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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Harris  
**Respondent:** Meatcleaver Limited  
**Heard at:** East London Hearing Centre  
**On:** 1 February 2019  
**Before:** Employment Judge Hyde

## Representation

**Claimant:** In person  
**Respondent:** Did not attend

# JUDGMENT

**The judgment of the Tribunal is that: -**

1. It was declared that the Respondent had unlawfully deducted the sum of **£695.13 gross** from the Claimant's wages, and the Respondent was ordered to repay that sum to the Claimant forthwith.

# REASONS

- 1 Reasons for the above Judgment are provided in writing as the Respondent did not attend the hearing. They are set out only to the extent that the Tribunal considers it necessary to do so in order for the parties to understand why they have won or lost. Further, they are set out only to the extent that it is proportionate to do so.
- 2 All findings of fact were reached on the balance of probabilities.
- 3 By a claim which was presented on 21 November 2018 the Claimant sought

compensation or payment of his salary after having worked for the Respondent from 9 July to 24 July 2018 in the capacity of restaurant manager. His role involved front of house duties. The response was presented on 4 December 2018, the claim having been served on the Respondent on 27 November 2018. In the response the Respondent disputed that the Claimant worked for as long as he said that he did in terms of the hours that he worked and referred to a clocking in and out procedure and their records and that therefore the Claimant was not entitled to as much money as he claimed.

4 The Respondent did not attend the hearing and was not represented.

5 The Tribunal had regard to the claim form and the Respondent's response. Also, Mr Harris produced a bundle of documents which the Tribunal marked [C1] which consisted of a two-page statement in which Mr Harris elaborated on the points he had made in his claim form; and also a bundle of approximately 12 pages of documents.

6 Mr Harris gave evidence to the Tribunal and verified the contents of his claim form and of the witness statement which he had prepared. He accepted that the Respondent had paid him the sum of £540.25 thus far. He asked to be compensated in relation to an annual salary which was offered to him of £30,000. He had also been promised that he would be paid for his travel expenses so he claimed £82.40 by way a zone 1 – 3 travelcard. He also produced a draft contract which had been sent to him by the Respondent which he did not sign because he did not agree with some of the details. This document was consistent with his claim for compensation in relation to arrears of pay.

7 The Respondent had not disputed that the Claimant worked for them. The question was whether I accepted Mr Harris's evidence on the balance of probabilities as to the work done. I was indeed satisfied that he was entitled to be paid and that the Respondent had unlawfully deducted the sum of £1153.84 from his salary but that because he had since been paid the sum of £540.27, taking into account the sum of £82.40 which is the value of the two weeks' travelcard, the Respondent had unlawfully deducted from him the sum of **£695.13** and I ordered that they repay that sum to the Claimant forthwith.

8 Finally, there was the issue of the claim on its face having been presented out of time. The Claimant presented his claim on 8 October 2018 but that claim was rejected because there was a discrepancy between the name on the early conciliation certificate and the name of the Respondent on the claim form.

9 Early conciliation took place between the Claimant and this Respondent between 7 September and 19 September 2018, a period of some 12 days. The Claimant having worked until 24 July 2018 had three months which would have expired on 23 October 2018 to present his claim. Therefore, when he submitted the claim form that was well within time. It was rejected because under the Employment Tribunal's Rules Mr Harris had not fully complied with the process. It was not a substantive error in the sense that Mr Khan, the person he named on the claim form, was the person who ran the restaurant. However, because this did not match the name on the EC certificate, the claim had to be rejected. Mr Harris was then notified of this by a letter dated 8 November 2018. It was sent by ordinary post. Having received it a few days later, he made enquiries of the Tribunal by telephone to ascertain exactly what he needed to do in order to fulfil the

requirements of the Rules. Then by 21 November 2018 the claim was successfully resubmitted.

10 I was satisfied that Mr Harris acted promptly in resubmitting the claim in the appropriate form. The error that he made was not one of substance and was an easily understood error especially having regard to the question asked beside the box which he filled incorrectly. At 2.1 of the claim form, the claimant was asked to give the name of their “employer or the person or organisation he was claiming against”. It was entirely understandable in those circumstances that this Claimant, like many others entered the name of the individual who they believed to be responsible for addressing the claim within the Respondent organisation.

11 In all the circumstances I was satisfied that it was not reasonably practicable for the Claimant to have presented his claim within time and I extended time until 21 November 2018 as it appeared to me that that was a reasonable period thereafter.

Employment Judge Hyde

8 March 2019