, 16 01 2020 and, as at the date of the Preliminary Hearing 1st July 2020, the respondent was due

and resting owing to the claimant the sum of £1,112.35 the same being the sum of which the claimant seeks recovery as compensation for accrued but untaken paid annual leave entitlement;

5 **(Second)** Of consent of parties and separately being satisfied that it is just, equitable and proportionate to do so, converts the Preliminary Hearing to a Final Hearing for the purposes of entering Judgment in terms of Rule 64 and proceeds as accords.

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

15 **(First)** The Judgment of the Employment Tribunal made and entered in terms of paragraph 64 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“Rule 64”), is that the respondent shall pay to the claimant the sum of £1,112.35 in the name of compensation for accrued, but as at the Effective Date of Termination of the claimant’s employment, untaken paid annual leave entitlement.

20 **(Second)** That an additional copy of this Judgment and the accompanying information booklet regarding enforcement be sent to the respondent’s Director at her home address.

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REASONS

30 1. This case, in which the claimant present a claim for £1,112.35 accrued holiday pay outstanding as at the Effective Date of her resignation 16th January 2020, called at Edinburgh by Telephone Conference for Closed Preliminary Hearing (Case Management Discussion).

2. The claimant participated in person; the Respondent Company, which has now ceased trading, was represented by its Director Ms Josalin Greig.
3. The Respondent Company, which has ceased trading due to insolvency and was in the process of being struck off the Register of Companies when the claimant initiated her proceedings before the Employment Tribunal had entered appearance resisting the claim. The Grounds of Resistance set out were grounds which, if established, would go to support a claim in damages for breach of contract. The principal claim which proceeds before the Tribunal is a statutory claim in terms of breach of the Working Time (Annual Leave) Regulations. It is not a claim which invokes the Tribunal's concurrent contractual jurisdiction on termination of a Contract of Employment and accordingly, cannot found an employer's contract claim (a counter claim) in the Employment Tribunal, for the purposes of reducing or extinguishing the claimant's principal claim. While the matters given notice of in the ET3 could relevantly found a claim for damages for breach of contract, the respondent will require to pursue such a claim in the Sheriff Court.
4. The Tribunal was accordingly satisfied, and upon further consideration and discussion the parties confirmed their mutual understanding, that no relevant defence to the claim was advanced.
5. It was a matter of express concession on the part of the respondent's Director that the particular sum claimed by the claimant was indeed due and resting owing to her, by the Respondent Company, in respect of outstanding holiday pay.
6. Both parties being anxious to progress matters without the need for further unnecessary procedure and having orally confirmed their agreement to the same in terms of Rule 64, the Employment Judge, of consent of parties, firstly converted the Closed Preliminary Hearing to a Final Hearing and secondly, in exercise of his power under Rule 64 and being satisfied as to the proportionality of doing so, entered Judgment against the respondent, in favour of the claimant, in the sum of £1,112.35.

7. At the respondent's Director's request, the claimant not objecting, the Tribunal has directed that in addition to the copy Judgment being issued to the Respondent Company at its address in Ocean Drive, Edinburgh, EH6
5 6JJ, a further and additional copy of the Judgment, together with the information booklet relating to enforcement be sent to the Respondent Company's Director at her home address, a separate Note of which has been placed on the file and is not to be otherwise disclosed.

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Date of Judgment: 14 July 2020

Employment Judge: Joseph d'Inverno

Entered Into the Register: 14 July 2020

And Copied to Parties

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