

LW



EMPLOYMENT TRIBUNALS

Claimant: Mr M A Surab

Respondent: Euro Foods Group Ltd

Heard at: East London Hearing Centre **On:** 27-28 October 2015

Before: Employment Judge Prichard (sitting alone)

Representation

Claimant: Mr G Robertson (Solicitor, for the Whitechapel Legal Advice Clinic, London E1)

Interpreter

For the Claimant: Ms A Ahmed – Bengali – Sylheti dialect

Respondent: Mr J Jupp (Counsel, directly instructed)

JUDGMENT

It is the judgment of the tribunal that the claimant was not dismissed either directly or constructively and his claims for unfair and wrongful dismissal therefore fail and are dismissed.

The claimant is ordered to pay a contribution to the costs of the respondent in the sum of £1,000.00.

The above oral judgment having been announced (with reasons) at the conclusion of the hearing on 28 October 2015, the written judgment without reasons was sent to the parties on 5 November 2015. The claimant's solicitor applied for written reasons for the judgment, by letter of 18 November 2015. The reasons are now provided below.

REASONS

1. The claimant, Mr Mohammed Ahmed Surab is currently 40 years of age. He worked for Euro Foods Group Ltd at their depot in Barking for over two years, until his employment ended in confused and confusing circumstances on 18 November 2014. He has not returned to work since. He was paid the minimum wage as a warehouse operative for 40 contracted hours per week – typically 5x 8 hour shifts per week. He would work on Sunday night and the following nights, earning in total gross pay of £252 a week - net £225. He brings claims for unfair and wrongful dismissal.
2. In the year 2014 the claimant was absent from work for a long period for various different reasons. Some time in summer 2014 he had applied for and been granted four weeks and three days holiday leave to return to Bangladesh. Shortly after he returned he underwent heart surgery (angiogram) and was recovering for some time after that. I have seen a sick note which he provided to the Respondent which covered 22 October until 12 November 2014.
3. The claimant originally states that he was under intense pressure to return to work and in fact had returned on 2 November 2014, despite the fact he was on certified sick leave, something which I have ultimately found to be completely untrue. I find that he telephoned the overall manager of the depot, Mr Shamim on 3 November asking if he could return to work because he stated he was bored at home. Mr Shamim, unsurprisingly stated that he should not return during the currency of his sick note and while he was sick. Any sensible employer would need to say that because of potential employer's liability. He states it is particularly so in the warehouse because they are all involved in manual handling and lifting.
4. To describe the business in general. It appears that about 90% of the clients - restaurants, retailers - are Bangladeshi and speak Bengali, specifically the Sylheti dialect of Bengali. Bengali is widely spoken in the workplace; most of the employees I have heard about are Bangladeshi. The claimant's supervisor, Mr Piotr Srodecki was an exception. He is Polish and does not speak Bengali.
5. The claimant has had the services of Ms Ahmed at this hearing as an interpreter. It is agreed that his English is not strong, particularly his spoken English. His comprehension appears to be reasonable, if limited. The language issue becomes a relevant consideration later in the narrative.
6. I have seen the last pay slips from the claimant's employment. They conform entirely to the P45 which was ultimately issued over two months after the claimant left. As to the total tax paid in that tax year and the total taxable earnings, it is correct to the penny. I have worked it out. It was quite clear that the claimant was paid sick pay for the whole of his remaining employment apart from three days worked from 16 to 18 November 2014.
7. If the claimant had returned on 2 November 2014, as he eventually claimed he had because he was sure that was a Sunday (it was), then it is psychologically impossible to accept that he would not have remonstrated at being paid sick pay of around £87 (it

varied) instead of his normal net pay of £228.65 per week. It is a fact that he never did complain or remonstrate about this.

8. This was an important element of the claimant's complaint because he has used it in these proceedings to portray the company as putting unreasonable pressure on him to return to work. That was a building block in the claimant's case against the respondent.

9. On 18 November 2014, he went to work and there was an incident. The claimant works eight hour shifts from 1.30pm until about 9.30pm. Sometimes if all the work is finished, managers will let the operatives leave sooner and they will still be paid for the contracted hours. Often the warehouse is extremely busy.

10. There are two separate outlets there; the warehouse where operatives pick goods for delivery by lorry and a separate cash and carry business called Masala Bazaar on the same premises, where individual customers come for smaller orders. Masala Bazaar has a sense of urgency about it because the customers are physically present and they need serving, whereas orders for delivery the next day are not time critical. They can be picked even the next morning before going out on delivery. The warehouse is open at 6am and it closes nightly at approximately 10pm, as does the cash and carry.

11. Some time after he appeared on 18 November the claimant's supervisor, Mr Piotr Srodecki, asked him to make himself ready to help in Masala Bazaar, not to go straight there, but when the call for help arose he was to drop everything and go there because his other duties were not time critical. The needs of Masala Bazaar obviously fluctuate depending on the number of customers at any particular time. I accept that Mr Srodecki asked the claimant to do this, in principle. He was merely asking him to be ready. However, on the second and third occasions he actually asked the claimant to go directly to Masala Bazaar to serve there.

12. The claimant's version is that he went to Masala Bazaar and complied with exactly what he was told, but when he got there Mr Akbar Hussain, who was in charge of Masala Bazaar, told him that the need was no longer there and that he could go back to his work in the warehouse. Mr Akbar Hussain was not asked about this nearer the time, and after the event it would be hard for him to remember from one night to the next whether the claimant had in fact reported for duty and whether he had in fact on that night told him that he did not need the claimant.

13. Nonetheless, Mr Srodecki, reasonably as I find, found that there was no other way of explaining this than the claimant was refusing, for whatever reason, to go and work in Masala Bazaar. This irritated him and he did not hide his irritation. He told the claimant he was going up to tell the manager, Mr Tarif Ahmed, the Sales Manager. Mr Ahmed was not the claimant's line manager. The claimant's line manager, Mr Johur, the Operations Manager, was off sick at that time. Mr Ahmed had an office upstairs where he was based. Mr Srodecki went up to see him and described what had happened - that the claimant had apparently refused to work in Masala Bazaar and he did not know what to do about it.

14. The claimant it seems, wanting to get his defence in first, tried to get ahead of him by telephoning Mr Ahmed at his office, but apparently Mr Srodecki was in the office already. The claimant's version of events which he recalls then was that Piotr Srodecki had sworn at him, called him a "fucking bastard". It seems that with Mr Ahmed, Mr Srodecki

was quick to admit that he had used the language, although he made clear that he had not used it directly to his face but more as a comment, muttering as he walked away.

15. It was not so clear in other witnesses' statements. Mr Robertson has rightly and fairly examined the inconsistency in the witnesses' stances on whether he swore "at" him or just in his presence, within earshot. I accept, that he said something like "fucking lazy bastard". I accept that this language is not unheard of in the warehouse, unsurprisingly. The claimant, despite his poor English, is bound to have understood it. (Mr Srodecki doubted if the claimant had understood what he was saying. However, one would have thought such phrases would be among the first words one would learn in a UK workplace).

16. Mr Ahmed was quick to say to Mr Srodecki that he was wrong to use that language in the presence of the claimant. He then asked the claimant to keep working and to come up and see him when his shift had finished. This was about 8.30 – 9.00 pm. It is not critical when it was; it was sometime around the end of the shift.

17. At this stage Mr Srodecki had left. He works the morning shift. What happens is, if the warehouse is understaffed, as it was that day, then he often stays on after the end of his early shift to help. It is for this sort of attitude to his work that he has received promotion. Mr Srodecki goes the extra mile, according to Mr Shamim, and he leads by example.

18. The claimant went to see Mr Ahmed and talked to him in his office. His office has a partition in it and a door that is always open, so there were two other individuals on the other side of the partition who could hear everything that was being said. One of them has been a witness at this hearing, Mr Abdul Juhel, and the other was a Mr Choudhury. The conversation took place in Bengali. Bengali is Mr Juhel's first language but not Mr Choudhury's.

19. It was the claimant and Mr Tarif Ahmed in the presence of these other two individuals, speaking Bengali. During the course of that conversation, the claimant told him that Mr Srodecki had abused him and he also said that Mr Srodecki was always abusing his position - an important extension to the allegation. The claimant stated that Mr Srodecki had "dismissed" him and told him there would be no more job.

20. As it happened, at that time, Mr Aqu Shamim telephoned Mr Tarif Ahmed, who was effectively in charge of the depot that night. He asked him for a report on the days trading and asked if there was anything he should know. Mr Shamim is the Depot Manager for Barking; he happens to live in Dagenham, but he also manages the respondent's newer and smaller depot in Hayes. He is not present in Barking all day, every day. He makes several telephone calls and keeps himself in touch with what is happening in both depots. At this stage Mr Ahmed had spoken to Mr Srodecki and heard his account of the claimant refusing apparently to carry out a reasonable instruction and Mr Srodecki's admission that he had used bad language to the claimant.

21. It is clear from what Mr Srodecki told the tribunal that the claimant did not dream up the dismissal allegation. It came from some thing which had been said. Mr Piotr Srodecki was clearly exasperated at the claimant and could not understand why he was not doing what he had asked. It seems it was out of character, it was unexpected, he did not know how to deal with it. He tried to explain to the claimant by saying that if he was not co-

operating then the whole business would fail, that there would be no job for him (Mr Srodecki himself), no job for the claimant and that they could just shut up the shutters and everybody could go home. He was talking about the worst case scenario of what would happen if everybody, like the claimant, refused to help when asked. In my view the claimant seized upon this and has deliberately taken it out of context in order to attribute an act of dismissal to Mr Srodecki. In my view the context of what Mr Srodecki was saying must have been clear. I cannot accept that it was genuinely or reasonably misconstrued or misunderstood.

22. When Mr Shamim telephoned, the focus of the claimant's complaints seemed to be a longstanding abuse of his position by Mr Piotr Srodecki. Mr Shamim openly expressed surprise that Mr Srodecki would have been abusing his position all this time without him, Mr Shamim, ever hearing any complaint from the many warehouse operatives who were supervised by him. Unfortunately then the claimant turned this into a loyalty issue. The claimant regards the Bengali brotherhood as very strong, all being Muslims. He expressed disappointment that Mr Shamim would take the word of a foreigner, non Bengali, and non-believer, as against his word as one of the brotherhood. That seemed to eclipse the earlier allegation that Mr Srodecki had expressly dismissed the claimant at that point. The main focus was now on Mr Shamim not accepting the claimant's allegation that Mr Srodecki had abused his position for a long time.

23. The claimant made his disappointment plain and said he was leaving. The whole conversation took about 15 to 20 minutes in total. The claimant then left, leaving his "tensor" card behind (the security swipe card that you move around and to clock into and out of the warehouse). Mr Ahmed was alarmed by that because it had an air of finality.

24. The claimant then left, giving Mr Juhel a lift with him in his car. Mr Juhel was referred to above. He had witnessed the conversation up in Mr Ahmed's office upstairs. Apparently the claimant said nothing to him in the car on the way back. That seemed curious considering the claimant had just been so upset. The claimant never appeared at work again.

25. Mr Ahmed was alarmed particularly by the tensor card being left there. He contacted Mr Shamim again. He said to him that the claimant had left his tensor card and that it looked as though the claimant was not therefore coming back to work.

26. Mr Ahmed had assured the claimant that the matter would be fully investigated with Mr Srodecki and the claimant. The managers would try to resolve the controversy that had arisen between the claimant and Mr Srodecki, for whatever reason. The claimant seemed deaf to this request to return the next day and unimpressed, or oblivious to the assurances that his complaint about Mr Srodecki would be properly investigated. He refused to countenance it. The claimant's mood had become dramatically worse when Mr Shamim expressed surprise and incredulity that Mr Srodecki would have been abusing his position of power for as long as the claimant alleged.

27. The telephone conversation with Mr Shamim took place by speaker phone. This has been disputed but I do not see how it would have been practicable if it was not on speaker phone.

28. The claimant further alleges in these proceedings that Mr Shamim acknowledged that Mr Srodecki had dismissed the claimant, and that he stated that he had been right to dismiss the claimant. This is a later allegation made by the claimant. It seems to be an allegation he has made to get round the fact that Mr Srodecki had no authority to dismiss (the respondent's case). Mr Shamim by contrast has authority. It was not the claimant's original case. The letter before action, written on the claimant's behalf by Whitechapel Legal Advice Centre, dated 12 December 2014, attributes the act of dismissal to Mr Srodecki.

29. Mr Shamim in evidence in these proceedings has always, consistently, wholly denied saying anything about dismissal to the claimant. This means nothing to him at all.

30. So, what was the respondent thinking in the meantime? On the night on 18 November 2014 Mr Ahmed telephoned Mr Shamim and said that the claimant had left his tensor card and asked him to telephone the claimant to make sure that he would come back the following day. Mr Shamim rang either late that night or after midnight in the small hours of the following day, 19 November. The claimant stated at that stage he was in bed and his mobile phone was not in the bedroom; it was downstairs in the living room, he did not answer it. His two boys also sleep upstairs which is why he does not have the phone in the bedroom.

31. Mr Shamim telephoned again the next morning on two occasions, sometime around 8 - 9 am he states, at a time when the claimant says he was taking the boys to school. The claimant simply did not pick up his telephone. The claimant did not return the calls. There is no suggestion that he did not have a good relationship with Mr Shamim. Indeed, the claimant had telephoned him directly on 3 November to ask if he could come back early from sick leave. The lines were open between the two. The claimant did not telephone Mr Tarif Ahmed either. He was totally silent.

32. To the respondent's thinking, this behaviour resembled the period when the claimant went to Bangladesh and overstayed his four week holiday by staying for six weeks and three days, and saying nothing. When he eventually came back, Mr Shamim, who was remarkably tolerant and laid back, waived the matter and welcomed him back. That is the spirit of brotherhood. Obviously the extra weeks were unpaid leave, but other managers in other workplaces might have chosen to start disciplinary proceedings. Many people have been disciplined in the workplace for overstaying on holidays. During the time that he had been away in Bangladesh nobody contacted him and he eventually just came back. The respondent thought the claimant had simply gone off work in circumstances where he was fed up and angry. He felt Mr Shamim had been disloyal. There were also concerns over the claimant's health.

33. The respondent thought that this behaviour was not out of character for the claimant. It was also complicated by the fact that the claimant had this unfortunate heart condition (at the age of 39). It is a serious condition which he needs to take care with. (Since termination, the claimant been receiving employment and support allowance, which he would not receive if he was officially fit for work. He has to submit medical notes and to attend workplace capability assessment reviews, as conditions of continued receipt of that benefit).

34. It seems to me that the claimant must have instructed his solicitors that he did not want to go back to work and that he just wanted to bring a claim and to either settle it for an amount of money or pursue it.

35. At the request of the claimant I have been shown a certain amount of material that is technically "without prejudice". The claimant has wanted this material to be seen by the tribunal. He argues it was not actually without prejudice in nature. There was controversial correspondence between the parties in the run up to this hearing. I am grateful to have been spared an application at the start of the hearing. A sheaf of authorities on legal professional privilege and "without prejudice" privilege was also handed in but not ultimately relied upon. It was resolved by agreement that the amount of prejudice this material would cause would be minimal. I agree that the material shows nothing particularly sinister about the respondent's reactions to the claimant upon receipt of his ET1 claim.

36. The ET1 was presented to the tribunal ultimately on 17 April 2015. Early conciliation with ACAS started on 6 February, within time relative to a termination date of 18 November 2014.

37. The claimant has done very little work since termination, stating it is because of his health. The claimant's heart condition has not cleared up despite the surgery. He is not fully fit to work but he works for 14 hours per week and receives tax credits now.

38. There was a letter before action on 12 December 2014. The respondent did not reply until January 2015. Whitechapel Legal Advice Clinic sent a chasing letter on 2 January 2015, asking for the P45, a copy of the claimant's contract, the grievance procedure, and a written statement of reasons for dismissal. Initially, Mr Keith Rawlings, the respondent's HR Director based at the head office in Cwmbran, responded that he needed to see official confirmation that Whitechapel Legal Advice Clinic was actually instructed by the claimant, which confirmation was provided on 6 January 2015. That reply crossed with a response from the respondent enclosing all the requested documentation. That response also stated:

"For the record you were not summarily dismissed by Piotr Srodecki warehouse supervisor on the day in question and we consider you still to be a member of our staff. Mr Shamim maintains that on 18 November you failed to carry out a reasonable instruction from Piotr by failing to serve a customer. This resulted in you going up to the office to talk to Tarif about the issue. You will recall you also spoke to Mr Shamim on the phone in an attempt to defuse the matter. It was hoped you would resolve the issues and continue working. As we understand it following that call you handed in your tensor card but Mr Shamim has not at any stage considered you to be dismissed. He has attempted to contact you to talk about your absence but you failed to accept his telephone calls. Again, for the record we have no record of you requesting a P45 and would have questioned the reason for you asking as we still consider you to be an employee In an effort to make progress can I suggest you contact Mr Aqu Shamim to discuss this matter."

Thus Mr Rawlings was asking the claimant not to contact him but to contact Mr Shamim, knowing that the local manager would be a good person to talk to, and also someone who could speak Bengali.

39. There was a subsequent "without prejudice" letter on 15 January 2015 from Whitechapel Legal Advice Clinic . I have not been shown that but I have been shown the response, which is not without prejudice, on 22 January 2015. It states again:

"We are of the opinion that Mr Surab was not dismissed. He still remains on the payroll and that is the reason he hasn't been issued with a P45. His continued absence and his failure to make contact with Mr Shamim to explain his absence is a concern to us and we would urge Mr Surab to get in contact with us to explain his absence or we may be forced to consider that his continued absence as repudiation of contract. Finally, we would urge Mr Surab to contact Mr Shamim to resolve the outstanding differences. As Mr Surab will have seen we also have a formal grievance procedure which we would urge him to use."

40. There does not seem to have been an answer to that. Subsequently Mr Rawlings wrote again on 6 February 2015 stating:

"We are still of the opinion that there is a genuine misunderstanding on the part of your client. We would like to resolve this matter within our own procedures. We would urge Mr Surab to take out a formal grievance in order that we can resolve this. If he doesn't wish to speak to Mr Shamim I would be more than happy to meet with him to discuss his options."

41. That letter also enclosed statements from many employees about the circumstances of 18 November 2014. Statements from Tarif Ahmed, Piotr Srodecki, Mr Aqu Shamim, Mr Moynul Ahmed (not called as a witness in this case), Mr Abdul Juhel and even one from Mr Akbar Hussain, the manager of Masala Bazaar which does not actually say very much about the night in question because it appears it was inherently unmemorable. It did not become a controversial issue until after the event.

42. Since leaving, the claimant has still been earning the national minimum wage but only for 14 hours per week. Thus his actual income from employment has dropped, but with employment and support allowance and a £100 tax credit, and housing benefit the total loss has not been disproportionately large. The claimant may well have known at the time that his prospect of returning to full work was not good in the immediate future. For the last weeks of his employment, the claimant was only paid statutory sick pay varying between £50 and £80. That was clear from the pay slips I was shown. His current financial situation is therefore better than it had been when he was off sick in employment.

43. On that evidence, I have to decide whether the claimant was directly dismissed or in the secondary alternative as the claim is put – constructively dismissed.

Conclusions

44. I cannot come near to finding that the claimant was directly dismissed. There is no particular law on this, save that ambiguous words or conduct need to be interpreted in the light of all the surrounding events, which the tribunal has been able to do over a two day hearing. I should not focus too narrowly on the disputed events of 18 November 2014. I have considered the non-return from holiday, the subsequent events, and the likely potential financial motivation where the claimant might make more out of a claim than actually returning to work in circumstances where his sickness absence might have continued. As I say, that financial aspect was not fully investigated through the course of this hearing. We agreed that we would not be looking at remedy, although in any disputed dismissal case the subsequent events are of relevance to the motive for any apparent resignation, as the respondent contends the claimant did.

45. When there are ambiguous events and the whole situation is up in the air, that there may be, as Mr Rawlings put it "a misunderstanding" then the fact that the respondent stated

that they considered he was still employed and urged him to get in touch is highly relevant. The claimant would apparently have none of it. When pressed on this at the hearing, particularly by myself as the Judge, he replied repeatedly that his solicitor had replied to the letters and secondly that his solicitor advised him that if he did go back that he would be out again in a couple of days, as if saying the respondent basically knew that they had unfairly dismissed him and wanted to wind the process back, get him in so that they could fairly dismiss him, imputing those motives to the respondent. I can find no such motives in the respondent; in fact, all the evidence is that everyone was well disposed towards him and this is despite the fact that Mr Srodecki was critical of him for being slow. It appeared when Mr Srodecki was pressed on this, that a number of warehouse operatives were slow and could be criticised for their rate of work. I consider that Mr Shamim is genuinely well disposed towards the claimant and that the claimant must have been shocked with the apparent display of disloyalty to the brotherhood and maybe to the faith when Mr Shamim spoke up for Mr Srodecki, apparently disbelieving that Mr Srodecki was guilty of long term abuse of his position.

46. I saw enough “without prejudice” material to know that the claimant made an offer to settle of £5,000. Mr Rawlings commented, in view of the strength of the case and the likely compensation, it was an excessive amount. All I know is that the case has not been settled, it has been fought.

47. I find that the claimant basically walked away on 18 November 2014 and did not intend to come back. He was not interested. I do not find that the respondent was remiss in not repeatedly asking him what was going on. Mr Shamim is responsible for some 65 or more employees and it is a busy warehouse at a busy time of year. The claimant had done this before and it appears the respondent had been very accommodating and they might well have been accommodating again. It was just up to the claimant to come back when he was ready, or to get in touch, but he never did.

48. The respondent was then shocked to receive a tribunal claim and a version of events which they found unrecognisable. It appeared that the claimant simply walked off the job and that with retrospect could be interpreted as a resignation with effect on 18 November 2014.

49. If the claimant was not directly dismissed, was he entitled to resign? Again I have found no conduct on the part of the respondent which would have entitled the claimant to resign. This depot is a benign, supportive and friendly place to work. I commended Mr Rawlings’s final letter referring to the matter as a misunderstanding. He was not occupying the “moral high ground”. He was playing it as low as possible so the claimant would not have had to lose face in order to come back to work. That was diplomatic; it could not have been easier for the claimant to come back to work if he had wanted. He cannot have wanted to and must have instructed his solicitor accordingly. He may well have had good reason for that, as I have suggested, if it was likely that he was going to continue to be off sick. He has now found work nearer to home, and that saves him from driving to and from Barking, and every night.

50. Was he constructively dismissed? I cannot find he was. Yes, Mr Srodecki did call him something like a “fucking lazy bastard”. It was provoked. Mr Srodecki was rebuked by Mr Tarif Ahmed for using that language. The respondent seems to have owned the

problem and was going to resolve it, but the claimant would apparently have none of it. He, rather than they, occupied the moral high ground, which was not helpful.

51. I find many of the claimant's allegations (particularly the one about returning to work on 2 November) to have been completely false. They did not therefore help his credibility as a witness. Other things he said did not hang together well in a logical way. He was forgetful and extremely erratic on areas of evidence which were not actually rehearsed before this claim. He sought to repeat the same answers at this hearing parrot-fashion, as if clinging to a known script. Often the sequence of events did not hang together well.

52. Ultimately, the claimant's explanations or attempted explanations of why he did not get in touch with the respondent were not remotely convincing (deferring to his solicitors etc). I do not consider the respondent failed in any duty to get in touch with the claimant in circumstances where the claimant simply would not pick up his telephone and would not reply to missed calls. I cannot find anything that comes near, either cumulatively or individually, to a repudiatory breach or a breach of the implied term of trust and confidence in the respondent's conduct for the purposes of section 95(1)(c) of the Employment Rights Act 1996.

53. Accordingly, the claims for wrongful and unfair dismissal have to fail in the circumstances where there is no dismissal.

Costs

54. Following the announcement of the judgment, the respondent made an application for costs, which came as no surprise because I was made aware at the start of the hearing that there had been a letter written "without prejudice save as to costs" shortly before the start of the hearing, dated 13 October 2015. The claimant's representative wanted it disclosed. It has not been disclosed until after judgment on liability has been announced. The letter is wholly unexceptional. As a Judge I have seen many of these.

55. Based on the findings it was going to be likely that I would make some order for costs in this case. I took detailed evidence on the claimant's disposable income. I was greatly helped by the claimant's wife Ms S Khatoun. She has been extremely open and helpful and has the details at her fingertips. They are council tenants; they live in Bow, Tower Hamlets. There is evidence as to a loan with still £1,700 outstanding and about 18 months to pay, and detailed figures which I shall not repeat. From the figures it appears that they have a monthly shortfall of approximately £100 before considering phone bills and school uniforms and TV licence. The family qualifies for free school meals and the claimant qualified for partial remission of the issue fee, but full remission of the hearing fee. It seems to me that under Rule 84 the claimant has a very limited ability to meet an order for costs.

56. From what I have seen of this case, I consider it is possible that the respondent may choose not to enforce an order for costs. I consider it would be wrong of me not to make any costs order. The prerogative of mercy is in large measure with the receiving party. Where I have made findings such as I just have, the receiving party is entitled to expect some order in its favour. The claimant's conduct in bringing and pursuing these proceedings has not been reasonable. That is despite the fact that he has been

conspicuously well supported and represented by the Whitechapel Legal Advice Clinic. They have made the best possible of a poor hand.

57. The respondent has asked for counsel's brief fee of £5,500 and also the attendance expenses of Mr Davis which are, I am satisfied, legal expenses. He has come from Wales and stayed overnight and has noted the proceedings. That means they are asking for £5,846.50.

58. They would not be entitled to get VAT on any part of their costs because the receiving party is Euro Foods Group Ltd which is VAT registered. So, the total is £5,786.50. I am not going to grant this full amount, but I should make an award of £1,000 costs which I consider is affordable within a reasonable time without causing extreme hardship.

Employment Judge Prichard

31 December 2015