



EMPLOYMENT TRIBUNALS

Claimant: Danielle Mitchell

Respondent: The Old Bakehouse Cuisine Ltd

Heard at: Leeds Employment Tribunal **On:** 30th July 2025

Before: Employment Judge L Bridge

Representation

Claimant: in person

Respondent: in person

JUDGMENT

1. The Claim for unauthorised deductions of wages is not well founded and is dismissed.
2. The Claim for unpaid holiday pay is not well founded and is dismissed.

REASONS

Background

1. The Claimant brings a claim of unauthorised deductions from wages in that she submits that for the entire time of her employment with the Respondent she was paid less than the National Minimum Wage.
2. The Claimant also brings a claim for unpaid holiday pay in that she claims she was entitled to holiday pay for two weeks which she did not receive.
3. Acas Early Conciliation took place between the 15th of April 2025 and the 27th of May 2025.
4. An ET1 was received on 28th May 2025.
5. An ET3 was received on 22nd June 2025.

Issues

6. (i) What was the start date of employment of the Claimant with the Respondent?
(ii) What were the hours worked by the Claimant?
(iii) What hourly rate of pay did the Claimant receive?
(iv) What holiday entitlement did the Claimant have?
(v) What holiday entitlement did the Claimant use?

- (vi) Was the Claimant paid for her holiday?
- (vii) What, if any remedy is owed to the Claimant?

The hearing

- 7. The Tribunal had an agreed bundle of 83 pages.
- 8. The Claimant gave evidence on oath.
- 9. Mr A Whalley gave evidence on oath on behalf of the Respondent.]
- 10. Both parties made closing submissions.

Findings of fact

How the Claimant began employment with the Respondent

- 11. In October of 2024 Mr Whalley took over the business The Old Bakehouse Cuisine Ltd from the mother of the Claimant's partner.
- 12. When he took over the business, the Claimant was already an employee, and he agreed that she could continue to be employed under the same terms and conditions because she knew the customers and processes of the business.
- 13. The business is a small operation and once taken over by Mr Whalley, the only employees were his partner Ms K Sharples, the Claimant and her son.
- 14. The Claimant said she had never before worked in the business despite it being owned by her partner's mother. She also said in evidence that she knew how the business ran.
- 15. I prefer the evidence of Mr Whalley that she was already employed by the business when he took over. Mr Whalley seemed genuinely shocked at the evidence she had never worked there before. It find it difficult to align the evidence of the Claimant that she was taken on because she knew how the company operated with her evidence that she had never worked there.

Start date of employment

- 16. The Claimant began work for the Respondent on 21st October 2024. I find this as a fact based upon an email sent by the Respondent to his accountants as follows:
- 17. On 21st October 2024 an email was sent by Karen Sharples (partner of Mr Whalley) to Tax Affinity Accountants stating the following: -

"Hi, could you please add the following on a fixed 16 hours per week at £11.44 per hour paid weekly.

Start date 21.10.24

*Danielle Mitchell
3 Fairfield Rd
Bridlington
YO15 3DP*

Thank you

Adrian Whalley”

18. The Claimant has said she began work on 1st October 2024 but was not sure of this in her evidence. I prefer the evidence of the Respondent on this issue as it is confirmed in writing in an email to his accountant sent at the time the employment was transferred to the Respondent company.
19. Regrettably there was no contract of employment issued, and terms of employment were agreed verbally between the parties.

Hours of work

20. This issue is at the very heart of this claim.
21. The Claimant states she worked 7.5 hours per day six days a week rarely taking annual leave. In support of this she has provided to the Tribunal a number of photos of food she uploaded to social media to advertise the business, one cleaning schedule showing her signature each day and messages sent to Mr Whalley showing her to be working on various dates.
22. Mr Whalley states that she worked sixteen hours a week every week but not at set times. In support of this he has provided wage slips showing 16 hours paid to the Claimant each week.
23. Both parties were adamant in their evidence about the hours worked. On balance I prefer the evidence of the Respondent for a number of reasons.
24. Firstly, whilst the messages do show correspondence between the pair on a regular basis, they support the Mr Whalley's claim that in the main, the shop did not open on a Saturday.
25. None of the messages about work were sent on a Saturday.
26. On 21st January the Claimant sent a text message to the Respondent stating the following

“Also, 1st February it's my sister's surprise baby shower, are we opening Saturdays straight away if so, I'll have to work till like 12:30 that day xxx”
27. The evidence of Mr Whalley was that he tried Saturdays for a couple of months, and they did not prove successful. He estimated the months as October and November, but this message suggests the idea was to try the Saturdays from late January 2025.
28. Further the cleaning schedule from December 2024 is blank for Saturdays supporting the claim that the shop was not open.
29. Secondly, the Claimant has not been consistent in her evidence about her hours of work. Her claim form specifies that she worked 38 hours per week. Her evidence at the hearing was that she worked 45 hours per week. In the body of the claim form, she says this was 7.30am until 3pm.
30. Thirdly, the Respondent provided in evidence an email to his accountant specifying the hours of work as 16. This was date stamped 21st October 2024

long before any disagreements between the parties or thoughts of litigation.

31. On the 9th of April 2025 the Respondent sent an e-mail to info@taxaffinity.com stating the following: -

“Hi Tuheed

Please can you take Danielle Mitchell off the payroll, her last working day was the 3/4/25

Many thanks

Adrian”

32. On Monday 3rd March the Claimant sent the following message to the Respondent: -

“Hi Adrian, just been to the job centre for an appointment and they have said the way my wage slips are done a wrong and they're not being notified? So, it might be easier to just do full time hours and submit it as that caus it shouldn't affect me they're saying it's not done right for tax and National Insurance, and they want copies of bank statements for it being paid into my bank account?”

33. The Respondent responded with “let's chat tomorrow”.

34. The Claimant submitted this evidence in support of her working more than 16 hours a week. I have considered the weight of this evidence and find that it is not as reliable as the evidence of what was submitted formally to the company accountant of the number of hours worked. No hours are specified in the message, and it refers to bank statements for payments into her bank account when it is common ground between the parties that the Claimant was paid in cash.

Rates of pay

35. The Claimant contends that she was paid the rate of £10 per hour which was not in accordance with the national minimum wage.
36. The Respondent states she was paid £11.44 per hour which was the minimum wage in 2024.
37. On balance I prefer the evidence of the Respondent that the Claimant was paid the national minimum wage for a number of reasons.
38. The Claimant has been emphatic in her accusations that she was not paid the national minimum wage throughout proceedings. The Respondent contends that this was never raised as an issue prior to her ending her employment and this is supported by the messages showing a good working relationship until the end of March 2025.
39. The Respondent has been able to provide evidence of an email to its accountant on the start date of her employment specifying her rate of pay and hours.
40. Wage slips have also been provided to this effect by the Respondent's accountant. Though the evidence is that they were not provided weekly as they should have been, I find that they are reflective of the pay given to the Claimant.

Holiday entitlement and pay

41. It is common ground that there was no discussion or agreement about holiday entitlement for the Claimant when she commenced her employment.
42. Nor was there any formal process for requesting annual leave.
43. The Claimant's evidence about her annual leave was that she very rarely took annual leave.
44. I have seen evidence in the bundle that the Claimant did take annual leave, and I find that she did take annual leave on an informal basis as and when she needed it by informing Mr Whalley. She sent a text message to Mr Whalley on the 21st of January stating the following: -

"also, first February it's my sister surprise baby shower are we opening Saturdays straight away if so, I'll have to work till like 12:30 that day xxxx"
45. Mr Whalley replied *"prob going to close that's at got my girls coming up for the weekend"*.
46. Mr Whalley also gave evidence, which was uncontested by the Claimant, that she had notified him that she required annual leave on the third of April due to a family matter.
47. It was the evidence of both parties that the Claimant did take leave between 20th December and 13th January.
48. It was the evidence of the Claimant that she took leave after 21st and worked that Saturday but I have already found as a fact that Saturdays were not working days. therefore, I find her last date of work before annual leave was 20th December 2024.
49. Between 20th December and 13th January there were 48 working hours taken as annual leave. This has been calculated by multiplying the sixteen hours a week the Claimant usually worked by the three weeks she was on holiday.

Was the Claimant paid for the annual leave she did take?

50. The evidence of the Claimant was that she took annual leave for three weeks and was not paid during that time.
51. I accept the Claimant's evidence that she took three weeks' annual leave and find that the annual leave was between 20th December 2024 and 13th January 2025.
52. Mr Whalley gave evidence that she was paid in full in advance of her leave. He has supported this with evidence of pay slips provided by his accountant.
53. I prefer the evidence of Mr Whalley in this regard because he has corroborated it with wage slips in support of payment being made to the Claimant for the weeks during which the Claimant was on annual leave.
54. I find that the Claimant was paid in full for these weeks of annual leave.

The end of the Claimant's employment with the Respondent

55. The Claimant did not attend work with the Respondent after 3rd April 2024. She did not formally resign. She simply never attended again.

56. On the 9th of April 2025 Karen Sharples sent an e-mail to info@taxaffinity.com stating the following: -

"Hi Tuheed

Please can you take Danielle Mitchell off the payroll, her last working day was the 3/4/25

Many thanks

Adrian"

The Law

The right not to suffer unauthorised deductions from wages

57. Section 13 of the Employment Rights Act 1996 states: -

"An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or*
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction."*

Section 13(3) ERA provides:

"Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion."

Definition of wages

58. Section 27 of the Employment Rights Act 1996 defines wages as

"Any sums payable to the worker in connection with his employment"

59. A deduction is a complete or partial failure to pay what was properly payable on a particular occasion. It includes a reduction in wages -
Bruce and ors v Wiggins Teape (Stationery) Ltd 1994 IRLR 536,

EAT.

The National Minimum Wage

60. Section 1 of the National Minimum Wage Act 1998 states that

“A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference. At a rate which is not less than the national minimum wage.”

Compensation related to entitlement to leave

61. Regulation 14 of the Working Times Regulations 1998 states that where:

*“(a) a worker’s employment is terminated during the course of his leave year, and
(b) on the date on which the termination takes effect (“the termination date”), the proportion he has taken of the leave to which he is entitled in the leave year under regulations 13(1) and 13A (1) differs from the proportion of the leave year which has expired.*

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or

(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—A is the period of leave to which the worker is entitled under regulation 13 and regulation 13A;

B is the proportion of the worker’s leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.”

Conclusions

Claim for unlawful deduction from wages

62. I find that no unauthorised deductions were made from the Claimant’s wages.

63. The Claimant worked 16 hours a week being paid £183.04 per week meaning her rate of pay was £11.44 per hour as shown on her pay slips. £11.44 was in accordance with the National Minimum wage in 2024.

64. I consider it worthy of note that even on the Claimant's version of events that she worked 7.5 hours a day 6 days a week getting paid £75 per day, I. could still not conclude there had been an unlawful deduction from her wages.
65. Had she been paid 11.44 per hour for 7.5 hours per day, six days a week as she claimed she was entitled her gross salary would have been 514.80. However, she would have been liable to pay income tax and national insurance on this income meaning her net income would have been £438.36 per week. Her clear evidence was that she was paid £450 per week so in excess of what she was entitled to and not less.
66. This demonstrates further that there was no unauthorised deduction from her wages.

Claim for unpaid holiday pay.

67. The Claimant took three weeks annual leave amounting to a total of 48 hours of annual leave.
68. I have calculated this by multiplying the sixteen hours per week that she worked by the three weeks she took off.
69. She was entitled to 45 hours of annual leave between 21st October and 1st April when she ceased employment. This is based on her working for the company for 23 weeks at 16 hours a week with an additional 8 hours for the final week where she only worked two days. This annual leave had been taken, and she had been paid for it.
70. Therefore, she is not owed any holiday pay and the holiday she took she was paid for.

Approved by:

Employment Judge Bridge

11th September 2025

JUDGMENT SENT TO THE PARTIES

ON

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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/