



EMPLOYMENT TRIBUNALS

Claimant

Mr D Rock

Respondent

2010 OPTICS LTD

-v-

(in Creditors Voluntary Liquidation)

FINAL MERITS HEARING HEARD BY THE CLOUD VIDEO PLATFORM

Heard at: **Centre City Tower, Birmingham** On: **15 September 2023**

Before: **Employment Judge Perry** (sitting alone)

Appearances

For the Claimant:

in person

For the Respondent:

no appearance

ORDER & REASONS

1. This claim was presented on 16 May 2022 following early conciliation between 5 and 28 April 2022.
2. The claimant originally brought complaints for unpaid wages, breach of contract, holiday pay, "other sums" and for unfair dismissal. He later accepted that he did not have two years qualifying service to bring a claim of unfair dismissal and so the unfair dismissal claim was struck out on 5 July 2022.
3. Because no response has been received the claimant was asked to provide a schedule setting out the losses that he has suffered so that a judge could consider if a money judgment could be made. The claimant did so. The hearing that was originally scheduled for today was however left in the list so I could assess the sums to be paid.

Having considered the file and papers and having heard evidence on affirmation from the claimant I have made the following determinations.

4. The claimant was employed as a civil engineer by the respondent between 4 January 2022 and 25 of March 2022.
5. I noted that the respondent's name was changed on 13 April 2022. I have thus ordered that the respondent's name should be amended to that set out above.



6. On 18 May 2023, the same day that the claimant’s application to the tribunal was actioned, the respondent went into voluntary liquidation and the respondent’s registered office address was changed. Given the tribunal papers were sent to the respondent’s original registered office address those papers should have come to the attention of the liquidators. However, given that change, that the Secretary of State may have a liability in relation to these matters and having provisionally determined on the basis of the papers before me and evidence I have heard, that an award should be made to the claimant in the following sums I have decided that before I do so I should allow the liquidator and the Secretary of State an opportunity to object to the course I propose to take. My assessment and rationale for the awards is set out below.

7. In the absence of objections from either the Secretary of State or liquidator within 28 days of this order being sent to them I propose that the judgment should be made for the following sums (all gross):-

7.1.	notice pay, one week	£600.00
7.2.	arrears of pay for March 2023 (£2,400 less £1,000 received)	£1,400.00
7.3.	holiday pay (3 months worked – no leave taken) one week	£600.00
7.4.	in relation to the claimant’s personal items left on the works van that were not returned to him on his dismissal	£819.00
7.5.	Award of 4 weeks pay pursuant to s.38 Employment Act 2002	<u>£2,400.00</u>
7.6.	Total	£5,819.00

8. I have therefore directed that the Tribunal papers and a copy of this order should be sent to both the Secretary of State and the liquidator. I have explained to the claimant that for many of the sums awarded he may rank as an unsecured creditor of the respondent and have thus directed a copy of the standard form letter informing the claimant of his right to make a claim on insolvency the National Insurance Fund (SL 14.1) should also be sent to him. I have informed him of the web page where such claims can be made (<https://www.gov.uk/claim-redundancy>).

9. In the event either the Secretary of State or liquidator wish to object the claimant has agreed that I can deal with any objections on the papers to avoid the need for a further



hearing. When responding the liquidator and/or Secretary of State confirm shall likewise confirm if they are so agreeable.

10. The claimant told me that during the period he was employed did not receive a contract nor any payslips. He has concerns therefore was whether HMC HMRC have been paid for any tax. I told him that that is obviously a matter that he will need to take up directly with them.
11. In a commendably frank way the claimant told me that it was difficult to assess his weekly pay. He was able to say that in March he calculated he was due some £2,400 of which he was paid £1,000. I therefore used that sum of £2400 as the basis of my assessment of the gross weekly pay and given the inaccuracies at play here considered it appropriate to merely divide that sum by four to assess the weekly rate.
12. On the basis that neither the payslips nor contract were provided I have made an award pursuant to s.38 Employment Act 2002 and also considered it was just and equitable in all the circumstances, to increase that award to 4 weeks pay.

Employment Judge Perry
Dated: 15 September 2023