Case Number: 2301188.2016
2302427.2016

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Ms N Ezeike	and	Laing O'Rourke Services Ltd

JUDGMENT ON AN APPLICATION FOR RECUSAL

Held at Ashford on 21 July 2017

Representation	**Claimant:**	Mr J Algazy QC, Leading Counsel
	Respondent:	Mr N De Silva, Counsel

Employment Judge Kurrein

JUDGMENT

The Claimant's application is not well founded and is dismissed.

REASONS

1 These reasons should be read in conjunction with all earlier Orders, Schedules and relevant correspondence.

The Application

2 The application that I should recuse myself from further case management involvement, and from the trial listed for fifteen days from 6 November 2017, was made in a letter from the Claimant's solicitors dated 30 June 2017. It set out the grounds for the application over six closely typed pages.

3 At the start of the hearing I informed the parties that as I had not been allocated to hear the substantive claim I could not recuse myself from it, and would confine my decision to further involvement in case management.

The Hearing

4 The application came before me on 21 July 2017, for which hearing the Claimant instructed a stenographer to attend.

5 I was provided with the following:-

5.1 A bundle containing over four hundred pages of documents, of which only about 50 specifically related to the application..

5.2 A witness statement from the Claimant's solicitor, Ms Dutt, containing 54 paragraphs extending over 17 pages, dated 18 July 2017.

5.3 A substantial bundle of authorities on behalf of the Claimant.

5.4 Five authorities on behalf of the Respondent

5.5 Skeleton arguments on behalf of each of the parties.

5.6 A transcript prepared by the Claimant of the hearing on 20 June 2017. The transcript was accepted as accurate by the Respondent and me for the purposes of this hearing, subject to the respondent's proviso that: –

5.6.1 It did not reflect Ms Dutt's conduct at the hearing on 20 June 2017, when, among other things, she was unable to deal with questions I put to her in the course of the hearing; and

5.6.2 The Respondent had not had sight of that transcript or Ms Dutt's statement before it completed its skeleton argument.

Ms Dutt's statement - admissibility

6 I was concerned at the content of the statement provided by Ms Dutt because it appeared to me to largely consist of her or her client's opinion on what had taken place at earlier hearings, whilst I would have to consider the issue from the point of view of an independent objective observer.

7 I heard submissions from each party as to the admissibility and relevance of Ms Dutt's statement.

8 I ruled that statement inadmissible on the following grounds:-

8.1 No Order had been made for evidence to be given at the hearing.

8.2 It was common ground I had to apply the test set out in Porter v. McGill [2002] AC 357, subject to various nuances advanced by the Claimant,

> "Whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

8.3 I took the view that in those circumstances:-

8.3.1 the views and opinions of Ms Dutt and/or her client (which were already set out at length in the letter of application) were irrelevant; and

8.3.2 there was a real danger that my assessment of that test might be inadvertently coloured by that evidence.

8.4 What was actually said and complained of at the hearings was not substantially in dispute.

8.5 It would be impracticable to hear that evidence and read all the documents in the bundle, and cross examination on it and them: the hearing was listed for a ½ day; I was not available again for at least a month; and there was an important interlocutory application regarding disclosure outstanding. In the event the hearing did not conclude until 14:40.

8.6 It would be contrary to the overriding objective to admit it.

Summary of application

9 The Claimant alleged that I had "exhibited an apparent bias and lack of impartiality" in favour of the Respondent "and against the Claimant, her representatives, and the Claimant's case."

10 The Claimant relies on matters that arose in the course of various hearings, the most recent being the hearing on 20 June 2017.

General observations

11 I have always sought to deal with the case management of complex cases where both parties are professionally represented in a discursive manner in the hope that directions can be largely, if not entirely, the subject of agreement. For that reason I try to conduct preliminary hearings ("PH"), formerly known as Case Management Discussions, in as informal a manner as is consistent with ensuring compliance with my legal obligations, particularly those set out in the overriding objective.

12 In the course of such hearings I do, on occasion, give parties an indication of my thinking on issues that may arise. It is my experience that such observations are commonly made by Judges, and are often considered helpful by representatives.

Background

13 I concur with the view expressed by the Respondent in its Skeleton Argument to the following effect:-

13.1 The extensive nature of the case management required in this matter arose from the lack of clarity in the manner in which the Claimant's case was presented.

13.2 At the hearing on 20 June 2017 Miss Dutt was ill-prepared, in that she could not promptly refer me to documents she sought to rely on, and was unable to identify issues with clarity. She rudely interrupted me on several occasions: her manner was unhelpful.

14 It is right to record that I am aware that:-

14.1 Miss Dutt has presented a slightly amended version of her letter of application as a complaint against me of Judicial Misconduct.

14.2 Counsel who appeared for the Respondent at the hearing on 20 June 2017, Miss C Davis, has responded to an enquiry made in the course of an investigation into that complaint in terms that are critical of the manner in which Miss Dutt conducted herself in the course of that hearing.

Matters of Complaint

15 I try to deal with these chronologically, with suitable cross references to the numbered paragraph in the letter of application in which the matter is raised.

<u>Hearing on 2 December 2016 – taking the initiative (paragraph 11)</u>

16 It is complained that I took the initiative in requiring the Claimant to provide full particulars of her claim. I did not do so.

17 In fact the Respondent, in its first ET3, pleaded:-

17.1 The manner in which the claim had been presented was inconsistent with the overriding objective and was vexatious and unreasonable (para. 2.2); and

17.2 Repeatedly asserted that the Claimant's claims were not particularised (paras. 6.7.1, 6.7.2, 6.7.5).

18 The Respondent apparently made a request for additional information dated 16 November 2016.

19 In the Joint Case Management Agenda for the hearing the Claimant accepted that she should provide Scott Schedules of her discrimination and whistleblowing claims in response to the Respondents request of 16 November 2016, and stated she would do so before the PH took place.

20 As far as I am aware I have not seen the Respondent's request or the Scott Schedules supposedly then prepared by the Claimant.

21 The Claimant had made two applications for specific disclosure on 24 November 2016. The first concerned salary information, which is dealt with below. The second sought an Order for no less than seventy eight different classes of document. I accepted the Respondent's submission that that application was premature: the claims and issues had not been identified and there was no suggestion that any future Order for disclosure would not result in voluntary disclosure of many, if not all, the documents the subject of the application..

22 However, in all the circumstances at that time it was entirely appropriate to make the Orders I did. In claims of this nature it is essential that the individual claims are detailed with the utmost clarity at an early stage so that appropriate disclosure is given and witness statements are confined to matters of relevance. I would have made such an Order even if the Respondent had not indicated it wanted Scott Schedules.

23 I also acceded to the Claimant's application, contrary to my normal practice, of listing the case at this hearing rather than waiting until the claims and issues had been satisfactorily defined.

<u>Reasons of 5 December 2016 – refusal of specific disclosure (paragraph 17)</u>

24 I fail to understand the basis on which it is alleged that part of my reason for refusing specific disclosure of salary information displays a "tainted view" of the Claimant.

25 The complaint implies the opposite: I was attributing greater knowledge to the Claimant than she believed she had.

26 I gave appropriate reasons for refusing that request for specific disclosure: they have not been challenged.

27 I was not critical of the Claimant and did not comment on the merits of her case.

16 January 2017 – incompetent Scott Schedules (paragraphs 12 and 13)

28 My findings in respect of the Scott Schedules provided by the Claimant in response to my Order following the PH on 2 December 2016 are set out in my reasons for the Unless Order I subsequently made. I was critical but not, I believe, patronising, of the Claimant's solicitor's conduct.

29 I believe my reasons are proportionate to the issue under consideration. I was not intemperate in my criticism.

30 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 19 January 2017 – "trying to force a settlement" (paragraph 4)

31 I was, as I explained at the time, seriously concerned at the nature of the Scott Schedules served in purported compliance with my original Order because they complicated, rather than clarified, the nature of the claims. It occurred to me that one explanation for that might be the that the Claimant's representatives were hoping to encourage settlement: such a tactic is far from unheard off.

32 The comment I made does not, in my view, criticise the Claimant or comment unfavourably on the merits of her claims. It did give the Claimant's representatives an indication of my possible thinking regarding their failure to clarify the claims, which in my experience some representatives might have found of assistance.

Hearing on 9 February 2017 – "unwilling to hear Claimant's Counsel" (paragraph 14)

33 The suggestion that I was unwilling to hear Counsel for the Claimant and/or had a closed mind appears to rest on a failure to properly read the note of what took place.

34 At the start of the hearing (p.404) I clarified that the application to vary the Unless Order (which had by then been complied with in full) was being pursued. Counsel then confirmed to me, in response to my question, that she did not wish to add to the letter of application in that regard. I had read that letter in advance of the hearing and had therefore heard her application in full.

35 I then heard the Respondent's submissions. Counsel for the Claimant did not then respond to the Respondent's submissions, but sought to reiterate that which was already set out in the letter of application and/or to take new points.

36 I did not consider the conduct of the Claimant's Counsel to be reasonable or to comply with the overriding objective. The hearing had been listed specifically to clarify the claims, including whether or not it was appropriate to limit the claims to be heard at the hearing listed in November 2017. It was not appropriate to take up a substantial part of the time for that hearing with what, in substance, were applications by the Claimant for reconsideration of the Unless Order.

37 At the point at which I made the comment complained of (p.405) the Claimant had made her submissions on the Unless Order and was simply repeating herself rather than replying to the Respondent's submissions.

38 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 9 February 2017 – "running up the clock" (paragraph 5)

39 I went on to hear her further submissions in which she sought to re-open the specific disclosure point regarding salary information (p.405). I concluded decided there was nothing new to change my original view on the issue (p.407) stating I would give written reasons (p.407).

40 Once again, Counsel for the Claimant sought to repeat points she had made earlier. I could not understand why she was doing so. I specifically asked her to "let us move on" and she continued to repeat herself. It was in that context I made the comment that she appeared to be "running up the clock, possibly deliberately".

41 I was critical of Counsel for the manner in which she took up time repeating points she had made and which I had acknowledged. I may have been exasperated by her failure to allow me to determine the manner in which the hearing should be conducted, however there is no criticism of my tone or manner.

42 I was not critical of the Claimant or the merits of her case.

Hearing on 20 June 2017 – "repleading" comment (paragraph 16)

43 In the course of a discussion regarding the extent of Event 7 (p.414-415) and the allegation of a conspiracy and "misleading evidence" I suggested that the allegation was inadequately particularised. The Claimant's solicitor sought to rely on the previously rejected Scott Schedules as further and better particulars regarding the allegations in Event 7 in respect of five of the named individuals. I simply stated, in terms, what my findings had been in respect of the original Scott Schedules.

44 Those Scott Schedules were not part of the case and, even if parts of them were to be accepted as further particulars, there remained outstanding the necessary particulars in respect of the eleven other alleged conspirators. The relevant part of the Scott Schedule is (partly?) Event 26 at p.219. I did have regard to it.

45 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – comment re XX of Mr O'Rourke (paragraph 6)

46 Miss Dutt told me that the Claimant wished to cross examine the nine alleged conspirators in respect of Event 7 who were not already being called as witnesses.. That was in the context that five of the alleged conspirators in respect of Event 7 were already witnesses in respect of Events 1 to 6 and 8 to 12. I did speculate whether the Claimant wanted to ensure Event 7 was heard as a substantive claim because of a wish to cross examine Mr O'Rourke.

47 Mr O'Rourke was one of the nine alleged perpetrators of Event 7 who the Claimant undoubtedly did wish to cross examine, as Miss Dutt had said. He was the most senior executive of all those identified as perpetrators in any of her claims. In the absence of his being identified in Event 7 he was unlikely to be a witness in the case.

48 My comment was one of speculation. It was not pejorative and was not put to the Claimant: I was speaking to Miss Dutt. It did not suggest an improper motive, simply a motive.

49 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – "experienced litigator" comment (paragraph 7)

50 This comment (p.418 – 419) was made in the context of discussions regarding specific disclosure and the extent of disclosure that would be required if Event 7 remained as a substantive claim.

51 I was concerned that only very shortly before the hearing started Miss Dutt had given Counsel for the Respondent and my Clerk a substantial bundle of documents and a Schedule which purported to set out the Respondent's position on numerous issues between the parties. The Respondent had not approved of or seen any part of the Schedule before, and had had no opportunity to consider it. Despite this Miss Dutt, who had highlighted some parts of the Schedule, sought to rely on it. In the circumstances I considered that inappropriate.

52 I was critical of Miss Dutt: an experienced litigator would not have produced such a schedule in such a manner at such a late stage. The parties' respective positions were already set out in the Appendix to the Respondent's letter to the Claimant of 19 June 2017.

53 I was not intemperate, patronising or disrespectful. I dealt with matters on the basis of the documents in the file I was referred to and oral submissions.

54 I was not critical of the Claimant and did not comment on the merits of the case.

Hearing on 20 June 2017 – "filing cabinets" comment (paragraph 8)

55 I made this comment (p.419) as shorthand for my preliminary view of the vast extent of the documentation that might be disclosable even if Event 7 was solely part of the "background material" . It was made to the Respondent's Counsel, who had indicated that the Claimant had not specified what documents were sought regarding Event 7, and who subsequently went on to illustrate the difficulty posed by the nature of the Claimant's accusations and the extent of the disclosure that might be required.

56 There had been no application for specific disclosure of relevant classes of documents in respect of Event 7, and my comment was not in respect of any such application. I did not ignore the Claimant's submissions. The Claimant accepted (p.421) that she was not seeking further disclosure in respect of Event 7.

57 I gave full reasons for the decisions I made at this hearing: they have not been challenged.

58 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – sigh (paragraph 18)

59 This is a p.421. The occasions on which Ms Dutt objected to any suggestion I may have made that her client might be at fault for delaying the proceedings are not clearly identified.

60 The extent to which the Claimant's claim and its prosecution were proportionate may be gauged from the history and content of the documentation it has generated to date. The correspondence was not helpful on this issue.

61 My sigh was generated by what appeared to me to be Ms Dutt's apparent need to seek a ruling or Order on the minutiae of the issues that arose: she was not content to accept the Respondent's responses or, if they were not acceptable, to seek clarification from the Respondent. Instead she made a request that I deal with the issue of whether some documents never existed. That was disproportionate.

62 My sigh was born of exasperation at Miss Dutt's failure to conduct her client's case in a proportionate manner and to comply with the overriding objective. It is my view that this attitude is reflected in the tone, nature and extent of the letter of application with which I am dealing.

63 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – one-sided approach (paragraph 19)

64 It was common ground that disclosure had not been completed and the bundles had not been finalised or compiled. The issue of fault was not of great relevance. I was concerned with getting the case on track.

65 Disclosure was discussed at considerable length (p.420 – 427).

66 By the conclusion of the hearing I believed I had dealt with all outstanding matters relating to disclosure. I gave directions and provided appropriate reasons for my decisions which have not been challenged.

67 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – specific disclosure (paragraph 20)

68 Once again, the relevant passages are not identified.

69 I am unclear how, if at all, this differs from the complaint at paragraph 19.

70 The specific items sought by the relevant application for specific disclosure were those relating to the Claimant's selection for redundancy and the grievance investigation file and grievance investigation report.

71 Both these matters were dealt with in detail in the Appendix to the Respondent's letter to the Claimant of the 19 June 2017.

72 There were no grounds on which I could reasonably make an Order in light of what the Respondent set out in that Appendix.

73 I gave appropriate reasons for my decision to refuse specific disclosure which have not been challenged.

74 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – "timescales" comments (paragraph 9)

75 On 19 June 2017 the Respondent had written to the Claimant to set out its position on the trial bundle, illegible and redacted documents, missing documents and specific disclosure. It had an Appendix which set out the Respondent's position in respect of the Claimant's applications for specific disclosure and, in respect of some classes of documents, informed the Claimant it would carry out further searches.

76 Miss Dutt's statement regarding timescales was, I thought, bordering on the ridiculous. Just the day previously she had been told the Respondent would conduct further searches, yet she appeared to me to be seeking an Order imposing a timescale. I thought her conduct to be entirely contrary to the overriding objective and said no more than that (p.421).

77 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – disclosure re comparator (paragraph 21)

78 This issue is discussed at p.422 – 423.

79 The applications for disclosure made by the Claimant in this regard prior to the hearing on 20 June 2017 was for,

> "Documents relating to the comparators Karen O'Brien and Tom Shaw"

80 In the Respondent's Appendix to its letter of 19 June 2017 it dealt with this request by responding,

> "This request is not specific enough. The Claimant has not indicated what documentation she believes the Respondent has in its possession and has not disclosed."

81 I was concerned that the Claimant's request was not specific and in the course of the hearing she appeared to be changing her ground as to what was relevant and disclosable. Miss Dutt did not put forward the terms of what might be a suitable Order for specific disclosure at any time, and it was not appropriate to make such an Order at short notice in the course of the hearing. It was and is open to Miss Dutt to reformulate her request appropriately.

82 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 – allegation of "no interest" (paragraph 15)

83 The comment by Miss Dutt (p.424) and was made toward the end of a three hour hearing in which there were a great many exchanges of substance between us. It is self-serving and subjective. I thought it intemperate.

84 To the extent she intended to refer to what had already taken place it was evidently not accurate: I had heard each of the submissions she made, discussed it with her and the Respondent, and made decisions appropriately.

85 If Miss Dutt was intending to refer to what she intended to say in the future she clearly could not anticipate my response.

86 In either case she does not identify any issue in which I showed "no interest".

87 I was not critical of the Claimant and did not comment on the merits of her case.

Hearing on 20 June 2017 - "unmanageable" and "state trial" (paragraph 10)

88 These comments are at p.424.

89 I was concerned that the case would become unmanageable because of the huge volume of documentation that was being generated by the Claimant's claims and requests for disclosure. I considered it disproportionate. By way of example, the Claimant had sought "documents" relating to identified comparators, without identifying the relevant class or classes of documents that were sought in light of the nature of the claim in which those employees were allegedly appropriate comparators.

90 The difficulty created by the potentially vast scope of disclosure was a substantial part of my reasoning for relegating Event 7 to "background material": see the Reasons for the Case Management Order of 20 June 2017.

91 I was not critical of the Claimant and did not comment on the merits of her case.

The Law

92 I was provided with copies of the following authorities:-

Locabail v. Bayfield Properties etc [2000] IRLR 96

Johnson v. Johnson (2000) 201 CLR 488

Porter v. McGill [2002] 2 AC 357

Lodwick v. London Borough of Southward [2004] IRLR 504

Gillies v. Secretary of State for Work and Pensions [2006] 1 WLR 781

Ansar v. Lloyds TSB Bank plc (2006) ICR 1565

Ansar v. Lloyds SB Bank plc [2007] ICR 211

Oni v. NHS Leicester City (2013) ICR 91

JSC BTA Bank v. Ablyazov (2013) 1 WLR 1845

Otkritie v. Uromov (2014) EWCA Civ 1315

Al-Zawawi v. Newson-Smith (2016) EWHC 2796

93 I took the view that this plethora of authorities did little to alter my initial view that in considering my position I should have regard to the principles set out by Burton J. in the EAT in Ansar v. Lloyds TSB Bank plc (2006) ICR 1565, as approved by the Court of Appeal,

> "1. The test to be applied as stated by Lord Hope in Porter v Magill [2002] 2 AC 357, at paragraph 103 and recited by Pill LJ in Lodwick v London Borough of Southwark at paragraph 18 in determining bias is:
>
> whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

2. If an objection of bias is then made, it will be the duty of the chairman to consider the objection and exercise his judgment upon it. He would be as wrong to yield to a tenuous or frivolous objection as he would to ignore an objection of substance: Locabail at paragraph 21.

3. Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour: Re JRL ex parte CJL [1986] 161 CLR 342 at 352, per Mason J, High Court of Australia recited in Locabail at paragraph 22.

4. It is the duty of a judicial officer to hear and determine the cases allocated to him or her by their head of jurisdiction. Subject to certain limited exceptions, a judge should not accede to an unfounded disqualification application: Clenae Pty Ltd v Australia & New Zealand Banking Group Ltd [1999] VSCA 35 recited in Locabail at paragraph 24.

5. The EAT should test the employment tribunal's decision as to recusal and also consider the proceedings before the tribunal as a whole and decide whether a perception of bias had arisen: Pill LJ in Lodwick, at paragraph 18.

6. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without something more found a sustainable objection: Locabail at paragraph 25.

7. Parties cannot assume or expect that findings adverse to a party in one case entitle that party to a different judge or tribunal in a later case. Something more must be shown: Pill LJ in Lodwick above, at paragraph 21, recited by Cox J in Breeze Benton Solicitors (A Partnership) v Weddell [2004] All ER (D) 225 (Jul) at paragraph 41.

8. Courts and tribunals need to have broad backs, especially in a time when some litigants and their representatives are well aware that to provoke actual or ostensible bias against themselves can achieve what an application for adjournment (or stay) cannot: Sedley LJ in Bennett at paragraph 19.

9. There should be no underestimation of the value, both in the formal English judicial system as well as in the more informal employment tribunal hearings, of the dialogue which frequently takes place between the judge or tribunal and a party or representative. No doubt should be cast on the right of the tribunal, as master of its own procedure, to seek to control prolixity and irrelevancies: Peter Gibson J in Peter Simper & Co Ltd v Cooke [1986] IRLR 19 EAT at paragraph 17.

10. In any case where there is real ground for doubt, that doubt should be resolved in favour of recusal: Locabail at paragraph 25.

11. Whilst recognising that each case must be carefully considered on its own facts, a real danger of bias might well be thought to arise (Locabail at paragraph 25) if:

a. there were personal friendship or animosity between the judge and any member of the public involved in the case; or

b. the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or,

c. in a case where the credibility of any individual were an issue to be decided by the judge, the judge had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or,

d. on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on their ability to try the issue with an objective judicial mind; or,

e. for any other reason, there were real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues."

Further findings

Specific Events

94 On the basis of my above analysis of the events complained of and in light of my understanding of the applicable law I make the following further findings in respect of those events, in the same order.

Hearing on 2 December 2016 – taking the initiative (paragraph 11)

Reasons of 5 December 2016 – refusal of specific disclosure (paragraph 17)

16 January 2017 – incompetent Scott Schedules (paragraphs 12 and 13)

95 I cannot accept that a fair-minded and informed observer, having considered the facts, would conclude that there was any impropriety whatsoever in respect of my conduct in the above events.

Hearing on 19 January 2017 – "trying to force a settlement" (paragraph 4)

96 I take the view that this comment falls squarely within the sort of dialogue that commonly takes place in case management discussions in the Employment Tribunal, as is referred to in paragraph 9 of Burton J's guidance.

Hearing on 9 February 2017 – "unwilling to hear Claimant's Counsel" (paragraph 14)

97 I cannot accept that a fair-minded and informed observer, having considered the facts, would conclude that there was any impropriety whatsoever in respect of my conduct in this regard.

Hearing on 9 February 2017 – "running up the clock" (paragraph 5)

98 I take the view that this comment falls squarely within the sort of dialogue that commonly takes place in case management discussions in the Employment Tribunal, as is referred to in paragraph 9 of Burton J's guidance.

Hearing on 20 June 2017 – repleading comment (paragraph 16).

Hearing on 20 June 2017 – comment re XX of Mr O'Rourke (paragraph 6)

Hearing on 20 June 2017 – "experienced litigator" comment (paragraph 7)

Hearing on 20 June 2017 – "filing cabinets" comment (paragraph 8)

99 I cannot accept that a fair-minded and informed observer, having considered the facts, would conclude that there was any impropriety whatsoever in respect of my conduct in this regard.

Hearing on 20 June 2017 – sigh (paragraph 18)

100 I take the view that this means of disclosing my thinking falls squarely within the sort of dialogue that commonly takes place in case management discussions in the Employment Tribunal, as is referred to in paragraph 9 of Burton J's guidance.

Hearing on 20 June 2017 – one-sided approach (paragraph 19)

Hearing on 20 June 2017 – specific disclosure (paragraph 20)

101 I cannot accept that a fair-minded and informed observer, having considered the facts, would conclude that there was any impropriety whatsoever in respect of my conduct in this regard.

Hearing on 20 June 2017 – "timescales" comments (paragraph 9)

102 I take the view that this comment falls squarely within the sort of dialogue that commonly takes place in case management discussions in the Employment Tribunal, as is referred to in paragraph 9 of Burton J's guidance.

Hearing on 20 June 2017 – disclosure re comparator (paragraph 21)

Hearing on 20 June 2017 – allegation of "no interest" (paragraph 15)

103 I cannot accept that a fair-minded and informed observer, having considered the facts, would conclude that there was any impropriety whatsoever in respect of my conduct in this regard.

Hearing on 20 June 2017 - "unmanageable" and "state trial" (paragraph 10)

104 I take the view that this comment falls squarely within the sort of dialogue that commonly takes place in case management discussions in the Employment Tribunal, as is referred to in paragraph 9 of Burton J's guidance.

Generally

105 I accept that I have been critical of the manner in which the Claimant's case has been presented and conducted by those acting on her behalf. I am content that such criticism has been justified in all the circumstances of the case. It has been proportionate, temperate and no criticism has been made of the tone or manner in which such criticism has been made.

106 I also accept that I have made comments in the course of the hearings that may have been unwelcome, but I cannot accept that they were in such extreme or unbalanced terms as to call my impartiality into question.

107 I have not expressed any views on the merits of any of the Claimant's claims. I have not criticised her or any potential witnesses, or made any adverse findings on her credibility.

108 I have concluded that the complaints made concerning my conduct are wrong in fact and/or are a consequence of the Claimant's and/or her representative being unduly sensitive or suspicious.

109 In light of all my above findings I have determined that a fair-minded and informed observer, having considered the facts, would conclude that there was no real possibility that I was biased. This is not a case where there is a real ground for doubt.

Employment Judge Kurrein
23 August 2017