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**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4105113/2020**

**Heard in Glasgow on the 31 March 2021**

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**Employment Judge L Wiseman**

**Mr M Hamami**

**Claimant  
Represented by:  
Ms C Cochrane,  
Solicitor**

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**Mr Rami Shehata**

**First Respondent  
Represented by:  
Mr Sattar,  
Consultant**

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**Happy Ramo Catering Ltd**

**Second Respondent  
Represented by:  
Mr Sattar,  
Consultant**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

35 The Tribunal decided to dismiss the claim.

## REASONS

1. The claimant presented a claim to the Employment Tribunal on the 25 September 2020 alleging there had been an unauthorised deduction from wages and a failure to provide written terms and conditions of employment.
- 5 2. The respondents entered a response denying the claimant had been employed and asserting Mr Shehata and the claimant had entered into a partnership to run a catering business. The claimant had not paid his share of the costs and the partnership had broken down.
3. The claimant made an application at the commencement of the hearing to  
10 amend the claim form to include a complaint in respect of the payment of holiday pay. The respondent did not object to this. The application to amend was allowed.
4. The issues to be determined by the Tribunal are:
  - was the claimant employed as an employee or worker, and if so, who  
15 was the employer;
  - was there an unauthorised deduction from the wages properly payable to the claimant;
  - was there a failure to pay holiday pay and
  - was there a failure to provide a written statement of employment  
20 particulars.

I heard evidence from the claimant and Mr Shehata. I, on the basis of the evidence before me, made the following material findings of fact.

Mr Abushina was present as an Interpreter to assist the claimant and the Tribunal.

**Findings of fact**

8. Mr Shehata and the claimant are friends. Mr Shehata contacted the claimant in early March 2020 to inform him he had located good premises for opening a food outlet shop. Mr Shehata the claimant visited the premises on the 12 March. The claimant liked the premises, so Mr Shehata contacted the owners regarding the lease of the premises.
9. Mr Shehata told the claimant how much the lease would cost, and the claimant told Mr Shehata he did not have any money to put into the business, but would get it. Mr Shehata confirmed he could get the money, but they would need to share the repayment. The lease was taken out in Mr Shehata's name only because the claimant did not want his name on any paperwork.
10. Mr Shehata and the claimant visited the Accountant to discuss Directors for the business. The claimant did not want to become a Director because he did not want his name on any papers.
11. A business account was opened in May 2020, naming only Mr Shehata. The claimant had not wanted his name on the account because he was wary of taking on any liability.
12. Mr Shehata and the claimant did not enter into a partnership agreement because Mr Shehata was waiting until the claimant obtained funds, or until the money he had borrowed had been repaid.
13. The claimant is an experienced chef and known for the quality of his food. He made a list of the equipment required to open the premises. The claimant and Mr Shehata spent a number of weeks sourcing and buying the equipment they required. Mr Shehata paid for all of the equipment.

14. The name Ramo, in the designation of the second respondent, is a combination of the claimant's name (Mohammed) and the first respondent's name (Rami). The business was successful and the arrangement with Just Eat brought in a significant amount of money each week. The claimant was fully occupied cooking: he decided what to cook and made up daily lists of items requiring to be purchased at the butcher and cash and carry. The claimant and Mr Shehata would go to the cash and carry to buy provisions which Mr Shehata would pay for.
15. Mr Shehata tended to take responsibility for the money. A breakdown of sales was provided to the claimant each night.
16. Mr Shehata ensured money was taken from the till/business account each week to repay the money he had borrowed. Any money that remained was split between Mr Shehata and the claimant. There were no records of these payments.
17. The claimant became suspicious of Mr Shehata taking the money to repay the money he had borrowed. Mr Shehata became frustrated with the claimant whom he felt continued to ask for new equipment without appreciating it was Mr Shehata who was in debt trying to pay for it all. The claimant and Mr Shehata had a heated argument which culminated in Mr Shehata telling the claimant not to come in the following day (31 May).
18. Mr Shehata told the claimant their agreement was over because the claimant had not come up with any money. Mr Shehata told the claimant that if he wanted to work it would be as an employee. The claimant refused and told Mr Shehata he intended to come to the shop to remove his share of the equipment.
19. Mr Shehata phoned the Police who were in attendance at the shop when the claimant arrived. The claimant was advised to leave the premises and duly did so.
20. Mr Shehata continued to trade for one more month and then sold the business for £9000, which covered his debt.

**Credibility and notes on the evidence**

21. The claimant told the Tribunal he and Mr Shehata had been partners in the business and that whilst he had no money to put into the business, the arrangement was that Mr Shehata would put in money and the claimant would put in labour and his expertise in cooking. The claimant considered that as a partner he had half of everything in the business, notwithstanding that Mr Shehata had paid for it.
22. The claimant confirmed there had been discussions about a partnership agreement but one had not ever been signed. The claimant accepted the lease and the business account were in Mr Shehata's name only and that Mr Shehata was the only person named as a Director of the second respondent. The claimant accepted he had been offered the opportunity to be named as a Director, but refused because a friend had told him to be careful. The claimant accepted he had not wanted his name on any paperwork because he was in receipt of benefits.
23. The claimant accepted the "deal" had been that he and Mr Shehata had to work to repay what had been borrowed, but after that money would be split 50/50. The claimant's position was that he had not received "a single penny" out of the business.
24. The claimant asserted he had worked 14/15 hours each day in the shop.
25. The claimant believed Mr Shehata told the Police that he [the claimant] was an employee.
26. I, for the reasons set out below, considered the claimant, by his own evidence, undermined his position that he had been an employee or worker.
27. I found Mr Shehata to be a reliable witness. Much of his evidence was similar to that of the claimant inasmuch as he and the claimant had set out to be partners in a food outlet shop/business. There was no dispute regarding the fact he [Mr Shehata] had signed the lease for the premises and had borrowed

money for the purchase of the equipment and to get the business going. There was also no dispute that the loan repayment needed to be shared and this was done by ensuring loan repayments were taken out of the money made each week.

- 5 28. There was also no dispute regarding the fact Mr Shehata and the claimant had visited the Accountant to set up Directorships, and that the claimant had refused to become a Director or have his name on the business account. Mr Shehata understood this was because the claimant was still in receipt of benefits and did not want his name on any paperwork.

10 **Discussion and Decision**

29. The first issue for the tribunal to determine is whether the claimant was employed as an employee or worker and if so, the identity of the employer. The claimant, in support of his position that he had been an employee or worker of the second respondent, relied on the fact that he had not made any financial contribution to the business; that he could not send a substitute to work if he was unable to attend and that he expected to be paid for his work.

- 15 30. I accepted the fact (which was not in dispute) that the claimant had not made any financial contribution to the business, however the claimant clearly told the tribunal that he considered his contribution to the partnership to be his labour and cooking skills and he considered that he owned half of the equipment even though he had not paid for it.

- 20 31. The claimant, when asked if he could have sent a substitute to work instead of him, answered "I don't think so. Mr Shehata could do it: he could bring in cover for me". Mr Shehata was not asked about this in evidence. I concluded little weight should be attached to the claimant's response because (a) the issue of sending a substitute had not ever arisen and had not ever been considered prior to this hearing and (b) there was nothing to suggest the claimant would not have been able to send someone else to do the cooking.

- 25 32. The claimant's position that he expected to be paid for his work was undermined by the fact the claimant told the tribunal the money Mr Shehata
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had borrowed had to be repaid before any remaining money was split between him and Mr Shehata. This meant the claimant could not have expected to be paid a “wage” in return for the hours worked, but rather he would be paid money if there was any remaining after the loan repayment had been made.

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33. The crucial fact which undermined the claimant’s position that he was an employee or a worker was the fact he continually referred to himself, in evidence, as a partner. The claimant told the tribunal:

- we shared the place like partners;
- he [the claimant] wanted a partnership agreement to be signed;
- Mr Shehata told him that he had a rich friend and that was why they [the claimant and Mr Shehata] went into business as partners;
- when asked about the purchase of equipment, he said “we started as partners which means I have half of everything ... the deal was that he would buy the equipment and finances and I would provide the labour. That’s the idea of a partnership”;
- he [the claimant] was offered a partnership agreement;
- he [the claimant] insisted they should have a partnership agreement but Mr Shehata was full of excuses and
- he [the claimant] insisted they have a joint or business account to which they would both have access.

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34. I considered these points wholly undermined the claimant’s position that he was an employee or a worker employed by the second respondent. I considered the evidence before me demonstrated that Mr Shehata and the claimant agreed to open a food outlet shop, having discussed the idea of a partnership in loose terms. The claimant was involved, with Mr Shehata, in agreeing the premises were suitable; identifying, sourcing and purchasing the equipment required for the shop; cleaning the premises to prepare for

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opening; agreeing and producing the menu for the shop; working in the shop (albeit the claimant did most of that work preparing and cooking food); visiting the cash and carry to purchase provisions required for the shop; visiting the accountant and agreeing the repayment of the loan taken by Mr Shehata should be paid first out of any income from the shop. The claimant had an opportunity to become a Director of the second respondent; to have his name on the business account and the lease, but he refused to do so.

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35. I concluded the claimant believed he was in partnership with Mr Shehata until such time as things went wrong, whereupon he decided that if was not allowed to remove equipment from the shop, he would seek wages for the work he had carried out.

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36. I, for the reasons set out above, decided the claimant was not an employee or a worker of the first or second respondent. Accordingly, the claimant has no entitlement to pursue a claim in respect of wages, holiday pay or failure to provide a written statement of employment particulars. I decided to dismiss the claim.

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Employment Judge: L Wiseman  
Date of Judgement: 28 April 2021  
Entered in register: 28 April 2021  
and copied to parties

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