EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
	v	
Tuna Duskun		Hafızlar Gıda London Ltd

Heard at: **London Central Employment Tribunal**

On: **5 November 2025**

Before: **EJ Webster**

Appearances
For the Claimant: **In person**
For the Respondent: **Ms L Simpson (Counsel)**

Court Interpreter: **Mr Y Kaya (Turkish language)**

RESERVED JUDGMENT

1. The Claimant's claims for unauthorised deduction from wages and breach of contract are not well founded and are dismissed.

REASONS

The hearing

2. This was a short hearing during which I heard from 3 witnesses (the Claimant and two individuals for the Respondent; Mr Demir and Mr Yay). The Claimant was assisted by a court appointed interpreter.

3. During the hearing the Claimant referred to documents, conversations and text messages/whatsapp messages which he held on his phone. He did not have any copies of those messages for anyone else to view and was not in a position to get them printed out. He had not sent any of these messages to the

Respondent. Orders had been made by the Tribunal prior to the hearing for these documents to be sent to the Respondent. Further, they were not brought to the Tribunal in a format which could be shared or properly considered.

4. I carefully considered the impact that the language barrier could have had on the Claimant's understanding of the Orders sent by the Tribunal and his obligation to comply with them. I also carefully considered whether to allow late disclosure and reliance upon any documents which the Claimant now said he had in order to ensure that the parties were on an equal footing. However, the Claimant was not specific as to what documents he had nor what aspect of his case they supported. I did take into account the language barrier when making this assessment but even with the benefit of the interpreter the information was very vague. I therefore considered that any disclosure during the hearing would lead to significant practical and logistical difficulties and I therefore did not consider any additional documents for the Claimant as I did not think it was within the overriding objective to do so.

5. Further, what became clear as I heard the evidence from all three witnesses was that the majority of the facts were not disputed. The Claimant had worked significant additional hours to the basic hours outlined in the contract; therefore the key questions I had to consider was whether that situation breached the Claimant's contract of employment and/or whether the Claimant had a right to overtime payments. From I could understand, the messages that the Claimant referred to did not seem to go to those issues.

Facts

6. The Claimant was employed by the Respondent as a restaurant manager from 5 July 2024 until 2 March 2024. By an ET1 dated 12 May 2025 the Claimant brought a claim for unpaid wages in respect of overtime he says that he worked. He did not specify whether this was an unauthorised deduction from wages claim or a breach of contract claim and I have therefore considered both possible claims.

7. The Respondent denied the claim and stated that they had paid him all wages owed and that he was dismissed for gross misconduct.

8. The Claimant's contract of employment contained the following clauses:

"*Clause 8 Hours*
8.1 Your normal working hours will be 37.5 hours/5 days per week plus such other reasonable hours as are necessary to fulfil your duties to the Company's satisfaction. However the Company reserves the right to change your working days or hours or to require you to work other shifts without changing the total weekly hours to be worked, provided that before implementing any changes to Company will consult with you and consider any reasonable objections which may have to the proposed changes. You may be required to work on public holidays and/or at weekends (including Sundays).

8.2 …… The Company and you agree that because of the special characteristics of your employment, the duration of your working time cannot

be measured or predetermined by either the Company or you, and as such the Regulations will not apply to your employment. Without prejudice to the foregoing, if in fact any hours worked by you beyond normal working hours do not fall within this part of the Regulations, you agree that the maximum weekly working time limit provided for in the Regulations shall not apply to you and your specifically waive that limit by signing this Contract. ….."

9. The Claimant's schedule of loss submitted on 21 October 2025 sets out that he worked various hours of overtime between September and February 2025 which he was not paid for. He says that these hours were in addition to his contractual hours of 37.5 hours per week.

10. Those additional hours were as follows:
    (i) September 2024: 343.5 – 150 = 193.5 hours
    (ii) October 2024: 320 – 150 = 170 hours
    (iii) November 2024: 224.5 – 150 = 74.5 hours
    (iv) December 2024: 244 – 150 = 94 hours
    (v) January 2025: 251 – 150 = 101 hours
    (vi) February 2025: 198 – 150 = 48 hours

11. When added together this gives a total of 681 hours over his contractual hours. The Claimant claims that his rate of pay for this work ought to have been £19.84 per hour. He calculated this by dividing his gross weekly wage by 37.5.

12. He confirmed that he was not claiming for notice pay or any other unpaid wages in respect of his standard contractual hours – he was just seeking payment for what he maintains was overtime.

13. The hours that the Claimant worked and evidenced before me were not disputed. However the Respondent stated that his contract of employment only entitled the Claimant to be paid on a monthly basis and there was no contractual right to paid overtime or any pay over and above the monthly wage allowed for there. They also said that they were entitled to ask him to work such additional hours as was reasonable and this is what they had done. The Claimant was in a senior managerial position and his role involved additional hours.

14. The Claimant says that he was not given time to read his contract given that it was in English, that he was not allowed to keep a copy after he had signed it, and that he did not understand this clause nor did he understand that he had opted out of the Working Time Regulations. He agreed that he had signed the contract. I find on balance that the Claimant did understand the basis of his contract and in particular his working hours. There was not a language barrier between the Claimant and his colleagues as all the witnesses before me spoke Turkish. He knew enough at the time that he was working for the Respondent and during this hearing to know that he was working more hours than were written in the contract and he knew enough to be able to ask for a copy of his contract had he wanted to check any aspect of it. Otherwise, I do not consider that he would be bringing this case.

15. The Claimant asserted that, in effect, his contract had been amended to entitle him for payment for the overtime because he had been told that if he worked additional hours he would be paid for them. He was not able to tell me how much money he had been told he would be paid, what rate he would be paid at for overtime nor when he expected to receive that money.

16. He also asserted that the Respondent had breached the contract because the additional hours he worked were not reasonable insofar as allowed for in Clause 8 of his contract (*such other reasonable hours as are necessary to fulfil your duties)* and went beyond any contractual entitlement on the part of the Respondent to ask him to work 'such additional hours'.

17. The Claimant gave oral evidence that he had conversations with managers at the Respondent (including Mr Demir) where he says the following occurred:
    (i) He was asked to work the extensive additional hours but told that he would be financially compensated for them

    (ii) When he expressed concerns about the number of additional hours to his managers, he was told that if he did not work the additional hours, then his visa could be at risk and as he had a young child in Britian he could not risk losing his job so he agreed to work the additional hours

18. Mr Demir's evidence was that although he accepted the Claimant worked additional hours, he did not ask him to do so and that all hours were willingly agreed to because they were all working together to achieve a common project namely the success of the business. He considered that the Claimant had a senior position within the organisation as a manager and that the additional hours were a necessary part of the role. He also said that everyone within the business, particularly those at a managerial level, willingly worked additional hours and that this was because the business was seen as representative of the country of Turkey and everyone involved wanted to make the project work – including the Claimant. He said that the Claimant had never complained about the hours until the Claimant's conduct issues arose. He also said that although the Claimant was paid in full during his first month in the UK he had hardly worked at all because the restaurant had not yet opened. Despite this the Claimant had been paid his full wages. He considered that this demonstrated that the Claimant was only entitled to be paid a monthly salary.

19. Mr Yay was an employee not a director. He gave evidence that he also worked many additional hours without overtime pay but that he did not get asked to do so. His evidence was that he saw it as an opportunity to make the business work and in return he was repaid with opportunity and advancement from a skills and work point of view.

20. I find, on balance of probabilities that the Claimant was asked to work additional hours and did not have the option to say no without it being frowned upon. I also consider it more likely than not that he found it difficult to refuse because his immigration status was reliant upon his job and he was therefore in an inherently weak and vulnerable position.

21. I also find, on balance of probabilities, that although the Claimant may have been assured that he would be compensated if he worked additional hours, there was no specificity to that promise. The Claimant was not told, for example, that additional hours would be paid at a certain rate, or given any idea of how much money he might receive if he worked additional hours nor when he would receive that payment. The Claimant had no expectation that he would receive a specific sum of money on a specific date that would be paid by reference to the number of hours he had worked. He did not, in the months preceding his departure from the business, challenge any of his wage slips or his earnings in any way by asserting that he had not been paid enough that month to reflect what he was expecting to earn and set out what monies he was owed. I find that this was because he did not have any expectation that his earnings would include sums that reflected the additional hours he had worked. I accept that he may have objected to the long hours on occasion and been worried about pushing the matter further due to comments about his immigration status, however that is not the same as believing that he was entitled to paid overtime.

22. It was not in dispute that the Claimant was dismissed. The Claimant does not agree that this was a fair dismissal or that he committed an act of misconduct. I have made no findings as to the fairness or reason for the dismissal as it was not part of the case before me and the Claimant did not have 2 years' continuous employment.

Conclusions

23. The burden of proof is on the Claimant to establish that he was entitled to overtime pay and that failure to pay him was an unauthorised deduction from wages and/or a breach of his contract of employment. If it amounts to a breach of contract, he must establish that he has suffered financial loss as a result. The burden is on the Claimant to establish any such loss.

24. The Claimant's written contract of employment confirms that the Claimant's salary is paid monthly and that the Respondent could ask him to work such other reasonable hours as are necessary. There is no written entitlement to overtime pay.

25. It was not in dispute that the Claimant was paid his monthly salary as per his contract.

26. I do not accept that the Claimant has proven, on balance of probabilities, that his contract was amended whether orally or in writing, entitling him to paid overtime for the additional hours worked even though they were extensive. I base this conclusion on the following:

    (i) He did not evidence before me that he had raised any concerns about his hours before his employment terminated. I therefore conclude that he did not believe, at the time, that he was entitled to paid overtime on a monthly basis calculated by reference to the hours he had worked.

    (ii) He was not able to explain to me what hourly overtime rate he had expected to be paid whilst he was working for the Respondent nor that

one had been agreed. His claim before the Tribunal was based on a calculation he made to bring this claim which involved dividing his monthly salary by the minimum number of hours he was required to work per week. His claim was not based on the assertion that the Respondent had agreed to pay him a particular amount of money during conversations about hours and pay.

(iii) He was not able to explain to me when he was expecting to be paid the additional money. He had not raised any issue of underpayment with the Respondent on receipt of any of his salary payments. He was making this claim, looking back at his time with the Respondent, and now believing that he was underpaid.

27. I conclude that any conversations where additional money may have been promised to the Claimant were not sufficiently clear or specific that they amounted an amendment to the written contract entitling the Claimant to additional wages. Any such discussions could have been vague offers to bonuses or pay rises or similar. However the offer was not sufficiently clear and unequivocal so as to create a binding contract. The Claimant did not give me evidence that set out specifics of what had been agreed in financial terms nor when he expected to receive that money. He has therefore not established a contractual entitlement to overtime. Therefore any failure to pay him those wages is not a breach of a contractual term.

28. I have also considered whether the Claimant has a breach of contract claim because he was asked to work such extensive additional hours that it could not fall within the definition of *such other reasonable hours as are necessary to fulfil your duties.* This seemed to be the main basis for the Claimant's evidence and concern.

29. The Respondent witnesses' evidence regarding not asking the Claimant to work additional hours was not plausible. The Claimant was an employee, not a director like Mr Demir and I do not accept that he would simply work such extensive additional hours to further a project from which he was not going to benefit financially, other than by receiving his contractual wages which he was already entitled to. He was in a vulnerable position because his immigration status relied upon his job. I have no doubt that the Respondent knew this and relied upon it in the way that they treated the Claimant including how many hours they rostered him to work. However, as concluded above, I do not consider that they made this request with a promise of any certain, specific, financial reward either. They had not therefore made any contractual promise to pay him overtime.

30. The Claimant stated that having to work double or triple his contractual hours was not reasonable and therefore there was a breach of his contract. However, I had no evidence that the Claimant thought it was unreasonable at the time that he was working. He did not provide me with sufficient evidence for me to be able to find, on balance, that he considered that this was far beyond what his management role required or that he considered it to be unreasonable.

31. He also did not tell me at what point the overtime hours became, in his view 'unreasonable'. I do not accept that they became unreasonable the moment that they passed 37.5 hours per week. He was a manager and had a relatively senior role and it is clearly envisaged (and allowed for) within his contract that he would work additional hours. The Claimant did not provide me with any evidence (including oral evidence) that, for example, had he only been asked to work 10 additional hours per week that would have been reasonable, but 15 would not. I had no assertion from the Claimant by which I could gauge what was 'reasonable'. I only had an assertion that the number of hours he did end up working was unreasonable. I conclude that the Claimant, whilst working under the contract, did not consider that the Respondent was breaching his contract by asking him to work the additional hours. He has only formed that view after the contract ended for other reasons.

32. The Claimant continued working for the Respondent for eight months. The reason for his departure was not linked to the unpaid hours. The Claimant did not end his employment because of the hours he was being asked to work thus suggesting that he did not find them so unreasonable as to amount to a breach of contract at the time. Had he done so I find, on balance, that he would have resigned despite his immigration status.

33. My primary conclusion therefore is that the additional hours worked were not in breach of the contract between the parties. However, if they were in breach of his contract, the Claimant accepted the requirement to work those additional hours and he waived any such breach by continuing to work there for as long as he did.

34. I reach this conclusion on the contract even considering the Claimant's vulnerability given his immigration status. I find that he was a relatively senior manager, and he did agree to work the hours and that his agreement to work the additional hours was sufficiently freely given so as not to fall foul of any aspect of the Modern Slavery Act 2015. I was not specifically addressed on this matter but considered it was in the interests of the overriding objective to consider it given the submissions made by the Claimant and his vulnerable status.

35. In the alternative, even if I found that the requirement for the Claimant to work additional hours was unreasonable, and that he had not waived that contract, the Claimant has not established that he has suffered loss as a result. The Claimant's contract allowed for a monthly salary which was paid in full. The Claimant has not evidenced before me, how much additional pay he would have been entitled to and at what point his additional hours became unreasonable and therefore from which point he ought to have been paid. I accept that he has used a logical method to calculate an hourly rate, but there is no clarity as to the losses he now asserts and where they derive from given that he clearly understood he could be asked to work some additional hours.

36. For these reasons I conclude that the Claimant has not established that he was contractually entitled to overtime payments or that by requiring him to work such extensive additional hours, the Respondent breached his contract. Further I do

not accept that the Claimant has established losses flowing from any such breach of contract. I do not uphold the Claimant's claims.

Employment Judge Webster

Date: 9 December 2025

JUDGMENT and SUMMARY SENT to the PARTIES ON

12 January 2026

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FOR THE TRIBUNAL OFFICE