



EMPLOYMENT TRIBUNALS

Claimant: Miss. S. Pan
Respondent: Kinoya Limited
Heard at: London South Employment Tribunal (via CVP video conference)
On: 3rd August 2026
Before: Employment Judge Sudra (sitting alone)
Appearances:
Claimant: In Person (unrepresented)
Respondent: Mr. B. Uduje of Counsel

RESERVED JUDGMENT

- (i) The Claimant's complaint of unauthorised deductions from wages (holiday pay) is not well founded and stands dismissed.
- (ii) The Claimant's complaint of failure to provide itemised pay statements is not well founded and stands dismissed.

REASONS

1. The Claimant began Acas early conciliation on 10th November 2025 ('Day A') and was issued with an Acas early conciliation certificate on 19th December 2025 ('Day B'). On 18th January 2026 the Claimant presented her ET1. The Respondent

defended the claims by way of an ET3 and Grounds of Response on 16th July 2026. Taking into account Acas early conciliation, any acts which occurred prior to 11th August 2025 are prima facie out of time unless time is extended.

The Issues

2. The Claimant's claim is for:

- (i) Failure to provide itemised pay statements (under s.8 of the Employment Rights Act 1996 ('ERA')); and
- (ii) unauthorised deduction from wages (unpaid holiday pay (s.13 ERA)).

Preliminary Matters

- 3. The Claimant attended this Hearing from the People's Republic of China and as such, was prohibited from giving evidence as she had not demonstrated that there is no legal or diplomatic barrier to the Tribunal taking oral evidence from the nation state where she was present as per the Presidential Guidance 'Taking Oral Evidence by Video or Telephone from Persons Located Abroad' (which took effect from 27 January 2025).
- 4. The Claimant had made an application for an interpreter to be present to translate the Hearing in Mandarin. Unfortunately, an interpreter had not been organised. I explained to the claimant that she would not be allowed to give evidence, due to not having received permission from the overseas jurisdiction she was in but would be allowed to ask questions and make submissions.
- 5. I was concerned that the Claimant maybe disadvantaged if we proceeded without an interpreter and sought her views. The Claimant said that whilst she would have preferred an interpreter, she had waited for the hearing a long time and did not want further delays. The Claimant said that she was content to rely upon her written documents and would ask questions. The Claimant spoke fluently and eloquently. I was satisfied that the Claimant could understand the

proceedings and her level of English was proficient. Mr Uduje observed that as the Claimant wished to continue, could be understood, and could follow proceedings we should continue. I decided to proceed and throughout the Hearing asked the Claimant, several times, if she was happy to continue and she confirmed that she was. I insured that no technical language or legal terms were used and frequently asked the Claimant to repeat what had been said to satisfy myself that the Claimant was truly following the Hearing.

Application to Amend the Claim

6. The Claimant, on 27 June 2026, made a written application to amend her claim to add complaints of: Automatic unfair dismissal (s.104 ERA (dismissal for asserting a statutory right)); failure to provide a written statement of employment particulars (s.1 ERA); and unauthorised deduction from wages (for 'induction hours' (s.13 ERA)).
7. The Claimant made oral submissions also and stated that she was not a law student and a litigant in person. The Claimant said that submitting her claim was 'huge work' and that she had spoken with others who had advised her to apply to amend her claim to add the above complaints. Other than saying that she was not expert in the law the Claimant gave no further reasons why she had not included the subject matter of her application to amend in her claim form. Nor did the Claimant explain, *why* she had waited so long before making her application to amend.
8. Mr Uduje made oral submissions on behalf of the Respondent. His submissions were concentrated on the nature of the amendment, time limits, and the timing and manner of the application. I heard submissions that the amendments applied for were substantial in nature and not minor. They were not relabelling pleaded matters or adding detail to the pleaded claim. Mr Uduje said that ignorance of the law is not a good enough reason and the Claimant could have conducted research at a much earlier stage. Finally, I heard that if the application to amend was allowed the respondent would be put at a

substantial disadvantage as a relevant manager had left the business in October 2025, the respondent would have search for documents relating to August and September 2025, would need to call further witness evidence, and that today's hearing would have to be postponed which would result in further delay to all parties.

9. Chandhok v. Tirkey [2015] ICR 527 provides that the importance of the claim form cannot be overstated. It is a basic principle that the claim form must clearly set out the claimant's case, including the facts on which the claimant will seek to rely.
10. The correct approach to adopt when considering an application to amend was considered by His Honour Judge Tayler in the EAT in the case of Vaughan v. Modality Partnership (2020) EAT 014712020.
11. In Pranczk v. Hampshire County Council UKEAT/0272/19 HHJ Auerbach stated that,
'technical or formal legal language did not need to be used, and, in that regard, due allowance should be made for the fact that the Claimant was a litigant in person, and for a little infelicity of expression. The legal cause of action did not have to be named, or statutory provisions cited. But, one way or another, the essential factual elements of the putative additional claim had to have been asserted'.
12. When a party is unrepresented, Tribunals should be live to the potential need to adopt a 'more inquisitorial approach' in order to ascertain where the balance of hardship and injustice lies. The Tribunal has a discretion to allow applications to amend. In Selkent Bus Co Ltd v Moore [1996] ICR 836, Mummery J gave guidance as to the main factors that need to be considered when considering an application to amend. This guidance, which has itself been explained in subsequent case-law identifies the following key-factors: a. Nature of the proposed amendment; b. Timing and manner of the application to amend; c. Time limits and whether time should be extended pursuant to the applicable statutory test; d. The balance of hardship.

13. In Vaughan, the EAT gave detailed guidance on the correct procedure to adopt when considering applications to amend tribunal pleadings. It confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application.
14. Where the amendment is to add new facts and grounds, the tribunal must decide if the new claim is in time and, if not, whether the amendment should now be allowed. If the claim arises out of the same facts as the original claim but simply adds factual details or attaches a new legal label, the Tribunal should more readily allow the amendment even outside the time limit.
15. On the other hand, if the amendment is to introduce an entirely new cause of action dependent on quite different facts, it is more difficult. The greater the difference between the factual and legal issues raised by the new claim and the old, the less likely it is that an amendment will be allowed, but it is always a matter for the Tribunal's discretion.
16. It emerged from, Cocking v. Sandhurst (Stationers) Ltd [1974] ICR 650 at 657BC that,

'In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused'.

17. Recently, in London Borough of Ealing and others v. Peace [2026] EAT 81, HHJ Tayler, helpfully set out factors necessary for a Tribunal to identify:

'33.

- 1) was the allegation contained in the original claim form
- 2) if not, was it in the later additional particulars, or was it asserted

orally at the hearing

3) what is the nature of the amendment, particularly, does it assert a new complaint

4) if the allegation was not in the original claim form, why not – i.e.

what is the explanation for the timing of the application to amend

5) whether the allegation adds a complaint that would be out of time (which may involve consideration of whether it may be part of an act continuing over a period) and if so whether there is a good reason why the amendment should be permitted notwithstanding the time point

6) finally, and fundamentally, the balance of injustice or hardship to the parties if the amendment is allowed or refused'

18. Refusal of an amendment will self-evidently always cause some perceived prejudice to the person applying to amend. They will have been refused permission to do something that they wanted to do, presumably for what they thought was a good reason. Submissions In favour of an application to amend should not rely only on the fact that a refusal will mean that the applying party does not get what they want; the real question is will they be prevented from getting what they need.

19. The Claimant failed to provide cogent reasons as to why she could not have pleaded the complaints she wished to add, within her ET1. There was also a lack of an explanation as to why the application to amend was not made until very recently. Taking into account the appellate case law I reminded myself that the crucial question was one of prejudice and hardship. If I did not allow the Claimant's application there would be some prejudice but her substantive complaints would be heard. If I did allow the application the Respondent would be severely prejudice as you would not be able to properly defend the claim within the trial window and a fair trial would no longer be possible. The respondents key witness, Mr Harsh, had left his role with the respondent in October 2025 without completing a handover. The Respondent would need to delve for information and documents, call further witness evidence, and rely on memories which may well have faded. For these reasons I found that the

balance of hardship and prejudice fell in favour of the Respondent and refused the Claimant's application to amend.

Procedure and Documents

20. I had before me:

(From the Claimant)

- (a) An bundle consisting of 59 pages;
- (b) a supplemental written note;
- (c) a Particulars of Claim document;
- (d) various emails; and (from the Respondent)
- (e) an opening note; and
- (f) a bundle of 146 pages.

21. I also had a written witness statement and heard live evidence from Peter Edward (director) of the Respondent.

22. I notified the parties at the outset of the Hearing that I would only read documents that I was specifically referred to and would only read documents referred to in witness statements insofar as they were relevant.

Relevant Findings of Fact

23. The following findings of fact were reached by me, on a balance of probabilities, having considered all of the evidence given by witnesses during the Hearing, including the documents referred to by them, and taking into account my assessment of the witness evidence.

24. Only findings of fact relevant to the issues, and those necessary for me to determine, have been referred to in this Judgment. It has not been necessary, and neither would it be proportionate, to determine each and every fact in dispute. I have not referred to *every* document wle read and/or was taken to in

the findings below but that does not mean it was not considered if it was referenced to in the witness statements/evidence and considered relevant.

25. In the interests of proportionality and in keeping with the Overriding Objective, I have confined my findings of fact to matters in dispute and those relevant for me to reach a fair determination of the complaints (r.60(6)).
26. The Claimant began work with the Respondent on 15 August 2025, as a server/bartender, and her employment terminated on 28 September 2025. Therefore, the Claimant's employment was short-lived and lasted six weeks and two days. The Respondent is a restaurant and has a concession in Harrods department store.
27. The Respondent uses software ('Opsyte') for on-boarding new members of staff, issuing contracts of employment, scheduling shifts and for annual leave. The claimant was on a zero hours contract and the minimum guaranteed number of hours was not provided. The Claimant, upon beginning her employment, worked under a three-month probationary period.
28. When the Claimant began her employment, she was issued with a contract of employment which was sent to her via a link. Initially, the Claimant was unable to access the link, but this was later corrected and she then had access.
29. On the last Friday of every month the Respondent's accountants released payslips for its staff using 'XERO' software which generated and sent payslips to employees. The Claimant's correct e-mail address was not recorded on XERO and therefore she could not access her payslips. The Claimant raised the issue with her manager Mr Harsh who said that he would look into it. The Claimant was then sent a new link which, by the time she tried to access it, had lapsed and this occurred after the termination of her employment.
30. When the Claimant's employment terminated, she was not paid the correct amount of accrued annual leave which she was due. In August 2025 the Claimant had accrued 2.86 hours of annual leave. In September 2025 she

accrued a further 11.28 hours of annual leave making a total of 14.14 hours of accrued untaken annual leave upon termination of employment.

31. Due purely to an administrative error the claimants annual leave was not paid in her final salary. The Claimant communicated with Mr Harsh about this but when he left the Respondent's employ, in October 2025, he did not inform anybody about the issue and did not complete a handover.

32. When Mr Warden became aware that the Respondent owed the Claimant annual leave pay, he promptly arranged payment and a Claimant was paid the annual leave accrued by her, in the sum of £161.40p, on 17 July 2026. H

The Law

Failure to Provide Itemised Pay Statements

33. S.8 ERA provides that (so far as material):

'8 Itemised pay statement.

(1) A worker has the right to be given by his employer, at or before the time at which any payment of wages or salary is made to him, a written itemised pay statement.' (My underlining).

...

34. In Leedham v. Royal Mail Group Ltd [2026] EAT 87, the EAT held that that the word '*given*' must be construed purposively, rather than literally. The purpose of s.8 ERA is to enable workers to understand how remuneration is calculated and whether any deductions have been made. The question was not whether the payslip had been physically handed over, but whether the employer provided the information in a manner fulfilling that purpose.

35. S.13 ERA provides that (so far as material):

'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.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.'

...

Conclusions

36. The Claimant's employment did not last very long. During her tenure, she received two payslips; one in August and the other in September 2025. Upon commencement of her employment, the Claimant had been sent an automated registration link to Xero on which platform she would have been able to access payslips.

37. The Claimant did not activate the link which, automatically, became ineffective after 14 days. The Respondent was unaware that the Claimant had not accessed the link and only became aware on 17 October 2025, when the Claimant contacted Mr Harsh, after her employment had terminated. Soon after, Mr

Harsh left the Respondent's employ without notifying anybody that the Claimant had requested payslips nor including this information in a handover. Therefore, the Respondent had given the claimant (as per Leedham) her payslips, she simply did not report any issues until after her employment was terminated. Therefore, this complaint is not upheld.

38. It is clear from the documentary evidence and from the evidence I heard today that the claimant was paid her full entitlement for accrued untaken annual leave. On 27 June 2026, the claimant was paid the sum of #161.40 which represents her annual leave entitlement of one 4.14 hours. This complaint has not been made out and is not helped.

39. For these reasons, the claim is not well founded and is dismissed.

Employment Judge Sudra

Date: 3rd AUGUST 2026

JUDGMENT SENT TO THE PARTIES ON

4th August 2026

FOR THE TRIBUNAL OFFICE