

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr P A Olivieri

Respondent

(1) Atamisqui Limited
(2) Secretary of State for
BEIS
(3) El Matadore Limited (In
Liquidation)

and

Held at Ashford on 25 September 2017

Representation

Claimant:

In Person

Respondent:

(1) No appearance entered
and did not attend
(2) Mr P Soni, Lay
Representative
(3) Mr J Sinclair, Liquidator

Employment Judge Kurrein

CORRECTED JUDGMENT

- 1 The claims against the second and third Respondents are dismissed.
- 2 The first Respondent is ordered to compensate the Claimant in the gross sum of £5,118.82 in respect of unauthorised deductions from the Claimant's pay relating to wages, holiday pay and notice pay.

The above sum has been calculated gross. This Judgment will be satisfied by payment of a lesser sum, allowing for authorised deductions in respect of tax and national insurance, **provided that** the first Respondent has made full returns to HMRC in respect of those deductions.

REASONS

- 1 The Claimant was employed by the third Respondent as a chef at a rate of £10:00 per hour from 22 January 2014.
- 2 Subsequently the following events took place:-
 - 2.1 The third Respondent entered a CVA on 16 February 2015.
 - 2.2 The first Respondent was incorporated on 13 May 2016. The sole officer is the father of the identically named Hugo Peyrel, who was the moving force of the third Respondent.

- 2.3 The CVA came to an end on 15 June 2016, and the third Respondent entered into creditors voluntary liquidation on 11 July 2016.
- 3 I accepted that the Claimant was wholly unaware of these matters, with the restaurant continuing seamlessly throughout his employment, until his receipt of a letter from the liquidator of 23 January 2017.
- 4 In the event he had resigned on 25 September 2016 because he was not being paid.
- 5 I accepted in those circumstances that it was not reasonably practicable for the Claimant to have started early conciliation against the first Respondent before 7 February 2017, which was completed on 7 March 2017, and he presented his claim on 17 March 2017. He sought and obtained advice from the CAB promptly. His claim for unauthorised deductions relating to wages, holiday pay and notice pay is therefore in time.
- 6 I am also satisfied that no liability for the sums claimed lies with the second or third respondents because there was a TUPE transfer and, in any event, the second Respondent cannot be liable for any sums that fell due to the Claimant after the first insolvency of the third Respondent in February 2015.
- 7 I was impressed by the meticulous records the Claimant had kept of the hours he worked, and the spreadsheets he had compiled. It is clear that he had been paid late, and for less than was due, for many months prior to his resignation. He was not paid at all for any period after 31 July 2016, and then only on 21 September 2016. I accepted his figures.
- 8 This Judgment has been corrected under Rule 69 because the First Respondent's name was misspelt.

Employment Judge Kurrein

10 April 2018