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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Newman

**Respondents:** 1. Arrow Promotional Ltd – In Members Voluntary Liquidation  
2. Arrow Promotional Group LLC

**Heard at:** East London Hearing Centre **On: 25 May 2017**

**Before:** Employment Judge Prichard

**Representation**

Claimant: In person

Respondents: Neither present nor represented

## JUDGMENT

The respondents are jointly and severally liable to pay the claimant the sum of £37,916.52. The amounts are made up as follows:

Compensatory award for unfair dismissal to reflect 8 months loss of earnings net of replacement earnings by the claimant	£18,899.00
Award under Regulation 16(3) and (4) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 13 weeks gross pay capped at £479 per week	£6,227.00
Arrears of commission to date of termination	£933.17
Averaged out commission for 8 months loss of earnings	£4,529.20
Loss of pension contributions for 8 months' loss at £41.46 per month	£331.68
Contribution to household bills 30 June 2014 to 23 September 2016 at a rate of 40% per working day £4.28 per working day	£2,210.02

Rental space-maker storage unit November 2015 to September 2016	£1,262.45
Tribunal fees	£250.00
Claimant's legal costs of these proceedings	£3,274.00

***The above oral judgment having been announced (with reasons) at the conclusion of the hearing on 25 May 2017, the written judgment without reasons was sent to the parties on 21 June 2017. The second respondent's solicitors applied for written reasons for the judgment, by email letter of 5 July 2017. The reasons are now provided below.***

## REASONS

1 The claimant already has judgment entered for him against both respondents, issued by Employment Judge Brown and sent to the parties on 10 May 2017. Today's hearing is to calculate the awards and also to hear the claimant's account of his employment by the respondent and its termination.

2 The claimant worked for the first respondent for 4 complete years from April 2012 until September 2016 when he and other UK colleagues were dismissed in the course of an arranged Skype call at 4pm between them and Mr Ed and Mrs Peggy Strauss calling from New York. Mr Strauss said the company no longer existed. The company does exist. It is currently shown on the register at Companies House as in members' voluntary liquidation. To the best of the claimant's knowledge the members of the company are in the US Ed and Peggy Strauss and in the UK Nikki De Bruin.

3 As far as the claimant can see she is still operating the company with some of the previous clients from her home address at 5 All Saints Road, Sutton, Surrey SM1 3DA. That is the basis of the Transfer of Undertakings contention and the award for failure to inform and consult under the TUPE regulations. The award is pitched at the maximum that is the starting point for penal type awards (See *Susie Radin v GMB* [2004] IRLR, 400, CA). There is no good reason to reduce it from that starting point on the facts of this case.

4 At this stage the proceedings do not appear to be actively resisted by the respondents. The first respondent originally presented an uninformative ET3 response. It did not say anything other than that nothing was owed to the Claimant.

5 After the alleged redundancy on 23 September the claimant was paid a correctly calculated redundancy payment for his age and length of service, and he was paid in lieu of four weeks notice. He was also paid his accrued outstanding holiday pay but nothing else. Through these proceedings he claims other sums which were owed to him in respect of expenses and arrears of pay in unpaid commission.

6 At the time he was dismissed the claimant was allegedly owed the sum of £933.17. He showed a reliably calculated accounts receivable sheet for the accounts that he worked on showing a total of £17,305.28 owed and receivable in billed work. The calculation is done on an average margin of 38.38%, and an average commission

rate of 14.05% commission. The claimant also calculated the commission which would be payable on an averaged out basis, based on historic pay slips of £566.15 @ 8 months = £4,529.20. He was also paid pension contributions of £41.46 per month that is claimed by way of loss of earnings.

7 The respondent clearly owes the claimant something for the use of his home as a workplace for the respondent. The company vacated the Moorgate address in Coleman St EC2 R 5BJ (originally this was used as the address for correspondence for the second respondent in these tribunal proceedings). Even after vacating there, they continued to use the postal address and the 0207 number in order to maintain the impression that they were based in the City of London. In fact all the employees home-worked Joanne Yeomans and Simain (spelling?) Daniel worked from Manchester and the claimant worked from his home in Chelmsford. He has apportioned his utility bills meticulously fairly, taking careful account of days worked, subtracting holidays taken for a 2 year period; that is how long he had been home-working less 50% for those days and it takes account of gas bills, servicing, water rates, the broadband, and the landline. In fact the high speed broadband was specifically put in by the claimant to enable more efficient home-working. There were additional insurance costs obviously because the claimant had a company computer etc.

8 There was disagreement about the storage unit which the claimant had to rent. He had an antique desk and chair at home which he inherited and did not want to lose. He had to keep them off site as-well as much other company equipment with the home-working because large amounts of goods were delivered to his house. He was having to warehouse them in his own domestic property. It was more than they could accommodate in the household.

9 Apparently Nikki De Bruin had said that the company would only pay for it if he put into the Arrow Promotional name which he was not prepared to do. The property he was forced to keep there was personal property. He did not want to risk losing it in the event that relations between himself and the company turned sour as they now have. This is reasonable and completely business-based expense which should always have been paid by the respondent. The amounts are eminently reasonable, It amounts to just over £120 a month.

10 In this case I consider that the respondent's conduct in not coming to some accommodation to settle these amounts sent reasonable and restrained letters for action by the claimant's solicitors, Brown Solicitors, and their continued resistance to and now disengagement from the proceedings is unreasonable conduct. Therefore costs are payable in the very reasonable sum of £3,274 which includes VAT. The claimant had to pay a fee of £250 to issue claim in the Employment Tribunal. It is routine that when judgment is given for a claimant in the tribunal, the fee should be reimbursed by the respondent under the Employment Tribunal rules.

11 The total of the above figures is £37,916.52 and the respondents are jointly liable then severally liable to pay that amount between them. I am satisfied that the American company is currently active in the UK through Nikki De Bruin. Much of the business previously done by the UK limited company is being done by the American company, in the absence of any other company. It is not known the extent to which the UK limited company is in fact still trading despite being in members' voluntary liquidation.

12 The current registered office on which this judgment will be served on the first respondent is in Edmund Street, Birmingham which is the business address of the

liquidators. The judgment is also being served upon the American company care of the Sutton address SM1 3DA which is understood to be the home address of Ms Nikki De Bruin. It is also being served on the US LLC company at 6 West 20<sup>th</sup> St, 3<sup>rd</sup> Floor, New York 10011.

Employment Judge Prichard

18 July 2017