STO

EMPLOYMENT TRIBUNALS

Claimant: **Mr I Ndu**

Respondent: **Coventry University London Campus**

Heard at: **East London Hearing Centre** **On: 8 & 9 October 2018**

Before: **Employment Judge O'Brien**
Ms M Long
Dr J Ukemenam

Representation:

Claimant: In person

Respondent: Ms Hodgetts of Counsel

JUDGMENT ON RECONSIDERATION

1. **The judgment of the Tribunal sent to the parties on 2 May 2018 is confirmed.**

2. **The claimant's application for costs is refused.**

REASONS

1 On 13 May 2017, the claimant presented complaints of constructive unfair dismissal, detriment and/or dismissal on the grounds of protected disclosure, and failures to make reasonable adjustments. The respondent resisted the claims.

2 The claim was dismissed in its entirety after a 6-day hearing and a further day deliberating in Chambers by a reasoned judgment sent to the parties on 2 May 2018.

3 On 15 May 2018, the claimant applied in writing for the Tribunal to reconsider its judgment on the grounds, summarised in his opening paragraph as errors in the proceedings, errors of fact and conflicting evidence [sic] in the findings of the Tribunal. Amongst those matters alleged to be errors in proceedings was the Tribunal's decision to

substitute its own list of issues to be decided in place of the list of issues he understood had been agreed between the parties.

4 It was solely on that ground that I notified the parties on 26 June 2018 of my provisional decision to grant the application. I indicated, however, that I expected the claimant to address in writing (and/or orally if a reconsideration hearing is listed) how the Tribunal's own list of issues failed to incorporate in its entirety the claimant's pleaded case and how his evidence and submissions would have differed had he been made expressly aware of the list of issues that the Tribunal intended to use. I refused permission on all other grounds because I was satisfied that they gave rise to no reasonable prospect that the judgment would be varied or revoked. I ordered that the respondent notify the Tribunal by 13 July 2018, with reasons, if it did not think that the judgment should be reconsidered, and both parties to indicate by that date whether the application could be determined without a hearing.

5 As it was, the Respondent replied on 11 July 2018, submitting that the surviving ground had no merit but agreeing that an oral hearing was necessary to identify which of the claimant's complaints he says had not been determined by the Tribunal and how the Tribunal's approach had made a material difference in the outcome of the case. The claimant replied on 13 July 2018, also submitting that an oral hearing was necessary, so that he could set out orally 'how the Tribunal's substitution of its own list of issues failed to incorporate in its entirety the Claimant's pleaded case and how his evidence and submissions would have differed had he been made expressly aware of the list of issues that the Tribunal intended to use.' He also asked me to reconsider what he described as my 'provisional view' his other grounds gave rise to no reasonable prospect that the judgment would be varied or revoked.

6 In the circumstances, I directed that an oral hearing be listed to consider the single ground which I had provisionally considered had reasonable prospects of success. As to the other grounds, I was satisfied that indeed they gave rise to no reasonable prospect that the judgment would be varied or revoked. To the extent that that had not been readily apparent already, I made the position clear at the beginning of the oral hearing.

7 On 4 September 2018, the claimant applied for additional documents to be relied upon at the reconsideration hearing. These comprised: the respondent's updated on-line profile for Alid Kambwili; and excerpts from the respondent's audited accounts. I indicated on 12 September 2018 my doubts that either of the documents attached to the Claimant's application dated 4 September 2018 would assist the Tribunal in deciding whether to confirm, vary or revoke its judgment. Nevertheless, not wishing to prejudge any submission the Claimant might make in respect of the webpage I gave him permission to rely on that document. However, the Respondent's published accounts were manifestly irrelevant to any issue in the case, and permission to rely on that document was refused.

8 The claimant then requested on 24 September 2018 permission to rely on further documents regarding Mr Kambwili. That application was dealt with at the beginning of the oral hearing and, the respondent raising no objection, permission was given for the Appellant to rely on the documents, which related to Mr Kambwili's ACCA membership certificate.

9 I did, however, bear in mind that we would have to apply the principles in **Ladd v Marshall [1954] 3 All ER 745** if the Appellant ultimately sought to rely on these documents as new evidence upon which the Tribunal ought to vary or revoke its judgment. As it was, no relevance was ever shown of these documents to the one permitted ground for reconsideration.

10 The matter was initially listed for one day, which appeared to me to be more than sufficient to deal fairly and proportionately with the matter. The claimant, however, requested on 13 August 2018 that two days were allocated. The respondent did not object and so I directed on 31 August 2018 that the hearing be extended by one day, that day to be reserved for deliberation in Chambers and the handing down of judgment if time allowed. As it was, despite active case management, the parties' presentation of their cases continued well into the second day and so this decision was necessarily reserved.

11 In addition to the additional documentation relied upon by the Claimant as mentioned above, placed before the Tribunal were the original trial bundle of approximately 1,000 pages and further bundles from both claimant and respondent prepared for the reconsideration hearing. We took into account all of the material to which we were referred whether or not expressly mentioned in this judgment. The respondent prepared brief written submissions and the claimant lengthy written submissions in response. Again, we took the parties' cases as developed, both orally in writing, before us into account whether or not explicitly referred to below.

RELEVANT RULES AND LAW

Reconsideration

12 The provisions of the Employment Tribunals Rules of Procedure 2013 relevant to reconsideration of judgments are as follows:

> 71 Application
>
> Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.
>
> 72 Process
>
> (1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

> (2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.
>
> (3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.
>
> 73 Reconsideration by the Tribunal on its own initiative
>
> Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).

The Ambit of the Employment Tribunal

13 It is the function of the Tribunal to decide a dispute between the parties on the basis of their pleaded cases. As Langstaff P said in **Chandhok v Tirkey UKEAT/0190/14/KN** at paragraphs 16-18:

> ’16. The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a' Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.
>
> ‘17. I readily accept that Tribunals should provide straightforward, accessible and readily understandable fora in which disputes can be resolved speedily, effectively and with a minimum of complication. They were not at the outset designed to be populated by lawyers, and the fact that law now features so prominently before Employment Tribunals does not mean that those origins should be dismissed as of little value. Care must be taken to avoid such undue formalism as prevents a Tribunal getting to grips with those issues which really divide the parties. However, all that said, the starting point is that the parties must set out the essence of their respective cases on paper in respectively the ET1 and the answer to it. If it were not so, then there would be no obvious

> principle by which reference to any further document (witness statement, or the like) could be restricted. Such restriction is needed to keep litigation within sensible bounds, and to ensure that a degree of informality does not become unbridled licence. The ET1 and ET3 have an important function in ensuring that a claim is brought, and responded to, within stringent time limits. If a "claim" or a "case" is to be understood as being far wider than that which is set out in the ET1 or ET3, it would be open to a litigant after the expiry of any relevant time limit to assert that the case now put had all along been made, because it was "their case", and in order to argue that the time limit had no application to that case could point to other documents or statements, not contained within the claim form. Such an approach defeats the purpose of permitting or denying amendments; it allows issues to be based on shifting sands; it ultimately denies that which clear-headed justice most needs, which is focus. It is an enemy of identifying, and in the light of the identification resolving, the central issues in dispute.
>
> '18. In summary, a system of justice involves more than allowing parties at any time to raise the case which best seems to suit the moment from their perspective. It requires each party to know in essence what the other is saying, so they can properly meet it; so that they can tell if a Tribunal may have lost jurisdiction on time grounds; so that the costs incurred can be kept to those which are proportionate; so that the time needed for a case, and the expenditure which goes hand in hand with it, can be provided for both by the parties and by the Tribunal itself, and enable care to be taken that any one case does not deprive others of their fair share of the resources of the system. It should provide for focus on the central issues. That is why there is a system of claim and response, and why an Employment Tribunal should take very great care not to be diverted into thinking that the essential case is to be found elsewhere than in the pleadings.'

14 It is not necessary to resolve every disputed fact, only those necessary to decide the claimant's complaints.

15 The use of lists of issues was considered by Mummery LJ at paragraph 31 of **Parekh v London Borough of Brent [2012] EWCA Civ 1630**:

> 'A list of issues is a useful case management tool developed by the tribunal to bring some semblance of order, structure and clarity to proceedings in which the requirements of formal pleadings are minimal. The list is usually the agreed outcome of discussions between the parties or their representatives and the employment judge. If the list of issues is agreed, then that will, as a general rule, limit the issues at the substantive hearing to those in the list: see Land Rover v. Short Appeal No. UKEAT/0496/10/RN (6 October 2011) at [30] to [33]. As the ET that conducts the hearing is bound to ensure that the case is clearly and efficiently presented, it is not required to stick slavishly to the list of issues agreed where to do so would impair the discharge of its core duty to hear and determine the case in accordance with the law and the evidence: see Price v. Surrey CC Appeal No UKEAT/0450/10/SM (27 October 2011) at [23]. As was recognised in Hart v. English Heritage [2006] ICR 555 at [31]-

> [35] case management decisions are not final decisions. They can therefore be revisited and reconsidered, for example if there is a material change of circumstances. The power to do that may not be often exercised, but it is a necessary power in the interests of effectiveness. It also avoids endless appeals, with potential additional costs and delays.'

THE PLEADED CASE AND THE LIST OF ISSUES

16 The claimant's ET1 indicated complaints of unfair dismissal and disability discrimination. Attached to the ET1 was a 4-page document entitled 'Constructive Dismissal Case and Claim'. It gave 'instances of targeting amounting to constructive dismissal' in 11 numbered paragraphs before going on to describe how that treatment made him feel, in particular 'aggravating [his] known disability health condition' (asthma) and drove him to resign. One of those paragraphs alleged mistreatment of the claimant because he 'acted as a whistleblower'; therefore, his claim clearly alleged protected disclosure detriment/dismissal.

17 At a preliminary hearing before Employment Judge Pritchard on 21 August 2017, the disability discrimination claim was identified as a complaint of failure to make reasonable adjustments. Judge Pritchard found the claimant's assertion at that hearing that complaining about stress was a further protected disclosure had not been specifically pleaded and was too vague to be the subject of an amendment even if such an application was pursued. In the event, no application was made before Judge Pritchard or us.

18 On 10 November 2017, the respondent requested further particulars of the complaints of constructive dismissal and protected interest disclosure complaints. In an email dated 5 December 2017, the Claimant refused to provide further details. However, he did give his responses of the first day of the final hearing, and they can be found at paragraphs 2.1 to 2.7 of our judgment, within the list of issues we ourselves identified. We further clarified his reasonable adjustments claim, and his responses were faithfully recorded in paragraphs 2.8 to 2.13.

19 The respondent drafted a list of issues dated 15 August 2017 for the claimant's consideration. His amendment to that draft is dated 12 September 2017. It is fair to observe that the language he used is less neutral than that used in the respondent's draft and that the claimant often conflated a number of issues into one. The 'factual issues' are significantly more detailed than the pleaded case but in any event often comprised compound questions and/or assertions.

20 It was apparent to us, as we recorded in our judgment, that Ms Dickenson acquiesced to the claimant's list rather than embracing it as an agreed document. We did not press the point at the time but realised in deliberations that the claimant's draft was unworkable. We considered it most expeditious to formulate our own list of issues from the pleaded cases as disclosed from the claim, the response, the reply to the request for further particulars, and the claimant's clarification to us of his claims.

21 We were satisfied at the time that our list fully encompassed the pleaded claim and raised no matters about which the claimant had not had an opportunity to adduce

evidence, challenge the respondent or make submissions to us. However, in light of the present application, we were eager at the reconsideration hearing to hear and consider the claimant's views on the matter.

22 Nevertheless, despite giving the claimant an opportunity to submit written arguments in advance and extending the oral hearing into the second day so that the claimant could fully present his case and respond to the Respondent's arguments, he was unable to identify any aspect of his pleaded claim which was not dealt with by our list of issues and was unable to identify anything he would have done differently at the hearing had we made him aware of the list of issues we intended to adopt, save that he would have objected and, if overruled, would have taken more time and emphasised his own case more orally and in writing. Even then, the claimant alleged that he had only been given 10 minutes in the final hearing to make closing submissions, whereas he had in fact taken 30 minutes and could have had more time; he had not been guillotined by us.

Neither had the claimant been dissuaded for making written submissions to speak to in closing. The claimant did not suggest that he would have applied to amend his case.

23 In short, we are entirely satisfied that our own list of issues captures entirely the pleaded case, and that it was appropriate to substitute that list in order to deal efficiently with the case. The claimant has told us nothing which would have persuaded us to use his draft had we spend time deciding the matter at the hearing. We are further satisfied that, had we notified the parties at the beginning of the final hearing that we had substituted that list for the draft proposed by the claimant, the case would have been presented no differently by either party. In the circumstances, no material unfairness arose, no material issue was undecided, and our judgment was unaffected by our approach to the list of issues. Consequently, we confirm our original judgment.

24 In any event, we considered what difference it would have made to our findings had we used the claimant's draft list of issues.

25 The claimant spent most of the hearing in effect making submissions on those issues. However, he gave no credible explanation for why he could not and did not make those submissions at the original hearing. Frankly, he was disingenuous about the amount of time he was given to close his case. The claimant's submissions amounted to mere disagreement with our decision and an attempt to reargue the entire case. It would not have been in the interests of justice to vary or revoke our judgment on the basis of those submissions even if they had merit.

26 As it was, Ms Hodgetts made concise yet comprehensive submissions to the effect that the issues relied upon by the claimant had been clearly addressed in our judgment or necessarily would be decided against him, given our findings of fact.

27 We agree entirely with her overarching submission, and by and large with her individual submissions in respect of each of the claimant's draft issues.

28 To illustrate the proposition that the bulk of the claimant's issues had in fact been decided in our judgment, in respect of the claimant's issues under the heading 'Constructive Unfair Dismissal':

28.1 Issue 1 ('Was the claimant forced to leave his job against his will because of the respondent's relentless conduct of constantly making unreasonable changes to how the claimant works that adversely affected the health and aggravated the disability of the claimant?'), as explained in the application and claimant's submissions, is subsumed in allegations 3, 7 and 11 of the particulars of claim and the complaint of failure to make reasonable adjustments particularised at the beginning of the original hearing and is therefore addressed in paragraphs 83, 87, 91 92 and 100-102 of our judgment.

28.2 Issues 2 ('Was the claimant forced to leave his job against his will because of the respondent's relentless conduct of constantly letting other employees bully and harass the claimant that adversely affected the health and aggravated the disability of the claimant?') and 7 ('Was the claimant forced to leave his job against his will because the because of the repeated failure of the respondent to provide a safe and healthy environment for the claimant to work?') as similarly explained in the application and claimant's submissions, comprise no specific allegations beyond allegations 1 to 11 of the particulars of claim and his reasonable adjustments claim and is therefore addressed entirely in paragraphs 81-92 and 100-102 of our judgment.

28.3 Issue 3 ('Was the claimant forced to leave his job against his will because of the respondent's constant targeting of the claimant in response to the claimant exposing wrongdoing and defending fellow employees' rights in the workplace?') goes further than the pleaded protected disclosure, which was limited to his email of 21 March 2016, and no permission had been sought or given to rely on further protected disclosures. The consequences of the pleaded disclosure and the alleged increase in bullying are subsumed in allegations 6-11 and are addressed in paragraphs 86-94 of our judgment.

28.4 Issues 4 ('Was the claimant forced to leave his job against his will because of the respondent's relentless conduct of failing to recognise and discriminate against his disability that adversely affected the health and aggravated the disability of the claimant?'), and 5 ('Was the claimant forced to leave his job against his will because the because of the respondent's relentless conduct of failing to make the required reasonable work adjustments that adversely affected the health and aggravated the disability of the claimant?') are subsumed in his complaint of failure to make reasonable adjustments particularised at the beginning of the original hearing and is therefore addressed in paragraphs 100-102 of our judgment.

28.5 Issue 6 ('Was the claimant forced to leave his job against his will because the because of the respondent's relentless conduct of constantly failing to adhere to good communication practice as requested by the respondent?) is subsumed in allegation 11 and is addressed in paragraphs 91-92 of our judgment.

29 Similarly dealt with in our judgment are the following of the claimant's draft issues, for the reasons given by Ms Hodgetts in her written submissions:

29.1 Issues 1, 3 and 4 under the heading 'Disability'.

29.2 All of the issues under the heading 'Reasonable Adjustments'.

29.3 Issues 1, 3 and 4 under the heading 'Protected Disclosure Detriment'. Indeed, we accepted that the claimant genuinely and reasonably believed that it was in the public interest to make his disclosure by email on 21 March 2016.

29.4 All of the issues under the heading 'Unfair treatment after whistleblowing by the claimant'.

29.5 All of the issues under the heading 'Factual Issues' save for 8-14, 16-17, 20, and 42.

30 As for the proposition that the rest of the claimant's issues would necessarily have been decided against him, given the Tribunal's findings of fact, we give by way of example the following draft issues under the heading 'Disability':

30.1 Issue 2 ('Why did the Respondent not implement the required work adjustments when the Claimant specifically informed Respondent that the condition was having a substantial, adverse effect on the Claimant's ability to carry out day-to-day activities?') is explained in the application as relating to adjustments being required to his teaching of M040. This goes beyond the case as pleaded and clarified both before Judge Pritchard and at the outset of our hearing. Nevertheless, our findings on PCP, disadvantage and knowledge of disadvantage at paragraphs 100 and 101 of our judgment are fatal to this issue.

30.2 Issue 5 ('Why was there undue protracted and prolongment of the dealing and resolution of the grievances filed by the Claimant which only worsened his health condition and aggravated his disability?') again concerns an unpleaded PCP: delay in the grievance procedure. Nevertheless, given our finding that the claimant confirmed on 11 March 2016 that he wanted his complaint to be treated as a formal grievance (paragraph 33) and that he received the outcome on 5 May 2016 (paragraph 40), with Easter and the May Bank Holiday intervening, we would have found this to have been sufficiently prompt and rejected any complaint of delay.

and under the heading 'Protected Disclosure Detriment':

30.3 Issue 2 ('Did the Claimant reasonably believe that the disclosure was made in the public interest to assert a protected employment right to health and safety?') goes beyond the pleaded case without permission having been sought or granted to amend. In any event, our findings at paragraphs 81-92 about the respondent's alleged mistreatment of the claimant and 94 about the respondent's response to the claimant's disclosure would be fatal to this allegation.

31 Issues 8 to 14 under the heading 'Factual Issues' concern alleged failures on the respondent's part to investigate complaints by the claimant. None of these alleged failures were pleaded as causing or contributing to a fundamental breach of contract by the respondent. The allegations about what was said to Usha Mistry were unsubstantiated, and we would not have simply taken the claimant's unsupported evidence; we found him not to be an entirely reliable witness (see for instance paragraph 19). In any event, we considered the email in which those complaints were made at paragraph 23 of our judgment and found that Andreas Nabor had initiated an informal investigation but took it no further because the claimant did not want to raise a formal grievance. Had we been required to, we would have found that the respondent did not thereby act in a way which could contribute to a breach of contract or from which it could be inferred that the pleaded case had been made out.

32 Issues 16 and 17 again were not pleaded as causing or contributing to a fundamental breach of contract by the respondent. Indeed, issue 16 concerns the treatment of others. The claimant did not at that time wish to make a formal grievance (paragraph 23). As it is, the claimant did not resign until a considerable period of time afterwards, having had a formal grievance meeting on 23 March 2016 at which he could have raised any matter still playing on his mind. We found in any event no evidence that the claimant had been bullied (paragraph 27). Again, we would if necessary have found that the respondent did not act in a way which could contribute to a breach of contract or from which it could be inferred that the pleaded case had been made out.

33 Issue 20 yet again was not part of the claimant's pleaded case. It alleges a failure on the part of the respondent to provide the claimant with sufficient resources. As is clear from our findings of fact, we found no evidence of inappropriate management of the claimant (in particular, see paragraphs 12, 17, 19, 23, 27, 29, 31, 32, 33, 35, 43, 46, 47 and 50). Indeed, we found in paragraph 31 that the claimant only complained about pressure of work after Peter Ye had told him that attending the open day of 23 March 2016 was a duty, with which the claimant did not wish to comply. Therefore, we would if necessary have found that the respondent did not act in a way which could contribute to a breach of contract or from which it could be inferred that the pleaded case had been made out. The respondent's lack of knowledge would have been fatal to any complaint that the allegation was one of a failure to make reasonable adjustments, although we would again observe that it was not part of the claim which was clarified with the agreement of the parties at the outset of our hearing, assisted by Judge Pritchard's note of the hearing before him.

34 Paragraph 42 alleges a deterioration in the claimant's health and the adoption of coping mechanisms both while and after working for the respondent, as a result of alleged bullying by the respondent. We did not find any bullying of the claimant or other behaviour which might have caused or contributed to a fundamental breach of contract by the respondent. We also found that the respondent lacked knowledge of disability until 20 July 2016 or substantial disadvantage at any material time. Therefore, findings in respect of the claimant's health and behaviour as alleged

would have been immaterial. We did in any event accept that the claimant attended Accident and Emergency at the Royal Free Hospital on 18 June 2016.

35 In his application, the claimant asserts that a further issue (issue 43) was agreed at the outset of the hearing. We disagree and note that it concerns unpleaded matters. Evidence was in any event heard about Andreas Nabor being provided with a copy of the claimant's occupational health report, and found at paragraph 48 that the claimant agreed for his health situation to be discussed with Andreas Nabor. We found no evidence of opportunism on his or any other individual's part.

36 In conclusion, we are satisfied that, even if we had adopted the claimant's draft list of issues and even if we had had the benefit of the submissions he made before and at the reconsideration hearing, our decision on his complaints would have been the same, and we would have confirmed our judgment.

37 In the course of submissions, it was, however, agreed that the Tribunal had made two immaterial errors which we would correct.

37.1 First, we had mistakenly found in paragraph 22 that Peter Ye had given the lecturing hours for module M040 to Albert de Jong, whereas the hours had in fact been given to Alid Kambwili. The error was immaterial; the material finding was that the hours had been given to someone else in order to keep the claimant's total teaching hours within limits, and that this had been the practice of the Department that module leadership and portfolios were changed occasionally, not just for the claimant.

37.2 Second, we had recorded at paragraph 41 that the claimant had indicated that he considered himself disabled in an email on 22 July 2016, whereas it was agreed that the email had in fact been sent on 22 June 2016. This was a typographical error which again had no material bearing on our conclusions. We had accepted that the claimant told Joanne Oguzie on 23 June that stress triggered his asthma and that she had urged him to attend occupational health. However, we concluded that the respondent only had actual or constructive knowledge that the claimant was disabled on 20 July 2016 when occupational health wrote its report, because the claimant until then had resolved to keep the effects of his asthma private.

38 Consequentially, I shall issue a certificate of correction and corrected judgment.

APPLICATION FOR COSTS

39 At the end of the reconsideration hearing, the claimant intimated an application for costs. In short, his grounds were that the respondent had concealed evidence and misled the tribunal, had behaved prejudicially, and had ruined the claimant's reputation (thus causing damage to his academic career and potential political career). He alleged that the respondent had committed perjury and obstructed the course of justice.

40 The Tribunal did not accept that the respondent was guilty of any of the claimant's accusations. Instead, the respondent had quite properly responded to and resisted an application for reconsideration and had behaved proportionately and reasonably in doing

so. Similarly, we were satisfied that the respondent had behaved reasonably in defending the claim and in its conduct of the case. In each case, of course, the respondent had been the successful party.

41 In conclusion, the claimant has established no proper grounds to make any order for costs and the Tribunal refuses to do so.

10 January 2019

Employment Judge O'Brien