



EMPLOYMENT TRIBUNALS

Claimants

Mr A Taieb-Bouderbal

AND

Respondent

Da Aldo Trading Limited
(in liquidation)

Heard at: London Central

On: 3 January 2018

Before: Employment Judge Norris

Representation

For the Claimant: Mr A McKenzie, Adviser

For the Respondent: Did not appear and was not represented

JUDGMENT

1. The Claimant's claims are well-founded and succeed.
2. The Respondent is ordered to the Claimant the following sums:
 - £9,580.00 by way of a redundancy payment; and
 - £4,811.28 in lieu of notice,

being a total of **£14,391.28**.

REASONS

Background

- 1 The Claimant worked for the Respondent from 1998 as a chef at a restaurant in Villiers Street, London. He was never issued with a statement of terms and conditions pursuant to section 1 Employment Rights Act 1996.
- 2 The Claimant's last working day was 10 November 2016, following which the restaurant closed. Although it re-opened some two or three weeks later, the Claimant was not re-employed and is unsure if it is still operated by the same proprietor.

3 The Claimant lodged his claim on 27 February 2017. He named the Respondent as Da Aldot (sic) Trading Limited, with an address of 17 Irving Street, London WC2H 7AU. This was the address shown on his P60. In recent years he had dealt with a Mr Ahmed Fouda. No response was received from the Respondent. A Hearing was listed for 5-6 September 2017.

4 However, on 25 July 2017, the Claimant's representatives, a Community Trust, faxed the Tribunal to say that the Respondent should be written to as Mr Fouda at 29 Villiers Street. The Hearing was duly postponed to today and the claim re-served with those details. Nonetheless, no response was received.

5 **The Hearing**

The Claimant attended the hearing represented by Mr Mackenzie. There was no attendance or representation by the Respondent, nor any written communication to explain this non-attendance or to make submissions.

6 **The Issues/law**

The Claimant claims:

- 6.1 Unfair dismissal. He says he arrived at work on 10 November 2016 to find that bailiffs had attended the previous day (when he was having a day off) to remove items of value, and he was told to go home because the business was ceasing to trade. He claims a failure to consult and a failure to offer suitable alternative employment. He contends that the Respondent operates at least two other restaurants in the area; and
- 6.2 A redundancy payment; and
- 6.3 His notice pay.

Findings of fact and conclusions

7.1 On conducting a search on the Companies House database, I established that Da Aldo Trading Limited commenced winding-up proceedings (Creditors' Voluntary Liquidation) on 4 May 2017. It is registered on that database as insolvent.

7.2 Accordingly, there is no reason why the Claimant's claims cannot proceed, so I heard the case in the Respondent's absence and make these findings, while explaining to the Claimant (who will no doubt be assisted by Mr Mackenzie and/or the Trust) that he may have to pursue his award via the appropriate Government office.

7.3 I find that the dismissal was unfair by reason of the wholesale failure to consult with the Claimant. However, in light of the fact that the Respondent is insolvent, I make no award in this regard. I find that the other restaurants operated by the Respondent already had their own chefs (indeed, the Claimant said he had helped out at one of them when they were short) so it does not appear there was any suitable alternative employment for him, even if those restaurants were operated by the same employer or were part of the group, as to which I had no evidence. There

is an overwhelming probability that if the Respondent had consulted with him, that consultation would of necessity have been very short (the Claimant said he was completely unaware that the business was in difficulty but clearly for the bailiffs to have seized goods, there must have been some very significant financial problems over some period of time) and would inevitably have had the same outcome.

- 7.4 However, I do award a redundancy payment. The Claimant's gross pay was £500 per week and his net £400.94. His date of birth is 17 December 1970 so he was aged 45 at the date of dismissal and he had been employed since 1 July 1998, so 18 years in total. His redundancy payment is therefore £9,580.
- 7.5 In addition, the Claimant was entitled to 12 weeks' notice. This amounts to £6,000 gross or £4,811.28 net. I award him that sum.
- 7.6 The Claimant confirmed that he has no outstanding wages or holiday accrued but untaken. These sums were paid to him in December 2016.
- 7.7 I record that I considered making an employer penalty under section 12A Employment Tribunals Act 1996 but concluded, without having heard representations but in light of what I know of the Respondent's means, that it would not be appropriate to do so in this case.
- 7.8 For the same reason, I have made no award as to the Claimant's issue fee paid in this matter, but in light of the *Unison* decision, he will be able to reclaim the sum paid (£250) directly from HM Courts and Tribunal Service using the online claim form. Again, Mr Mackenzie will be able to assist him in this.

Employment Judge Norris on 03 January 2018