

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4101666/2017**

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**Held in Edinburgh on 16 August 2017**

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**Employment Judge: Mr N M Hosie (sitting alone)**

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Mr P Khatri-Chhetri

Claimant

Gurkha Kitchen

Respondent

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**JUDGMENT**

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The Judgment of the Tribunal is that the claim is dismissed.

**REASONS**

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1. This case came before me by way of a Preliminary Hearing. The claim comprised complaints of unlawful deduction of wages, for outstanding holiday and sick pay and for notice pay. The claim was not defended. The respondent had not submitted an ET3 response form.

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2. It emerged at the Hearing that he respondent, and the claimant's employer, was, in fact, a limited Company: Gurkha Kitchen Restaurant Limited which traded as "Gurkha Kitchen". The Company was a tenant of the restaurant premises.

3. The claimant started to work for the respondent's restaurant business on 15 June 2015 as Restaurant Manager. However, after a period of some three months the business had to close down due to water damage to the premises.

5 4. Thereafter, the claimant assisted with a claim to the respondent's insurers for loss of income due to business interruption and it was anticipated that the income from that claim would be sufficient to enable the business to start up again once the repairs to the premises had been carried out by the landlord. However, the insurance claim was unsuccessful and the respondent had no funds by the time  
10 the repair work had been carried out and the premises were ready again to open for business around January 2017. The respondent was unable to start up the business again. The Company had not traded after the restaurant closed in September 2015 and the claimant had not worked there after that.

15 5. The water damage to the restaurant premises which caused the respondent Company to cease trading occurred through neither party's fault. It made the contract of employment impossible to perform. The contract was "frustrated" which meant that it came to an end automatically, by operation of the law and the parties were discharged from further obligations under it. The claimant is not  
20 entitled, therefore, to payment of the sums he is seeking under the contract.

6. Further, the claimant advised me that the respondent Company had ceased trading and had no assets which meant it was improbable that he would be able, in any event, to implement any Judgment in his favour.

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7. In these circumstances, the claimant advised that he wished to withdraw his claim and he confirmed that he was agreeable to the claim being dismissed.

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8. Accordingly, I shall issue a Judgment to that effect.

5 Employment Judge: Nicol Hosie  
Date of Judgment: 22 August 2017  
Entered in Register: 23 August 2017  
and Copied to Parties