



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105680/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 29 and 30 January 2024

Employment Judge B Campbell

10 Mr William Hastie

Claimant  
In Person

Kirkland Refrigeration Limited

Respondent  
Represented by:  
Ms J Majithia -  
Counsel

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

1. The claimant was unfairly dismissed.
2. The claimant's claim for unpaid wages succeeds.
- 20 3. The claimant's claim for accrued annual leave succeeds.
4. The claimant's claim for additional (referred to as 'average') holiday pay succeeds.
5. The claim for notice pay succeeds.
6. The claimant is therefore awarded the following:
  - 25 a. A basic award of £1,056,
  - b. A compensatory award of £2,409,
  - c. The sum of £1,840.20 in respect of unpaid wages,
  - d. The sum of £614.40 in respect of accrued and unpaid holidays,
  - e. The sum of £1,665.60 in respect of additional/average holiday pay,
  - 30 and

- f. The sum of £2,248.40 as damages for failure to provide or pay the equivalent of his entitlement to notice of termination of his contract.

### REASONS

1. The claim was heard on 29 and 30 January 2024. On the latter date an oral judgment on liability was given. It was confirmed that the claimant's complaints listed at 1 to 5 above were successful, and the amounts due to him as a result would be confirmed in writing.

#### *Unfair dismissal compensation*

2. The claimant was found to have been unfairly dismissed by the respondent. His date of birth is 2 January 1984 and accordingly he was aged 29 at the date of dismissal. His service with the respondent began on 1 January 2021 and was dismissed on 6 June 2023. He had therefore completed two full years of service. He worked 40 hours per week and was paid £16 per hour, making his gross weekly pay £640. The statutory cap on a week's pay applicable at the date of dismissal was £643. A basic award is therefore £1,280, to be adjusted as explained below.
3. The claimant was awarded a compensatory award as a result of being unfairly dismissed. This covered the period from 4 July 2023 (being 4 weeks after the termination date as explained below) to 13 August 2023, the day before he began working for a new employer in a role which was at least as well paid, and his financial losses stopped accruing. The period from the termination date to 4 July 2023 is covered by the payment for damages in respect of notice pay below, and so the claimant is not compensated twice for the same period. His net weekly pay after deduction of income tax and employee national insurance contributions is calculated at £511. A compensatory award is calculated at £2,920.
4. The claimant was found to have contributed to his dismissal by reason of his own conduct to the extent of 25% and the basic and compensatory awards were reduced by that amount.

5. There was however an uplift to the basic and compensatory awards of 10%, reflecting that the respondent had not followed the ACAS Code in relation to disciplinary and grievance procedures.
6. Making those two adjustments in order results in a basic award of £1,056 and a compensatory award of £2,409.

*Unpaid wages – breach of contract/unlawful deduction from wages*

7. As quantified in the claimant's schedule of loss, he had not been paid for any work carried out since his payslip dated 19 May 2023, amounting to 120 hours, equivalent to £1,920 gross or £1,533 net. He was also due 16 hours of overtime at an hourly rate of £24, as itemised in his payslip dated 16 June 2023, which was not paid to him. The net value of that pay is calculated at £307.20.
8. The total award for unpaid wages is therefore £1,840.20.

*Accrued holidays*

9. The respondent adopts the calendar year as its holiday year. The claimant had accrued 14 days by his termination date, and had taken 8 days, leaving 6 days. The gross value of a day's pay was £128, equivalent to £102.40 net. Multiplied by six that amounts to £614.40.
10. The claimant was also contractually entitled to a payment equivalent to holiday pay earned on his overtime pay between the dates of 1 January 2022 and 6 June 2023. This was calculated at £2,082 gross, equating to £1,665.60 net.
11. No reduction or uplift is applied to those figures as they relate to rights separate from the dismissal and the question of its fairness.

*Damages for breach of contract – notice pay*

12. The claimant was awarded damages for breach of contract, the breach being the respondent's failure to provide notice of termination of his employment.

The respondent did not make a payment of the equivalent. His entitlement to notice under his contract was four weeks. In gross terms that amounted to £2,560. The net equivalent £2,044, based again on a figure of £511 per week.

- 5 13. It was decided to increase this by 10% in reflection of the respondent's failure to follow the ACAS Code, as the failure to provide notice is closely related to the unfair dismissal, and but for that failure the claimant would have been awarded unfair dismissal compensation for the same period. It is not appropriate to reduce amount to reflect the claimant's contributory conduct in the same way as for the compensatory award. The figure is therefore
- 10 £2,248.40.
14. The respondent is accordingly ordered to pay the claimant the sums calculated as above in compensation for his successful claims.

B Campbell

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**Employment Judge**

**12 February 2024**

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**Date**

**Date sent to parties**

**12 February 2024**

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