



## EMPLOYMENT TRIBUNALS

**BETWEEN**

(1) Mr Luca Antinucci  
(2) Mr Nordin Elbouti

*Claimants*

and

**BBB Notting Hill Ltd**

*Respondent*

### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** London Central

**ON:** 18 September 2017

**EMPLOYMENT JUDGE:** Mr Paul Stewart

**MEMBERS:** sitting alone

#### *Appearances:*

**For Claimants:** (1) Mr Sebastian Walch - FRU  
(2) Mr Edward Benson – CAB worker

**For Respondents:** Did not appear and not represented.

### JUDGMENT

It is ordered that:

- (1) BBB Notting Hill Ltd be substituted as Respondent in both of these claims;
- (2) The Respondent do pay to the first Claimant the sum of £3,865.64; and
- (3) The Respondent do pay to the second Claimant the sum of £1,417.96.

### REASONS

#### **Introduction**

1. Both these claims are breach of contract / unpaid wages claims. The first Claimant worked in a restaurant situated at 45 Ledbury Road, London W11 2AA: the second at a restaurant situated at 36 Golborne Road, Notting Hill, London W10 5PR. The first Claimant specified in his ET1 that was received by the Employment Tribunal on 1 June 2017 that the Respondent was Robert Newmark Restaurants with an address at 45 Ledbury Road, London W11 2AA. The second Claimant, in his ET1 received by the Employment Tribunal on 6 June 2017, specified the Respondent to be one Robert Newmark t/a West

Thirty Six & Robert Newmark Restaurants with the same address as the restaurant at 36 Golborne Road, Notting Hill, London W10 5PR

2. On 17 July 2017, the Employment Tribunal gave Notice of Hearing to be held on 4 August 2017 in respect of these two cases and in respect of similar claims being brought by four other employees in these restaurants – Mr C Adam, Mr K Enchev, Mr K Venskunas and Mr M Tamkus. The Respondents to these six claims were specified as (1) BBB Notting Hill Ltd, (2) BBB Notting Hill Limited and (3) Robert Newmark Restaurants. The Notice to the first of these Respondents was sent to the 4<sup>th</sup> Floor, 7 – 10 Chandos Street, London W1G 9DG, to the second at Beach Blanket Babylon, 45 Ledbury Road, London W11 2AA and to the third at 45 Ledbury Road, London W11 2AA. Additionally, the Notice was sent to Robert Newmark t/a West Thirty Six & Robert Newmark Restaurants at at 36 Golborne Road, Notting Hill, London W10 5PR.
3. By a letter dated also 17 July 2017, the two claimants in this case and the two respondents as they had named them, were informed that Employment Judge Potter, who happens to be the Regional Employment Judge in this region, had considered the representations of the parties and had ordered that these two claims should be heard together as they appeared to give rise to common or related issues of fact and law and it was in accordance with the overriding objective that they be heard together.
4. A week later on 24 July 2017, a Notice of Hearing was sent to the parties in each claim indicating that the hearing of the claim was to be on 18 September 2017 at 10:00 a.m.
5. On 24 September 2017, Mr Sebastian Walch, the FRU representative who appeared before me and who had come on the record as the first Claimant's representative on 25 August 2017, applied to the Tribunal to exercise its discretion to substitute as the Respondent in his claim BBB Notting Hill Ltd at 4<sup>th</sup> Floor, 7 – 10 Chandos Street, London W1G 9DG. He explained that the first Claimant had believed erroneously that, because his pay slips specified the employer to be Robert Newmark Restaurants, the correct Respondent was that entity. However, a search on Companies House had established that the legal entity behind Robert Newmark Restaurants was BBB Notting Hill Ltd at 4<sup>th</sup> Floor, 7 – 10 Chandos Street, London W1G 9DG.
6. He further informed the Employment Tribunal that Mr Robert Newmark was named as a director of BBB Notting Hill Ltd from 31 December 2012 to 20 April 2015 and had been in a managerial role within the restaurant at which the first Claimant worked at 45 Ledbury Road, London W11 2AA. He argued that, since the ET1 was served on the named Respondent (Robert Newmark Restaurants) at the address at which the restaurant was operated, the correct Respondent (BBB Notting Hill Ltd) had had notice of the proceedings albeit that the ET1 was not served on it at its address at 4<sup>th</sup> Floor, 7 – 10 Chandos Street, London W1G 9DG.
7. Mr Walch's application was referred to Employment Judge Potter who directed on 13 September 2017 that the issue of the correct Respondent would be dealt with at the hearing on 18 September 2017. She noted that notice of strike off

and dissolution of BBB Notting Hill Ltd had been given by the Register of Companies.

8. On 15 September 2017, Mr Edward Benson, an Employment Caseworker at Kensington CAB, wrote to the Employment Tribunal on behalf of the second Claimant seeking the substitution of the Respondent as named by the second Respondent in his ET1 to BBB Notting Hill Ltd of 4<sup>th</sup> Floor, 7 – 10 Chandos Street, London W1G 9DG. In essence, he sought this substitution using similar arguments to those deployed by Mr Walch.
9. The matter came before me with both Claimants present each represented, the first by Mr Walch and the second by Mr Benson. None of the various entities who had been served as respondents to these claims appeared and they were not represented. No response had been made to the ET1 served on them.
10. Evidence was given by the first Claimant. In his statement dated 17 September 2017, he recited the history of his employment and how he was now owed £3,865.64 in unpaid wages with the principal of his employers being Mr Robert Newmark. Initially he had been employed by The Earl of Portobello Ltd from 23 March 2015 but, on or about 28 March 2016, he had been transferred to Robert Newmark Restaurants.
11. In his very helpful written submissions, Mr Walch presented his argument as to why BBB Notting Hill Ltd was the correct Respondent and why the first Claimant should be allowed to amend. I accept that, since the first Claimant had put down the restaurant address at 45 Ledbury Road, London W11 2AA and the Notice of a Claim would therefore have been served there and would have been received by those carrying on the business on behalf of BBB Notting Hill Ltd, the substitution that the first Claimant was asking the Employment Tribunal to make was of a mere technical nature.
12. For all the reasons cited by Mr Walch and having regard to the overriding objective, I substitute BBB Notting Hill Ltd as the Respondent to the first Claimant's claim. I further order the Respondent to pay to the first Claimant the sum of £3,865.64.
13. I also heard evidence from the second Claimant. I was satisfied that he had also worked for BBB Notting Hill Ltd at its restaurant at 36 Golborne Road, Notting Hill, London W10 5PR. For the reasons set out in Mr Benson's letter dated 15 September 2017, I order the substitution of Notting Hill Ltd as the Respondent to the second Claimant's claim. Further, I order the respondent to pay to the second Claimant £1,417.96 being the sum of unpaid wages amounting to £1,273.96 and accrued holiday pay of £144.
14. Finally, I record my thanks both to Mr Benson and to Mr Walch.

EMPLOYMENT JUDGE Stewart On: 8 November 2017