EMPLOYMENT TRIBUNALS

Claimant: Miss N Frost

Respondent: Coffee Jazz Limited

Heard at: Bristol (by video) **On:** 10 October 2025

Before: Employment Judge Cuthbert

Appearances
For the Claimant: Mrs C Frost (claimant's mother)
For the Respondent: Mr C Kiernan (lay representative)

REASONS

1. These written reasons are provided following a request made by the Respondent by email on 10 October 2025, following oral reasons and judgment given at the end of the hearing earlier that day.

2. The Respondent's request was not made at the hearing itself or subsequently in writing in accordance with the timings specified in Rule 60(4) of the Employment Tribunal Rules 2024 (**Rules**). I decided nonetheless to permit the request in accordance with the overriding objective in Rule 3 and exercising the discretion provided by Rules 5 and 6, so as to avoid the Respondent inevitably submitting a further request to the same effect.

Procedure at the hearing and issues

3. The hearing was listed for a final hearing of two hours, by video.

4. The Claimant claimed unauthorised deductions from her wages by the Respondent. She claimed the sum of £296.82 by way of remedy.

5. Upon reading the documents supplied by the parties, it was apparent that the Respondent had also failed to provide the Claimant with a written statement of her terms and conditions – there was no contract within the documents provided to the Tribunal; the Respondent also expressly stated, within its written witness evidence, that the Claimant was not issued with a written contract. That apparent failure gave rise to an additional remedy issue, set out further below.

6. In addition to the pleadings (ET1 and ET3), the Tribunal had been provided with various documents in advance by the parties: a witness statement from the Claimant and certain documents upon which she relied, plus a Schedule of Loss with some further documents attached to it. The Respondent provided three witness statements, from Cristina Gorea (owner), Dorina Kramos (Deputy Manager) and Vasile Andrusca (Director) plus a further 14-page written submission document prepared by Ms Gorea, and some documents attached to the statements and written submission. I had read all of this material before the start of the hearing and reviewed the relevant content again when deliberating after the evidence and submissions.

7. At the start of the hearing, I explained the issues to be decided by the Tribunal to the parties. Neither party was legally represented and so I suggested in advance that they note those issues down. The issues were as follows:

   7.1. What was the Claimant's agreed pay rate? It was not disputed that the Claimant was paid at the rate of £11.44 but the Claimant claimed that the agreed rate was £12.50. If the Claimant was paid less than the agreed rate, this would be an unauthorised deduction of wages and therefore unlawful.

   7.2. Was there any written contract or other written agreement authorising the Respondent to deduct the Claimant's pay in respect of unauthorised breaks?

   7.3. If not, such deductions were unauthorised and therefore unlawful.

   7.4. If unlawful deductions were made, what was the shortfall in the Claimant's wages?

   7.5. Did the Respondent fail to provide the Claimant with a written statement in accordance with section 1 of the Employment Rights Act 1996?

   7.6. If the Claimant's claim for unauthorised deductions of wages succeeded, should the Claimant be awarded an additional two to four weeks' pay in respect of that failure. An award of at least two weeks' pay must be made unless it would be unjust and inequitable to make such an award.

8. I informed the parties that I had read all of the documents provided to me in advance of the hearing (see para 6 above) and explained the procedure to be followed during the rest of the hearing, in terms of oral evidence, including cross examination which needed to focus on the relevant issues, and then oral closing submissions from each party, then deliberation and oral judgment.

9. It was very clear that much of the content of all the four witness statements had little or no relevance whatsoever to any of the issues. I pointed out to the parties as follows:

   9.1. It appeared that only paragraph 5 of the Claimant's witness statement, read together with an Excel schedule attachment of her claimed hours worked, were relevant. The rest of her witness statement was not relevant.

9.2. Cristina Gorea. The only relevant evidence in Ms Gorea's witness statement was confirmation that the Claimant was not issued with a written contract and the reference to a "Sling" mobile app which the Respondent claimed its staff used to record their hours worked. The rest of her witness statement was not relevant.

9.3. Dorina Kramos. The first paragraph of Miss Kramos' witness statement about the Claimant's interview was relevant, as was the last paragraph of her statement. The rest of her witness statement was not relevant.

9.4. Vasile Andrusca. The only point of potential relevance in Mr Andrusca's witness statement was reference to use of the Sling app. The rest of his witness statement was not relevant.

10. It was also apparent during these initial discussions with the parties that none of the Respondent's three witnesses had yet joined the hearing – only Mr Kiernan, who was representing the Respondent, was present for the discussions above. I asked Mr Kiernan why this was so. He explained that he would telephone Miss Kramos and Mr Andrusca when their time came to give evidence, and they would join at that time, but that Ms Gorea would not be attending the hearing.

11. I told Mr Kiernan in response that the hearing was a public one and so the witnesses could attend at any time; I also explained that, if Ms Gorea was not attending the hearing, for her evidence to be tested by being cross-examined on behalf of the Claimant, her evidence would be accorded only limited weight by the Tribunal in the circumstances. Mr Kiernan said that he intended to read out Ms Gorea's witness statement to the Tribunal in her absence. I explained that I had already read Ms Gorea's witness statement, it was not his witness statement and he was not a witness, and this would therefore be unnecessary.

12. I asked the parties if they had any queries about what had been discussed, before we proceeded to hear the oral evidence. They did not.

The witness evidence and findings on the relevant facts

13. The witnesses were as follows:

13.1. The Claimant had provided a witness statement and accompanying documents and a Schedule of Loss and gave oral evidence, being asked questions by the Tribunal and by Mr Kiernan in cross-examination.

13.2. Ms Gorea, the owner, did not attend the Tribunal to give evidence and so, as indicated at the outset of the hearing, her witness statement and the documents to which she made reference within it were accorded very limited weight by the Tribunal.

13.3. Mr Andrusaca, a director, had provided a witness statement and gave brief oral evidence. He was asked during cross examination how often he had encountered the Claimant at work. He said he had met her only once.

13.4. Miss Kramos, the Deputy Manager, gave evidence about the Claimant's interview in her witness statement and in her brief oral evidence about the Sling app and about the alleged unauthorised breaks.

14. Where there was a conflict of evidence, there were essentially no contemporaneous documents to help to resolve any of the factual disputes (no written contract, no copy of the job advertisement, no joint or contemporaneous record of the hours worked by the Claimant). I preferred the Claimant's evidence to the evidence of the Respondent's witnesses. She gave clear and straightforward answers on the issues in dispute to the Tribunal and during her cross examination.

15. I made findings of fact as set out below, only on the evidence which was relevant to the issues.

16. The Respondent is a small Café business and the Claimant worked briefly for the Respondent during September 2024, as a waitress. The Claimant was not issued with a written statement of terms and conditions at any time by the Respondent.

17. The Claimant was appointed to the role following an advertisement posted by the Respondent on the Indeed website. The advertisement was subsequently taken down by the Respondent before the present dispute arose. The advert clearly existed as it was mentioned in correspondence between the parties (an email from Ms Gorea to the Claimant dated 5 October 2024, attached to the Claimant's witness statement).

18. I accepted the Claimant's evidence that the hourly rate specified in the advertisement was £12.50 per hour. Ms Gorea did not attend the Tribunal hearing and so could not be asked about the advertisement on behalf of the Claimant or by the Tribunal. Miss Kramos claimed in her evidence that a lower hourly rate of £11.44 (minimum wage) was discussed and agreed in the interview. This was put to the Claimant by Mr Kiernan but the Claimant denied that any hourly rate different to the advert had been mentioned to her during the interview or during her employment and so she had expected to be paid at the advertised rate. I preferred the Claimant's evidence to that of Ms Kramos. The Respondent's failure to provide the Claimant with any written statement of her terms and conditions was evidently extremely unhelpful in this regard – written confirmation at the outset of the Claimant's employment of her hourly rate would obviously have avoided such a dispute arising in the first place.

19. The Claimant worked eight shifts in the Café between 5 September 2024 and 20 September 2024. She had kept a personal record of the shifts and this was set out for the Tribunal within an Excel spreadsheet (see below). The Respondent used an app called "Sling" to keep its own records of the shifts of its staff. It asserted that the Claimant was told to join this app at the start of her employment but there was no evidence that she ever did interact with the app. I accepted her account that she did not do so and had no recollection of being asked to do so.

20. The Respondent was evidently dissatisfied with the Claimant's performance – the Claimant disputed this. Both parties had focused substantial amounts of their written evidence on issues of alleged poor performance. I made no findings about

the Claimant's general performance, as it was irrelevant to the issues I needed to determine.

21. The only performance-related matter which was relevant was the extent to which the Respondent had made deductions from the Claimant's pay in respect of what the Respondent claimed were unauthorised or unapproved breaks taken by the Claimant. In particular, insofar as is relevant to the issues, Ms Gorea asserted in her written evidence as follows:

> *Fig. G – CCTV Screenshot (14 September 2024, 11:08 AM) This still from our café's live CCTV feed shows Nancy Frost standing idle during peak working hours while other staff are engaged in duties. This is one of multiple instances captured on CCTV where she was observed not working, chatting, or simply loitering while on shift. These periods were counted as unapproved breaks and were therefore not paid, as per café policy and standard practice*

22. The still of the CCTV which accompanied the above assertion showed the Claimant stood behind a counter at the Café, in a customer-facing area. No customers were visible at the time and another colleague was partially in shot.

23. The Respondent's position was that it was entitled to deduct sums from the Claimant's pay for such alleged unauthorised or unapproved breaks, as it had deemed them to be. As was apparent from Ms Gorea's statement above, these were periods when the Respondent alleges that the Claimant was, in effect, just standing around or similar, which it said it had determined following an investigation of some CCTV footage.

24. On the only relevant matters to be decided, I accepted that the Claimant **was** clearly working all relevant times – she was not on any unpaid "breaks"[1] when stood in the Café during her working hours - and so she was entitled to be paid for the hours she was at work.

25. The Respondent's case was that it was unhappy with the Claimant's performance and in particular with what it said she was doing (or not doing) at times when the alleged unauthorised breaks were occurring. The Claimant clearly disputed, in her witness statement, what was alleged by the Respondent in respect of her performance. I observed that the correct and appropriate means by which an employer would be expected to address concerns which it may have about an employee's performance is by way of some sort of performance management/capability process or a disciplinary process and by way of sanctions which may follow, such as verbal or written warnings, dismissal etc. There is no general right for an employer to simply withhold or deduct an employee's pay in response to performance concerns.

26. I accepted the Claimant's written and oral evidence that she did not take any formal rest breaks during her eight shifts of employment.

[1] See for example the definition of "rest break" in Reg 12 of the Working Time Regulations 1998 – namely, an uninterrupted period of not less than 20 minutes, spent away from the workstation.

27. There was no written contract of written agreement entitling the respondent to make deductions from pay for any breaks (or any document specifying working hours, breaks, whether any breaks which were taken were paid or unpaid etc). As with the dispute about the hourly pay rate, the provision of a standard written statement of terms by the Respondent to the Claimant again may have helped to avoid disputes around breaks arising.

28. I accepted the Claimant's written and oral evidence about the shifts she worked for the Respondent, as set out in the spreadsheet attached to her witness statement, namely:

    28.1. 05/09/2024: 1200 to 1730

    28.2. 10/09/2024: 0830 to 1430

    28.3. 13/09/2024: 1130 to 1730

    28.4. 14/09/2024: 0800 to 1530

    28.5. 15/09/2024: 1000 to 1630

    28.6. 18/09/2024: 1000 to 1730

    28.7. 19/09/2024: 1000 to 1600

    28.8. 20/09/2024: 1000 to 1730

29. This evidence was not challenged by the Respondent during cross examination save to the extent that it asserted that Claimant was supposed to use the "Sling" app to record her working time. I accepted the Claimant's evidence that she had no knowledge of the Sling app and so she had not used it during her short period of employment with the Respondent.

30. The Claimant's employment ended on 21 September 2024 when her employment was terminated by the Respondent, after she had reported sick for her shift on 22 September. On 11 October 2024, the Claimant was paid £359.34 by the Respondent but said that she should have received £656.25 (52.5 hours worked @ £12.50 per hour).

31. The Claimant commenced Acas Early Conciliation on 25 November 2024 and was issued with an Early Conciliation certificate on 12 December 2024. She presented her ET1 on 5 January 2025.

The law

32. The right of an employee not to suffer unauthorised deductions from their wages is set out in section 13 of the Employment Rights Act 1996 (**ERA 1996**), emphasis added:

> *13 Right not to suffer unauthorised deductions.*

*(1) 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.*

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

*(a) in one or more **written terms** of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or*
*(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker **the employer has notified to the worker in writing** on such an occasion.*

(3) 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.

…

33. Section 14 ERA 1996 contains limited exceptions to the general right in section 13, none of which apply in this case. A claim to an Employment Tribunal for a breach of section 13 arises under section 23 ERA 1996.

34. Section 1 ERA 1996 places an obligation on an employer to provide to its employees and workers an initial written statement of employment particulars, as follows:

1 Statement of initial employment particulars.

(1) Where a worker begins employment with an employer, the employer shall give to the worker a written statement of particulars of employment.

(2) Subject to sections 2(2) to (4)—

(a) the particulars required by subsections (3) and (4) must be included in a single document; and
(b) the statement must be given not later than the beginning of the employment.

(3) The statement shall contain particulars of—

(a) the names of the employer and worker,
(b) the date when the employment began, and
(c) in the case of a statement given to an employee, the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment of a statement given under section 2(4) containing them) is given, of—

(a) the scale or rate of remuneration or the method of calculating remuneration,
(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),
(c) any terms and conditions relating to hours of work including any terms and conditions relating to—
(i) normal working hours,
(ii) the days of the week the worker is required to work, and
(iii) whether or not such hours or days may be variable, and if they may be how they vary or how that variation is to be determined.
(d) any terms and conditions relating to any of the following—
(i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the worker's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
(ii) incapacity for work due to sickness or injury, including any provision for sick pay,
(iia) any other paid leave, and
(iii)pensions and pension schemes,
(da) any other benefits provided by the employer that do not fall within another paragraph of this subsection,
(e) the length of notice which the worker is obliged to give and entitled to receive to terminate his contract of employment or other worker's contract,
(f) the title of the job which the worker is employed to do or a brief description of the work for which he is employed,
(g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,
(ga) any probationary period, including any conditions and its duration,
(h) either the place of work or, where the worker is required or permitted to work at various places, an indication of that and of the address of the employer,
(j) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom they were made,
(k) where the worker is required to work outside the United Kingdom for a period of more than one month—
(i) the period for which he is to work outside the United Kingdom,

(ii) the currency in which remuneration is to be paid while he is working outside the United Kingdom,
(iii) any additional remuneration payable to him, and any benefits to be provided to or in respect of him, by reason of his being required to work outside the United Kingdom, and
(iv) any terms and conditions relating to his return to the United Kingdom.

(l) any training entitlement provided by the employer,
(m) any part of that training entitlement which the employer requires the worker to complete, and
(n) any other training which the employer requires the worker to complete and which the employer will not bear the cost of.

35. Section 38 of the Employment Act 2002 (EA 2002) states as follows (insofar as is relevant, emphasis added):

38 Failure to give statement of employment particulars etc.

(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

(2) …

(3) If in the case of proceedings to which this section applies—

(a) ***the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate****, and*
(b) when the proceedings were begun ***the employer was in breach of his duty to the worker under section 1(1)*** *or 4(1)* ***of the Employment Rights Act 1996*** *or (in the case of a claim by an worker) under section 41B or 41C of that Act,*

the tribunal must, subject to subsection (5), increase the award by the minimum amount *and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.*

(4) In subsections (2) and (3)—

(a) references to the minimum amount are to an amount equal to two weeks' pay, and
(b) references to the higher amount are to an amount equal to four weeks' pay.

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.

(6) The amount of a week's pay of a worker shall—

(a) be calculated for the purposes of this section in accordance with Chapter 2 of Part 14 of the Employment Rights Act 1996 (c. 18), and
(b) not exceed the amount for the time being specified in section 227 of that Act (maximum amount of week's pay).

36. The right to claim in respect of unauthorised deductions (section 23 ERA 1996) is one of those claims listed within Schedule 5 EA 2002.

Closing submissions

37. After a 10-minute adjournment, following the oral evidence, I heard oral closing submissions from both parties, as follows.

38. Mrs Frost said that the Claimant was never given any terms of employment. She had responded to an Indeed advert, seeking some extra money before she started University. She wanted what was owed which was £296.82, at the rate of £12.50 per hour. The hours deducted were unlawful and unfair and the Claimant had never been spoken to about unapproved breaks.

39. Mr Kiernan said that the Claimant had not been able to verify aspects of her claim – especially the Indeed advertisement. All new employees were subject to the minimum wage. The deductions were made lawfully and the Claimant in her claim bundled unpaid breaks against unauthorised breaks. 19.5 hours had been deducted for unapproved breaks. The salary was always a minimum wage and was to increase to £12.50. The Respondent believed that all full and final payments had been received by the Claimant.

Conclusions

40. After a further adjournment for Tribunal deliberation, I gave an oral decision at the end of the two-hour hearing, in which I had concluded as follows on the relevant issues:

40.1. What was the agreed pay rate? I found that it was £12.50, which had been specified in the advertisement to which the Claimant responded. No other rate had been agreed.

40.2. Was there any written contract or other written agreement authorising the Respondent to deduct the Claimant's pay in respect of "unauthorised" or "unapproved" breaks? There was not.

40.3. It followed that unauthorised deductions were made to the Claimant's wages, contrary to section 13 ERA 1996, both in terms of paying her a lower hourly rate than was agreed and in respect of unauthorised breaks.

40.4. I found that that the shortfall in wages was the amount claimed by the Claimant, namely **£296.82**, less any deductions for tax and national insurance which may fall due under PAYE.

40.5. Did the Respondent fail to provide the Claimant with a written statement of employment particulars in accordance with section 1 of the Employment Rights Act 1996? Yes, it did.

40.6. What award under section 38 EA 2002 was therefore appropriate? No reasons were put forwards as to why it would be unjust and inequitable to make such an award. A written statement of terms and conditions might potentially have avoided some of the disputes in this case arising. I found that an award of two weeks' pay was clearly appropriate, which I calculated, based on an average of the final two weeks of the Claimant's employment, as follows:

£293.75 x 2 = **£587.50**

41. Accordingly, my judgment was as follows:

41.1. The Claimant's claim for unlawful deductions from wages succeeded – the Respondent was ordered to pay the Claimant the sum of **£296.82** (less any deductions for income tax and national insurance).

41.2. The Respondent failed to provide the Claimant with a written statement of initial employment particulars and so an additional award of two weeks' pay, in the sum of **£587.50**, was made to the Claimant, pursuant to section 38(3) EA 2002.

Employment Judge Cuthbert
Date: 26 October 2025

Written Reasons sent to the parties on 30 October 2025

Jade Lobb
For the Tribunal Office