Case Number: 2302383/2016

THE EMPLOYMENT TRIBUNAL

SITTING AT:	**LONDON SOUTH**	
BEFORE:	**EMPLOYMENT JUDGE MARTIN**	
Members	**Ms R Bailey**	
	Mr N Shanks	
BETWEEN:	**Mr Per Hedlund**	**Claimant**
	and	
	London Borough of Lambeth	**Respondent**
ON:	**13 August 2018**	

APPEARANCES:

For the Claimant: **Did not attend – written representations received**

For the Respondent: **Mr Dracass - Counsel**

RESERVED JUDGMENT

The unanimous decision of the Tribunal is that the Respondent's application for costs is successful and that the Claimant shall pay to the Respondent £13,000 contribution to its costs.

RESERVED REASONS

1. This is the Respondents application for costs dated 19 December 2017 following the judgment promulgated 20 November 2017. The Respondent was represented by Mr Dracass (Counsel) The Claimant did not attend but provided written submissions. The Claimant says in his submissions that he requested a postponement of the hearing as he had booked returning to Sweden prior to the

notice of hearing. There are no such requests on the Tribunal file, and the Respondent said it had not received any such request either. Given that the Claimant said *"as such I am providing my response in writing instead"* the Tribunal proceeded to hear the costs application in his absence.

2. Add the law 276(1) a and b.

3. The Respondent's application is detailed and sets out the full basis of its application. The Respondent had suggested that the costs hearing was done on the papers to avoid added expense, however the Claimant did not consent tothis and as at 9 August 2018 was indicating that he was going to attend. As mentioned there are no indications on the file that the Claimant had requested any postponement to the hearing. The Respondent prepared a bundle for use at the hearing which included the judgment on costs by EJ Crosfill (The Crosfill Judgment) and the reconsideration of that judgment (The Crosfill Reconsideration) which were promulgated on [ ] and p] respectively. These judgments were in relation to another case which was related to the issues in this case.

4. The Respondent referred to the judgment given by this Tribunal:

5. Paragraphs 11-13:

   11. *The Claimant's witness statement was very short comprising 15 short paragraphs. It did not address the key issues despite them being set out at the case management hearing, save to say that a disclosure was made but giving no information as to why for example, he had a reasonable belief in the allegations, why it was in the public interest and crucially it did not address any causation between the reference given and him not gaining permanent employment.*

   12. *The Claimant provided very limited documentary evidence. What was notable by its absence was any documentary evidence to substantiate his contention that the reason he did not find employment was because of the references given by the Respondent. In his oral evidence to the Tribunal he conceded that he assumed that the reason for not getting employment was because of the references and he did not have anything to back this up.*

   13. *Similarly, there was no documentary evidence to support the matters in his disclosure. The Claimant said he had written things in a notebook which he shredded after the COT3 agreement was reached. This is discussed further below.*

6. Paragraph 21:

   The Claimant said he had spoken to the School about his concerns about how the Centre was run before. The Respondent said no such conversations had taken place. The Claimant produced a document dated 16 December in the bundle. The Respondent's evidence is that this was not received by it. On balance considering that it was not later referred to by the Claimant in his disclosure (see below) and the Tribunal's view of his credibility (see below) the Tribunal find that the document in the bundle was either not sent, or was created later for the purposes of this litigation. The Tribunal find that this document was not received by the Respondent.

7. Paragraph 22:

It was put to the Clamant that he was making threats to raise complaints as he was looking for payoff. The Claimant accepted he was engineering this as he was asking to be paid until the half term. Mr Nichol responded on 20 January 2016 telling him of the process if the Claimant wanted to make a complaint and confirming that the meeting on 26 January 2016 would go ahead.

8. Paragraph 35:

There were documents in the bundle relating to the way the negotiations between the Claimant and the Respondent were conducted before the COT3 being agreed. The Claimant initially objected to them being referred to but then said he did not have an issue with them being before the Tribunal. These documents reveal a bullish attitude by the Claimant and reveal that he suggested he would go to the press. In one document he refers to having 'a ton of evidence' to substantiate his allegations about the School. No evidence was in the bundle and in his oral evidence he said that he was referring to his notebook which varied in his evidence from having 42 or 47 items.

9. Paragraph 41:

The uncontested evidence was that in the space of four years the Claimant either threatened legal proceedings, or took legal proceedings against four separate schools including the Respondent. The London Borough of Wandsworth was the Claimant's previous employer and subject to Tribunal proceedings on the termination of his employment.

10. Paragraph 42:

The Tribunal heard from Mr Ryan the Head of HR Schools for the London Borough of Wandsworth. During his evidence he referred to having been threatened by the Claimant in earlier litigation for defamation and libel and that the Claimant asked for his and his colleagues personal address. He also mentioned that the Sunday before this hearing began, the Claimant sent an email to his line manager threatening libel proceedings. The Tribunal asked for a copy of this email to be given and it was provided on the last day of evidence. The Tribunal offered the Clamant the opportunity to give evidence about this email, but he declined the offer. The Tribunal repeated the offer after an adjournment when the submissions were read but again the Claimant declined. This email was headed "Subject: Brendan Ryan" and went on to say that the witness statement provided to Lambeth by Mr Ryan was factually incorrect, a breach of data protection, the sharing of information of a confidential complaint and made references to allegations that are covered under section 13 of the Education Act 2011 as "as such I will be notifying the police as soon as I have the opportunity".

11. Paragraph 45:

As set out above, the Claimant did not give any documentary evidence to support his assertion that the reason he could not obtain permanent employment was because of the reference provided by the Respondent. As already said, at the least there could have been something from the agencies to corroborate the Claimant's assertions. Given his evidence that he assumed it was the reference which was the problem, the Tribunal infer that he was not told by the agencies that this is the reason they could not find him permanent employment. As submitted by the Respondent, the Claimant was able to find temporary supply work which would be surprising if the reference was as deficient as he alleges.

12. Paragraphs 48 – 50**:**

48. *The Tribunal find that the COT3 is a valid agreement which is binding on both parties. The parties are the London Borough of Lambeth, and the Tribunal is satisfied that there is a*

separation of the school from the London Borough of Lambeth in the agreement. The Tribunal finds that the obligation was on the Respondent (Lambeth) to give the reference and there was no wording agreed. What was agreed was a standard reference. No time scales were provided for in the COT3. As set out above the Tribunal finds that the references were dealt with in a reasonable time and accept the Respondent's evidence that it was not a priority especially at beginning of academic year which is very busy.

49. Even if the reference was outside the terms of the COT3, the tribunal does not consider that the Respondent was materially influenced by the disclosure. What was upper most in their minds was the complaint made against the Claimant and the subsequent disciplinary proceedings. They were concerned about the safeguarding issues raised and also the performance issues which were ongoing before the disclosure as demonstrated by the incident logs, feedback notes and emails set out above and in the chronology. The Claimant refused to cooperate.

50. Even if the Claimant had shown the references were the reason for him not obtaining permanent employment, the Tribunal finds that the reason for the giving of the reference in the form that they took was because of the constraints of the COT3 agreement. The Tribunal accepts the evidence that the disclosure did not materially influence the reference process.

13. Paragraphs 57-59

57. The Tribunal has found the Respondent witnesses without exception to be credible and thoughtful in their responses. They gave reasoned answers and were generally consistent. Any inconsistencies were minor and to be expected when the events are nearly two years old.

58. This is in contrast to the Claimant who the Tribunal did not find to be credible. The Claimant brought his case on 'assumptions' without bringing any evidence to substantiate them. He exaggerated and inflated the remedy sought - he agreed in cross examination that it was wholly unrealistic. His answers to questions were disingenuous for example, about his earnings since the termination of his employment, first saying that he had to live off his savings as he did not have a job, but later having to admit that he had earnt over £30,000 from supply teaching, his explanation that this was because he was self-employed and not employed on a permanent contract is not accepted by the Tribunal. During his evidence he denied lying but admitted not being "transparent".

59. The evidence that the Tribunal heard about litigation with other schools, the demands for monetary settlement and the inappropriate email the Tribunal were shown which was sent about Mr Ryan's witness statement shows a pattern of behaviour.

14. The Respondent referred to two costs warnings. The first in its Grounds of Resistance served with its ET3 on 12 Dec 2016 and the second in a letter dated 25 September 2017. The latter warning gave details as to why the Respondent considered the Claimant's claim would fail which reflect the judgment of this Tribunal.

15. The Respondent's position is that the Claimant acted unreasonably and vexatiously in the bringing and continuing of his claimant that his claim had no reasonable prospect of success.

16. The Claimant send documents with his written response. The Tribunal notes that as at 9 August 2018 the Claimant was indicating that he would be attending the Tribunal as in an email of that date he says: *"simply put - the bundle should be*

the documents provided to the tribunal at the hearing as I will be referring to a number of documents within it to show your continued breach of directions….".

17. The Claimant's papers sent for this hearing show that a property in Syracuse NY was foreclosed and the Claimant relies on this to show he is impecunious. There is nothing to show what interest the Claimant had in the property as it simply states the foreclosure and says that the Claimant should remove any property from the premises. The heading is simply 'Personal Property'. There was no other expiation about this. The other emails provided do not relate to his means or how he conducted the litigation which are an inherent part of the costs application made by the Respondent. The Claimant knows the law and process relating to costs following the Crosfill Judgment and Reconsideration.

18. From this the Claimant knew about requesting adjournments, how means are used in costs applications. The relevant law is set out in great detail in the Crossfil Judgment and Reconsideration, including the statutory test for costs, the definition of a vexatious litigant, and that the Tribunal may take into account the means of the paying party (Vaughan v London Borough of Lewisham [2013] IRLR 713. Notwithstanding this, the Claimant failed to provide any substantive response to the Respondent's' application and failed to provide any evidence as to his means.

19. All he said in his representations were that his income was about £20k over 18 months, but there was no evidence of this. He has not mentioned savings, the settlement received from the Respondent in previous litigation (£17,500), his current earnings or anything about his outgoings. The Respondent referred the Tribunal to p715 of the original bundle which shows that as at 30 June 2016 the Claimant had savings of £65,000. The Tribunal accepts that this sum may now depleted but there is not evidence to say it has been fully depleted. Clearly, he was in substantial funds at that time.

20. The Tribunal is mindful that the Claimant admitted to not being '*transparent'* as referred to in the judgment paragraph 58 where the Tribunal found the Claimant's evidence on means to be disingenuous. On this basis the Tribunal does accept the Claimant's unsupported evidence of financial hardship. The Claimant is working and therefore does have an income.

21. The Claimant refers to without prejudice discussions with the Respondent. These should not be put before the Tribunal, and although the Tribunal did have them in the papers from the Claimant and the Respondent the Tribunal was not specifically referred to them by the Respondent and has not considered them as they are not relevant to the question of costs that the Tribunal has to determine.

22. The Claimant says that he has appealed to the EAT. The Tribunal does not have any papers regarding this, however the Respondent says it is a the sift stage as it was presented late. Whether the claimant has appealed is not relevant to our consideration on costs.

23. The Claimant criticises the Respondent for breaching orders, however this is not an application against the Respondent for costs and this information is therefore not relevant. The Claimant has made an application for reconsideration, this was not put before the Tribunal at time it was made and will be dealt with separately.

24. It is also not relevant that the Respondent decided not pursue its application for a strike out at the start of the hearing, preferring instead to proceed with full merits hearing.

25. The Crosfill Judgment and Reconsideration shows a pattern of behaviour and the Claimant's disregard for the process of this legal process. This has continued into this case and this hearing. As in the previous costs hearing, the Claimant did not say would not be attending (there are no postponement requests on file and none were received by the Respondent) and as of 9 August indicated he would be attending. The Respondent was put to unnecessary expense in attending this hearing when it has requested the matter be dealt with on the papers. Further the Claimant did not send to the Respondent in the submissions and supporting papers which he emailed to the Tribunal on Sunday 12 August 2018. These had to be copied for the Respondent at the start of the hearing.

26. Even taking into account that the Claimant is a litigant in person, the Tribunal finds him to be educated and he has had the benefit of the Crosfill judgment for many months but has failed to address any of the salient points set out in the Respondent's application for costs or provide any satisfactory evidence of his means.

27. Having considered the Claimant's conduct in the round the Tribunal finds that his conduct as whole is unreasonable and vexatious and his claim had no reasonable prospect of success as particularly exemplified by his admission that he had no evidence but 'assumed' the reference was why he did not obtain alternative employment. The Tribunal find the threshold for making a costs award has been met.

The amount of the Costs Order

28. As stated above the Claimant has not provided any satisfactory evidence of his means. The Tribunal is not satisfied from the information before it that the Claimant cannot pay a costs award made.

29. The Tribunal notes the Respondent's hourly rate of £80 per hour which is reasonable. The Respondent has requested summary assessment of costs. The Tribunal awards costs from the date of the second costs warning (25 September 2017). It has considered the costs incurred by the Respondent from that date to the conclusion of the hearing. Counsel's fees are approximately £5,000. The Tribunal has estimated that approximately 1/3 of the solicitor's fees were incurred after this date, which equates to £8,000. Therefore, the total

payable by the Claimant to the Respondent is £13,000.

Employment Judge Martin
Date: 13 August 2018