



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8002507/2025**

**Held in Aberdeen via Cloud Video Platform (CVP) on 15 April 2026**

**Employment Judge O'Donnell**

**Mr K Gordon**

**Claimant  
In Person**

**Cove Restaurant Limited**

**Respondent  
Represented by:  
Mr C Douglas -  
Representative**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal, given orally at the hearing, is that the claim for unlawful deduction of wages is not well-founded and is hereby dismissed.

#### **REASONS**

1. The claimant has brought a claim of unlawful deduction of wages against the respondent in respect of gratuities (tips) paid to him at the end of his employment. He says he received less than he thinks he should have been paid.
2. The respondent resists the claim. They say that the claimant was paid in accordance with their allocation of tips policy which is that 10% of all tips paid in each quarter is divided between all casual staff such as the claimant.
3. The claimant confirmed that he had no evidence that the allocation of tips policy was anything other than as described by the respondent in their ET3. He stated that he had been told that tips should be paid monthly and not quarterly; this is correct but has no bearing on the issues in this case.
4. The claimant has no evidence about how much was paid in tips in the relevant quarter and cannot produce any evidence that the sum paid to him was less than he was entitled to be paid.

5. Section 13 of the Employment Rights Act 1996 (ERA) provides that an employer shall not make a deduction from a worker's wages unless this is authorised by statute, a provision in the worker's contract or by the previous written consent of the worker.
6. In terms of s13(3) ERA, a deduction of wages arises in circumstances where the total amount of wages paid by an employer to a worker on any occasion is less than the total amount of wages properly payable on that occasion.
7. The burden of proving how much was properly payable lies with the claimant. He requires to produce evidence of much he should have been paid in tips and show that the amount actually paid was less. He has produced no evidence about any of this at all. The Tribunal cannot simply pluck a figure out of the air in terms of what was properly payable and needs evidence to support the claimant's case if it is to find in his favour.
8. Whilst the necessary evidence would not have been in the claimant's possession in the normal course of events, it was open to him to ask the Tribunal to issue an Order compelling the respondent to produce this information but he did not do so. He was informed of this option at the initial consideration stage of the case.
9. The claimant sought to argue that the respondent had conceded, in their ET3, that he had been underpaid. There was no such concession. At most the respondent indicated a desire to settle the case because the claimant had worked more hours than would normally be expected of a casual worker. This is not, however, a concession that there had been an underpayment and the ET3 very clearly says that the claimant has been paid in accordance with the respondent's allocation of tip policy.
10. In these circumstances, the claimant has failed to prove that he was paid less than was properly payable to him in terms of tips and so the claim for unlawful deduction of wages is, therefore, not well-founded. The claim is hereby dismissed.