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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104073/2019

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Held at Aberdeen on 12 December 2019

Employment Judge I McFatridge

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Mr Y Diaz Nino

**Claimant
In person**

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Nabil Naoum

**Respondent
No ET3**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The judgment of the Tribunal is that the claim is dismissed. The claimant was not employed by the respondent.

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E.T. Z4 (WR)

REASONS

1. The claimant submitted a claim to the Tribunal in which he claimed that he was due a sum by La Lombarda (Aberdeen) Limited in respect of unpaid wages but that the respondent was responsible for paying this. He referred to the fact that he had previously raised a case against La Lombarda (Aberdeen) Limited under reference 4102790/2019. He indicated that the owner of the company, who he stated was the respondent in this case, Mr Naoum, had decided to strike the company off. The claimant was seeking payment from Mr Naoum as an individual.
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2. Subsequently, the claimant obtained a default judgment against La Lombarda (Aberdeen) Limited.
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3. At the hearing I indicated to the respondent's representative who was present that I was not prepared to hear evidence from Mr Naoum, the respondent, since he had not submitted an ET3. I understand Mr Naoum disputes this however it is quite clear that the ET3 which he lodged was lodged out of time for both the case against La Lombarda (Aberdeen) Limited and the case against him as an individual. It was quite properly rejected by Employment Judge McPherson and Mr Naoum has not sought a reconsideration of that decision. I then put the claimant on oath and asked him to indicate why he considered that Mr Naoum was a person who should be liable to pay him the wages which he was owed. The claimant's evidence was essentially that he had gone to work at the restaurant. He had signed a contract with a company called Nab Company Limited which was the previous name of La Lombarda (Aberdeen) Limited.
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4. The claimant's position was that he had checked the Companies House records and these showed that Mr Naoum the respondent had been the sole owner and sole director of the company during the whole period of its existence. He lodged documents demonstrating this. The claimant was unable to point to anything else which in his view made Mr Naoum liable for his unpaid wages.
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Decision

5. As I advised the claimant on the day, limited companies in the UK have a separate legal personality from that of their owners or shareholders or their directors. In this case it is quite clear that the claimant was employed by the limited company. The limited company was originally known as Nab Company Limited but thereafter the documents show that on 22 June 2017 it changed its name to La Lombarda (Aberdeen) Limited. Even although I entirely accepted that Mr Naoum was the sole shareholder and sole director of the company during the whole of the period of its existence it was clear to me that the claimant had been employed by the company and not by Mr Naoum as an individual. Accordingly, there was no basis for me making a judgment that Mr Naoum should pay the debts of the company.

6. The claimant indicated that he was already exploring restoring the company to the register so he could pursue his claim against the company. I also indicated to the claimant that it may well be worthwhile contacting the Insolvency Service. Although I am unclear as to whether they would be in a position to make payment under these circumstances they do have a general liability to meet certain obligations which are owed to employees by employers who have become insolvent.

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Employment Judge:
Date of Judgment:
Date sent to parties:

Ian McFatridge
17 December 2019
19 December 2019

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