



EMPLOYMENT TRIBUNALS

Claimant

Miss T Hurynovich

v

Respondent

1. Leo Scheiner
3. Oscar Scheiner
4. 08344730 Limited (in voluntary liquidation)
5. Fyrtorr Limited

Heard at: Watford Employment Tribunal

On: 11-14 and 17 and 18 January 2022

Before: Employment Judge George

Members: Mr A Scott
Mr S Bury

Appearances

For the Claimant: In person

For the Respondent: Mr M Hodson, counsel

Interpreters in the Russian language

REMEDY JUDGMENT

The fourth respondent is to pay to the claimant the minimum amount under s.38(3)(a) of the Employment Act 2002. This amounts to 2 weeks' pay at £508 = £1016.

REASONS

1. As set out in the reserved judgement sent to the parties on 11 May 2022, the claimant was successful in claims against the fourth respondent of unauthorised deduction from wages in respect of shortfall of pay from January to March 2018, holiday pay and notice pay. Such claims, and a claim for breach of contract, fall within Schedule 5 of the Employment Act 2002 (hereafter the EA 2002). We also found that at the time the proceedings were issued, the fourth respondent was in breach of their obligation to provide the claimant with a statement of the employment particulars. As a result, s.38(3) EA 2002 has effect such that the Tribunal shall make an award of the minimum amount (2 week's pay) and may, if it considers it to be just and equitable in all the circumstances, increase the award of compensation by the higher amount (4 weeks' pay).
2. This claim had been overlooked in oral submissions and case management orders were made for the parties to provide any submissions which they wished to make by 25 May 2022. The fourth respondent (which had not appeared at the final hearing) did not take that opportunity. The claimant argued that the maximum award should be made in the absence of any objections and because the "consequences and the loss to the Claimant far greater than this reward offers even at the maximum rate".
3. We remind ourselves of our findings in para.64.61 to 64.63 of the reserved judgment that R3 wished to draft a service agreement for the claimant and she was resistant to his attempts to formalise a job description for her. She accepted that he wanted to discuss a job description with her. We have found that it was the claimant who made the arrangements for her pay and therefore she who directed the accountant to limit the amount of pay which was accounted for through PAYE.
4. On the other hand, the responsibility rests on R4 to issue particulars which comply with s.1 of the Employment Rights Act 1996 and they could have done so even had the claimant persisted in refusing to agree those particulars or a more comprehensive contract. The lack of contract did mean that the length of continuous service remained an issue within the proceedings. The stance taken by R4 about the amount they could declare as the claimant's wages affected her ability to claim notice pay and redundancy payment from the Insolvency Fund, in the absence of a statement of particulars of employment. That amount was, however, consistent with the sums the claimant directed the accountant to declare through payroll.
5. Taking those matters into account, we decided that it is not just and equitable to increase the award by the higher amount. We give weight to our finding that R3 had been obstructed in his desire to formalise a service agreement by the claimant. Had the claimant co-operated with the third respondent then it is likely there would have been a service agreement and job description in place prior to the issue of proceedings. In circumstances where the claimant is, in part, responsible for the

lack of written contract, we do not think it just to award more than the minimum award.

6. By s.227 of the Employment Rights Act 1996, the maximum amount of a week's pay when assessing an award under s.38(3) EA 2002 shall not exceed £508 for claims commenced between 6 April 2018 and 5 April 2019. The present claim was started on 22 March 2019. The claimant's rate of pay, as found by us, exceeded £508 per week and therefore that is the appropriate amount of a weeks' pay for the purposes of this award.

Employment Judge George

Date: ...30 September 2022

Sent to the parties on:

4 October 2022

For the Tribunal Office