



THE EMPLOYMENT TRIBUNAL

Claimant: Mr A Grant

Respondent: Nick Constantine t-a The Fish Club

Held at: London South (By CVP Video) **On:** 29 November 2023

Before: Employment Judge Siddall

Representation

Claimant: In person

Respondent: Ms M Wahabi

JUDGMENT

No Response to the claim having been filed, the decision of the tribunal is that:

1. The application for an extension of time to present a response is refused on the basis that it does not comply with rule 20;
2. The application for a postponement of the hearing is refused on the grounds that the tribunal is satisfied that the claim is more likely than not to have come to the Respondent's attention at the time it was issued, and it is not in the interests of justice for the application to be granted; and
3. The complaint of unauthorised deductions from wages is well founded. It is declared that the Respondent made unlawful deductions from the salary of the Claimant and that he is owed (having made allowance for a total sum of £1300 paid to him by the Respondent):
 - a. The sum of £1722 gross for the period from 13 March to 13 April 2023 (ie the date when the restaurant where the Claimant was employed opened); and
 - b. The sum of £875 gross for the period from 13 April to 26 April 2023 (the date of the Claimant's resignation).
4. The Respondent shall pay the Claimant the total sum of **£2597** gross. The Claimant is responsible for any tax and national insurance.

WRITTEN REASONS

PROVIDED FOLLOWING A REQUEST BY THE RESPONDENT

1. This is a claim for unpaid wages and additional compensation brought by the Claimant who worked for the Respondent between 13 March and 25 April 2023. I heard evidence from the Claimant. Mr Constantine, the Respondent, did not attend the hearing and did not provide any evidence although he did send a representative, Ms Wahabi of Croner.
2. The history of these proceedings is as follows. The Claimant says that he left his job on 25 April 2023. He contacted ACAS on 1 May 2023 and obtained an Early Conciliation Certificate on 3 May 2023. On the same day he lodged a claim with the employment tribunal.
3. The Respondent is named as 'Nick Constantine. The fish club'. The Fish Club is a restaurant in Orpington and the website clearly identifies Mr Constantine as the owner. Ms Wahabi stated that to the best of her information the business did not trade through a limited company and that Mr Constantine was the correct respondent.
4. On 24 May 2023 the Tribunal sent a Notice of Claim to 'Nick Constantine the fish club'. The letter is addressed to 356 Crofton Road, Locksbottom Orpington Kent. The letter advised the Respondent that a response form must be submitted by 21 June 2023. None was received.
5. The claim was listed for a one-day hearing on 29 November 2023.
6. On 28 November 2023 the Claimant filed a witness statement with the Tribunal.
7. On the same day Croner wrote to the tribunal indicating that they were representing the Respondent. The letter requested an extension of time for the Respondent to present a response, and for a postponement of the hearing. They stated that the address on the Notice of Claim was incorrect as the restaurant is at 366 Crofton Road not 356 Crofton Road. They indicated that the 'claim documents' had come to the attention of the Respondent on 24 November 2023 when the owners of 356 Crofton Road had brought papers from the tribunal to him.
8. The Claimant opposed the application. He pointed out that if a Google search is carried out the address of the restaurant is shown as 356 Crofton Road. He argued that the Notice of Claim was very likely to have been delivered to the restaurant. He also stated that the Respondent owns several businesses in the same road. He was certain that even if the tribunal claim had not been delivered to the Fish Club restaurant in May 2023 that it would have come to the Respondent's attention as it is very likely that whoever received the letter had forwarded it on.
9. I considered the applications made by the Respondent. I noted that the request for an extension of time did not comply with rule 20(1) as it was not

- accompanied by a draft response. Ms Wahabi's case was that this was not possible as the Respondent had only received notice of the claim a few days prior to the hearing. I asked Ms Wahabi what the Respondent's position was in relation to the Claimant's claim for unpaid wages. She told me that she had no instructions as to whether the Respondent disputed the claim in whole or in part.
10. I took into account the fact that Mr Constantine did not attend the hearing to give evidence. There was therefore no evidence before the tribunal that the Notice of Claim had not been received in May, as to who occupies number 256 Crofton Road, why the Google address is different and how the claim had come to his attention in November.
 11. I noted that the Notice of Claim was clearly addressed to Mr Constantine at the Fish Club, which (it is agreed) is the name of the restaurant that he owns and where the Claimant worked. I noted the Google address and gave weight to the evidence that the Respondent owns a number of businesses in the same road. I concluded that it was more likely than not that the Notice of Claim had been delivered to the restaurant and had come to the Respondent's attention soon after it had been posted by the Tribunal.
 12. In case I was wrong on that, I considered the application under rule 20(1). If it was true that the claim had only come to the Respondent's attention on 24 November 2023, was it impossible for a draft response to have been provided on 28 November 2023?
 13. This was a simple claim for wages owed over a period of employment of six or seven weeks. I noted that there were three working days between the alleged date of receipt of the claim papers and the hearing date. I would have expected that during that period of time an employer would have been able to check their records and reach a view as to whether any money was owed to a former employee or alternatively that all sums due had been paid. However Ms Wahabi told me that she had no instructions whatsoever on the matter nor indeed on whether the Respondent had any defence at all to the claim. Had I been told that the Respondent's position was that no wages were due and that the claim was opposed in its entirety, I may well have taken a different position. In this case I heard no evidence from the Respondent, and his appointed representative had not been instructed even to indicate whether there was in fact any defence to the claim.
 14. The Respondent was professionally represented at the hearing. I concluded that it should have been possible to prepare a 'holding' response within the period between notice of the claim being received and the hearing. Even if this was not possible I would have expected the Respondent to either attend the hearing himself to explain what had happened or to give instructions to his representative as to whether the claim was going to be defended.
 15. In all the circumstances I decided to refuse the application for an extension of time to present the response and refuse the application for a postponement.
 16. I then proceeded to hear evidence from the Claimant about his claim.

17. The Claimant said that he had worked with the Respondent before at a different restaurant. In November 2022 they had a discussion about the Claimant becoming Head Chef at the Fish Club.
18. In or around February 2023 the role was discussed in greater detail. The Claimant says that the Respondent asked him to leave his current job as soon as possible as the kitchen would be clean and ready for him as soon as he was ready to start. The Claimant says he was offered and accepted a salary of £35,000 per annum for forty hours per week. In the absence of any challenge, I accept that was the agreed figure. He left his old job on 28 February and started work at the Fish Club on 13 March 2023.
19. When he arrived at the kitchen the Claimant discovered that it had not been cleaned, contrary to what he had been told. Over the next three weeks he spent all his time deep cleaning the kitchen.
20. At the end of the month he was paid £300 for his three weeks work. He was not given a contract of employment. The Claimant says and I accept that he was told by the front of house manager that the sum paid was to 'tide him over' and that he would be fully compensated once contracts were written up. As the Claimant had worked for Mr Constantine previously and had no problems, he trusted him to reimburse his full wages.
21. The restaurant opened for a VIP gathering on 7 and 8 April and then for the public on 13 April 2023. The Claimant says that no other chefs had been hired and he began to be very anxious and stressed about what was happening. He worked an 80-hour week during this period.
22. On 20 April the Claimant cut his thumb badly just before service started. He carried on working but went to A&E after work had finished. He was given a specialist appointment for the following Saturday. At that appointment he was signed off for two weeks as unfit for work.
23. The Claimant sent a note to the Respondent expressing concern about the money he was owed and the problems he had. They met on Wednesday 26 April 2023. The Claimant outlined his concerns and said that he wanted to leave. He says that the Respondent became verbally abusive to him.
24. The Claimant decided that he could not continue with the job. He packed up his equipment and went home. He was sent a sum of £500 for the previous weeks work. His evidence is that the Respondent paid him a total of £1300 for the period of his employment. (That represents a figure of approximately £200 per week or £10,400 per annum).
25. The Claimant requested that the Respondent pay him £875 for the hours he had worked while the restaurant was open. He told the Respondent that if this was paid he would 'go on his way' but this proposal was refused. He therefore brought this claim to the employment tribunal.
26. The Claimant's total claim for unpaid wages was as follows:

27. £1722 gross for the three weeks he worked prior to the restaurant opening, calculated as 3 x £673 per week LESS the sum of £300 paid.
28. In relation to the period that the Claimant worked between the opening of the restaurant and his departure, he claims a total of £875, having given credit for the sum of £1000 paid.
29. The Claimant's claim comes to a total of £2597.00.
30. The Claimant worked for the Respondent for a total of 6.5 weeks. At a salary of £35,000, the Claimant could potentially claim a total sum of £4,374 for this period less the sum of £1300 that he received. However he has not claimed wages for the entire period but only for the days when he worked.
31. Having heard evidence from the Claimant and in the absence of any evidence or submissions from the Respondent, I find that the Claimant commenced work on 13 March 2023 on an agreed salary of £35,000. He worked for a total period of 6.5 weeks, initially on cleaning the kitchen and then in the role of Head Chef once the restaurant opened. His employment ended upon his resignation on 26 April 2003. During his employment he was paid a total sum of £1300. The Respondent therefore made unlawful deductions from his wages. I award the Claimant the total sum he has claimed of £2597.00

Employment Judge Siddall
Date: 26 February 2024