



EMPLOYMENT TRIBUNALS

Claimant: Mr Oleksandr Trokhymchuk

Respondent: La Tartine London Limited

Heard at: London Central Employment Tribunal

On: 6 October 2025

Before: Employment Judge Sarkis

Claimant: in person

Respondent: in person by its directors Anna Strelsova and Konstantin Lifanov

JUDGMENT

1. By consent, the complaint of unauthorised deductions from wages contrary to Part II of the Employment Rights Act in relation to work done in December 2024 and January 2025 is well founded and succeeds. The respondent must pay the claimant the gross figure of **£3,365**.
2. The complaint of unauthorised deductions from wages contrary to Part II of the Employment Rights Act in relation to unpaid accrued holiday days is well founded and succeeds. The respondent must pay the claimant the gross figure of **£2909.76** for holiday accrued but not taken at the date the employment ended.
3. The complaint in relation to financial loss caused by the unlawful deduction from wages is not well founded and is dismissed.
4. The complaint of breach of contract in relation to notice pay is well-founded. The respondent failed to pay the claimant in lieu of notice as set out in the contract and letter of 27 January 2025. The respondent must pay to the claimant the net sum of **£770**.
5. The complaint that there was a failure to comply with requirements surrounding fair allocation and distribution of tips is well-founded and succeeds. It is declared that the respondent failed to ensure that tips were allocated in a transparent way. The respondent must pay the claimant the gross figure of **£67.34** in compensation.

6. The claimant's claim for additional compensation for emotional distress is not well founded and is dismissed.
7. The total the respondent must therefore pay the claimant to account for unpaid wages, accrued holiday pay and notice pay is **£7,112.10**. The Claimant is responsible for paying tax on the above gross sums as appropriate.

REASONS

Background and agreed facts

1. The claimant commenced employment as Head Chef for the respondent company on 15 July 2024. The company was a restaurant based at premises in central London. The claimant's salary as set out in his employment contract was £18 per hour and he was contracted to work for 40 hours per week.
2. The claimant consistently worked over his contracted hours, as permitted by his employment contract. According to his payslips, in July 2024 he worked an average of 48 hours per week. In August 2024 he worked an average of 49 hours per week. In September he worked an average of 47 hours a week. In October he worked an average of 57 hours a week. In November he worked an average of 45 hours per week and in December an average of 45 hours per week. The claimant was paid for the hours worked as itemised in his payslips.
3. The restaurant was closed between 26 December 2024 and 15 January 2025 for the festive period.
4. On 20 January 2025 the landlord served a notice of forfeiture and re-entered and secured the premises, the result being that the restaurant had to close.
5. On 21 January 2025 the respondents informed the claimant by email that "*the restaurant has been temporarily suspended due to unforeseen circumstances for an indefinite period. Please wait for further notice from us when the situation is resolved.*"
6. By email on 27 January 2025 the respondents informed the claimant that due to the lack of access to the premises, the business was closing indefinitely and as a result, his employment would terminate by reason of redundancy. The email set out that "*you are not required to work your notice and your last day of service will be 28.01.2025. You will receive a payment in lieu of the notice due to you.*"
7. On 5 January 2025 the respondent made a payment of £1,000 to the claimant. This was a part payment of his December salary. No payment was made for his January salary or for accrued and untaken holiday. He was not provided with a payment in lieu of notice.
8. There was no documentary evidence from either party regarding annual leave entitlement or requests. There was contradictory evidence from the parties regarding days on which the claimant did not go into work and whether he had verbal

permission for this or not. However, both parties agreed that the claimant had not taken any of his annual leave entitlement and so it was not necessary to make a finding of fact as to whether there were other days, not counted as annual leave, in which he had not worked.

The claims

1. The claimant brings claims for unlawful deduction of wages (including holiday pay) and additional financial loss caused as a result. He also brings a breach of contract claim for unpaid pay in lieu of notice and seeks compensation for emotional distress and for what he claims was an unfair allocation of tips and services charges.
2. Acas early conciliation took place between 21 January 2025 and 24 February 2025.
3. The ET1 claim form was received on 28th February 2025.
4. By order of 4 August 2025 Employment Judge Nicolle directed that a response to the claim must be filed by 1 September 2025.
5. The ET3 response form was received on 29 August 2025. In its response, the respondent set out that it accepted that the claimant was a worker and that wages and accrued holiday pay were owed for December 2024 and January 2025 to the amount but denied all other claims.

The Hearing

1. The hearing was an in person hearing listed for two hours to start at 2pm. Unfortunately the hearing did not commence until 2.45pm as the claimant had been waiting outside a different Tribunal hearing room and there was difficulty reaching him.
2. The claimant relied on a Russian interpreter throughout the hearing. The two directors of the company attended on behalf of the respondent.
3. The Tribunal had a bundle of documents amounting to 62 pages provided by the respondent.
4. The claimant and respondent both gave evidence on oath.
5. It was established at the hearing that the respondent did not dispute the claim for unlawful deduction from wages for work done in December 2024 and January 2025 and accepted that the claimant was owed the gross wages of £3854.80 for that period. This figure is calculated by the gross figure for unpaid wages in December 2024 and January 2025 (£4365) minus the one off payment of £1000 made in January 2025. This claim is well founded and, by consent, succeeds.

6. It was also established that the claim for compensation for injury to feelings would be dismissed as the claimant's claims did not include a claim for unlawful treatment at work such as discrimination or harassment.

Issues

1. The issues that fell to be determined in this claim were therefore the following:
 - a. Unlawful deduction of wages in relation to holiday pay - what was the amount of accrued but untaken holiday days at the date the employment ended and what was the correct rate of pay for those days;
 - b. Financial loss - did the claimant suffer any additional financial loss as a result of not being paid his wages in December 2024 and January 2025 and if so what amount;
 - c. Breach of contract - was the claimant entitled to notice pay and if so what amount;
 - d. Tips - were the tips and service charge payments distributed in a fair and transparent manner

Unlawful deduction from wages (holiday pay)

1. The claim for unlawful deduction from wages was made in time. The payment complained about was due in January 2025 and the claim form was filed on 28 February 2025 which is within the three month time limit. It was not in dispute that the claimant was an employee of the respondent and therefore had standing to bring a claim.
2. I have considered whether the claim is in fact in respect of wages and conclude that it is. "Wages" are defined in section 27 of the Employment Rights Act 1996. Section 27(1) provides that "wages" means "any sums payable to the worker in connection with his employment". Pay for accrued but untaken holiday entitlement falls within the definition of wages. I am therefore satisfied that the claim is in respect of wages.
3. I have then gone on to consider whether there was a deduction from those wages. Section 13(3) of the Employment Rights Act 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."

4. The respondent's position was that the claimant had accrued 11.346 days of annual leave by the time his employment ended. The respondent did not set out how that figure was reached other than that it was calculated by the respondent's accountant who was not present at the hearing.
5. By law the claimant is entitled to 5.6 weeks of holiday per year. The claimant worked at the respondent company for 28 weeks and the parties agreed that he had not taken any of his annual leave entitlement. I find therefore that he was entitled to 15 days of holiday for the period in which he worked.
6. It is then necessary to calculate the rate of holiday pay. The respondent calculated that this should be paid at a rate of £144 a day which is the equivalent of an 8 hour day at £18 per hour.
7. However, the claimant's contract sets out that holiday pay will be based on average earnings over the previous 52 weeks. As the claimant did not work for 52 weeks, his average earnings can be calculated from the start of his employment to the end of December 2024.
8. The claimant's average weekly earnings from July 2024 to the end of December 2024 was £969.92. This is based on him working an average of 48.5 hours a week at £18 per hour which amounts to £873. His average tips each week were 96.92. This gives an average weekly earning of £969.92. As I have calculated that the claimant was entitled to 15 days of holiday, the amount that was unlawfully deducted is £2909.76.
9. I have then considered whether the deduction was authorised. Section 13(1) ERA creates three types of authorised deduction:
 - Deductions made by virtue of a statutory provision: section 13(1)(a);
 - Deductions made under a "relevant provision" of the worker's contract: section 13(1)(a);
 - Deductions to which the worker has previously signified his or her agreement in writing: section 13(1)(b).
10. I do not find that the deduction was authorised under any of these provisions.
11. Finally, I have considered whether the deduction was one of the limited exempt deductions within section 14 of the Employment Rights Act. It is for the Respondent to show that one of these specific circumstances arises and the Respondent did not raise any of these situations. I therefore find that the deduction was not one of the limited exempt deductions.
12. I therefore declare that the deduction of the value of 15 days of accrued annual

leave was an unlawful deduction of wages. The respondent must pay the gross sum of £2909.76 to the claimant.

Financial loss

1. Section 24(2) ERA provides:

“Where a tribunal makes a declaration under subsection (1) [i.e. a declaration that there has been an unauthorised deduction from wages], it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.”

2. The claimant set out in his claim form that he “had to rely solely on [his] spouse’s reduced income, borrow money, and use [his] credit card to cover rent and bills” and estimated his financial loss at £2000. At the hearing the claimant gave evidence that he had to take out several small loans due to not receiving his wages. However, he confirmed that there were no interest payments payable on these loans. He did not provide any evidence of other financial loss. The burden to prove financial loss, and its causal link to the non payment of wages, is on the claimant. The claimant did not provide evidence of any financial loss and so this claim is unproven and therefore dismissed.

Payment in lieu of notice

1. The claimant’s contract set out that the respondent reserves the right to give pay in lieu of notice. The email of 27 January 2025 specifically set out that the claimant would receive a pay in lieu of notice. It is accepted by the respondent that no payment in lieu of notice was made.
2. The respondent director explained during evidence that she understood there was no requirement to make a payment in lieu of notice and that that this was set out in the employee handbook. A copy of the handbook was not filed with the response or available at the hearing. I find that if the respondent wanted to rely on provisions set out in the employee handbook, the handbook or relevant provisions should have been made available to the Tribunal.
3. I find that there has been a breach of contract by the respondent in failing to pay the claimant a sum in lieu of notice. It was accepted that the claimant was an employee. The claim was made within 3 months of the end of the claimant’s employment.
4. As the claimant was employed for less than 2 years, his notice period in event of redundancy is one week commencing on 27 January 2025. In order to calculate the amount of pay, I need to consider the amount the claimant earned in the 12

weeks prior to being made redundant. However, as the restaurant was closed from 26 December 2024 to 15 January 2025 and as the claimant was not able to work from 21 January 2025 due to the closure of the restaurant, I have instead looked at the 12 weeks of earnings up to 26 December 2024. The average weekly earning in that period was £977.85.

5. The breach of contract claim in relation to notice pay is well-founded. The respondent failed to pay the claimant in lieu of notice as set out in the contract and letter of 27 January 2025. The respondent must pay to the claimant the net sum of **£770** as compensation.

Tips

1. The claimant set out that there did not seem to be a fair and transparent system for allocating tips to workers. He noted that he only ever received a rounded figure each month - £400 or £300 for example – and questioned whether this showed that tips were not being divided in an accurate or fair way.
2. The respondent confirmed during evidence that the allocation of tips was controlled by the directors and that the proportion of tips allocated to employees was based on the following criteria: hours worked, job role (front of house/kitchen staff), level of responsibility, achieving individual or team goals, overall productivity, quality of work performed and discipline.
3. In its response, the respondent provided out a table which set out the total tips received in a month, the total number of workers the tips were to be divided between, the hours worked by the claimant in that month and the proportion of the tips paid to the claimant. However, the table did not set out how the amount allocated to the claimant had been reached or what criteria had been used. The respondent was not able to provide that information at the hearing.
4. The table shows that between August and December 2024 the claimant received between £14.84 and £76.03 over, or £8.66 and £100 under the mean amount of tips each month when dividing the total amount of tips between the amount of workers.
5. For example, in August 2024 he received £400. The total amount of tips received that month was £2,696.10. There were 7 workers to divide the tips between and the claimant received £400. This was £14.84 over the mean amount. In September 2024, the total amount of tips received was £3,146.83. There were 7 workers to divide the tips between and the claimant received £400. This was £49.55 less than the mean amount. In October 2024 the claimant received £100 less than the mean amount. In November 2024 the claimant received £76.03 more than the mean amount and in December 2024 the claimant received £8.66 less than the mean amount.

6. I considered the Employment (Allocation of Tips) Act 2023, the purpose of which is to ensure the fair and transparent allocation of all tips, gratuities and service charges. I also considered the associated code of practice.
7. I find that the respondent was entitled to select its own set of factors to use when determining the allocation and distribution of tips. However, the set of factors must be clear and objective. I find that the factors used by the respondent, in particular 'overall productivity', 'quality of work performed' and 'discipline' are not clear and objective. This was more so because the respondent was not able to produce any documentary evidence to evidence how any of the factors had been applied to the claimant in allocating his tips from the commencement of his employment until his employment ended.
8. I find that the claimant's complaint about fairness or transparency in the tipping system is well founded and I make a declaration to that effect. In the absence of any evidence as to how the tips should have been allocated, I consider that the claimant should have received no less than the mean amount of the tips received each month when divided by the amount of workers. The respondent must therefore pay the claimant the gross sum of £67.34 which would increase his tips from August-December 2024 to the mean amount for each month.

Approved by:
Employment Judge L Sarkis
5 January 2026

Judgment sent to the parties on:

9 January 2026

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For the Tribunal:

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