



## EMPLOYMENT TRIBUNALS

**Claimant:** Ms T Kumari  
**Respondent:** ASM Capital Ltd

**Heard at:** London Central (by CVP)

**On:** 4/7/2024  
**Before:** Employment Judge Mr J S Burns

### Representation

**Claimant:** In person  
**Respondent:** Ms V Dbss (Portfolio Property Manager)

### JUDGMENT

The Respondent must pay the Claimant £4500 by 18/7/24.

### REASONS

1. This was a claim for holiday pay and arrear salary. I heard evidence from the Claimant and from Ms Dbss and was referred to various documents sent to me by the Respondent including receipts for plane tickets, P45 etc
2. The Claimant was employed by the Respondent from a date in 2020 as a housekeeper/domestic servant in a home occupied by Ms S Mittal who is the wife of the owner of the Respondent.
3. She took a break from January 2021 and restarted employment on 7/6/21.
4. The Claimant was summarily dismissed on 12/10/23 for allegedly stealing a silver rattle and a bottle of Japanese whisky which were found packed into her suitcase. Ms Mittal did not attend to give evidence<sup>1</sup> to back up this serious allegation. The Claimant in her evidence denied stealing these and says they were gifts to her. It is unnecessary for me to decide this theft claim.
5. The Respondent did not issue the Claimant with any written terms and conditions of employment or a written contract at any time but it is agreed that her rate of pay was £600 per week and £100 per day as she worked a six-day week, and that she was entitled to at least 28 days paid holiday per year.
6. It is agreed that she was not paid for the last three days of her employment which were all working days. She should have been paid for these so she is owed £300 as unpaid salary.
7. In her ET1 she claimed unpaid holiday pay "from April 2022 to October 2023". In her evidence at the tribunal she claimed unpaid holiday pay for 2021. This would require an amendment to the claim which I have not allowed as it is too late to change the claim in the middle of the final hearing. In any event it is not shown that the Claimant (who was allowed to take holidays by

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<sup>1</sup> Ms Dbss said that Ms Mittal could not attend to give evidence "because she was travelling".

the Respondent) had the right to carry forward from one year to the next any entitlements in respect of untaken holidays.

8. The Claimant agrees that she took 4 days excess paid holidays in 2022 and that she must give credit of £400 for this.
9. In 2023 it is agreed that the Claimant was due and did not take 21.8 holidays up to the dismissal day. I have rounded that up to 22 days which after applying the credit results in a holiday pay entitlement of £2200-£400 = £1800.
10. The Respondent's main defence is that it paid and is entitled to off-set the cost of two airplane tickets which it purchased for the Claimant as follows: £631.56 on 30/1/22 and £986.61 in September 2023 = total £1618.17. It is agreed that there was no attempt to seek repayment from the Claimant while her employment continued. There is no contract or other document to show any agreement that the Claimant was obliged to repay the Respondent for these tickets. Ms Mittal has not attended or even provided any statement to back up this bald assertion which has emerged only after the employment ended. The Claimant in her evidence said that these were perks of her employment - ie akin to a gift or bonus - and there was no agreement or understanding that she would have to repay the money. I accept this evidence. If the agreement was that she should repay the cost of the tickets then I would have expected to see evidence of repayments, requests for repayment or deductions from her pay after 30/1/22 and before the employment ended. I do not accept the defence and do not allow the Respondent to off-set the airplane ticket expenses.
11. When these ET proceedings began the Respondent was in breach of its duty to provide a written statement of initial/changed employment particulars as required by sections 1(1) and 4(1) of the Employment Rights Act 1996, and as she has succeeded in a claim for unauthorised deductions and payments under section 23 ERA 1996 (a type of claim listed in Schedule 5 of the Employment Act 2002), under section 38 of the latter Act, the Tribunal must order the Respondent in addition to pay either two or four weeks' pay to the Claimant. I regard it as just and equitable in all the circumstances of this case (which include the difficulties caused by the non-provision of written terms to a vulnerable domestic servant) to increase the award to 4 weeks pay - ie 4 x £600 = £2400

Total payable	
Salary	£300
Holidays	£1800
Sec 38	<u>£2400</u>
	£4500

Employment Judge J S Burns  
4/07/2024  
For Secretary of the Tribunals

Date sent to parties  
10 July 2024