EMPLOYMENT TRIBUNALS

Claimant: **Mr A Christopoulos**

Respondent: **DBX commodities Limited**

Heard at: **London South Hearing Centre by CVP**

On: **6 March 2026**

Before: **Employment Judge Mclaren**

Representation

Claimant: In Person

Respondent: Mr A Claude, Director

JUDGMENT having been sent to the parties on 31 March 2026 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided

REASONS

Background

1. The claimant was employed as Head of Sales reporting to the Board of Directors. His employment began on 8 January 2024. His employment ended on 3 January 2026.

2. By a claim form dated 14 November 2025 he brought a claim for unpaid wages. This related to unpaid commission which he believed was due under his employment contract in relation to 3 particular transactions

3. The respondent disputes this and in essence states that the monies were not payable because the transactions did not fall within the commission scheme rules.

4. On 28 January 2026 the claimant then made a written application to amend his

claim to add a claim for unpaid holiday and unpaid salary. The latter relates to what he said was a pay rise that had been agreed and only paid for one month.

The amendment application

5. In summary the claimant argued that this was not a substantial amendment as the claims arose from the same employment relationship. It was the same factual framework and the evidence would substantially overlap with existing claims. He had made the amendment application within three months of the final deduction and therefore the claim would be on time if he filed a new claim and he is then applied to consolidate the two.

6. His written application further submitted that refusing the amendment would prejudice the claimant without good reason and would create piecemeal litigation. He submitted that there were no new factual allegations beyond those of which the respondent was already aware.

7. The respondent had replied to the amendment application opposing this. In its written response it's stated that the claims lacked merit and would unfairly widen proceedings shortly before the final hearing. However, the respondent confirmed to me that it was able to address the points at this afternoon's hearing.

Legal Principles

8. Guidance as to the main factors that shed light on the balance of injustice when considering an application to amend where set out in Selkent. In Abercrombie and others v Aga Rangemaster Ltd [2014] ICR it was emphasised that the guidance in Selkent's case was not intended as prescribing some kind of a tick-box exercise. It is simply a discussion of the kinds of factors which are likely to be relevant in striking the necessary balance. Case law, together with the Presidential Guidance on General Case Management for England and Wales on amendments identifies the following considerations.

Nature of the proposed amendment

9. The Presidential Guidance, draws a distinction between amendments seeking to add or substitute a new claim arising out of the same facts as the original claim and those which add a new claim entirely unconnected with the original claim.

10. In considering applications to amend which arguably raise new causes of action the focus should not be on questions of formal classification but on the extent to which the new pleading is likely to involve substantially different areas of enquiry from the old: the greater the difference between the factual and legal issues raised by the new claim and by the old, the less likely it is that the amendment will be permitted.

11. In order to determine whether the amendment amounts to a wholly new claim, as opposed to adding or substituting a new cause of action linked to or arising out of the same facts as the original complaint, it will be necessary to examine

the case as set out in the Claim to see if it provides a causative link with the proposed amendment. The entirety of the Claim form must be considered.

12. This should be considered first, before any time limitation issues are brought into the equation, as it is only necessary to consider the question of time limits where the proposed amendment in effect seeks to adduce a new complaint, as distinct from 'relabelling' the existing claim.

Timing and whether time should be extended pursuant to the statutory test

13. Time limits are required to be considered where there are entirely new claims unconnected with the original claim as pleaded. It is essential for the tribunal to consider whether that claim or cause of action was out of time and, if so, whether the time limit should be extended.

The timing and manner of the application.

14. In Ladbrokes Racing Ltd v Traynor EATS 0067/06 the EAT gave guidance as to how a tribunal may take account of the timing and manner of the application in the balancing exercise. It will need to consider:

- why the application is made at the stage at which it is made and why it was not made earlier
- whether, if the amendment is allowed, delay will ensue and whether there are likely to be additional costs because of the delay or because of the extent to which the hearing will be lengthened if the new issue is allowed to be raised, particularly if these are unlikely to be recovered by the party that incurs them; and
- whether delay may have put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than it would have been earlier.

The balance of hardship the hardship and injustice of allowing the amendment against the injustice and hardship of refusing it.

15. In Vaughan v Modality Partnership [2021] IRLR 97 the EAT confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The parties must therefore make submissions on the specific practical consequences of allowing or refusing the amendment.

Other Factors

16. The question of the merits of the claim to be added by way of an amendment has been considered. It is arguable that in balancing the hardship of allowing or refusing the application, the merits of the proposed new complaint may be relevant, at least where it has no reasonable prospect of success. The Claimant has lost nothing by the refusal; and the Respondent should not suffer the expense of defending such a complaint.

17. In summary it is vital to appreciate that, whichever 'type' of amendment is proposed, the core test is the same: the tribunal must review all the circumstances, including the relative balance of injustice, in deciding whether or not to allow the amendment .

Decision

18. I do not agree that the introduction of a new claim for failure to pay holiday pay and for failure to pay salary arise out of the same facts as already pleaded. The pleaded case relates to the way in which the commission agreement works. The amendments relate to contractual terms in relation to holiday and whether there was or was not a variation of the employment contract.

19. I consider this to be a substantial amendment. In terms of the timing of the application it was made in January 2025. It was not referred and therefore has not been addressed. This places the parties in a difficult position as in the absence of that decision neither party could properly prepare for what would be an expanded case. I accept that had this been brought as a new claim at the date the amendment application was made it would have been within time.

20. As the respondent had confirmed that it was able to address the points this afternoon there was no prejudice to the respondent if I accept the amendment application. There would be considerable prejudice to the claimant if I refused it

21. I therefore accept the amendments.

The issues

22. The issues in this case are therefore

Holiday Pay (Working Time Regulations 1998)

Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

Unauthorised deductions (4 claims)

Did the respondent make unauthorised deductions from the claimant's wages namely three unpaid commission payments and a failure to pay increased salary from October 2025?

Evidence

23. I was provided with a variety of documents by the parties. This was provided piecemeal. There were no witness statements. I heard evidence from both the claimant and Mr Claude who answered my questions and who made submissions in support of their positions.

Relevant law

Deductions

24. The statutory prohibitions on deductions from wages are contained in Part II of the Employment Rights Act 1996 (ERA). The general prohibition on deductions is set out in s.13. A right arises where monies have not been paid which are "properly payable". There must be an actual failure to pay, and it must relate to money that is due to the individual. If an individual enters into a written agreement and consents to making the deduction, then the money is not due.

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.

……………

(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

Holiday Pay

25. The Working Time Regulations 1998 provide workers with a statutorily guaranteed right to paid holiday. Subject to certain exclusions all workers are entitled to 5.6 weeks' paid holiday in each leave year beginning on or after 1 April 2009 — comprising four weeks' basic annual leave under Reg 13(1) and 1.6 weeks' additional annual leave under Reg 13A(2). The entitlement to 5.6 weeks' leave is subject to a cap of 28 days. Reg 13(1).
26. Compensation related to entitlement to leave is set out in regulation 14

14.—(1) This regulation applies where—

(a)a worker's employment is terminated during the course of his leave year, and

(b)on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—

(a)such sum as may be provided for for the purposes of this regulation in a relevant agreement, or

(b)where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

Where

A is the period of leave to which the worker is entitled under regulation 13(1);

B is the proportion of the worker's leave year which expired before the termination date, and

C is the period of leave taken by the worker between the start of the leave year and the termination date.

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

Findings of Fact

Commission claim 1

27. The pleadings described the 3 disputed commission payments . The first was described in this way.

    CLAIM 1 - WELHUNT YEAR 2 RENEWAL: $3,000
    Contract: 2-year deal for $120,000, paid in full December 2024
    Commission owed: 5% renewal rate on Year 2 ($60,000) = $3,000
    Evidence: December 2024 payslip shows £14,000 commission for only 2 deals (Welhunt Y1 + Greenland), not 3 deals. If Welhunt Y2 had been paid, payslip would show ~£16,337, not £14,000.
    Respondent's false claim: States "fully paid" but mathematics prove this impossible.

28. I heard evidence from both individuals about this. It was agreed that the commission entitlement was to 20% of $60,000 and a second payment of 5% of $60,000. In total this would be a payment of around £9,480.

29. The claimant said that his payslip showed he received commission of some £14,000. It was his evidence that this could not therefore have included the 5%

payment. He said that the payslip included commission payment for another matter, Greenland. He accepted that the agreed payment for Greenland was worth 5% of $15,000 namely around £3000.

Conclusion

30. On a mathematical basis if he had been paid all the sums he was entitled to he would have received £9,480 for the 20%, £2,300 for the 5% plus around £3000 for the Greenland contract. That is give or take £14,000 which is what he received. The difference in figures was because we are doing a dollar to pound conversion and has not been done with precision.

31. The claimant then accepted that he had received the appropriate payment. This claim does not succeed.

Commission claim 2

32. The second commission payment was described in this way

    CLAIM 2 - EMBER: $5,780
    Contract: UN Fund CO2 emissions monitoring project, new client
    Commission owed: 17% (September 2025 new client rate) = $5,780
    Evidence: All negotiations with Sabina Assan (Project Lead). Respondent accepted commission in writing (9 Oct 2025 letter), then retracted (11 Oct letter) after ACAS notification.
    Bad faith: Respondent had all information before accepting, then conveniently "reviewed CRM" and retracted.

33. The argument between the parties here was whether this was an existing client. In looking at the terms of the commission agreement which had been provided to me, a client is introduced if they are not somebody that the company has been in contact with in the prior 60 days.

34. Mr Claude accepted that, while he had evidence of email correspondence with this client, it was earlier than the 60 day period before September 2025.He raised no other points as to why this sum might not be payable. It had been refused solely on the basis it was not a new client.

Conclusion

35. Applying the terms of the contract therefore this claim succeeds. It was disputed on a factual basis the respondent conceded was incorrect.

Commission claim 3

36. This was described in this way
    CLAIM 3 - UNIPER: $10,000
    Contract: $50,000 SaaS contract, payment received 3 Sept 2025
    Commission owed: 20% new client rate = $10,000

Evidence: I proposed accepted pricing, managed customer negotiations June-July 2025, drove deal to execution.
Respondent's position: Claims he "primarily performed sales services" but evidence shows shared involvement at minimum.

37. The dispute of fact here was whether or not the claimant had primarily performed the sales, marketing and negotiating services necessary to secure such sale. Mr Claude said that he had done most of this. The claimant said that he had been part of a joint effort. It was difficult for him to say who had been responsible for what.

38. I found that the terms provided for payment only where the claimant had been the primary driver. I preferred Mr Claude's more definite recollection of who had been most involved over the claimant's less certain recollection.

Conclusion

39. My finding of fact was that the claimant had not primarily performed the sales marketing negotiating services and therefore this claim does not succeed as his efforts place him outside the terms of the commission agreement.

Failure to pay higher salary

40. Before the contract was signed there had been a discussion between the claimant and Mr Claude about his salary being increased to £100,000 once a particular target was met. The claimant accepted that he could not rely on that exchange of emails because he subsequently signed a contract which made it clear at clause 24 that the contract was the entire agreement and superseded all previous arrangements. He drew my attention to it simply to make it clear as context that when he received the internal communication dated 26 September 2025 he was not surprised.

41. I was taken this internal communication which was from Mr Claude which specified that the claimant would have noticed his salary was now £100,000.. That email was very brief. It did not put any conditions on that pay rise. It did not refer to the need for any further paperwork.

42. Mr Claude said that he made a mistake in sending that email. It was also the company's practice at to sign an addendum to a contract every time of the change in pay and that was evidenced by the two documents that I had which showed that this was the practice.

43. The contract at paragraph 23 dealt with the question of amendments and gave the employer the ability to make reasonable changes from time to time by giving reasonable notice in writing.

44. There was nothing in the contract that required there to be any formal addendum signed by both parties. Something in writing from the company was enough. There was nothing in Mr Claude's email which made the pay rise conditional upon further paperwork.

Conclusion

45. On my findings of fact and construction of the contract I conclude that the company was bound by that pay rise and should have paid the claimant a higher rate of pay from October onwards.

Holiday pay

46. The claimant had asked for holiday pay from 2024. I pointed out that the contract does not allow for unused holiday to be carried over without consent. He confirmed he did not have the consent and withdrew his claim for holiday pay for 2024.

47. I asked the parties to identify how much holiday pay we were talking about in the year of termination and the claimant calculated that it was seven days outstanding leave which the respondent was prepared to accept.

48. The respondent argued that there was no entitlement to accrued untaken holiday because the letter of termination expressly said that payment in lieu was not included. As the claimant was on three months garden leave doing nothing it would be double counting to give him his holiday on top.

49. I looked at the contract and noted that paragraph 7.3 states that the employer must tell the employee if they are to take unused holiday during any notice period or garden leave. Mr Claude accepted that he had not done this.

Conclusion

50. As Mr Claude accepted the company had not complied with the contract terms and instructed the claimant to take holiday during garden leave I found the claimant was entitled to unpaid holiday.

51. The parties provided the calculations which were agreed.

Approved by
Employment Judge McLaren
Date: 13 April 2026