



EMPLOYMENT TRIBUNALS

Claimant: Ms A Diaco

Respondent: Officine International Ltd

Heard at: London South Employment Tribunal, by video using CVP

On: 20 March 2026

Before: Employment Judge Musgrave-Cohen

Representation:
Claimant: Ms A De Quincey, solicitor advocate
Respondent: Mr G Politelli, respondent employee

JUDGMENT having been sent to the parties on 26 March 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

5. The Claimant was employed as a Restaurant Manager from 1 December 2023 until 18 July 2024. She commenced early conciliation on 18 December 2024 and received the ACAS certificate on 20 December 2024. She issued her claim on 20 January 2025.
6. The Respondent failed to file a defence and judgment was sent to the parties on 10 April 2025. Meanwhile the Respondent had sought to correspond with the Tribunal on 25 March 2025, 16 April 2025 and 12 May 2025 and filed an ET3 and application to extend time to allow it to defend the claim on 26 August 2025.
7. The application to enter a response to the claim was allowed and judgment set aside by order of Employment Judge Fowell in an order sent to the parties on 13 September 2025.
8. In preparation for this hearing, the Claimant prepared a hearing bundle, witness statement, exhibits to the statement (included within the hearing bundle) and a skeleton argument. The Respondent did not provide any evidence or witness statements. The Respondent was content that the documents and relevant information was before the Tribunal.

9. The Tribunal noted the late preparation of documentation by the Claimant. No criticism is made of the Claimant or her representatives and it is noted that no orders were made about bundle preparation. However this was rather late in the day and so it was important to ensure that the Respondent was not prejudiced by the documentation and evidence. Mr Politelli, of the Respondent, confirmed that the Respondent had had sufficient time to consider the information and prepare for the hearing.
10. During the hearing, the Claimant gave evidence and was cross examined. Both parties made oral submissions and the Tribunal read the Claimant's skeleton argument. The Tribunal adjourned to deliberate. On its return, the Claimant's Counsel was not present due to a private matter. The Claimant, and those she instructed at Law Works, confirmed that they were content to proceed in her absence and Judgment was handed down.

Claims and issues

Unlawful deduction of wages / breach of contract respect of wages

11. The only issue proceeding was whether or not the Claimant suffered an unlawful deduction of wages in respect of the deduction of £1,780 from the final payment made to her on 10 October 2024. Alternatively, this matter was pursued as a breach of contract claim.

Automatic unfair dismissal (whistleblowing)

12. The claim for automatic unfair dismissal (whistleblowing) was dismissed on withdrawal.

Unlawful deduction from wages / breach of contract in respect of holiday pay

13. The Tribunal did not have jurisdiction to determine a complaint in respect of holiday pay for the following reasons:
14. The Claimant said that she was not paid her holiday pay and that she only became aware of this on 10 October 2024 when her final payment was made.
15. The claim form filed on 20 January 2025 does not include a claim for holiday pay. The box for holiday pay is not ticked and the description of the claim clearly states that there are two claims, neither of which is a claim for holiday pay.
16. It was surprising to hear that the Claimant considered that ticking the box stating "*I am owed arrears of pay*" included a claim for holiday pay given that the previous box on the same page read "*I am owed holiday pay*". This was not ticked although it which would very evidently have been the correct box to tick if the Claimant believed she was owed holiday pay. The Tribunal took into account that the Claimant was represented when she completed the claim form.
17. It follows that an application to amend the claim is required.

18. This is a wholly new claim which is not intimated in the claim form. The Tribunal took into account the Presidential Guidance pertaining to amendments and the principles of the well known authority of Selkent.

Time and limitation

19. A holiday pay claim pursuant to the Working Time Regulations must be brought within 3 months beginning with the date on which it is alleged that the payment should have been made. A holiday pay claim pursued as a breach of contract claim must be brought within three months beginning with the effective date of termination of the contract which gives rise to the claim.
20. In both cases, time may be extended where it was not reasonably practicable to bring the claim within three months.
21. The Claimant relies on her knowledge as the reason for the delay stating that she was not aware of the failure to pay holiday pay until her final payment on 10 October 2024. She did however know that she had not been paid any holiday pay since her employment ended on 18 July 2024 and there was no reason not to raise a claim about that matter earlier. Within her documents she mentions having taken legal advice before 10 October 2024.
22. The first time the Claimant mentioned a claim for holiday pay was in the schedule of loss dated 24 March 2025. The Claimant did so in response to a standard letter from the Tribunal requesting clarification of the sums she said were due. That list included various standard payments that may be due such as holiday pay and notice pay. It was not a statement as to which claims had been accepted.
23. The judgment awarding payment of holiday pay was set aside by order sent to the parties on 9 September 2025 on EJ Fowell.
24. Even if the 10 October 2024 had any relevance to the date of limitation, the Claimant was still late in bringing the matter before the Tribunal in the schedule of loss and there is no evidence before the Tribunal that it was not reasonably practicable to bring the claim before the end of the appropriate limitation period or before it was eventually mentioned.

Timing and manner

25. The Tribunal have also considered the timing and manner of the application. The application was made on the day of the hearing. However, even were the Tribunal to consider 24 March 2025 as the date of the application, rather than today, the Tribunal is still not satisfied that the Claimant has given any good reason as to why the application was not made within time or earlier than it was. The Claimant had legal representation and had all the information she required to make the application within the limitation period.

Balance of prejudice

26. The Tribunal must consider the interests of justice and the relative hardship that would be caused to the parties by granting or refusing the amendment.

27. The Respondent is aware of the complaint however they contend that no unlawful deduction has been made in respect of holiday pay. They denied the claim from the outset and stated that a higher sum was paid in the final salary to provide for untaken holiday pay. The pay slip appears to show that there was a higher than usual salary paid even though only a part month was worked in the final month.
28. Neither the Claimant nor Respondent has engaged with the exercise of calculating what of the higher than usual final payment is due to salary and what is due to holiday pay. It seems that the Claimant's schedule of loss does not engage at all with what additional sums she received over and above her normal pay or what they might have been for. She simply claims the full sum for holiday pay without reflecting sums already received or engaging with the Respondent's explanation that she has already been paid holiday pay.
29. It is therefore unclear to the Tribunal what sum the Claimant properly says she was entitled to. The Tribunal determine that the balance of prejudice falls against the Claimant and the application to amend the claim to proceed with a claim for holiday pay is refused.

Findings of facts in respect of unpaid wages

30. The Claimant was employed under a contract of employment dated 1 December 2023. The contract is not signed but neither party has suggested that it did not accurately detail the particulars of the Claimant's employment and the contractual agreements between them.
31. The contract includes the following provision at clause 14:
- "As agreed by the employer for the position of the restaurant manager, the employee's accommodation costs in the UK, until the employment contract is mutually agreed upon and continued by both employer and employee is bore by the employer. The one-time relocation costs and expenditure is also bore by the employer, for the employee when under the employment contract is on/continued from/on/before the commencement of the job of the employee with its employer."*
32. There are no provisions within the contract of employment requiring the Claimant to pay anything towards her accommodation or the deposit for the same, either at the start, during or after the end of the contract. There are no provisions requiring her to take any responsibility for ensuring that any sums the Respondent might have paid towards the property, including the deposit, are returned to them.
33. The Claimant moved in to a property in Camberwell Road. She signed a Company Let Agreement which included the following definitions:

The "Landlord": Valentina Guerrini residing abroad in Naples, Italy.

The "Tenant": Officine International LTD

The Tenants Employee/ "Occupier" of the Property is: Agnese Diaco, born in Genova (Italy) on the 28th August 1989

The "Property" the flat known as Flat 4, 79 Camberwell Road SE50EZ

34. The let agreement details the rental price of the property. It is known from the Claimant's contract of employment that the Respondent would be responsible for the payment of rent.

35. The agreement provides detail about the deposit stating the following at clause 5.2:

The Full Deposit paid to the Landlord for the amount of £ 4,500, which will be returned upon inventory review at checkout. The deposit is paid to the Landlord upon the signing of this agreement and is paid as security for the performance of the Tenants obligations set out in this agreement.

36. It is therefore the Tenant who has obligations linked to the deposit and not the Occupier. The Tenant's obligations under the agreement include the upkeep of the property and arrangements on departure including providing proof of professional cleaning. These are all obligations of the Tenant only. The Claimant is not the Tenant.

37. The agreement provides for the landlord to deduct a sum from the Deposit which properly represents the reduction in value of cost of repair of any item listed in the inventory which is damaged or missing. The Tenant is prohibited from assigning, charging, sub contracting or transferring any part of the agreement.

38. Ms Diaco was a signatory to the agreement. She is recorded as being the Occupier. There is no provision within this agreement stipulating that, as the occupier, Ms Diaco, has any obligation under the agreement.

39. There was no accompanying agreement between the Respondent and Ms Diaco placing any responsibility on her for the full return of the deposit on exit.

40. Following the termination of her employment, the Claimant was permitted to remain in the accommodation. No payment was required from her for this accommodation nor was she required to leave earlier than she did.

41. On 8 October 2024 the Claimant checked out of the property and a check out report was completed. The report concluded by stating that £1,780 would be taken from a deposit of £4,500 and the remaining balance of the deposit would be released.

42. On 10 October 2024, the Respondent paid the Claimant the sum of £1,681.44.

43. The Respondent says that this reflects the Claimant's ordinary salary for July 2024 plus accrued but untaken holiday amounting to £3,461.44 per her final pay slip less the sum deducted from the deposit of £1,780 leaving the balance of £1,681.44.

Parties' submissions

44. The Tribunal expressed its gratitude to the parties for their submissions.
45. The Claimant says that she had no obligations on check out under the terms of the tenancy agreement and so was not legally liable to maintain the property in any particular condition or to clean it as required under the agreement. She says that these were the responsibilities of the Tenant, being the Respondent. She disagrees that she left the property in a bad condition in any event and disagrees that the deductions were justifiable.
46. The Claimant maintains that the Respondent had no lawful basis to deduct any sums from her final salary payment and that they were in breach of contract in doing so. She says that she remained in the property after her employment ended with permission from the Respondent and was not asked to leave any earlier than she did.
47. The Respondent admits they made the deduction but contends that they did not do so arbitrarily but rather did so to properly cover the cost of the damage as detailed in the check out report. They say that the Claimant profited from remaining in the accommodation for several months after the end of her employment and that the Tribunal should take account of the fact she benefitted from three months' free accommodation.

Applicable Law

Unlawful deduction from wages under section 13 Employment Rights Act

48. Wages due to an employee under the Employment Rights Act 1996 ("ERA 1996") are defined as "any sums payable to the worker in connection with his employment" (section 27 ERA 1996).
49. Section 13(1) of the ERA 1996 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deduction is authorised by virtue of a statutory provision or a relevant provision of the worker's contract, or worker has previously signified in writing his agreement or consent to the making of the deduction.
50. A failure to pay an employee the total amount of wages properly payable by him to the worker is to be treated as a deduction from wages, and unlawful pursuant to s.13 ERA 1996.
51. An employee has a right to complain to an Employment Tribunal of an unlawful deduction from wages pursuant to Section 23 ERA 1996. Such a claim must be presented before the end of the period of three months beginning with the date of payment of the wages from which the deduction was made. A claim may only be considered outside of this period where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the relevant time period and if so where it was presented within such further period as the tribunal considers reasonable.

Breach of contract

52. An employee may bring a claim that his employer has breached a term of his contract of employment where that breach was outstanding when the employment ended.
53. Such a claim must arise or be outstanding on the termination of the employee's employment. The claim must be presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. As above, a claim may only be considered out of this period where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within the relevant time period and if so where it was presented within such further period as the tribunal considers reasonable.

Conclusion

54. In applying the relevant law to my findings of fact the Tribunal reaches the following conclusions:

Unlawful deduction from wages

55. The Claimant was provided with accommodation as part of her employment. The full responsibility for the property, both in terms of the deposit, maintaining and the condition on exit of the property, lay with the Respondent. The Respondent was the "Tenant" and the Claimant was the "Occupier". The tenancy agreement clearly stipulates that it is the tenant who is responsible for maintaining the property and it is the tenant, the Respondent, who is responsible for cleaning the property on exit.
56. There is no collateral agreement in writing or otherwise to state that the Claimant has any responsibility for the upkeep or final clean of property.
57. There was no written provision of the Claimant's contract that the Claimant would be liable for the deposit or the loss of deposit at the end of the tenancy. Equally the Claimant had not signified in writing or verbally that she agreed to the Respondent making a deduction from the Claimant's final wages due to any potential loss of deposit.
58. The Respondent could have invited the Claimant to agree to such provisions but it did not do so.
59. It does not appear to this Tribunal that the Claimant has unjustly profited from remaining in the accommodation. She had moved to England for the position at the Respondent and had lost that role within a very short time, it is not surprising that she might want to, and the Respondent might agree to allow her, to stay in the accommodation for a while as she determined her next steps.
60. The Tribunal was not shown any written or verbal instruction that she should leave any earlier than she did.

61. The Tribunal concludes that the Respondent had no lawful reason to deduct the sum from the Claimant's final pay and as such the Respondent did make an unauthorised deduction from wages contrary to section 13 ERA 1996.

62. The Respondent is ordered to pay to the Claimant the sum of £1,780 being the total sum deducted from the Claimant's final wages.

Breach of contract

63. Having reached the decision in respect of unlawful deduction from wages, it is not necessary for the Tribunal to go on to determine the breach of contract claim, this claim being a claim for the same sum for the same loss.

Approved by:
Employment Judge Musgrave-Cohen
Date: 5 May 2026

Sent to the parties on:
Date: 18 May 2026