Appeal No. UKEAT/0082/18/LA

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 20 September 2018

Before

HER HONOUR JUDGE STACEY

(SITTING ALONE)

APPELLANT

EMPLOYMENTS RIGHTS ADVICE LTD

CRAIG VERNON & VOLKSMASTER LTD

RESPONDENT

Transcript of Proceedings

JUDGMENT

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APPEARANCES

For the Appellant	MR MARTIN BROOMHEAD (Representative)
For the Respondent	No appearance – written representations submitted

SUMMARY

PRACTICE AND PRODEDURE – Costs

PRACTICE AND PROCEDURE – Review

The Appellant was the representative of the Claimant before the Employment Tribunal and seeks to challenge the Tribunal's decision to make a Wasted Costs Order against him. The Tribunal had initially refused the Respondent's application, but had used its powers to reconsider on the application of the Respondent pursuant to Rule 70 **Employment Tribunals Rules of Procedure 2013.** In the Reconsideration Judgment, the Tribunal had revoked its earlier Judgment and at a subsequent hearing ordered the Appellant in this appeal to pay £1,000 towards the Respondent's costs of defending the proceedings.

There was no error of law in the ET's approach: it was entitled to conclude that it was in the interests of justice to reconsider its earlier decision since it had been misled by the Claimant's representative about the steps taken to apply for fee remission (at the material time the ET fee regime was in place). All 3 limbs of the **Ladd v Marshall** [1954] 3 ALL E R 745 test were met. In any event, even if not, this was one of the circumstances where it would be in the interests of justice to adduce new evidence, even if the criteria in **Ladd** had not been met, since the ET had been misled by the Claimant's representative who had incorrectly submitted that an application for fee remittance had been made when it had not, which was material to the Tribunal's decision to refuse the Respondent's application for a Wasted Costs Order.

The abolition of the fee regime following the UNISON Judicial Review was irrelevant to the issues in this case which was about the Tribunal having been misled by a party's representative.

HER HONOUR JUDGE STACEY

1. This is an appeal against a Reconsideration of a Costs Judgment. The issue is the Employment Tribunal's entitlement to reconsider its earlier Judgment pursuant to Rule 71 of **Employment Tribunal Rules of Procedure 2013**. The Appellant in this case is Employment Rights Advice Limited, which was the representative of the Claimant before the Employment Tribunal. The Claimant before the Employment Tribunal was a Mr C Vernon and the Respondent to the appeal, Volksmaster Limited, had been the employer of Mr Vernon was the Respondent below. I shall refer to the Appellant as ERA, to Mr Vernon as the Claimant and to the Respondent Volksmaster Ltd as the Respondent.

2. The Tribunal hearing took place in the Manchester region before Employment Judge Little (sitting alone) in a hearing which took place on the 20 February 2015 and sent to the parties on 2 March of 2015.

3. The history and relevant background is as follows. The Claimant presented a claim to the Employment Tribunal on 7 November 2013 that he had been dismissed by the Respondent four days into his employment as a Car Mechanic in circumstances of disability discrimination. He brought claims for various breaches of the **Equality Act 2010** under the protected characteristic of disability, notice pay, holiday pay and arrears of pay. The Claimant alleged his dismissal was discriminatory – direct, indirect, breach of the reasonable adjustment duty and discrimination arising from disability – relying on obsessive compulsive disorder as a disabling impairment. The Respondent defended the claim on the basis that it had no knowledge of the Claimant having OCD, if indeed he did which was not accepted (and if he did nor was it conceded it amounted to a disability under section 6 **Equality Act 2010**). They said he was dismissed 4 days into his 3

month probationary period as it was quickly apparent that he was not competent to carry out the role for which he was engaged and was putting the customer's vehicles at risk and causing financial loss to the company, a small family firm. In relation to the contractual claims, the Respondent asserted that during the probationary period the Claimant could be dismissed without notice.

4. The Claimant's representative at the Employment Tribunal and throughout up to and including today's hearing was a Mr Martin Broomhead of ERA, who named himself as the Claimant's representative in the ET1.

5. A Preliminary Hearing was held and the case set down for a Full Merits Hearing listed for 17 June 2014. That Full Hearing however did not take place as the Claimant did not pay the hearing fee applicable at that time. The Claimant was required to pay the hearing fee or apply for remission by 27 May 2014, when neither had been done by that date, an Unless Order was made on 28 May 2014 requiring either the payment of the correct fee or the submission of a properly completed remission application within seven days. Neither was done and the claim was struck out on or about 9 June 2014, one week before the hearing.

6. The Claimant applied for the claim to be reinstated which was refused by Employment Judge Holmes on 12 June 2014 since no fee had been paid for the hearing. That has been referred to at various times as the first Reconsideration Judgment.

7. I have done the best I can from the papers before me to reconstruct the chronology, as one had not been included in the bundle.

The Costs Judgment

8. The Respondent then applied for costs against the Claimant: both a so called ordinary Costs Order on grounds that the proceedings had been conducted unreasonably and there were no reasonable prospects of success; and also, a Wasted Costs Order to be paid by the Claimant's representative, Mr Broomhead, personally. That application was heard on 15 September 2014 before Employment Judge Little. The application was refused for the Reasons set out in the Costs Judgment which was sent to the parties on 7 October 2014. During the hearing it was clarified that the application should have been against ERA and not Mr Broomhead personally. No objection was taken to the sensible course of action taken by the Tribunal to treat the application as being against the Claimant's representative, and to the extent that any amendment was required, it was granted and service dispensed with: it was a classic example of the Tribunal applying the overriding objective by avoiding unnecessary formality and seeking flexibility in the proceedings pursuant to Rule 2(c). The Costs Order was refused and we need say no more about that.

9. As to the Wasted Costs Order application, the Tribunal addressed each of the various limbs of the application and concluded that the Respondent had not met the relatively high bar for the making of a Wasted Costs Order. I did not have before me the documents that were before the Tribunal at that hearing: the Respondent's application dated 28 July 2014, Mr Broomhead's response dated 20 August 2014 and a 23 page document referred to alternatively as the statement or submission of Ms McCarthy, the solicitor for the Respondent, but Mr Broomhead explained that they were not necessary and everything was readily apparent and self-evident from the Costs Judgment itself.

10. The hearing identified and set out the Wasted Costs Regime in accordance with Rules 80 and 81 of the **Employment Tribunal Rules of Procedure 2013**, noting that a Wasted Costs Order may only be made where the party seeking costs has incurred costs (a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or (b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay. The Tribunal considered the applicable case law: **Ridehalgh v Horsefield** [1994] 3 ALL ER 848 and **Medcalf v Mardell** [2002] 3 ALL ER 721 and also **Ratcliffe Duce & Gammer v Elbins** EAT 0100/08.

11. The matters relied on by the Respondent in support of its Wasted Costs Order application were that Mr Broomhead had not applied his mind to the relevant legal issues, he had not complied with the Case Management Orders, the case had not been properly pleaded, he had had no reasonable prospects of success and the hearing fee had not been paid. It is only the final matter - the non-payment of the hearing fee - that is relevant for the purposes of this appeal. It is necessary to go through in some detail the way in which it was dealt with by the Tribunal and the information before it that led to the conclusions that it made.

12. It appears that the Respondent's argument was that the failure to pay the hearing fee or apply for fee remission and then to seek reinstatement of the claim, still without paying the fee or applying for its remission was unreasonable (see paragraphs 5 and 6 of the Costs Judgment at page 42) " his actions in relation to the notice of dismissal and reinstatement application had been unreasonable". Mr Broomhead's written response to the Respondent's costs application is referred to in paragraph 7 of the Judgment, and notes that he made "brief comments about the application for Wasted Costs, which he [Mr Broomhead] described as being an application doomed to failure".

13. Ms McCarthy of the Respondents solicitors had prepared a 23 page document headed as a statement. Mr Broomhead objected to the appellation. The sensible and pragmatic approach adopted by the Employment Judge, in accordance with the overriding objective and Rule 2(c) was to consider the document as a submission and a written argument on the Wasted Costs application, but not as evidence on disputed matters of fact. At that stage the Respondent was not aware that Mr Broomhead would assert, or imply, that he or that his client had sought fee remission and that it was a pending matter at the time that the claim was struck out for want of payment of the hearing fee.

14. The parties' submissions at the hearing are set out in the Tribunal's carefully constructed Costs Judgment. It records the Respondent's submission in paragraph 29:

> **"There had also been a failure to pay the fee for the hearing or make a remission application timeously. There had then been unreasonable pursuit of a review in relation to the dismissal of the claim. Unless Orders in relation to the payment of fee had been breached".**

15. Mr Broomhead's submissions are set out at paragraphs 32 to 34. The Employment Judge records that Mr Broomhead took him at some length through the events surrounding the non-payment of the fee and the Claimant's endeavours to have the claim reinstated. At paragraph 33 it states: "Mr Broomhead then reiterated the attempts which he had made to get the claim reinstated". Ms McCarthy was afforded an opportunity to reply and in doing so she contended it was negligent not to deal properly with the hearing fee and no explanation had been offered in the context of the application for reinstatement.

16. After hearing those submissions, the Employment Judge found in relation to the hearing fee matters in relation to the Wasted Costs Order at paragraphs 39 and 40 as follows:

> **"c) Non-payment of the hearing fee and not complying with the Unless Order in that regard"**

39. Here I conclude that the representative cannot be criticised for its client's inability or otherwise failure to pay the Hearing fee. Any application for fee remission which might have been made remains a grey area although Mr Broomhead cannot be accused of inactivity when one considers his attempts to have the claim reinstated. Even if that approach involved the failure to deal with the grounds for such an application".

(d) Mr Broomhead's actions subsequent to the notice of dismissal

40. This again is the question of the remission application (or not) and the subsequent application for reinstatement. The comments set out in (c) above apply equally here".

The question of the steps taken to pay the fee or apply for remission were revisited in the context of the ordinary Costs Order:

c) Non-payment of the hearing fee

"45. As indicated earlier is not clear what steps were taken to apply for remission…"

17. Therefore, it is apparent from the Judgment that Mr Broomhead had led the Tribunal to believe that either he or his client had made attempts to apply for fee remission and which was outstanding and undecided at the time the claim was struck out, or at least it was a grey area, but that Mr Broomhead had been busy trying to apply for fee remission. Mr Broomhead had clearly given the Tribunal the impression that he had been taking active steps to ensure the hearing took place and was not struck out.

18. As a result, the Tribunal did not agree with the Respondent's submission that the circumstances had been made out for the order of a Wasted Costs Order.

<u>What happened next</u>

19. Fee remission correspondence is between a Claimant or his or her representative and the Employment Tribunal. It is not correspondence that is copied in to the other side of litigation.

20. Following the rejection of the Respondent's costs applications in the Costs Judgment, the Respondent was troubled by Mr Broomhead's assertions at the hearing and sought to investigate.

It is necessary to refer to the correspondence in some detail. The Respondent first emailed Mr Broomhead on 14 October 2014 asking for urgent clarification of four matters.

> **"Firstly, the date that Mr Broomhead or his client made an application for the hearing fee remission.**
>
> **Secondly, documentary evidence of the date.**
>
> **Thirdly, the date the client made an application for remission of the reconsideration fee – a reference to the application for a reconsideration of EJ Holmes Judgment see paras 5 and 6 above - and**
>
> **Fourthly, copies of documentary evidence relevant to the reconsideration fee remission application."**

The Respondent's solicitors fairly explained that the information was needed as it was considering making an application to the Tribunal to review the Judgment. It was seeking to obtain an accurate chronology of the steps taken by the Claimant and Mr Broomhead to apply for fee remission. Mr Broomhead denied the request in an email dated 20 October 2014.

21. The Respondent then wrote to the Regional Secretary of the Manchester Employment Tribunal on 21 October 2014 with an application for a Disclosure Order to obtain the information that Mr Broomhead had refused to provide them and applied for a Reconsideration of the Costs Judgment. The grounds of the application were that it would be in the interests of justice. They stated as follows:

> **"In summary we consider that the Claimant's representative may have misled the Tribunal at the Costs Hearing on 15 September 2014 and that new, relevant information is likely to be available that wasn't available at the said Hearing.**
>
> **The information referred to is that surrounding the timing of the Claimant's application for remission of his Hearing Fee. The Claimant's representative implied that the application for remission of the hearing fee was made before the Claimant's claim was dismissed for non-payment of the fee".**
>
> **…..**
>
> **The timing of the Claimant's application for remission is an important factor in the Respondent's Application for costs. This is because it was part of the Respondent's application that failure to either pay the hearing fee, or make an application for remission of the fee within the time limits specified by the Tribunal at the time; and a failure to deal with the Reconsideration Fee (and subsequent applications and communications by the Claimant's representative regarding the issue) was unreasonable behaviour.**
>
> **The Claimant's representative implied at the Costs Hearing that an Application for remission was outstanding at the time that the claimant's case was dismissed, thus the claimant behaved reasonably. The Claimant had not raised this point at any time before**

the Costs Application hearing. We believe that information is likely to be available to show that this information is incorrect and that the Claimant did not deal with the matter of the Hearing Fee until after his claim was dismissed. Had documentary evidence been available at the time of the Costs Hearing it would have been likely to have affected the Judgment."

22. The application was granted and on receipt of the information from the Tribunal, the Respondent was able to discover for the first time that the Claimant, or his representative on his behalf, had never applied for fee remission of the hearing fee required in the case. They had submitted an application for the remission of the reconsideration fee after the claim had been struck out for non-payment on 14 July 2014. That was some 6 ½ weeks after 27 May 2014, the date by which the fee should have been paid or an application for remission made, and the Unless Order was issued; 5 weeks after his claim was struck out; and 4 weeks after the hearing should have taken place.

23. In the light of that information, the Respondent wrote to the Tribunal confirming that it wished to proceed with its reconsideration application by letter of 19 November 2014. The letter goes on to explain that Mr Broomhead had told Employment Judge Little directly that he always makes fee remission applications on time. The discovery of the documentation casts that submission by a solicitor to a Tribunal, albeit a non-practising one, in a rather different light. The reconsideration application was considered at a further hearing and it is that Judgment of 20 February 2015 that Mr Broomhead, on behalf of ERA now seeks to challenge.

The Reconsideration Judgment

24. The Employment Judge commenced the Reconsideration Judgment by setting out the nature of the Respondent's application. He considered the documents that had been provided by Ms McCarthy for him and he set out the procedural history of the claim. He directed himself as

to the provisions of Rule 70 of the **Employment Tribunal Rules and Procedure 2013** which provides that:

> **"A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."**

25. Mr Broomhead is quite right to point out that the Employment Tribunal does not refer to any of the recent case law on the question of reconsideration and he informs me today that he tried to draw the Tribunal's attention to the cases of **Outasight VB Ltd v Brown UKEAT/0253/14/LA** and **Adegbuji v Meteor Parking Ltd [2010] UKEAT 1570/09/2104**. In support of that contention he refers to his reference to those cases at the subsequent hearing on 24 April 2015 when the level of Wasted Costs was assessed.

26. It is common ground that the test for understanding the new wording in Rule 70 "in the interests of justice", has been helpfully and clearly set out in both **Outasight** and more recently in **Scrannage v Rochdale Metropolitan Borough Council** [2018] UKEAT/0032/17 by Her Honour Judge Eady QC. I quote as follows from paragraphs 22 to 23 of **Scranage**:

> **"22. The test for reconsideration under the ET Rules is thus straightforwardly whether such reconsideration is in the interests of justice (see Outasight VB Ltd v Brown UKEAT/0253/14 (21 November 2014, unreported). The "interests of justice" allow for a broad discretion, albeit one that must be exercised judicially, which means having regard not only to the interests of the party seeking the review or reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.**
>
> **23. Where the application for reconsideration is made on the basis of "new evidence", the test the ET will apply remains that laid down by the Court of Appeal in Ladd v Marshall [1954] 3 All ER 745 (Outasight paragraph 49), which provides that three conditions must be met as follows**
>
> **1) that the evidence could not have been obtained without reasonable diligence for use at the original hearing;**
>
> **2) that it is relevant and would probably have had an important influence on the hearing; and**
>
> **3) that it is apparently credible."**

27. It is not an absolute test. There might be cases where the interests of justice would permit fresh evidence to be adduced notwithstanding that the principles laid down in **Ladd v Marshall** are not strictly met. Examples of when this might arise include where a party has been genuinely ambushed, or if there was some additional factor or mitigating circumstances. It cannot be a closed category because the nature of the interests of justice test is, self-evidently, that the interests of justice are paramount. It is impossible to anticipate all the number of different circumstances which may arise that might occur require re-visitation of a particular issue because it is in the interests of justice to do so.

28. The Tribunal closely and carefully analysed the new information sought to be put before it and it considered the parties' respective submissions. The Tribunal found:

> **"6.1.2.2 Ms McCarthy contends that in the light of the documentation which in the meantime the claimant has been ordered to disclose, it would be in the interests of justice to vary the Judgment so that the respondent should have its costs incurred for the work done in the period when it assumed there would be a Hearing on 17 June; whereas at that time the claimant, or more particularly his representative, would have known that there was not going to be that Hearing because the failure to pay a fee or make a remission application would inevitably lead to the claim being dismissed before it got to a Hearing. Ms McCarthy's case today was that the claimant had not submitted an application for remission of the Hearing fee until 14 July 2014. However, I find that the remission application of 14 July 2014 was in respect of the fee which otherwise would have been payable in respect of the claimant's application for Employment Judge Holmes' Judgment to be reconsidered. I further conclude, on the balance of probabilities, that neither the claimant nor Employment Rights Advice Limited ever made an application for remission of the Hearing fee.**
>
> **6.1.2.3 It is common ground that no Hearing fee was ever paid or tendered. The fee history document generated by Jadu refers to the Hearing fee being expected and gives the remission status as "not requested". It follows that the claimant and/or his representatives have not fully complied with my disclosure order. Clearly, they could not disclose something which probably does not exist, but one would have expected them to explain why they could not disclose a particular document. As mentioned previously, Mr Broomhead had not brought any papers to today's Hearing and was not able to put anything before me which could establish that there had been even an attempt to make a timeous or any remission application in respect of the hearing fee."**

29. The employment Judge made a finding based on the new information that neither the Claimant nor ERA had ever made an application for remission of the hearing fee. All that Mr Broomfield had done was to apply on 14 July 2014 for a remission of the fee for applying for a reconsideration of EJ Holmes Judgment not to reinstate the claim that was struck out on 9 June

2014 for non payment of the remission fee. That was a finding that the Tribunal was entitled to make on the information before it, which Mr Broomhead could not refute, and which made a material difference to the position the Tribunal had understood from Mr Broomhead's submissions at the hearing. It was a very important piece of further information that contradicted the impression given at the Costs Hearing.

30. In paragraph 6.1.4, the Tribunal asks itself whether the refusal to make a Wasted Costs Order against ERA be varied. The Judge finds as follows:

> **"6.1.4.2 However today, when the spotlight has been on the question of hearing fee remission, and because I now have the additional documents before me, I have been able to make specific findings of fact on the Hearing fee remission issue. I also remind myself that the claimant's representative received the fee request contained in the Tribunal's letter of 25 February 2014 because that was sent directly to Mr Broomhead at Employment Rights Advice Limited. Precisely the same applied in relation to the subsequent Unless Notice.**
>
> **6.1.4.3 In these circumstances I cannot accept Mr Broomhead's denial of responsibility. These are not failings which can properly be laid at Mr Vernon's door as by implication Mr Broomhead now seeks to do.**
>
> **6.1.4.4 I remind myself of the law that I considered in September 2014 in relation to the applicable principles when considering whether a wasted costs order should be made. In summary, rule 80 provides that a wasted costs order can be made where a party has incurred costs as a result of any improper, unreasonable or negligent act or omission on the part of the representative. 'Negligence' in this context, according to the Court of Appeal in the leading case of Ridehalgh, means a failure to act with the competence reasonably to be expected of, as it was put in that case, ordinary members of the profession. Although I understand that Mr Broomhead is now a non- practicing solicitor, I am also mindful that Employment Rights Advice Limited hold themselves out ass "Specialists in Employment Law" - that is referred o on their letterhead.**
>
> **6.1.4.5 In circumstances where Employment Rights Advice Limited knew that either a Hearing fee payment or a successful remission application would be necessary as a precondition for their client's case being heard by the Tribunal on 17 June 2014; were aware that their client could not afford to pay the fee, and then on my finding took no steps to ensure that a remission application was made, then that would be negligent conduct of Mr Vernon's case.**

The Costs Judgment continues

> **6.1.4.6… I conclude that it was negligent (in the Ridehalgh sense) and also improper and unreasonable for Employment Rights Advice Limited not to put the respondent's solicitors on notice, no later than 27 May 2014, that no Hearing fee had been paid and that – whatever the reason for it – no remission application was going to be made or that (if it was the case) there were difficulties in getting instructions. In my judgment that satisfied the first requirement of the three part test set out in Ratcliffe Duce & Gammer (see paragraph 18 of my September reasons). I am further satisfied that the second requirement is also met because that failure led the respondent's solicitors to incur unnecessary costs in preparing for a Hearing which they were perfectly entitled to assume was going to take place.**
>
> **6.1.4.7 Finally, I consider on the basis of the material now before me that it is just to order Employment Rights Advice Limited to compensate the respondent for the relevant part of their costs."**

The Appeal Grounds and Arguments

31. The only ground of appeal permitted by Mr Justice Langstaff to go forward to this Full Hearing is that the Tribunal had no grounds to reconsider its earlier decision. Mr Justice Langstaff considered that it was arguable that the Tribunal should not have entertained the reconsideration application and that it is an important principle that there should be finality in litigation.

32. The thrust of Mr Broomhead's submission is that there was no evidence which could not have been reasonably known or foreseen at the time of the original hearing and the Tribunal does not, in its Reconsideration Judgment, go through the applicable case law and the **Ladd v Marshall** test or direct itself in accordance with **Outasight VB Ltd v Brown**.

33. In the Respondent's written submissions (they have chosen not to incur the cost of attending today and explained that no discourtesy to the Appeal Tribunal was intended, but it was purely to minimise their client's costs) they resist the appeal on the grounds that the Tribunal had been misled. In advance of the Costs Hearing the Respondent was not in a position to have known that Mr Broomhead would, to put it neutrally, imply that there had been a timely fee remission application. They had been ambushed at the hearing. It would have been wholly disproportionate to have sought an adjournment during the Costs Hearing once Mr Broomhead had raised it after they had been taken unawares. Furthermore, it would have been an unattractive application as it would have been predicated on the premise that Mr Broomhead had misled the Tribunal, and a Tribunal will not lightly act on such a presumption, so any adjournment application part way through the hearing would have been unlikely to be successful in any event.

Discussion and Conclusions

34. The Reconsideration of Judgment identifies the ways in which the Tribunal appears to have been misled by Mr Broomhead at the Costs Hearing and the Respondent has been taken unawares. The Respondent cannot have been expected to have anticipated Mr Broomhead's submission at the Costs Hearing. So even if the disclosure application could have been made in advance of the Costs Hearing, it would not have been reasonable for the Respondent to have applied for it at that stage.

35. Therefore, no more needs to be said about Mr Broomhead's submission that partway through the Costs Hearing the Respondent should have applied for an adjournment to enable it to obtain the documents that would prove that he had misled the Tribunal. Mr Broomhead will have had the knowledge (whether actual or imputed) of the chronology of events and that he had never applied for fee remission in respect of his client's claim when he represented otherwise to the Tribunal in order to defeat the Respondent's application for a Wasted Costs Order.

36. I accept that the Tribunal could have referred explicitly to the **Ladd v Marshall** test and the **Outasight VB Ltd v Brown** but when one reads the Costs Judgment, they have implicitly addressed these tests. It is apparent that the evidence could not have been obtained without reasonable diligence for use at the original hearing, since, as set out above, the Respondent could not reasonably have been expected to anticipate that Mr Broomfield would mislead the Tribunal in this way. Self-evidently the information was relevant and would have had an important influence on the hearing since the Tribunal reversed its decision once it knew of it. The new material was not in dispute and therefore, in the words of **Ladd**, credible. All limbs of the **Ladd v Marshall** test were satisfied.

37. But in any event if I am wrong about that, this is one of those cases where the interests of justice would require a looser approach to that prescribed by **Ladd v Marshall**. It is of the utmost importance that representatives do not mislead a Tribunal into error on important and material issues. The importance of receiving accurate submissions based on the facts so that a Tribunal can make sound judgments is essential to justice and the administration of justice. Where a representative has been proved to have misled the Tribunal in the way that occurred in this case, it goes without saying that it will be in the interests of justice for a Tribunal to be correctly informed of the material facts so that it may reconsider its Judgment and, if necessary, affirm, revoke or amend its earlier Judgment. It is particularly important in a jurisdiction such as in the Employment Tribunal where advocacy is not limited to the regulated professions.

38. It is not part of my role today to determine whether the incorrect submission was inadvertent, deliberate or dishonest. But this case is a reminder of the importance of representatives being careful not to mislead a Tribunal and to check their facts carefully. Where, as here, an inaccurate submission results in an injustice, it is more in the public interest that the matter be revisited and the injustice corrected, than that Judgment is final.

39. Finally, by way of postscript, the abolition of the fee regime following the Supreme Court's Judgment in **R (UNISON) v Lord Chancellor** [2017] UKSC 51 is irrelevant to the narrow issue for determination in this case.

40. For those reasons I dismiss the appeal.