EMPLOYMENT TRIBUNALS

Claimant: Mr G Hinton

Respondent: TA Restaurant Holdings Limited

Heard at: London South Employment Tribunal **On:** 6 October 2025

Before: Employment Judge A Close

Representation:
Claimant: In person
Respondent: Miss Nicola Twine, Counsel

RESERVED JUDGMENT

Salary

The claimant's claim that the respondent made unauthorised deductions from his wages by failing to pay him a salary of £60,000 is not well founded and is dismissed.

The claimant's claim that the respondent was in breach of contract by failing to pay him a salary of £60,000 is not well-founded and is dismissed.

Pay for 20 December 2024

The claimant's claim that the respondent made unauthorised deductions from his wages on 31 January 2025 by failing to pay one day's pay for 20 December 2024 is not well founded and is dismissed.

The claimant's claim that the respondent was in breach of contract by failing to pay the claimant one day's pay for 20 December 2024 on 31 January 2025 is not well-founded and is dismissed.

Holiday Pay

The claimant's claim in relation to holiday pay is not well founded and is dismissed.

Time off in lieu

The claimant's claim that the respondent made unauthorised deductions from his wages on 31 January 2025 is well-founded.

The respondent shall pay the claimant **£560.56** which is the gross sum deducted. This sum is expressed as a gross amount but on the understanding that the claimant shall be paid less deduction of any tax or national insurance payments.

REASONS

Introduction

1. The claimant was employed by the respondent as Operations Director from 1 March 2024 until December 2024. He claims breach of contract/deductions from his pay and other payments. There is a dispute between the parties as to the termination date.

Hearing and Evidence

2. A hearing took place on 6 October 2025 by CVP. There were no enduring technical difficulties.

3. The Tribunal was provided with a bundle of 228 pages. Two additional documents were admitted into the evidence: the claimant's resignation letter dated 18 June 2024 and a copy of an email chain of the same date between the claimant and Mrs Dobbs-Higginson. As the email chain had been admitted very late on the hearing day and the claimant had not had the opportunity to review it, the claimant (and the respondent if they wished) were given leave to provide further submissions on this document only within 7 days of the hearing. No such submissions were received from either party.

4. The claimant gave evidence for himself. Mrs Dobbs-Higginson gave evidence for the respondent. A witness statement for Ms. Hilary Culkin was provided by the respondent but she was not called to give evidence at the hearing.

5. The oral evidence and submissions were completed but there was not sufficient time for deliberation or judgment.

6. After the hearing, on 13 October 2025, the claimant uploaded a further document to the Tribunal portal: an email between the claimant and Tom Aiken dated 20 June 2025. No application was made by the claimant to admit this in evidence nor was it accompanied by any explanation as to why this document had not been disclosed previously, why an application to admit it into evidence had not been sought at the hearing or why it was considered relevant. The respondent objected to the admission of this email into the evidence.

7. For the avoidance of any doubt, this email has not been admitted into the evidence (even if such were intended to be requested by the claimant). I do not consider that it would be in accordance with the overriding objective or in the interests of justice for such document to be admitted into evidence after the hearing has concluded. As the claimant was informed at the hearing, it is a necessary element of justice for there to be finality and it is not proportionate or fair for a party to attempt to keep introducing further documents in this way when the evidence has already been heard.

Issues

8. The issues had been narrowed between the parties prior to the hearing. Further clarifications were made at the hearing and the final list of issues is attached to this Judgment at Annex A.

Findings of Fact

9. The claimant was interviewed on 14 December 2023 by Justine Dobbs-Higginson ('JDH'), Director, for the position of Operations Director. During that interview the claimant was informed that overall remuneration would be £60,000. Although JDH was a Director of the respondent, she worked on a part-time basis and her role was to oversee the financial aspects of the business. She did not have any expertise in the operational side. JDH had a full-time role in finance and so had limited time to devote to the role.

10. On 31 January 2024, JDH sent the claimant a proposed statement of terms and conditions [30, 39B] "for our review". That statement showed TA Consultancy Limited as the employer and a total salary of £60,000.

11. In early February 2024 JDH held various conversations with the former Operations Director, Kevin Kelly as to how the claimant's remuneration should be structured/paid. He recommended that the claimant should receive "house pay" i.e. national minimum wage (NMW) rates for basic hours and that the claimant should also join the tronc scheme. That tronc scheme was administered by a third party, WMT Troncmaster Services Limited ('WMT'), as troncmaster. The respondent did not have control over the distribution of tronc to its employees and could only make recommendations to WMT about this. The way the tronc system works is that the troncmaster collects tips on behalf of the employer and then distributes them to the employees directly. Such monies are not the property of the respondent. In this case the tronc was administered by WMT but paid to employees through the respondent's payroll. It was shown as a separate amount on employees payslips.

12. The benefit of structuring remuneration in this way to the respondent was that this would reduce its overall levels of employer's national insurance contributions and would not be taken from its cashflow. The downside for the claimant was that such tronc would not be guaranteed for him and he would only be entitled to NMW rates for his salary/hours worked (which would affect his remuneration for, for example, mortgage purposes). However, there were also advantages for the claimant: he would not pay employee's national insurance on tronc pay thereby increasing his take home pay and the tronc would not be taken into account as income for repayment of certain purposes including for student loans.

13. During February 2024 the claimant carried out some work for the respondent on a self-employed basis and he invoiced the company for this work rather than being paid through the payroll.

14. At or around this time, the claimant worked with Mr Kelly, the former Operations Director of the respondent. The claimant became aware that Mr Kelly received a salary of £55,000 but was under the impression that he also received tronc payments.

15. The claimant returned a copy of the proposed statement to JDH on 27 February 2024 [201B], which he had signed and dated. This statement again referred to TA Consultancy Limited as the employer and a salary of £60,000. It provided for a holiday year of the calendar year. In relation to overtime, this was dealt with in clause 7. It simply stated that flexibility was required and that the claimant could be required to work outside basic hours. The statement was not subsequently also signed on behalf of the respondent.

16. Prior to starting work for the respondent as an employee, or shortly thereafter, JDH had a number of conversations with the claimant about how his remuneration would be structured. The claimant was informed that his remuneration would be split into house pay and tronc.

17. The claimant started as an employee of the respondent from 1 March 2024. Although the claimant's statement of terms and conditions referred to TA Consultancy Limited, it was accepted by both parties that the claimant was actually employed by TA Restaurant Holdings Limited. The claimant had responsibility for the day-to-day operations of the respondent including payroll. This encompassed liaising with WMT over the house/tronc remuneration for all employees, including himself, and for contracts of employment. The claimant's role involved considerable seniority and responsibility within the respondent.

18. In March 2024, the claimant was added to the tronc pool by WMT and was notified of this directly by WMT [48B].

19. On 16 March 2024 the claimant received an email from JDH. The claimant responded to that email on the same day and made some comments in red, in response to the points made by JDH. The email from JDH raised some queries in relation to other staff members, mainly relating to pay and re-charges between group companies, and included some reference to house/tronc split of remuneration. The claimant's replies in red included clarification as to the various salary/tronc arrangements for other staff members, in particular that they would be receiving a basic salary and tronc payments [61B]. The email from JDH says "Same applies to you in terms of pay structure but with £60k total." The respondent submitted that this is a reference to the claimant's pay and the tronc/house pay split. However, if the comments in red are excluded so JDH's initial email remains, it is not obvious that JDH's email does actually reference the claimant's pay structure. In these circumstances I do not find that the claimant could reasonably be regarded to have considered this email chain as including a statement that he would receive house pay and tronc of £60,000 in total.

20. On 22 March 2024 the claimant emailed WMT [72B] to make the respondent's recommendations for tronc payments per annum for new starters to the respondent, including himself. For himself, he recommended £33,240 per annum, which was subsequently confirmed by Tom Aiken.

21. On 22 March 2024 the claimant was sent a new contract of employment by Hilary Culkin of Anchor HR [66B]. Ms Cullin is an independent HR consultant and was working with the claimant to produce new contracts for the respondent's staff. It was clear that this contract was sent for the claimant's review and for his comments and it was not stated that this contract would

be imposed upon the claimant going forwards. The new contract [212B] referred to salary of £60,000 and, in clause 5.8, that the claimant would be entitled to join the tronc system which is discretionary and operated/controlled independently of the company by a troncmaster. Clause 5.6 stated that overtime would not be payable unless additional payment was required to satisfy the respondent's obligations under NMW regulations. Clause 10.3 provided that the company's holiday year was from 1 April to 1 March each year. A final agreed version of this contract was not subsequently produced or signed by either party.

22. The claimant received his first payslip dated 29 March 2024 [176B]. It showed a salary of £2,230.80 and tronc of £2,775.76.

23. On 5 April 2024, the claimant sent an email to WMT [68B]. The claimant pointed out his annual tronc was incorrect and that it should be £33,240 as per the "new starter email on 22nd March".

24. On 5 April 2024 the claimant sent an email to JDH and Tom Aiken. He said that he was "just finalising everything for ready for next week and wanted to run the final figures and position by you". This email included a spreadsheet which showed the salary/tronc/pay for a number of staff including the claimant. The claimant's own pay was also included in this table [95B] and it records salary of £26,769.60 and tronc of £33,240 giving total pay of £60k.

25. On 8 April 2024 the claimant sent an email to JDH which recommended how to approach discussions with staff over pay. It included a statement to employees that they have a "salary portion and your tronc portion".

26. On 10 April 2025 the claimant sent an email to WMT making recommendations in relation to annual Tronc for 17 employees, including himself. The claimant's tronc allocation was recommended at £33,240 and was the largest tronc allocation of all the employees.

27. On 26 April 2024 [177B], the claimant was paid £2,230.80 basic salary and tronc of £2,774.65, which was recorded in a payslip.

28. On 31 May 2024 [178B] the claimant was paid £2,230.80 basic salary and tronc of £2,774.65, which was recorded in a payslip.

29. On 17 June 2024, JDH sent an email to the claimant titled "Feedback". It included criticisms of the claimant's behaviour, his ability to work to deadlines and that he had hung up on her when they were discussing these and other matters.

30. The claimant responded to JDH's email on 18 June 2024. He replied to her criticisms, included some of his own in relation to the respondent and attached a letter of resignation also dated 17 June 2024, which provided for a termination date of 18 September 2024. Neither the claimant's email or the resignation letter referred to any dispute or complaint in relation to the claimant's salary payments or the spilt between salary/tronc.

31. On 28 June 2024 the claimant was paid £2,230.80 basic salary and tronc of £2,774.65, which was recorded in a payslip.

32. On 10 July 2024 the claimant sent a mail to JDH. The background to this email was that the overall tronc takings had been less than expected. The respondent was concerned about the impact this would have upon staff and suggested that basic pay/a bonus should be issued to staff. In his email the claimant made clear that this would be disadvantageous for him because if he received less tronc but a larger salary/bonus he would pay more national insurance and this would result in a £572.03 loss of take-home pay for him.

33. On 16 July 2024 the claimant sent an email to JDH which included a table showing salary and tronc for employees, including himself. Again, the claimant's salary was shown as £26,769 and tronc of £33,250 per annum.

34. On 18 July 2024 the claimant sent an email to JDH which included a table showing salary and tronc for employees, including himself. Again, the claimant's salary was shown as £26,769 and tronc of £33,250 per annum.

35. On 26 July 2024 the claimant was paid £2,230.80 basic salary and tronc of £2,774.65, which was recorded in a payslip.

36. On 30 August 2024 the claimant was paid £2,230.80 basic salary, tronc of £1,805.72 plus a bonus of £959.79, which was recorded in a payslip.

37. Before 18 September 2024, the claimant's planned termination date, the claimant asked the respondent to agree to his resignation being retracted as he wished to continue in employment. A call took place between JDH, Tom Aiken and the claimant on 17 September 2024. The respondent did not agree that the claimant's notice would be retracted but offered to extend the notice to "the end of the year". This was agreed by the claimant.

38. On 27 September 2024 the claimant was paid £2,230.80 basic salary and tronc of £2,778.18, which was recorded in a payslip.

39. On 25 October 2024 the claimant was paid £2,230.80 basic salary and tronc of £2,776.03, which was recorded in a payslip.
40. On 25 November 2024 JDH sent an email to the claimant [122B] referring to "Dec 20, which is meant to be your last day".

41. On 29 Nov 2024 the claimant was paid £2,230.80 basic salary and tronc of £2,776.27, which was recorded in a payslip.

42. On 17 December 2024 [136B] the claimant sent an email to Paperchase (the respondent's accountants/payroll) to provide starters/leavers information for staff members, including himself. It referred to a leaving date for himself of 31 December 2024.

43. On 17 December 2024 Paperchase queried the claimant's holiday entitlement recorded on planday of 32 days and asked him to double check it. These were days which the claimant had inputted onto planday himself. The claimant claimed that 21.46 of these days holiday related to time off in lieu ("TOIL"). He claimed that with the agreement of Tom Aikens, he had

performed additional work outside his basic hours and it had been agreed that these could be taken as TOIL. As those days had not been taken the claimant had claimed these as additional days accrued holiday when his employment terminated.

44. On 19 December 2024 JDH sent an email to the claimant [143B]. It said "as agreed your last day is COB tomorrow i.e. 20/12/24".

45. On 19 December 2024 Paperchase sent an email to the claimant [138]. It stated that his termination date was processed as 20 December 2024 and that he was entitled to 15 days' pay for that month of £1,544.40.

46. The respondent claims the claimant did not work on 20 December 2024 as he did not respond to calls or complete outstanding handover tasks. The claimant claims he did work. It is not in dispute that the claimant did not present for work after 20 December 2024.

47. The evidence of JDH, which I accept, was that on 20 December 2024 the claimant had been required to attend a handover call and to deal with other handover matters but he did not do so. In addition, the claimant did not answer when attempts were made to contact him by the respondent. In contrast the claimant did not present any evidence showing that he had worked or an explanation as to why he did not respond to the respondent. On balance I have concluded that the claimant did not work on 20 December 2024.

48. JDH subsequently queried the claimant's entitlement to 32 days' holiday as recorded by the claimant. A WhatsApp message chain between JDH and the claimant on 19 December 2024 shows JDH asking the claimant to justify the entitlement claimed. The claimant's responses showed that he did not expect to have to justify the additional days in relation to TOIL. He did not provide any further clarification as to the date/times worked in response to the request.

49. Given the lack of response from the claimant, JDH asked the respondent's General Manager to review any additional hours which the claimant claimed he had worked but that he had not been paid for. An additional 49 hours or 5.5 days were found.

50. These additional days/ times were relayed to the claimant in an email on 7 January 2025 from Paperchase [164B]. The total additional hours worked were stated to be 49 hours or 5.5 days. The respondent agreed to round up this entitlement to 6 days as a gesture of goodwill.

51. Subsequently, the claimant was informed that the payment of the 6 additional days was conditional upon returning company property. The 6 days was not ultimately paid to the claimant.

52. On 6 January 2025 Tom Aikens sent an email to the claimant. Various issues were discussed, including deductions from wages and the respondent's ability to make these from the claimant's salary. This mentioned that the respondent considered that the contract from March/April 2024 was "legally binding" but if not, the previous statement signed by the claimant before his employment

started would be “in force” and that it also has “the relevant provisions that allow us to deduct from your salary”.

53. On 31 January 2025 the claimant received his final payments (185B). The claimant was paid salary of £1,441.44, which related to pay for the period between 1 December to 19 December 2024. 20 December 2024 was not paid as the respondent had concluded that it had not been worked by the claimant. The claimant was paid for 10.54 days accrued but untaken holiday at £102.96 per day totalling £1,085.20. He also received a tronc payment of £3,138.28.

Particular findings of fact

54. As set out in Annex A: List of Issues two particular findings of fact are necessary and which follow from the main findings of fact as detailed above:

54.1. What was the claimant’s remuneration?

54.1.1. The claimant asserts that he had agreed a salary of £60,000 with the respondent and did not agree to any variation of this. He says that it was agreed he would receive tronc in addition to this salary. The respondent asserts that the claimant agreed a reduced, “house” salary of £26,769, i.e. at NMW levels, but that it recommended to the troncmaster that he should receive annual tronc of £33,240. Both parties accept that any tronc was not a contractual entitlement between the parties and was a matter within the control of the troncmaster. The issue between the parties is therefore, essentially, whether the claimant’s salary was agreed at £60,000 or £26,769.

54.1.2. A key question was whether the statement of terms and conditions signed and dated by the claimant on 27 February 2024, was a legally binding contractual obligation between the parties.

54.1.3. I have found that this contract was validly entered into and was a binding contract between the parties. There was a mistake as to the name of employer (accepted by both parties) but I have not found any evidence that at that stage (i.e. 27 February 2024) the salary of £60,000 was a mistake and was not agreed. I do not consider that a mistake as to the name of the employer is sufficient to invalidate the entire contract.

54.1.4. However, I do find that shortly after that statement was signed by the claimant and before the first payroll run on 29 March 2024, that the claimant agreed to his salary being reduced to £26,769.60 (known as house pay). The reasons for this are as follows:

54.1.4.1. Although the claimant said he had complained about the reduction in salary, he did not particularise this either in his witness statement or in oral evidence. JDH stated that he had not complained about this matter to her. The claimant received payslips each month during the course of his employment, from March to December 2024 which clearly showed his salary at the house pay level. There is no evidence in the documentary evidence that the claimant had complained about this level of payment or that it should have been at the £60,000 level on receipt of his first payslip, subsequent payslips or at all. Indeed, when the claimant resigned, he complained of a number of issues within his letter of resignation dated 18 June 2024 and the

covering email, but he did not complain that his salary was being paid below the level that was agreed. In these circumstances I have concluded that, on balance, the claimant did not complain about his remuneration and I find that this is strong evidence that the claimant had accepted salary at the house pay level.

54.1.4.2. Although there were clear disadvantages to the claimant of agreeing to a reduced house salary and a non-contractual tronc allocation, in particular the reduced assured income per month and impact upon ability to borrow, there were also clear advantages to him. For example, the claimant would pay less employee's national insurance contributions than if he received a salary of £60,000 alone, which would increase his take home pay. In the email dated 10 July 2024 between the claimant and JDH the claimant pointed out that a proposal to increase his house salary/pay him a bonus because tronc was less than expected, would be disadvantageous for him because this would result in a £572.03 loss of take-home pay. In my judgment this is strong evidence that the claimant had accepted the reduced salary because of this particular advantage to him.

54.1.4.3. There were multiple occasions in which the claimant showed in communications with JDH that his salary was at the house pay level including the claimant's emails dated 5 April 2024, 16 July 2024 and 18 July 2024. I have found this demonstrates acceptance of the position by the claimant.

54.1.4.4. I do not find that the contract of employment emailed to the claimant on 22 March 2024 by Hilary Cullin became legally binding. Hilary Culkin was a third-party HR consultant who had been working with the claimant to produce new contracts of employment for himself and other employees. She was not proposing a new contract to the claimant on the respondent's behalf. It was clear from the covering email that it was a "proposed" contract of employment. It was never finalized or signed by the parties. Although this contract refers to a salary of £60,000 it also refers to the employer as being TA Consultants Limited. I conclude that it is more likely than not that Hillary Culkin transposed these details from the previous contract of employment when producing this contract without any consideration of the actual position. I do not consider that this contract is, as submitted by the claimant, evidence of the level of his agreed salary.

54.1.4.5. Although the claimant submitted his resignation to the respondent in June 2024, he later sought to retract it in September 2024 and to continue working for the respondent. I do not consider that the claimant would have acted in this way if he considered that the respondent had made substantial deductions from his salary each month or his pay had not been as he had agreed it.

54.1.4.6. Finally, the claimant made much of the fact that Mr Kelly, the previous Operations Director, had received a salary of £55,000 plus tronc. There was considerable dispute between the parties about Mr Kelly's entitlement to tronc and whether it had been authorized or not. Although this may have affected the claimant's expectations at the beginning of employment, I do not consider

that this has any relevance to the claimant's agreed remuneration or levels of house salary which were subsequently determined between the parties during employment for their own particular reasons.

54.2. The termination date of the claimant's employment

54.2.1. It is common ground between the parties that it was agreed that the claimant's employment would terminate "at the end of the year".

54.2.2. I accept JDH's evidence that it would have been apparent to the claimant that this date would have been understood as Friday 20 December 2024. This was an obvious date given it was the end of the week before the respondent closed for Christmas. This understanding was clearly evidenced by JDH's emails of 25 November 2024 and 19 December 2024 which referred to the termination date as 20 December. I consider that if the claimant had not understood and agreed that the termination date would be 20 December 2024, he would have challenged or complained to JDH about it after receiving those emails but there was no evidence presented to me of this.

54.2.3. For these reasons I find that the claimant's employment terminated on 20 December 2024.

Findings and Conclusions

55. Taking each of the claimant's claims in turn.

Were the wages paid to the claimant between March and December 2024 less than should have been paid? If so by how much?

Salary generally

55.1. If the claimant's salary had been agreed at £60,000 then the respondent's failure to pay this to the claimant each month between March 2024 and January 2025 and to pay him salary at the house pay level would have been an unauthorized deduction from wages on each occasion he was paid pursuant to section 13 of the Employment Rights Act 1996 and/or a breach of contract which subsisted on the termination of the claimant's employment.

55.2. However, I have found that the claimant's salary was not agreed at £60,000 but at £26,769.60 per annum. In these circumstances there was no deduction from salary or any breach of contract between the parties.

55.3. One matter raised by the claimant was that his salary was incorrectly made up of tronc and this was unlawful. However, he did not make any particular submissions in this regard and did not refer the Tribunal to any particular law or legislation.

55.4. The respondent referred the Tribunal to section 27W of the Employment Rights Act 1996, which came into force on 1 October 2024. It provides:

(1) A prohibited reimbursement provision in an agreement between an employer and a worker (whether in a contract of employment or not) is void.

(2) *A provision in an agreement is a "reimbursement provision" if it*

purports—
(a) to require the worker to make a payment to the employer, or
(b) to reduce any part of the wages payable to the worker by the employer.
(3) A reimbursement provision is "prohibited" if there is a relationship between—
(a) the payment or reduction, or the amount of the payment or reduction, under the reimbursement
provision, and
(b) either—
(i) the worker being allocated qualifying tips, gratuities and service charges, or
(ii) the worker receiving worker-received tips that are not qualifying tips, gratuities and service charges.
(4) The circumstances in which there is a relationship of the kind mentioned in subsection (3) include
circumstances where—
(a) the possibility of the worker being allocated qualifying tips, gratuities and service charges,
(b) the amount of qualifying tips, gratuities and service charges to be allocated to the worker,
(c) the possibility of the worker receiving worker-received tips that are not qualifying tips, gratuities and
service charges, or
(d) the amount of worker-received tips that are not qualifying tips, gratuities and service charges to be received by the worker,
is wholly or partly dependent on the reimbursement provision having been agreed.

55.5. The respondent submitted that there was not any reimbursement provision applied to reduce the claimant's wages by the payment of tips contrary to section 27W (2)(b) above either before or after 1 October 2024 and therefore the arrangement was lawful.

55.6. My conclusion is that there was not a reimbursement provision in this case. I did not find, as alleged by the claimant, that his salary was £60,000 and that the respondent had attempted to partly satisfy this or reduce it by the payment of tronc to him. I have instead found that there was an agreement to pay the claimant salary at £26,769.60 and that any tronc payments to him were discretionary and in addition to this salary. Therefore, there is not a reimbursement provision within the meaning of section 27W.

20 December 2024

55.7. In relation to the claimant's pay in December 2024, the claimant was not paid for 20 December 2024, his last day of employment because the respondent alleged he had not worked on that day.

55.8. I have found that the claimant did not work on 20 December 2024, as he should have done, and that this was unauthorized absence. In these circumstances I do not consider that an obligation to pay the claimant for this day arose. Alternatively, I find that the respondent was entitled to rely upon clause 6.2(a) of the statement of terms and conditions dated 27 February 2024 (in accordance with section 13(1)(a) of the Employment Rights Act 1996) to deduct one day's pay for his

unauthorized absence on 20 December 2024.

55.9. Therefore, in these circumstances, I conclude that the claimant received the correct amount of pay for salary in December 2024. Therefore, the respondent did not make unauthorized deductions from the claimant's pay in this regard contrary to section 13 of the Employment Rights Act 1996 and neither was it in breach of its contractual obligations.

Accrued Holiday

55.10. At the start of the hearing, the claimant struggled to articulate whether he was claiming that the accrued holiday of 10.53 days paid to him on the termination of his employment (excluding alleged TOIL) in the sum of £1085.20 had been correctly calculated and paid to him.

55.11. During the course of the hearing and in submissions, the claimant did not assert or dispute that the accrual of holidays of 10.53 had been incorrectly calculated and did not put forward any alternative calculation in this regard. His entire focus was upon his claim for TOIL days.

55.12. As the respondent's position has not been disputed, I conclude that the claimant received the correct accrued holiday pay entitlement on the termination of his employment and that he is not entitled to further payment in this regard.

Time off in lieu ("TOIL")

55.13. The claimant asserted that he was entitled to 21.46 additional days holiday. He claimed that he had worked this number of additional days at the request of Tom Aikens and that the agreement was that he would take additional days holiday off when it was possible for him to do so. It was common ground between the parties that there was no other overarching agreement, whether in the claimant's statement of terms and conditions or elsewhere, which entitled him to TOIL.

55.14. In relation to the number of TOIL days to which he alleged he was entitled, the claimant did not give particulars in his evidence or submissions as to when the alleged additional days/hours had been worked, what work he had performed and who had agreed the TOIL hours. He simply stated that the hours were worked and TOIL was agreed, primarily with Tom Aiken. The claimant had himself inputted the total days holiday, including TOIL, onto the system as an amorphous amount without being clear when the time was worked.

55.15. The claimant had referred to messages between himself and Tom Aikens which he claimed showed that he had been required to work hours outside of his basic hours [225 to 226B]. However, these messages showed no such thing: it was simply a discussion about how busy the respondent would be at certain times in November 2024, for example on a Saturday lunch. There were no messages produced which evidenced an agreement for TOIL or to work any particular days or times.

55.16. The respondent had undertaken its own investigation of the TOIL days claimed by the claimant. It had found that the claimant had worked an additional 49 hours as set out in the email to the claimant from Paperchase dated 7 January 2025. The respondent did not allege that the claimant had worked these hours without the respondent's agreement.

55.17. On balance, I have concluded that there was an agreement between the claimant and respondent that the claimant would receive TOIL if he worked additional hours. The claimant gave evidence that this was the case and the respondent did not call Tom Aikens to give

evidence that it was not. Therefore, I accept the claimant's evidence in this regard.

55.18. However, I do not conclude that the claimant worked an additional 21.46 days over his basic hours. The claimant provided no evidence that he had done so, even in outline. Instead, I accept the respondent's position which it reached following an investigation, that the claimant worked an additional 49 hours, as set out in the email from Paperchase dated 7 January 2025. As the claimant had not had the opportunity to take these hours as holiday before his employment terminated, he was entitled to be paid for this entitlement at the minimum wage rate of £11.44 per hour totaling £560.56 gross.

55.19. In these circumstances the respondent's failure to pay the claimant the sum of £560.56 in his pay on 31 January 2025 was an unauthorized deduction from his wages. The respondent is ordered to pay such sum to the claimant after appropriate deductions.

Approved by:
Employment Judge A Close
Date: 16 October 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided, they will be placed online.

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/

Schedule:

List of Issues

Claimant's remuneration

1. What salary was the claimant contractually entitled to? Was it:

   - £60,000 basic salary plus Tronc (forecast at £33,250), being overall remuneration of £93,240, as asserted by the claimant; or

   - National minimum wage ('house pay') £26,768/9 plus Tronc, which was not guaranteed but which was forecast at £33,250 resulting in total likely remuneration of £60,000 as asserted by the respondent.

Date of Termination

2. On what date did the claimant's employment contract terminate?

   - The claimant asserts that his employment contract terminated on 31 December 2024.

   - The respondent asserts that the claimant's employment contract terminated on 20 December 2024.

Deductions from salary/breach of contract

3. Were the wages paid to the claimant between March 2024 and December 2024 less than should have been paid? If so, by how much?

Accrued Holiday

4. What is the holiday year? Is it the calendar year or is it 1 April to 31/March each year?
5. Was holiday accrued to a termination date of 20 December 24 or 31 December 24? How much is such accrual?
6. How many days holiday were taken by claimant before the termination date?
7. What is the rate at which holiday is to be paid?

Unpaid overtime/TOIL

8. How many additional hours or days did the claimant carry out work for which he was not paid? The claimant says it was 21.46 days. The respondent says it was 5.5 days.
9. Was there an agreement that the claimant would receive time off in lieu ("TOIL") in relation to such unpaid days or hours of work?
10. What is the pay in lieu the claimant should have received, if any, in relation to any TOIL days.