



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Julian Hilaire

v

Luton Borough Council

Heard at: Bury St Edmunds

On: 13 – 15 August 2018

Before: Employment Judge Laidler

Members: Mrs M Prettyman and Mr B Smith

Appearances

For the Claimant: In person

For the Respondent: Mr N Caiden, Counsel

RESERVED JUDGMENT

1. **The full merits hearing is adjourned to a date to be fixed.**
2. **The Respondent's application to strike out is refused.**

RESERVED REASONS

1. These proceedings were issued in 2014. This 8 day full merits hearing had been listed at a Preliminary Hearing on the 9 January 2018. On the 8 August at the direction of Regional Employment Judge Byrne the hearing was moved from Cambridge to Bury St Edmunds Employment Tribunal as there had 'been a complete breakdown of the air conditioning system at that venue and given current temperatures it is not possible to hold the hearing at Cambridge as listed.' This led to an application to postpone by the Respondent on the 8 August. The Claimant indicated the move had come as a 'massive blow' but that he needed to seek advice about it. There was further correspondence and applications and this Employment Judge directed that all applications would be determined at the outset of this listed hearing. The start time was put back to 11 am to take account of the additional travelling for the parties.

2. At the outset of the hearing Counsel for the Respondent made it clear that it was no longer seeking a postponement. It was however pursuing its application to strike out the claims.
3. In view of the age of these proceedings there is a complicated procedural history. The tribunal proposes to deal with the following in these reasons:
 - a. A summary of the claims brought
 - b. A brief chronology of the procedural steps and appeals
 - c. The Respondent's submissions on strike out and postponement
 - d. The Claimant's submissions on strike out and location of the hearing.
 - e. The relevant law
 - f. The tribunal's conclusions.

Summary of the claims brought

4. One of the difficulties in this case has been that the Claimant has had three sets of solicitors, there have been various versions of a Scott Schedule listing the allegations and there is not really a definitive, narrative list of issues. The following is taken from the original details of claim lodged by Taylor Rose Law LLP on the 10 March 2014:

'The Claimant seeks the following:

- a) Compensation for unfair dismissal award; basic and compensatory;
 - b) A declaration that the Claimant has been discriminated against on the grounds of his race;
 - c) Compensation for injury to feelings in respect of race discrimination, and victimisation;
 - d) Compensation for breach of contract in relation to the Claimant's pension, unpaid wages and interest on the same;
 - e) Holiday pay
 - f) Notice pay.'
5. That claim form was served on the Respondent on the 17 March 2014 with its response due on the 14 April 2014. The Respondent sought and was granted an extension of time to the 12 May 2014.
 6. Before that date, on the 14 April 2014 Taylor Rose Law applied to amend. The letter stated they wished to amend because the Claimant wishes:

'a) to confirm that the Claimant's depression amounts to a disability within the meaning of Section 6(1) of the Equality Act 2010.

b) to confirm that the pleaded claim that the failure to rearrange redundancy interviews so that the Claimant could attend them, amounts to a failure to make reasonable adjustments within the meaning of section 21 of the Equality Act 2010'

7. They attached a copy of the claim showing the amendments the claimant wished to make. The letter was in the bundle for this hearing at p15 – 17 although that version of the amended particulars was not but the tribunal could see it from its own file. It provided the following additions:

'to paragraph 16

The Claimant's depression is alleged to amount to a disability within the meaning of Section 6 of the Equality Act 2010

to paragraph 52

The failure to support the Claimant properly is either ordinary for the Respondent, and therefore is a further failure to make reasonable adjustments in light of the Claimant's disability. *Alternatively, it amounts to an act of direct discrimination on the grounds of the Claimant's race or disability* (emphasis added)

To paragraph 53

This is alleged to amount to a failure to make reasonable adjustments in relation to the Claimant's disability within the meaning of section 21 of the Equality Act 2010

To paragraph 57

Any reasonable employer would have postponed the interviews for the Claimant and allowed the question of his redundancy to be determined at a later date.

To paragraph 58

It would have been reasonable for the employer to make reasonable adjustments to the redundancy procedure to ensure the Claimant was offered additional support in writing at an early stage.

To paragraph 91d)

Compensation for injury to feelings in respect of disability discrimination contrary to Section 21 Equality Act 2010'

8. By letter to the parties of 16 April 2014 Employment Judge Sigsworth stated:

'Amendment application allowed

Leave to amend granted

As per amended ET1'

9. The Respondent filed its ET3 on the 12 May 2014 on receipt of which a Preliminary Hearing was listed for the 20 June 2014.

10. By letter of the 6 June 2014 Taylor Rose notified that the Claimant withdrew his claims of victimisation and wrongful dismissal. They included a 'tracked changes version of the Claimant's Details of Claim. This also contains the earlier and now accepted amendment'. That is the version in the bundle at p48 – 66. It:
 - Deleted paragraph 90 – the claim of victimisation
 - Deleted reference to victimisation in paragraph 92c) – the claim for compensation
11. The tribunal has seen from the tribunal file that both parties provided a list of issues for the Preliminary Hearing on the 20 June 2014. That for the Claimant included a claim of direct disability discrimination contrary to section 13 Equality Act 2010 as did the Respondent in its agenda.
12. The Preliminary Hearing primarily dealt with the issue of the instruction of a joint medical expert and did not set out a definitive list of all the issues in the claim. It did provide that if the Claimant wished to amend his claim again then a formal application must be served by the 11 July 2014. That was made but not granted so further detail on that is not necessary. The Respondent was to advise whether it pursued a hearing on disability, time issues or prospects of success by 1 August. A further Preliminary Hearing was listed for the 28 November 2014 with a time estimate of one day. There were several postponements with it eventually listed to take place on the 15 June 2015.
13. By letter of the 28 November Paul Jackson of Cambridge Legal Practice went on record as acting for the Claimant. By letter of the 5 June 2015 (wrongly dated 2014) the new solicitors made a further application to amend. They wished to 'resurrect' a claim of victimisation that had been withdrawn. They also 'sought to clarify the issues with the attached Scott Schedule which addresses all the discrimination claims'. This is where the Scott Schedule originates from.

Preliminary hearing 15 June 2015 before E J Cassel

14. The Claimant's application to amend was refused, the Judge stating that:
 - The victimisation claim had been withdrawn and could not be resurrected
 - To amend the existing claim of direct discrimination to include the protected characteristic of disability would cause hardship and injustice to the Respondent.

- Harassment was a new cause of action, was substantially out of time and it would not be just and equitable to extend time.
 - Three deductions from wages were out of time and as there had been no application to extend time the tribunal had no jurisdiction to consider them.
15. The Respondent's application to strike out and/or for a deposit was not pursued.
16. A full merits hearing for the 12 – 23 October 2015 was listed at that Preliminary Hearing
17. Both representatives raised issues with the judgment and orders made at that preliminary hearing. The Respondent pointed out that the Claimant had withdrawn his breach of contract claim but that had not been recorded. That led to the judgment being issued recording that withdrawal.
18. Mr Jackson for the Claimant also wrote on 2 July 2015 as follows:
- ‘Another error in the judgment was to remove [by not including it in the summary of issues to be determined] the direct discrimination claim which was an alternative to reasonable adjustments – both had previously been accepted by the Tribunal. That claim was not withdrawn’
19. The Respondent took issue with that stating that the claims were as listed in the Respondent's Counsel's submissions and those had only listed a reasonable adjustment claim and not a claim of direct disability discrimination.

Claimant's appeal against the judgment of E J Cassels

20. By a Notice of Appeal date stamped by the EAT 17 August 2015 the Claimant lodged an appeal against the judgment of E J Cassels.
21. By letter of the 25 September 2015 the Claimant requested a postponement of the tribunal hearing listed for the 12 October 2015 in view of his appeal. This was refused on the 8 October 2015 by E J Moore who stated that a further application may be made at the outset of the hearing.
22. On the day of the hearing the Claimant wrote to the tribunal advising that he could not attend due to ill health. At the hearing the following judgment was made:
- 1. ‘The Claimant's application to postpone this substantive hearing is refused.
 - 2. The Respondent's application to strike out the claim is refused.
 - 3. This case is stayed until such time as the Claimant produces a medical report confirming his fitness to proceed.
 - 4. In the event the stay was lifted there would be a preliminary hearing to determine whether a fair trial was still possible, strike out and/or deposit orders.’

23. The tribunal also recorded at paragraph 8 as follows:

Despite the Claimant's protestations the case is not excessively complex. He mistakenly bases many of the issues in correspondence on a 'Scott Schedule' prepared by one of his former representatives. His claim is of course defined by the particulars set out on his original claim form (now as amended by the matters he withdrew and an order of E J Sigsworth granting specific amendments to the claim (namely specific allegations of disability discrimination). There has never been an application to amend to include the content of the 'Scott Schedule' and it does not form part of the case. He is reminded that amendment of a claim is not a right and the discretion to permit and amendment rests a) on trite legal principles including compliance with statutory time limits (normally three months from the incident complained of) and b) consideration of the interests of both parties.

24. By letter of the 6 November 2015 Usher Solicitors now instructed by the Claimant stated he was fit to proceed. A preliminary hearing was therefore listed for the 15 January 2016. That hearing was postponed, and the case stayed pending the conclusion of the Claimant's appeal against the decision of E J Cassel.
25. The Claimant's appeal was dismissed by Mr Justice Kerr in the EAT on 8 March 2016
26. By email to the tribunal of the 1 April 2016 the Claimant advised that he would be seeking leave of the Court of Appeal.
27. By letter of the 12 April 2016 the tribunal confirmed the stay pending the outcome of the appeal.
28. By letter 10 May 2016 Usher Solicitors LLP advised they were no longer instructed. The Claimant has proceeded since as a litigant in person.
29. On the 11 May 2016 a Preliminary Hearing was listed for the 24 June 2016 to clarify the claims and issues the tribunal believing the appeals had been determined but that was postponed due to appeals.
30. Leave to appeal to the Court of Appeal was refused on the 11 July 2016. A preliminary hearing was then listed for 3 November 2016.

3 November 2016 Preliminary Hearing before E J Sigsworth

31. The Judge referred to the Respondent's Scott Schedule that had been produced for the October full merits hearing that had not proceeded. The Claimant did not have a copy from his representative. The Judge stated:

'However it seemed to the Employment Judge that unless and until there was some objection to it, that schedule fairly set out the outstanding claims – save for two exceptions to this, relating to the reasonable adjustments claim, and I will deal with that below.

32. He needed that the Scott Schedule comprised 35 factual allegations but that 'many of them can be grouped into categories'. The tribunal determined that all, save for numbers 1 and 27 in relation to the pension scheme should proceed to a merits hearing without deposit orders being made on them. The Schedule as a result of that hearing was at p112 of the Supplementary Bundle for this hearing.
33. At paragraph 3 of the Reasons the Judge set out how some claims would be struck out but be replaced by amended versions of the same claim. He stressed to the claimant that it was unlikely that 'further applications to amend the claim would be looked at favourably'
34. By letter of the 28 November the Claimant applied for reconsideration and objected to Scott Schedule stating that 'there are several inaccuracies within the document' arguing determination had been made on the incorrect schedule 'as opposed to the Claimants accepted ET1'. In particular he took issue with the 'removal by the Respondent of 'direct disability discrimination'.
35. By a judgment sent to the parties on the 6 January 2017 the reconsideration application was refused.
36. A full merits hearing for the 3 – 12 April 2017 was listed
37. The Claimant appealed E J Sigsworth's preliminary hearing judgment. By letter of the 22 March 2017 the April hearing was postponed.
38. By letter of the 27 March 2017 the Claimant was advised that his appeal had been submitted out of time. An application for an extension of time in which the present the Notice of Appeal was refused by Order of the EAT dated 1 June 2017.
39. By letter of the 3 December 2017 from the Employment Tribunal the parties were advised that the stay was lifted as the appeal was not pursued.
40. A Preliminary Hearing took place before E J Sigsworth on 9 January 2018 and this hearing was listed. There was further debate about the Scott schedule and paragraph 2 of the Summary recorded as follows:

'...There was substantial discussion, but at the end of this it was accepted by the parties, save in respect of one matter which will be added to the Scott schedule, that the current schedule contains the issues that will be determined by the Tribunal at the merits hearing. **A complaint of direct disability discrimination at paragraph 52 of the amended Particulars of Claim will be added.** (emphasis added). For the avoidance of doubt, the schedule will incorporate the amendments allowed by the Employment Judge on 14 April 2014 and thereafter at the preliminary hearing on 3 November 2016. The Respondent's solicitor will draft a final and definitive schedule.'

The Respondent was ordered to do that by the 23 January 2018 and was in fact filed on the 16 January 2018.

41. Extensive correspondence was received from the Claimant following that Preliminary Hearing necessitating Judge Sigsworth to direct a letter to be sent stating that 'the tribunal will not enter into further correspondence on these historic matters'.
42. By letter of the 29 May 2018 the Respondent applied for a postponement of the 8 day full merits hearing listed for the 13 August 2018 on the basis that the Claimant had appealed to the EAT. The Claimant objected stating his application had been expedited and there was no need to postpone. He subsequently advised that his Rule 3(10) hearing had been listed for the 27 June 2018. On the 29 June he advised that it had been heard and no further appeal was being pursued by him.
43. The Order of The Honourable Mrs Justice Simler DBE of the 27 June 2018 was seen in the Supplemental Bundle at p373. In dismissing the appeal, she recorded the following 'Observations':

'1. There remains some doubt about the appropriateness of the Scott Schedule of Allegations produced by the Respondent, and some concerns that it does not reflect fully all the allegations contained in the ET1 that have been allowed to proceed, together with matters referred to at para 2 of the 9 Jan case management summary, as permitted to proceed by way of amendment.

2. This is an issue that ought to be capable of resolution between the parties given a degree of willingness on both sides and ought not to involve the EAT.

3. The Appellant has produced what appears to be a helpful colour-coded Schedule of his own. He maintains that he has tried to agree use of his document as the definitive Scott Schedule with the Respondent/Employment Tribunal but without success. It is not clear why not.

4. In the absence of any good reason for not doing so, if the Appellant's Scott Schedule better reflects all issues he wishes to raise, it may be prudent to proceed on the basis of the Appellant's Scott Schedule (rather than the one prepared by the Respondent)'

44. The Claimant lodged his schedule on the 3 August 2018 in accordance with the above.
45. The Claimant lodged a new ET1 on the 25 May 2018. By letter of 28 July 2018 E J Sigsworth stated that he felt the new claim contained discreet issues not directly connected with the current claim. As it was not appropriate for the listed hearing to be postponed either:
 - a. The hearing would go ahead without the new claim being added, or
 - b. The parties agree that the new claim can be determined at the listed hearing and they can prepare their case for this.
46. By letter of the 16 July 2018 the Respondent made application to strike out the claim. This was to be determined at the outset of this hearing.

47. As recorded at the outset of these Reasons on the 8 August 2018 it was necessary to move this hearing from Cambridge to Bury St Edmunds. The Respondent initially objected but withdrew those objections at this hearing. It pursued its application to strike out.

Respondent's application to strike out

48. As set out in the Respondent's letter of application of the 16 July 2018 this comprised the following elements:

48.1 Unreasonable conduct.

48.1.1 The October 2015 hearing

48.1.2 Failure to agree a postponement of the April 2017 hearing

48.1.3 General unreasonable conduct.

48.2 Fair trial no longer possible

49. The Respondent attended with the joint bundle containing approximately 1300 pages, a supplemental bundle of 400 pages and the following witness statements which had been served:

Sarah Jane Lawlor, Hub Manager, signed 16 September 2015.

Linda Farmer, Senior Targeted Youth Worker, signed 16 September 2015

Nick Chamberlain, Service Manager, signed 22 September 2015

Caroline Dawes, School Improvement Advisor, signed 22 September 2015

William Joseph White, Human Resources, signed 22 September 2015

Veronica Charles, Human Resources, signed 22 September 2015

Joanne Fisher, Service Director, signed 22 September 2015

(the tribunal was advised that William White and Veronica Charles would be leaving the Respondent's employment in November 2018)

All save Linda Farmer had prepared further statements in support of this application stating how they would now struggle to remember the events so long ago. Mr White referred to correspondence he had seen from Linda Farmer who no longer works for the Respondent who stated that her 'memory would fail me now'.

50. Whilst acknowledging that the tribunal had a discretion whether to strike out and that it could strike out the whole or part of the claims, it was

submitted in this case the whole of the claim should be struck out. Counsel referred to **Chidzoy v British Broadcasting Corporation UKEAT/0097/17/BA** and acknowledged that even where unreasonable conduct has been established the tribunal must have regard to the question whether a fair trial might still be possible and whether there is an alternative to striking out the Claimant's claim.

51. It was submitted that this is a case where the last act relied upon is in 2013. The Claimant has made repeated applications to amend and all his appeals have been unsuccessful. This was of the Claimant's own doing and not following the tribunal's advice to focus on the issues identified.
52. The Respondent's witnesses cannot remember these matters and a trial will just be a paper exercise.

Unreasonable conduct (as set out in Respondent's letter of 16 July 2018, p404-6 supplemental bundle)

October 2015 hearing

53. The judgment noted there was a late application to postpone and the claimant did not turn up to the hearing which had to be aborted.

April 2015 full merits hearing

54. Prior to this taking place there was a late appeal lodged.

General unreasonable conduct

55. The Claimant continued to appeal tribunal decisions. There has been a lot more correspondence than necessary. Accusations have been made against the Respondent which are serious and without foundation.

Lack of a fair trial

56. This is pursued both separately to and along with the other grounds (p406)
57. This is now a stale claim with matters going back to 2004 and the bulk of it in 2011. The Respondent submits that applying the usual time limits the tribunal would not be considering this.
58. The Claimant makes allegations against those no longer employed at the Respondent. Linda Farmer is no longer going to attend.
59. The Respondent's witnesses have provided supplemental witness statements explaining that they are not really able now to assist the

tribunal They have provided initial witness statements and the Respondent has all the documents. This is alleged to be a discrimination case. The task of the tribunal is to decide why decisions were made and whether inferences should be drawn. That is why there is the need to hear oral evidence and the reason why discrimination cases are rarely struck out before hearing it. The Claimant will say that what has been written in documents is not the case and is entitled to put that in cross examination. It will be a paper exercise.

60. The fact that witness statements have been prepared is not enough. It is not known what the Claimant will rely upon to persuade the tribunal to draw inferences.
61. There is also the issue of remedy if the Claimant is successful. The Schedule of Loss is over £100,000. Until the tribunal gives its findings the Respondent cannot address with its witnesses what the outcome would have been but for any discrimination that is found. The witnesses may no longer be employed by the Respondent. Even if they they may not remember what their thinking was at the time.
62. Article 6 is engaged and applies equally to the Respondent. That a litigant is entitled to a 'fair trial within a reasonable time' is more often relied upon by Claimants. The delay means that the Respondent cant deal effectively with parts of the case.
63. The Claimant is the author of the delay with his applications and appeals.
64. The stress on the Respondent's witnesses must also be taken into account and the significant costs.
65. The Claimant was warned by Employment Judge Moore on 9 October 2015 that in view of the age of the case 'it is proximate to the point where consideration of whether a fair trial is still possible may be necessary'. The Judge then noted in his judgment following the 12 October 2015 hearing that the Respondent's counsel, who appeared also at this hearing, had not been able to say that it was impossible then to have a fair trial 'but there is force in his submission that this point is now approaching'.
66. The Judge questioned why the application was being made now. Mr Caiden explained that they had argued it before EJ Sigsworth in January 2018, but they couldn't continue due to the Claimant's pending appeal. An order was made that they submit any application by a given date and that is what they have done.

Lesser sanction

67. The Respondent argues that there isn't one. A costs sanction will not help witnesses memories. Making further case management orders it was submitted wont assist. The Claimant has repeatedly said he is not happy with the Scott schedule even though initially prepared by his then representative.
68. The Respondent had suggested at the outset that the tribunal just determine sample claims or the more recent. The Claimant refused and that is not something that can be forced upon him.
69. It is now at the stage where the claims should be struck out in their entirety. Although this is a serious step it was suggested there are not many cases where the facts start in 2004. The tribunal repeatedly warned the Claimant this might happen.

Claimant's submissions

70. The Claimant prepared a written skeleton argument which the tribunal read, and he then supplemented this orally.
71. The Claimant submitted that he had to pursue two valid appeal to get back the claim of direct disability discrimination that was 'wrongfully removed on 15/6/15 put back in on 9/1/18'. The Claimant argues that delays have been caused by the Respondent 'removing some of my claim'. In 2015 E J Sigsworth had not accepted the disability discrimination claim but those amendments had already been accepted by him. The Claimant had to contest the Scott Schedule until E J Sigsworth accepted on 9 January 2018 that claim should be included. If he had not pursued the appeal this valid claim would not have been put back in.
72. He further argued that with regard to the hearing due to start on the 12 October 2015 he had a valid appeal outstanding of which the Respondent was aware, but it failed to support his application to postpone due to that appeal.
73. Dealing with the issue of witnesses the Claimant submitted that all the investigation findings are in the bundle and that shows how they came to their conclusions. He did not accept there could not be a fair trial. Linda Farmer may have left the service but has done a witness statement. Her investigation is in the bundle. Nick Chamberlain did another investigation that is in the bundle. The Claimant didn't see why the findings in the documents could not be relied upon by the witnesses to refresh their memories.

Postponement request

74. The Claimant has been trying to obtain advice with regard to the change of venue. He lives in Luton. He has no car as he can't drive due to his arthritis. He must use public transport. He had a friend willing to drive him from Bedford to Cambridge for the hearing when it was listed there. The Claimant can get to Bedford by train. That friend was not able to do the longer journey to Bury St Edmunds although the Claimant did obtain a lift for this first day of the hearing.
75. The Claimant was asked by the Judge how he would get to a hearing in Bury St Edmunds without a lift. He explained that he would need to go by train from Luton to London, London to Ely and Ely to Bury St Edmunds. He would need to leave at approximately 5.30 am to achieve this and might not get home until 9.30 pm.
76. The Claimant only receives £147 in benefits every two weeks and the train fare would be £119 a day.

Respondent's reply

77. It was disputed that the appeals led to the result the Claimant describes. It was a judicial decision to allow in the direct disability discrimination claim. None of the appeals related to that one point. Mr Caiden then took the tribunal back through the chronology of the Scott Schedule.
78. The Respondent could not comment on the travelling issues and costs. At the last hearing the Claimant had said Bury St Edmunds would not be convenient. The Respondent had initially stated to the tribunal that both parties would be affected by the move, but the Respondent is now here and subject to the strike out application ready to proceed. It now takes a neutral position on the postponement request.

Tribunal conclusions on postponement

79. The tribunal was placed in a difficult position in view of the travel difficulties described by the parties. It therefore made the following directions:
 1. That by 12 noon on Tuesday 14 August 2018 the Claimant to advise the Respondent and the Employment Tribunal whether he can get to Bury St Edmunds via Cambridge on Wednesday 15 August and for the rest of the 8 day hearing if the Tribunal does not grant the Respondent's strike out application.
 2. If he cannot manage to get there for the rest of the 8 days would he be able to at least attend on Wednesday 15 August to hear the tribunal's decision on strike out and postponement
 3. The hearing was adjourned to 12 midday on Wednesday 15 August with the parties not required to attend on Tuesday 14 August which would be reserved for tribunal discussion.

80. On the 14 August the Claimant confirmed what he had earlier told the tribunal orally about the transport and cost difficulties. Coach travel was not an option. He was unable to put back in place the arrangements with a friend to help him get to Cambridge.
81. As a result of these difficulties the tribunal concluded it had no alternative but to adjourn the 8 day hearing that had been moved to Bury St Edmunds from Cambridge. It had been moved due to the air conditioning problems at Cambridge to a location the Claimant cannot get to. It would not be in accordance with the interests of justice or any aspect of the overriding objective to compel a party to attend a hearing that would cause them untold stress and cost and make it impossible for the Claimant to deal with necessary case preparation each evening as he would clearly be too exhausted to do so. The parties were therefore advised that the hearing was postponed, that they did not need to attend on Wednesday 15 August and that the decision on strike out would be reserved and sent out in writing.

Tribunal's conclusions on strike out

82. The application to strike out is refused.
83. The tribunal cannot classify appealing as unreasonable conduct when the Claimant believed that the Scott Schedule did not correctly represent the issues he wished to bring before the tribunal. He has the right to appeal. The Respondent may be correct in its assessment that the appeals were not solely on the direct disability discrimination issue and did not actually correct that in themselves. However, this tribunal cannot strike the Claimant out for appealing.
84. Delays have been caused by the appeals but have also in part been caused by listing delays
85. The Claimant has had three different representatives and is now a litigant in person. This has all further hampered him. The tribunal is only too aware of the difficulties of obtaining and funding specialist employment law advice and again the Claimant should not be penalised for that.
86. All the Respondent's witnesses prepared their statements in 2015. Some are lengthy and detailed, for example that of William White is 56 paragraphs and Veronica Charles 45 paragraphs. They can re-read them. They will be assisted by the extensive documentation that is available to them and the tribunal. This is not a case where witness statements have not been taken and the Respondent has lost contact with witnesses. Most remain with the Respondent. If they do not, then the Respondent has the option of considering applying for witness orders.

87. The Claimant responded to documents at the time. His responses are in the bundle and can be considered.
88. There are also minutes of meetings
89. It cannot be said that a fair trial is no longer possible. It should now be relisted as a matter of urgency. The file will be referred to the Regional Employment Judge with the proposal it be listed at Watford Employment Tribunal as soon as possible.
90. The parties and the tribunal hearing the full merits hearing will need to take account of the 'observations' of HHJ Simler with regard to the Scott Schedule as quoted above

Employment Judge Laidler

Date:13.09.18.....

Sent to the parties on: 26.09.18.....

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For the Tribunal Office