



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4113728/2021 & 4113729/2021**

**Hearing Held by Cloud Based Video Platform (CVP) on 28 February 2022**

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**Employment Judge: M A Macleod**

**Iwona Zmidzinska**

**1<sup>st</sup> Claimant  
In Person**

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**Jolanta Furmanik**

**2<sup>nd</sup> Claimant  
In Person**

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**Argyll Western Hotel Management Limited**

**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 claimant's claims succeed, being undefended, and that the respondent must pay to the 1<sup>st</sup> claimant the sum of Five Thousand Four Hundred and Seventy Nine Pounds and Fifty Two Pence (£5,479.52) and to the 2<sup>nd</sup> claimant the sum of Ten Thousand Three Hundred and Twenty Four Pounds and Twenty Pence (£10,324.20).**

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## REASONS

1. The claimants presented claims to the Employment Tribunal, which were subsequently combined, in which they complained that they had been unlawfully deprived of pay by the respondent.
2. The respondent did not submit an ET3 response in this case. Their representative sought to apply for an extension of time on at least two occasions, but failed to intimate the application to the claimants, and accordingly the applications were refused by the Tribunal.
3. Accordingly, the claims proceeded to a hearing undefended. The hearing took place on 28 February 2022 by Cloud Video Platform. The claimants both appeared and represented themselves. Ms Furmanik, the 2<sup>nd</sup> claimant, was provided with the assistance of an interpreter in the Polish language.
4. Both claimants gave evidence, and I had reference to documents which were presented on the Tribunal file.
5. Having heard the evidence of each claimant, I have concluded that their claims succeed, and that they should be awarded the following sums.

### Ms Zmidzinska

6. The first claimant commenced employment with the respondent on 16 August 2019, as a Housekeeping Assistant. She was employed by the respondent until her employment was terminated on 22 July 2021.
7. Her employment, like that of the 2<sup>nd</sup> claimant, was terminated without notice on 22 July 2021.
8. For a period of 13 weeks, from May 2021, the 1<sup>st</sup> claimant was not paid at all. She was placed on furlough by the respondent with effect from 14 November 2020 and from that date, received 80% of her contractual pay, which was £8.91 per hour, for 37.5 hours per week, until her pay was stopped in May 2021.

9. The respondent's explanation was that they were unable to pay the claimant until they received their furlough payments from HMRC.

10. When the 1<sup>st</sup> claimant's employment was ended, she received no notice of termination, nor any payments in respect either of notice or holiday pay which was outstanding.

11. The 1<sup>st</sup> claimant was entitled to 28 days' annual leave. She had taken 15 days of that leave by the date of termination, and accordingly she is entitled to 13 days' pay.

12. Her employment was ended, without notice, shortly prior to acquiring two years' continuous service with the respondent. She seeks a redundancy payment though she accepts that she lacks the actual service required.

13. I accept the 1<sup>st</sup> claimant's evidence to be honest and straightforward, and there is no doubt that she has been unlawfully deprived of pay by the respondent.

14. I find, therefore, that she is entitled to the following award:

- **Redundancy:** If the claimant had been dismissed with notice, she would have been entitled to one week's notice (section 86(1)(a) of the Employment Rights Act 1996. Section 145(5) defines the relevant date in respect of her entitlement to a redundancy payment as the date upon which her notice period would have expired. According to my calculations, that would have meant that her employment would have ended on 29 July 2022. By that reckoning, she would not have been employed by the respondent for a period of 2 continuous years, and therefore she is not entitled to a redundancy payment.

- **Arrears of pay:** The respondent failed to pay the claimant for 13 weeks until the date of her dismissal. Her weekly pay was £334.12; accordingly she would be entitled to be paid £5,345.92 in respect of unpaid wages at her full rate. However, the Tribunal must compensate her for wages lost, and by her own account, she was

entitled to furlough pay at 80% of her full pay, rather than full pay, for that period. As a result, she is entitled to a payment of £4,276.74.

- **Notice pay;** The claimant is entitled to one week's pay, of £334.12, which is her full pay rather than the furloughed sum.
- 5 • **Holiday pay:** The claimant is entitled to 13 days' holiday, at a daily rate of £66.82. She is therefore awarded ££868.66.

15. The respondent must therefore pay to the 1<sup>st</sup> claimant the sum of **£5,479.52**.

### **Ms Furmanik**

16. The 2<sup>nd</sup> claimant is entitled to the following payments:

- 10 • **Redundancy:** The 2<sup>nd</sup> claimant commenced employment with the respondent as a housekeeper in September 2016. Her employment ended on 22 July 2022. She had 5 years' completed service with the respondent. Her date of birth is 29 May 1960, and accordingly as at the date of termination of her employment, she was entitled to 5  
15 weeks' pay multiplied by 1.5. her weekly pay was the same as the 1<sup>st</sup> claimant, and accordingly her full pay, on which her redundancy payment was to be calculated, was £334.12 per week. Multiplied by 7.5, the 2<sup>nd</sup> claimant is entitled to a redundancy payment of £2,505.90.
- 20 • **Arrears of pay:** The respondent failed to pay the claimant for 13 weeks until the date of her dismissal. Her weekly pay was £334.12; accordingly she would be entitled to be paid £5,345.92 in respect of unpaid wages at her full rate. However, the Tribunal must compensate her for wages lost, and by her own account, she was  
25 entitled to furlough pay at 80% of her full pay, rather than full pay, for that period. As a result, she is entitled to a payment of £4,276.74.
- **Notice pay:** The 2<sup>nd</sup> claimant is entitled to a notice payment of 5 weeks' pay, amounting to £1,670.60.

- **Holiday pay:** The 2<sup>nd</sup> claimant was entitled to 28 days' annual leave, but took none up to the date of her termination. Accordingly, she is entitled to pay in respect of holidays accrued but untaken as at the date of termination of employment in the sum of £1,870.96.

5 17. The respondent must therefore pay to the 2<sup>nd</sup> claimant the total sum of  
**£10,324.20.**

10 Employment Judge: Murdo Macleod  
Date of Judgment: 02 March 2022  
Entered in register: 04 March 2022  
and copied to parties

15 I confirm that this is my Judgment in the case of Zmidzinska and Furmanik v Argyll  
Western Hotel Management Limited and that I have signed the Judgment.