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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr K Liton

**Respondent:** Tandoori Grill Limited

**Heard at:** East London Hearing Centre

**On:** 3 February 2020

**Before:** Employment Judge Goodrich (sitting alone)

## Representation

**Claimant:** In person

**Respondent:** Mr A Saggar (Director of Respondent)

## Interpreter

The Tribunal engaged Mr Azad, a Bengali interpreter, to interpret for the Claimant.

# JUDGMENT

The judgment of the Employment Tribunal is that:

1. Judgment be entered for the Claimant for the following sums, which the Respondent admits it owes the Claimant namely:
  - (1) £246.30 unlawful deductions from wages (30 hours wages at £8.31 per hour)
  - (2) £200 outstanding holiday pay.
2. The Respondent has leave to defend the balance of the Claimant's claims, as provided for in Case Management Orders below.
3. The Claimant has leave to restore his case for hearing, as set out in Case Management Orders below.

# REASONS

## ***Background and the Issues***

1 The background to the hearing today is as follows.

2 The Claimant presented his claim form to the Employment Tribunal on 25 September 2019. Before doing so he had obtained an early conciliation certificate from ACAS. This was received by ACAS on 26 July 2019 and issued on 26 August 2019.

3 In box 8.1 of the Claimant's claim form were ticked the boxes for notice pay, holiday pay, arrears of pay and another type of claim (failure to provide valid terms and conditions of employment).

4 The Claimant had the assistance of the Newham Citizens Advice Bureau in drafting his claim which provided submissions setting out the details of his claim. At paragraphs 68 – 69 these claims were summarised as being:

4.1 Unauthorised deduction from holiday pay: £309.46

4.2 Unauthorised deduction from pay £471.02

4.3 Pay in lieu of notice £235.51

4.4 Failure to provide written terms and conditions of employment £942.04.

5 In the preceding paragraphs details were given of the Claimant's account of the relevant events together with some submissions as to the relevant law. Essentially the submissions were based on assertions that the Claimant was, firstly, a worker of the Respondent; and secondly, an employee.

6 On 2 November 2019 the Employment Tribunal sent a letter setting out that they were enclosing a copy of the Claimant's claim form; that the date for responding was 2 December 2019; and that the claim would be heard today with one hour allocated to it.

7 The Tribunal has also engaged the services of a Bengali interpreter in order to interpret for the Claimant.

8 The Respondent did not provide its ET3 response form by 2 December 2019.

9 Employment Judge Jones, by a letter directed by her dated 8 January 2020, wrote to the Claimant to ask if he had a different address for service on the Respondent.

10 By letter dated 13 January 2020 the Claimant replied to the Tribunal giving the registered office address of the Respondent. The address given by the Claimant on the claim form was, I understand, the trading premises of the Respondent.

11 Before the Tribunal had sent another copy of the claim form to this address, an email dated 20 January 2020 was sent to the Tribunal by Ms Pooja Saggar. She said that she had only just received an email from ACAS informing them that there was less than two weeks left to the hearing; that she had no knowledge of the hearing prior to this; and had not received any documents by email or post regarding this hearing at all either from ACAS or the Tribunal.

12 Ms Saggar went on to explain that the company ceased trading on 9 October 2019 and that this was the last day of the company at its business premises. She said that they were unaware of any upcoming hearing and had not received any documentation. She asked for more time to submit a response to the Claimant's claim.

13 In response, Employment Judge Russell directed a reply which, in summary, was as follows.

14 She stated that the Respondent must provide an alternative address and would then be sent a hard copy of the claim. She also directed that there be attached to the email copies of the ET1 claim form; the ACAS early conciliation certificate; and the notice of claim in the letter to which I have referred dated 2 November 2019.

15 At the hearing before me today, present were the Claimant himself, Mr Azad the interpreter engaged by the Tribunal to interpret, and Mr Ajay Saggar, who informed me that he is now a director of the Respondent although he was not at the time the Claimant worked for the company.

16 I discussed with the parties how I proposed to proceed. Mr Saggar notified me that the company had ceased trading on 9 October 2019; they had not received the court documents; and that they had been informed of the hearing only by ACAS subsequently. He went on to say that the company is insolvent and that they have creditors, particularly HMRC, chasing the company. He anticipated that within about four weeks an administrator would be appointed. He said that the company has no assets.

17 I discussed with the Claimant his options for proceeding. He notified me that he did not accept that the Respondent had not received the claim form at the time. The options I outlined were either:

17.1 Issuing judgment in default on the Claimant's behalf; or

17.2 Giving the Respondent leave to defend the claim.

18 In the course of me the replies to the questions I asked Mr Saggar when he was giving evidence, he accepted that the company does owe the Claimant some wages and some holiday pay although he disputed both sets of figures set out in the Claimant's claim form.

19 Although the Respondent had not completed an ET3 form, Mr Saggar did provide what he described as "notes by Tandoori Grill Limited for Tribunal hearing on 3 February 2020". These amounted in effect to a defence of at least part of the claims. He disputed the Claimant's version of events. If his version set out there was accepted part at least of

the Claimant's claims would fail.

20 Mr Saggar's wish was for the Respondent be given an opportunity to defend the claims, in so far as they disputed them.

21 Mr Liton, through the interpreter, asked for judgment in default to be granted.

22 The issue for me to decide was, therefore, whether to enter judgment in default and if so for how much; whether to enter judgment for the sums admitted by the Respondent; and whether to give the Respondent an opportunity to defend the sums they disputed.

### ***The Relevant Law***

23 Rule 21 of the Employment Tribunal Rules of Procedure provides as follows:

“(1) where on the expiry of the time limit in Rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the Respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) an employment judge shall decide whether on the available material (which may include further information which the parties are required by a judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a judge alone.

(3) the respondent shall be entitled to notice of any hearings and decisions of the tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the judge.”

### ***The Evidence***

24 On behalf of the Respondent I heard evidence from Mr Saggar.

### ***Findings of fact***

25 The question for me to make findings of fact on is – do I accept the account that Mr Saggar has given me of events as regards the Respondent not receiving the Claimant's claim form until the Tribunal sent him the copies by email referred to above? (Mr Saggar accepted that the company had received the documents enclosed with the Tribunal's email dated 24 January 2020).

26 On the balance of probabilities, I do accept that the Respondent did receive the documents including because:

26.1 My decision is on the balance of probabilities because I do have some doubts. Usually, where premises have been abandoned and posts not

delivered the document will be returned to the sender by the post office. In this case, so far as I am aware from the Tribunal's file, the document has not been returned. It appears at least reasonably possible therefore that the post office did forward the documents. Indeed, Mr Saggar does accept that a number of documents were successfully forwarded to the forwarding address provided to the post office.

- 26.2 Set against that I base the evidence I heard as a whole including the following points.
- 26.3 Mr Saggar is here even although the company is no longer trading. If, as Mr Saggar says the company is about to go into liquidation and has a number of creditors, including HMRC, it is unlikely to be able to pay any judgment that the Tribunal may make. Mr Saggar could therefore have chosen not to attend but feels strongly enough about the Claimant's account of events and disputing it that he has right here. It appears reasonably likely, therefore, that he or his sister would have filled in the form if they had received it.
- 26.4 Although the Respondent did not complete the ET3 response form to date they are unrepresented and he has done his best to give the Respondent's account of events.
- 26.5 Where Mr Saggar accepts that the Respondent owes the Claimant money he has frankly said so and consented to judgment being entered. This to my mind is a point in favour of his credibility.
- 26.6 As the company had left the premises by the time the claim form was sent it also appears possible that it might have gone astray or there might have been some slip in the forwarding arrangements.

27 I find, therefore, the following facts.

28 For many years the Tandoori Grill Limited restaurant was run by the father of Mr and Ms Saggar.

29 In November 2017 their father died. Following his death Mr Saggar's sister, Ms Pooja Saggar, ran the company, together with help from Mr Saggar. Ms Saggar was not, however, particularly well equipped or experienced in running the restaurant as her experience was in accountancy, not the running of a restaurant.

30 On 9 October 2019 the company ceased trading and left the premises where the restaurant had been run. Another company (in which Mr Saggar and his sister had no involvement) purchased the fixtures and fittings of Tandoori Grill Limited, did some refurbishment and opened in January.

31 Ms and Mr Saggar made arrangements for posts to be forwarded by the post office. Both he and his sister also made some visits to the premises to ask for and look for any mail. They did not receive the claim form or letter from the Employment Tribunal.

32 Mr Saggar accepts that the Respondent owes the Claimant his last week's wages which, he says, amounts to 30 hours at £8.21 per hour. He would accept judgment being entered for this sum. He disputes, however, the balance claimed by the Claimant.

33 Mr Saggar also accepts that the Respondent owes the Claimant some holiday pay, assessing the figure as £200. He does not accept the balance claims by the Claimant.

34 He does not accept that any pay in lieu of notice is owing because he says that the Claimant resigned and was not dismissed. He also says that the Claimant received a contract of employment so no sum should be owed for failure to provide one (the Claimant himself appeared in the details of his claim to accept that he was provided with a written contract).

***Closing submissions***

35 Neither party had anything to add from the discussions we had about the case.

***Conclusions***

36 So far as the sums that Mr Saggar accepts that the Respondent owed I enter judgment for these sums.

37 So far as the remaining sums in dispute are concerned I consider that Mr Saggar has provided a reasonably arguable defence to the claim. If, therefore the Claimant's version of events and the relevant law is accepted ultimately he would get judgment for the money. If the Respondent's version of events was accepted or the Claimant not satisfied the relevant legal principles the Respondent would be successful. On the balance of probabilities, I consider that there will be less prejudice in allowing the balance of the claim to be did than in rejecting it.

***Other matters***

38 After I had given my judgment I made case management orders, after discussion with the parties.

Employment Judge Goodrich

21 February 2020