

IN THE EMPLOYMENT TRIBUNAL OF GIBRALTAR

Claim No. 19 of 2023

BETWEEN:

FATIMA ZIDI

Claimant

and

EL KRIRI'S LE MARRAKECH LIMITED
T/A TASTE OF MARRAKECH

Respondent

JUDGMENT

1. The Claimant, a Moroccan national, worked as a cook for the Respondent's Moroccan restaurant for over two years.

2. Unfortunately, her employment was abruptly ended¹ on the morning of the 14th March 2023 when she "*turned up to work as normal*" and found that "*The entrance was locked, the restaurant appeared empty and there was a written paper note stuck posted on to the front explaining that the restaurant had closed down*".

3 On 17th March 2023, she filed an appeal letter against her dismissal and subsequently spoke to the sole director and shareholder of the Respondent², Mr Nabil El Khiri, who confirmed its receipt but told her that "*the business is not re-opening and that she was dismissed*"³.

4. At the oral hearing of the 22nd January 2025, the Respondent confirmed that the landlord had taken over possession of its business premises by blocking access to the locks (for non-payment of rent) and that it thereby abandoned its business because it was no longer able to continue trading. It was also confirmed by the Respondent that the

1 Paragraph 4.2 of her Claim Form and Section 6.2 Attachment - Tab 1 of the Claimant's Bundle, pages 1 to 7.

2 Companies House profile of the Respondent dated 22.01.25.

3 Paragraphs 4 and 6 to 8 of Claimant's Witness Statement dated 3rd December 2024 Tab 12 of the Claimant's Bundle, pages 73 and 74.

Claimant had not received any of the payments referred to in paragraph 13 of the Termination of Employment Form⁴.

5. The Claimant was, therefore, dismissed on the 14th March 2023, without any prior notice, as a result of the fulminant closure of the Respondent's business. That was the effective date of termination of her employment and the reason why she lost her job. No other or other credible reason was advanced by the Respondent, despite hinting to the contrary and which I did not allow⁵, for her dismissal. There is little doubt that this business went under, never to resurface again⁶ and, with it, this lady's employment and her legal entitlements.

6. I, therefore, awarded the Claimant her actual losses up to the date of termination: (1) a redundancy payment of £2,641.28 (2) £1,140.75 for wrongful dismissal (3) £937.50 for 25 days of outstanding accrued holiday pay and £2,632.50 for 10 weeks of unpaid wages but no compensation for future losses. I indicated being unable to award, in addition to the redundancy payment, a basic award of £2200 and gave the Claimant an opportunity to show cause to the contrary⁷.

7. I have every sympathy for the Claimant and frown upon the unfair manner she was dealt with by this Respondent. I am, however, unable to decide this issue on sympathy or disapproval of the Respondent's conduct, and I have not been persuaded by the grounds she has now advanced⁸.

8. This lady was unfairly dismissed on 14th March 2025 contrary to section 59 (1) of the Employment Act ("EA") as read in conjunction with section 64 (1), (2) (a) and (5) (b). The reason for her dismissal under **section 65 (1) (a) EA** as read in conjunction with **section 65 (7) (c) (i)** was that the Respondent "*ceased to carry on that business*" on that date⁹. That was the only and genuine reason for her dismissal¹⁰, but it was a reason that clearly failed under section 65 (1) (b) of the EA as read in

4 Filed by the Claimant in these proceedings – see Tab 11, page 72 of her Bundle. The form was dated 21st July 2023 but not signed by the Claimant.

5 Alleged misconduct/poor performance. Nor was I prepared to entertain it against her as just and equitable, under Regulation 3 (6) of the 2016 Regulations, at this very late and final stages of these proceedings and absent a timely chance of fully defending herself.

6 The Respondent would have been struck off by the Registrar of Companies but for the Claimant's solicitors representations based on this outstanding claim – see paragraph 8 of the Claimant's Submissions dated 2nd December 2024.

7 See attached Order of 22nd January 2025.

8 See Claimant's Submissions dated 28th January 2025. Contrast Schedule of Losses dated 2.12.24 and 22.01.25.

9 See paragraphs 40 to 44 of the Claimant's Supplemental Submissions of 13th December 2024.

10 The closure of the Respondent's business.

conjunction with section 65 (2) (c), (3) and (6) for the unfair manner in which this Respondent concluded this lady's employment¹¹.

9. This is not, in my respectful view, a Boorman or Bowyer case¹².


10. Case 21 of 2018 is instructive but, unlike the present case, it fell to be considered under section 65 (7) (c) (ii) EA and in the manner explained by the President because: "*The Respondent was suffering a downturn in business that resulted in it requiring less employees to carry out its work*"¹³."

11. The approach of the Court of Appeal in James W Cook & Co Ltd (in Liquidation) v Tipper [1990] ICR 716 was and is, in my respectful view, the correct approach to the present case.

12. The Claimant is only entitled to a redundancy payment under Regulation 3 (1), as read in conjunction with sub-regulation (3), and/or Regulation 2 (8) of the Employment Tribunal (Calculation of Compensation) Regulations 2016, pursuant to and/or as calculated in accordance with Regulations 3 and 4 of the Conditions of Employment (Redundancy Pay) Order¹⁴. The effect is, under either provision¹⁵, identical in this case. The Claimant either receives a basic award of £2200 plus a compensatory award of £441.28 (being the difference between the basic award and the redundancy payment payable) or no basic award with a compensatory award of £2641.28, which is what I ordered.

13. In conclusion, and on the facts as I found them in this case, the Claimant is not entitled to a basic award in addition to a redundancy payment (which is the only compensatory award payable in this case) or, at least, not without making the mandated deduction as explained above.

Dated this 25th day of February 2025


Stephen Bossino
CHAIRMAN

11 Without any or any reasonable or ample warning or notice of the possible closure of the business and denying her the opportunity of thereby organising her personal affairs properly and in an orderly fashion which, as a non-entitled worker with limited residence rights solely arising from her employment, ought to have fully exercised and moved this Respondent to act differently including paying her all her entitlements as they fell due.

12 See paragraph B, page 847, Boorman v Allmakes Ltd [1995] ICR 842 CA. See paragraph 3 (referring to paragraph 21) Bowyer v Siemens PLC [1995] UKEAT/0021/0/SM (unreported).

13 See page 10, paragraph 5 – Podesta & Others v Harridge Builders Limited – ET 21 of 2018.

14 See section 70 (1) and (3) of the EA and the enabling provision of Section 71.

15 Regulation 3 (1) and (3) or Regulation 2 (8).

IN THE EMPLOYMENT TRIBUNAL OF GIBRALTAR

BETWEEN:

Claim No. 19 of 2023

FATIMA ZIDI

Claimant

and

EL KRIRI'S LE MARRAKECH LIMITED
T/A TASTE OF MARRAKECH

Respondent

ORDER

Wednesday the 22nd day of January 2025

Before Mr Stephen Bossino, Chairman.

UPON HEARING Callum L. Smith, a solicitor of Messrs Phillips, solicitors for the Claimant and Nabil El Kriri, sole Director and Shareholder of the Respondent, who appeared in person on behalf of the Respondent.

AND UPON the Respondent having failed to file a Response within 21 days from the 7th June 2023 when the Claim Form together with the prescribed Response Form was sent to it by the Tribunal Secretary in accordance with Rule 13 of the Employment Tribunal (Constitution and Procedure) Rules 2016 ("the Rules") and having failed to apply for any extension of time within which to do so **AND UPON** the Tribunal being satisfied, on the material available and in the circumstances of this case, that the Claimant was unfairly dismissed and that an award ought to be made in her favour **AND IN ACCORDANCE** with the Overriding Objective of the Rules.

IT IS HEREBY ORDERED THAT:

1. Pursuant to Rule 21(2) of the Rules judgment on liability is entered in favour of the Claimant.
2. The Claimant is awarded the following amounts:
 - (1) The sum of £2641.28 by way of Compensatory Award which is due and payable to her under the Conditions of Employment (Redundancy Pay) Order;
 - (2) The sum of £1,140.75 for wrongful dismissal; and,
 - (3) The sums of £937.50 and £2,632.50 in respect of her claims for 25 days of outstanding accrued holiday pay and 10 weeks of unpaid wages respectively **UNLESS** the Respondent provides documentary evidence within 14 days from the date herein proving that it has already paid these sums to the Claimant and it is so proved to the satisfaction of the Tribunal.
3. The Claimant may file written submissions within 14 days from the date herein showing why Regulation 2(8)(a) of the Employment Tribunal (Calculation of Compensation) Regulations 2016 does not apply to her further claim to a Basic award of £2200.00 and/or that the Tribunal has a discretion to disapply it.
4. No order as to costs.



Chairman