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## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109154/2019

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Hearing Held in Glasgow on 17 September 2021

Employment Judge R McPherson

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**Mr. Mohammad Sajid Nazir Rasheed**

**Claimant  
Represented by  
A Smith and  
D Leyden  
Student Advisers**

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**K Ilahi  
Interpreter**

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**QY51 Ltd  
(In Voluntary Liquidation)**

**Respondents  
Not present and  
Not represented**

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## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is as follows.

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1. The claimant's claim for unlawful deduction of wages succeeds.
2. The respondent is ordered to pay the claim the sum of **£6,328.33** in respect of unlawful deduction of wages and accrued holiday pay of **£1,690.81**.
3. The respondent is further ordered to pay the claimant the sum of **£944.15**, being equivalent to two weeks' wages due to failure to provide written terms of employment.

## REASONS

1. The claimant was represented by Mr. Smith & Mr. Leyden, students with Strathclyde Law Clinic, both of whom had recently taken over the handling of the claim. The Tribunal had arranged for an interpreter for the claimant. The respondent did not attend.

### Issues

2. The issues I had to decide included who was the correct respondent, whether the claimant suffered an unlawful deduction from wages over the period of employment, and failure to pay holiday pay.

### Law

3. I considered the application of s 112 of the Insolvency Act 1986 (IA 1986), ss 1 – 4, 8, 13 – 27 and 210(5) of the Employment Rights Act 1996 (ERA 1996), reg 30 of the Working Time Regulations 1998 (WTR 1998), ss17 and 28 of National Minimum Wage Act 1998 and s38 Employment Act 2002 (EA 2002). In a voluntary liquidation, the liquidator replaces the directors' authority over a company, and in terms of s12 of IA 1986 a court has the power to sist proceedings under its general powers. By contrast, where a company is subject to compulsory liquidation, in terms of s130 of IA 1986, Tribunal proceedings cannot be continued without permission of the relevant court.

### Findings in Fact

4. I consider that it is in accordance with the overriding objective to make short findings of fact.
5. The claimant was employed from **Sunday 5 September 2018**. He worked between 5 and 6 days a week as a waiter in a restaurant, and regularly worked between 55 to 60 hours per week. He was not provided with written terms of employment. His employer operated the restaurant under a trading name. In March 2019, his employment was transferred from, his then employer, Hello Fresh Central Limited to **QY51 Ltd**. He was employed continuously throughout the whole period of his employment.

6. His employment terminated on **Friday 19 April 2019**, when he elected to resign after raising what he considered were irregularities in pay, specifically that he was not paid by the hour.
7. He was provided with monthly payslips, and while they appeared to show a fixed daily rate of £52 per day, his worked hours were not reflected on the monthly payslips which showed lower recorded hours. The effect was that he received hourly payment below the applicable rates for National Minimum Wage (NMW) to which he was entitled.
8. The claimant sustained unlawful deduction of wages, having regard to the applicable NMW rate in the period to 14 April 2019 in the sum of **£6,120.33**. The claimant was not paid in the subsequent period to 19 April 2019, sustaining further unlawful deduction of wages having regard to the applicable NMW rate in the sum of **£208**.
9. He did not take paid holidays and had accrued entitlement to **£1,690.81** holiday pay.
10. It is a matter of public record that **QY51 Ltd** was placed into voluntary liquidation by resolution passed 26 November 2019. The previous employer was also subject to a voluntary creditor's liquidation, and its winding up commenced on **12 April 2019**.

**Decision**

11. The respondent set out in this judgment is the correct respondent. The claimant is entitled to both accrued unlawful deduction of wages of £6,328.33 and accrued holiday pay of £1,690.81. In addition, the claimant is entitled to a sum equivalent to 2 weeks' wages (57.5 hours x 2 weeks x £8.21 per hour) in respect of failure to provide written terms of employment in accordance with s38 EA 2002.

Employment Judge: Rory McPherson  
Date of Judgment: 17 September 2021  
Entered in register: 22 September 2021  
and copied to parties