



EMPLOYMENT TRIBUNALS

Claimant: Mr J Duran Delgado

Respondent: Pizzeria Gali Ltd

Heard at: Southampton (by CVP)

On: 27 June 2025

Before: Employment Judge Yallop

Representation:

Claimant: In person

Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is as follows:

Wages

1. The complaint of unauthorised deductions from wages is well-founded. The Respondent made an unauthorised deduction from the Claimant's wages that were due to be paid by 15 June, 29 June and 13 July 2024.
2. The Respondent shall pay the Claimant **£3,332.72**, which is the amount outstanding of the gross sum deducted. The Claimant is responsible for the payment of any tax or National Insurance.

Holiday Pay

3. The complaint in respect of holiday pay is well-founded. The Respondent failed to pay the Claimant in accordance with regulations 14(2) and 16(1) of the Working Time Regulations 1998.
4. The Respondent shall pay the Claimant **£2,380.04**. The Claimant is responsible for paying any tax or National Insurance.

REASONS

Oral reasons were delivered on 28 February 2025, but written reasons were requested by the Claimant at the end of the hearing in accordance with Rule 60 of the Employment Tribunals Rules of Procedure. The following reasons are therefore provided:

Introduction

1. The Claimant worked for the Respondent as a kitchen supervisor from 23 October 2023. His employment terminated on 6 July 2024 following his resignation. The Claimant claims that he is owed arrears of pay and holiday pay.
2. The Respondent admits the Claimant's claim in respect of the arrears of pay.
3. The Respondent admits that the Claimant was not paid for his accrued but untaken holiday on the termination of his employment, but disputes the Claimant's calculation as to what is owed.

The hearing

4. I conducted a hearing on 27 June 2025 to decide whether to issue judgment against the Respondent and if so, what to award by way of remedy. The Claimant gave sworn evidence. There were no other witnesses.

Preliminary matters

5. Before commencing the hearing, I considered how to proceed given the non-attendance of the Respondent. Under rule 47 of the Employment Tribunal Procedure Rules 2024, if a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.
6. The Claimant said that he was aware from his ex-colleagues that Miguel Barros, the sole Director of the Respondent, had sold the company's property and left the country.
7. As the Respondent had provided a response to the claim, I knew it was aware of it, and that the Tribunal's methods of contacting the Respondent had previously been effective. The Notice of Hearing dated 31 March 2025 was sent to the same address as the Notice of Claim, which was the Respondent's registered address. The Respondent's registered address has not been changed on Companies House.
8. On 1 and 6 May 2025, the Claimant raised concerns with the Tribunal about the Respondent failing to comply with case management orders. On 26 June 2025, the Tribunal therefore emailed both parties regarding the case management orders that needed to be complied with prior to the hearing. The

Respondent was warned that if it failed to comply with the orders there could be serious consequences, including the strike out of the defence.

9. As the Respondent ceased corresponding with the Claimant and the Tribunal, I considered it likely that the Respondent had chosen not to attend the hearing. I therefore decided to proceed in the Respondent's absence on the basis that it was in the interests of justice to do so to avoid delay, and because the Respondent's conduct, and the information from the Claimant about its Director's whereabouts, suggested the Respondent would not attend if the hearing was adjourned to a later date.

Issues

10. I agreed with the Claimant that I needed to decide whether to issue judgment against the Respondent and if so, what to award by way of remedy.
11. The Respondent had admitted the complaint for arrears of pay, so the only disputed complaint was for holiday pay.
12. The Respondent had admitted that it had failed to pay the Claimant for the annual leave the Claimant had accrued but not taken when his employment had ended. The Respondent had also admitted that the Claimant was entitled to 5.6 weeks of holiday a year. This meant I needed to determine the following issues in relation to the holiday pay claim:
 - a. What was the Claimant's holiday year?
 - b. How much of the year had passed when the Claimant's employment ended?
 - c. How much leave had the Claimant accrued for the year by that date?
 - d. How much paid leave had the Claimant taken?
 - e. Were any days carried over from previous holiday years?
 - f. How many days remain unpaid?
 - g. What is the relevant daily rate of pay?

Findings of Fact

13. The relevant facts are as follows.
14. The Claimant's employment terminated on 6 July 2024 following his resignation. He received a payslip on 15 June stating that he would be paid £1078.65, a payslip on 29 June stating he would be paid £1118.73 and a payslip on 13 July stating he would be paid £639.96. Those sums were never paid to him. The Respondent accepted in its response that those sums were owed to the Claimant, but not paid.
15. The gross sums on the Claimant's pay slips were £1,373.11 (15 June), £1,431.61 (29 June) and £728 (13 July). This totals £3,532.72. The Claimant has only received £200 from the Respondent in respect of the outstanding sums, so there is £3,332.72 remaining.
16. The Claimant's written contract of employment with the Respondent states that he was paid an hourly rate of £13 for 40 hours minimum a week. The Claimant gave oral evidence that he worked and was paid for 46 hours a week every week. He explained that there were only 2 people working at the

shop, so it was a condition that he worked those hours. He was put onto the rota by the Respondent and had to work the hours he was given. He was not able to take leave at any point during his employment. He said his holiday leave year ran from the day he started employment. The Respondent did not provide any evidence contradicting this, and I accept the Claimant's evidence.

17. In relation to annual leave, the Claimant's contract states that he is entitled to 5.6 weeks' holiday a year including bank and public holidays. However, it does not state when the holiday leave year starts or ends, or state how holiday pay will be calculated.

Relevant law and conclusions

18. In accordance with regulations 13(3) and 13A(4) of the Working Time Regulations 1998 (WTR), if there is no leave year set out in writing, and the Claimant started employment after 1 October 1998, their leave year begins on the anniversary of their start date. This accords with the Claimant's oral evidence that his leave year ran from the date he commenced employment. The Claimant commenced employment on 23 October 2023, so I conclude that his leave year ran from 23 October 2023 to 22 October 2024.
19. The Claimant worked from 23 October 2023 to 6 July 2024, which was 37 weeks. $37/52 \times 5.6 = 3.98$ weeks of holiday accrued.
20. In accordance with regulation 16(3ZA) WTR, when determining the amount of a week's holiday pay for regulation 13 WTR leave, overtime payments that have been regularly paid to a worker in the 52 weeks preceding the calculation date must be included (or if the employee has been employed for less than 52 weeks, the number of complete weeks for which he was employed). It is clear from the Claimant's oral evidence that he was required by the Respondent to work 46 hours a week every week throughout his employment. Even if the Respondent is correct about the terms of the contract, and 6 of the hours the Claimant worked each week constituted voluntary overtime, the 6 hours would still be included in the calculation of the Claimant's holiday pay because the Claimant always worked it.
21. As the Claimant's normal working week was 46 hours and he was paid £13 per hour, he earned £598 gross a week.
22. On the termination of the Claimant's employment, he was entitled to be paid in lieu of accrued but untaken holiday. He did not receive this pay. He is therefore owed $3.98 \text{ weeks} \times 598 \text{ gross per month} = £2,380.04$.

Approved by:
Employment Judge Yallop
20 July 2025

JUDGMENT SENT TO THE PARTIE ON
06 August 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/