mf

EMPLOYMENT TRIBUNALS

Claimant: **Mr M Iqbal**

Respondent: **MJL Holdings Ltd**

Heard at: **East London Hearing Centre**

On: **30 October 2018 & 5 November 2018**

Before: **Employment Judge Russell (sitting alone)**

Representation
Claimant: **In person (assisted by Mr Hussain, McKenzie Friend)**
Respondent: **Mr M Luff (Director)**

JUDGMENT

The judgment of the Employment Tribunal is that:

1. **The Claimant's application to strike out the Response is refused.**
2. **The claim for a redundancy payment fails and is dismissed.**
3. **The claim for notice pay and wages fails and is dismissed.**
4. **The claim for holiday pay fails and is dismissed.**

REASONS

1 By a claim form presented on 19 September 2017, the Claimant claims a redundancy payment, notice pay, outstanding annual leave and pay. The Respondent resists all claims. At an earlier hearing, I decided that the effective date of termination of the Claimant's employment was 26 April 2017. Essentially, the case turns on whether the Respondent was entitled to terminate the contract summarily by reason of gross misconduct.

2 At this hearing, I heard evidence from the Claimant and, for the Respondent, from Mr Luff (Managing Director) and Mr Latronico (Area Manager). I was provided

with a bundle of documents and read those pages to which I was taken in evidence.

3 On the first morning of the hearing, the Claimant applied to have the Response struck out by reason of the Respondent's conduct. He submitted that the Response was a falsified and fabricated document. This is an assertion that the Claimant first made as long ago as July 2018. In the bundle of documents used at a hearing on 19 April 2018, a document attached to the Response which purported to be notes of a disciplinary meeting on 21 April 2017 was only six pages long whereas the copy of the notes provided to the Claimant was seven pages long. This, says the Claimant, shows fraud and falsification of evidence by Mr Luff and the Respondent's former solicitor, whom he has asserted was aware and complicit in falsifying the document. In a letter to the solicitor, the Claimant said that he was seriously considering reporting him to the Solicitor's Regulation Authority for disciplinary action which may include him being struck off.

4 The Respondent's former solicitor has strongly refuted the allegation, explaining that there had been no more than an administrative error whereby he erroneously attached an earlier draft version which had subsequently been amended by the Respondent. The final document as approved by Mr Luff was seven pages long and was the version submitted with the Response. Mr Luff has confirmed that this was indeed what happened.

5 In short, there is a dispute of evidence about a very serious allegation which, if true, would be a possible contempt of court and serious professional misconduct. I did not consider that I could simply take the Claimant's assertion at face value in a preliminary application on the morning of the final hearing. Rather I considered that I should hear evidence and decide the case after an opportunity to assess the credibility of the parties on this, and other, points. I refused to strike out the Response.

Law

6 Section 140, Employment Rights Act 1996 provides that:

> **(1) Subject to subsections (2) and (3), an employee is not entitled to a redundancy payment by reason of dismissal where his employer, being entitled to terminate his contract of employment without notice by reason of the employee's conduct, terminates it either—**
>
> **(a) without notice,**
> **(b) by giving shorter notice than that which, in the absence of conduct entitling the employer to terminate the contract without notice, the employer would be required to give to terminate the contract, or**
> **(c) by giving notice which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.**
>
> **(2) Where an employee who—**
>
> **(a) has been given notice by his employer to terminate his contract of employment, or**
> **(b) has given notice to his employer under section 148(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,**
>
> **takes part in a strike at any relevant time in circumstances which entitle the employer to treat the contract of employment as terminable without notice, subsection (1) does not apply if the employer terminates the contract by reason of his taking part in the strike.**
>
> **(3) Where the contract of employment of an employee who—**

(a) has been given notice by his employer to terminate his contract of employment, or
(b) has given notice to his employer under section 148(1) indicating his intention to claim a redundancy payment in respect of lay-off or short-time,

is terminated as mentioned in subsection (1) at any relevant time otherwise than by reason of his taking part in a strike, an employment tribunal may determine that the employer is liable to make an appropriate payment to the employee if on a reference to the tribunal it appears to the tribunal, in the circumstances of the case, to be just and equitable that the employee should receive it.

(4) In subsection (3) "appropriate payment" means—

(a) the whole of the redundancy payment to which the employee would have been entitled apart from subsection (1), or
(b) such part of that redundancy payment as the tribunal thinks fit.

(5) In this section "relevant time"—

(a) in the case of an employee who has been given notice by his employer to terminate his contract of employment, means any time within the obligatory period of notice, and
(b) in the case of an employee who has given notice to his employer under section 148(1), means any time after the service of the notice.

7 The Claimant's claim for notice pay is brought under the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994, article 3. It is, in general, for the Respondent to show on the balance of probabilities that the Claimant was in fact guilty of the misconduct alleged to amount to a repudiatory breach of contract entitling it to dismissal without notice or pay in lieu. To be sufficient, the conduct must so undermine the trust and confidence inherent in that particular contract of employment that the employer should no longer be required to retain the employee, **Neary v Dean of Westminster** [1999] IRLR 288.

8 The Employment Rights Act 1996 ("ERA") s.13 provides that an employer shall not make a deduction from wages of a worker employed by him unless the deductions are required or authorised to be made by virtue of a statutory provision, a relevant provision of the worker's contract or the worker has previously signified in writing his agreement or consent to the making of the deduction. A deduction occurs when an employee or worker is paid less than the amount due on any given occasion including a failure to make any payment, s.13(3) ERA.

9 An employee's entitlement to paid annual leave is set out in regulations 13, 13A, 14 and 16 of the Working Time Regulations 1998. In particular, regulation 14 provides that where the employment is terminated during the course of a leave year, the Tribunal must determine the amount of any payment in lieu of accrued but untaken holiday by multiplying the statutory entitlement by the proportion of the leave year expired and then deducting the actual amount of leave taken.

Findings of Fact and Conclusions

10 The Respondent is a retail company importing footwear from Europe and China and selling it through retail outlets or direct to the wholesale trade. One of the shops was in Leytonstone and the Claimant was its manager from 21 January 1994.

11 In the past five years, the Respondent has closed a number of shops and was considering the closure of Leytonstone. By early February 2017, a definite date for the closure of Leytonstone was known.

12 On 18 February 2017, the Respondent wrote to Mr Iqbal confirming that the Leytonstone shop would close around the middle of April 2017. The letter gave him 12 weeks' notice of termination, suggested an anticipated redundancy payment in the sum of £9,433.51 gross and raised the possibility of transfer to another shop. The Claimant refused to transfer, as he was his contractual right.

13 The process of closing down the Leytonstone shop started around mid-March 2017 when Mr Latronico attended the premises. Stock which was potentially saleable was put into a closing down sale or transferred to another shop. Stock remaining in the shop after closure would be paired up and sent back to head office or sent to other shops at a special offer price. Mr Luff attended at the shop on 27 and 28 March 2017, with the latter being the final day of trading at Leytonstone.

14 By a letter dated 3 April 2017, the Respondent raised allegations of potential gross misconduct against the Claimant. In a lengthy and detailed letter, it set out an account of how the closure process had revealed the existence in the shop of thousands of odd shoes which were unsaleable. In the letter, Mr Luff referred to discussions between himself and the Claimant about the odd shoes and the sheer volume of oddments in men's steel toe-cap shoes and trainers. Mr Luff said that the final straw had been the discovery on the last day that every single ladies' boot box on the shelf (at least 200 boxes) contained an oddment. Mr Luff goes on to record asking the Claimant and staff where the other shoes were. The staff had no idea. The Claimant blamed staff for failing to pair shoes taken off display. Mr Luff did not accept the Claimant's excuse that it was the fault of staff who had not paired shoes taken off display; he believed that the Claimant, as manager, must have been aware for many years of the accumulation of oddments. In the letter, Mr Luff referred to there being well over 5,000 odd shoes with a retail value of between £50,000 and £100,000. The Claimant was invited to a disciplinary hearing and told that he could view photographs taken to record the scale of the problem, although the letter refers to the fact that the Claimant had been present in the shop and seen it for himself.

15 In his reply on 9 April 2017, the Claimant denied any gross misconduct or wrongdoing. He said that there had been no end of year or closing down stock take by an independent auditor both of which were required to prove gross neglect as the photographs taken by Mr Luff were not sufficient evidence. The Claimant regarded the allegations as an attempt to dismiss him without paying him his redundancy pay, notice pay and wages.

16 The Claimant's employment was due to end by reason of redundancy on 13 May 2017. Attempts were made in April 2017 to hold a disciplinary hearing with the Claimant. The Claimant refused to attend. On 18 April 2017, the Respondent repeated its earlier request that the Claimant work out his notice period alongside the manager at the Barking shop. The Claimant refused. By a letter dated 24 April 2017, Mr Luff informed the Claimant that his employment was summarily terminated for gross misconduct, that he was not entitled to redundancy payment and would be paid until dismissal. The Claimant was informed of his right of appeal but did not exercise it.

17 After dismissal, the parties exchanged correspondence in which the Claimant maintained his entitlement to the payments he said were due and the Respondent maintained that he was not. As part of this, the Claimant made a data subject access

request for a wide range of documents. The Respondent refused to provide all of the documents requested as it regarded the request as disproportionate but, on 26 June 2017, it did provide the Claimant with copies of the photographs.

18 The chronology set out above is largely not in dispute. What has made this a remarkable case is the single factual dispute between the parties: were approximately 5,000 odd shoes found in the Leytonstone shop on closure? The Respondent says that there were. The Claimant accepts that if such a great number of odd shoes were found, it would amount to gross misconduct; his case quite simply is that the odd shoes did not exist and are a fabrication to avoid paying his redundancy payment and other monies. This is a dispute to be decided on the balance of probabilities based upon the evidence I prefer.

19 The Claimant's case is that the evidence for the Respondent is not credible for a number of reasons. Firstly, it falsified an attachment to the Response (the notes of the disciplinary meeting relied upon in the strike out application). Secondly, the Respondent has failed to disclose all relevant documents. Thirdly, by the date of closure of Leytonstone, there was no stock left in the stockroom because in the five months preceding closure there had been no deliveries of stock in but many transfers of stock out to other shops. Fourthly, the Respondent waited five days between discovery of the alleged problem before taking action rather than dismissing or suspending him on the spot, suggesting that the Respondent could not really have believed that he had committed an act of gross misconduct. Fifthly, he was not told about the oddments problem at the time the shop closed, there was a delay in providing photographs which have been fabricated and there was no independent closure audit. Sixthly, Mr Latronico was not also subject to disciplinary action. Finally, the he was offered alternative employment even after the gross misconduct allegation was made.

20 By contrast, the Respondent's case is that the Claimant is not credible and the Tribunal should prefer its evidence. Firstly, it relies upon photographs taken in the shop over a series of days while the closure was ongoing, including time stamps and one with taken with a copy of a newspaper of the same date. Secondly, transfer printouts show that there were deliveries of stock into Leytonstone until February 2017 when the closure date became known. Thirdly, that there were discussions with the Claimant at the time of the closure process about the problem of odd shoes being discovered. Fourthly, there needed to be a proper disciplinary investigation and consideration before the Claimant could be dismissed or refused suitable alternative employment. Fifthly, the solicitor's error had led to a draft version of the deliberations being attached to the Response. Sixthly, auditors were not necessary because it was not year-end and as stock was being transferred internally it would be accounted for in the other shops at year-end. Finally, Mr Luff and Mr Latronico's evidence as to the sheer number of shoes and the detail of what they had found.

21 On balance, and for reasons set out below, I preferred the evidence of the Respondent to that of the Claimant.

22 The Claimant's evidence was unreliable and, at times, incredible on a number of points. For example, the Claimant's insistence that the document attached to the Response had been deliberately fabricated in order to portray an unduly critical

impression of him in the mind of the Tribunal and unwillingness to accept that it was or even could have been a simple administrative error. This was a concern first raised by the Claimant on 4 July 2018 and repeated in his letter to the Respondent's solicitor on 30 August 2018. After asserting that the solicitor had been fully aware and complicit in falsifying evidence and would be reported to the SRA for disciplinary action, the Claimant added that it would be in his client's best interest to settle by paying him in full. As set out above, the solicitor objected to the accusation against him and the intemperate way in which it was expressed, providing a full explanation of the error which had led to an earlier draft of the notes being attached to the Response.

23 In order to resolve this dispute, I analysed both versions of the notes of the meeting on 21 April 2017. There are differences between them which are mostly but not only matters of formatting by adding paragraph numbers and moving text around. There were differences of substance highlighted by the Claimant, for example:

"**He has not attended and therefore I shall continue the meeting without him**" (attached to the Response)
and
"You again replied stating that you would not be attending. As you refused to attend, I am therefore left with no alternative than to evaluate the situation as best I can." (sent to the Claimant).

"**Other shops that we have closed down in the past we have had oddments but maybe 30/70 half pairs and these are normally because of odd sizes being sold. And you have two shoes of the same foot, so it was reasonably accepted that this could happen.**" (attached to the Response).
and
"**We have closed several shops in the past and generally we find from 30 to 70 half pairs depending on the size of the shop, these half pairs are normally odd sizes, which we consider reasonable.**" (sent to the Claimant).

24 In the version of the notes sent to the Claimant there is reference to two members of staff spoken to: Kamir and Loublia. In the version attached to the Response, there is instead reference to three members of staff: Kamir, Loublia and Noor. Noor was critical of the Claimant's management style but did not comment on the issue of odd shoes, unlike Kamir and Loublia who did. In other words, Noor's evidence was not relevant to the gross misconduct relied upon by the Respondent as the reason for dismissal. Its removal is therefore consistent with the explanation of the solicitor and Mr Luff about the editing process.

25 Having carefully considered the differences between the two versions of the notes, I accept the explanation given by Mr Luff and supported by his solicitor that in error a first draft of the notes was attached to the Response. Such differences as were identified did not create a materially more critical impression of the Claimant's conduct in connection with odd shoes said to have been found during the closure of Leytonstone. There was no falsification of the document.

26 The readiness of the Claimant to accuse a solicitor and Mr Luff of a knowing falsification was consistent with his response to any evidence which undermined his case. The Claimant asked for disclosure of stock transfer requests into Leytonstone as relevant to his submission that there had been no stock transferred in the five months

before closure. At the hearing in September, I agreed that they were relevant and ordered their disclosure. The computer-generated document shows transfer of stock into Leytonstone until 15 February 2017, supporting the Respondent's case and undermining that of the Claimant. In response, the Claimant alleged that the computer-generated document was a fabrication and that he needed the physically signed documents. The computer-generated document identifies by item number, supplier, reference, description (including size and colour), quantify, value and date each of the stock transfers in question. The suggestion that each entry over a four-page print out has been fabricated is not plausible. I find that there were significant stock transfers into Leytonstone between 7 December 2016 and 15 February 2017.

27 The Respondent relied heavily upon the many photographs taken at Leytonstone during the closure process. The Claimant asserts that the photographs are fabricated and not genuine. During the course of this Tribunal hearing and evidently frustrated by the Claimant's assertion that the photographs were fabricated, Mr Luff produced the mobile telephone on which the photographs were taken to show their date and time stamps. The Claimant's response was that these had been manipulated. The final photograph on the mobile telephone was of an electricity meter reading, it had the date stamp of 28 March 2017 and included the banner of a copy of the Sun newspaper showing a date of 28 March 2017. Mr Luff said that the photograph was taken to confirm the final electricity meter reading and the date on which the reading was taken. The Claimant's response was that an archive copy of the newspaper had been purchased in order to stage the photograph, despite that photograph not being relied upon as proof of the existence of odd shoes and being produced spontaneously during the hearing.

28 As for the photographs of the alleged odd shoes, the Claimant takes issue with three in particular. At page 95 of the bundle there is a photograph of some empty wooden racking in the storeroom under which the floor is clean and tidy. The Claimant accepts that this was the state of the storeroom when the shop had closed and was about to be handed back to the landlord. At pages 73 and 83 there are further photographs of the same wooden racking but covered with a large number of clearly odd shoes under which are cardboard boxes and scraps of paper showing the stockroom in a state of mess and disorder. The Claimant's case is that these latter photographs were staged in the manner of a film set where all of the shoes, boxes and even rubbish were moved back into the shop after it closed. This is not plausible.

29 The photographs show that the Leytonstone shop was clearly large enough to hold the number of oddments found by Mr Luff and Mr Latronico. Shoes and boots were stored on the shop floor and in the stockroom. The photographs provided by the Claimant of the shop floor before closure show the shop floor densely stocked. Indeed on one rack alone, there appear to be about 300 to 400 pairs of ladies sandals. Many of the oddments were found as a single shoe or boot in their proper box but very many were also found jumbled together in large cardboard boxes and in the electricity meter room. In such circumstances, and contrary to the Claimant's evidence, there was more than enough space for so many oddments in the shop.

30 The existence of photographs said to show large numbers of oddments was known to the Claimant by 3 April 2017 who was told he could see them if he wanted. I considered it telling that his response on 9 April 2017 was not to challenge the

existence of contemporaneous photographs but instead to challenge their sufficiency as evidence. Moreover, this letter set out the discussions about the shoes with the Claimant during the closure process. The Claimant did not deny then, as he does now, that such discussions took place. I prefer the evidence of Mr Latronico and Mr Luff and find that the photographs were taken as the store was closing, showed the very large number of odd shoes found at the Leytonstone shop which was discussed with the Claimant at the time.

31 A central part of the Claimant's case is that this was a sham allegation of gross misconduct to avoid paying his redundancy payment, a ruse he says previously used by the Respondent on other employees dismissed when shops closed. At the Preliminary Hearing on 6 September 2018, I ordered the Respondent to provide information and documents for all shops closed between 1 January 2014 and 31 December 2017 of the what happened to the manager, whether redundancy payments were made and if so, payslips to prove that the payment had been made. The Respondent complied with the Order. Eleven shops closed during this period. Twelve managers were named: five received redundancy payments; three transferred to another shop; one resigned before the shop closed, one failed to respond to an offer of transfer and one was dismissed for gross misconduct. This latter was the Claimant.

32 It may be seen that the evidence did not support the Claimant's case. His response was to allege that the redundancy payments had only been made after solicitors became involved and litigation threatened. There is no evidence to support any such assertion. Indeed, it is inconsistent with the payslips that show that the redundancy payments were made at the date of termination. I reject the Claimant's case and find this a further example of his lack of credibility and willingness to make serious allegations without any evidence in support.

33 The Claimant relies upon a lack of an independent audit on closure and asserts moreover that previous audit reports would show that they had inspected all stock in previous year-ends. The Respondent has produced a letter dated 5 September 2018 from its auditor which confirms that the year-end audit would only test check a sample of 10 stock items for retail price and inclusion/omission from the stocktake ledgers. Again, faced with evidence undermining his case, the Claimant said that the letter was not reliable due to a manuscript amendment. That amendment changed the word "theft" to "shortage" in respect of stock. I am not satisfied that such an amendment is sufficient to cast doubt upon the material evidence of the auditor that their practice was not to check all stock but only a small sample.

34 Whilst it is right that there was no independent audit on closure, based upon the other evidence I consider on balance that it would have supported the Respondent's case. No doubt, the Claimant would have challenged the genuineness and reliability of such a report in that event. Even without such an audit, there is the oral evidence of Mr Luff and Mr Latronico that there were well over 5,000 odd shoes with a retail value of between £50,000 and £100,000, contemporaneous photographs and the contents of the letter sent on 3 April 2017.

35 The next point raised by the Claimant is what he describes as delay in dismissing him and an offer of alternative employment. Both he says are inconsistent with a genuine belief that he had committed an act of gross misconduct and are

evidence from which I can infer that the allegation was a sham. The last day of trading at Leytonstone was Tuesday 28 March 2017. The letter setting out the allegation was sent on Monday 3 April 2017, some four working days later. Mr Luff and Mr Latronico were still on site trying to pair oddments to establish the scale of the problem, information which was necessary before any disciplinary action could be taken. The Claimant was not at work to be suspended. In the circumstances, I do not find there to have been undue delay. As for alternative employment, this was for the remaining weeks of the notice period and was to work alongside another manager, not to manage the shop himself. Neither is evidence from which I could infer that the disciplinary allegations were a sham.

36 Finally, it is correct that Mr Latronico was not subject to disciplinary action. He was the area manager and not the shop manager. The extent of the oddments problem was only known on closure when boxes were opened and, instead of containing a pair as might reasonably be expected, there was only a single boot or shoe. This was not a problem which could or should reasonably have been known to Mr Latronico previously and for which he could fairly be disciplined.

37 Finally, in assessing the reliability and credibility of the Claimant's evidence I took into account his assertion on the first day of the hearing, 30 October 2018, that he had not received a copy of the bundle and had not previously seen the photographs included within it. I directed the Claimant's attention to the Reconsideration Judgment of Employment Judge Goodrich where he expressly referred to the content of the Respondent's bundle used at a hearing in April 2018 as including 55 pages of photographs. The Claimant's response was that Judge Goodrich was wrong. I do not agree, rather it is another example of the Claimant's inability to accept evidence with which he does not agree or which undermines his assertions.

38 On the balance of probabilities and taking the above into account, I accept the Respondent's evidence that there were some 5,000 odd shoes found in the Leytonstore shop during the closure process. In allowing the build-up of such a volume and value of the shoes, the Claimant was guilty of an act of gross misconduct and the Respondent was entitled to and did terminate his contract for this reason. Applying section 140(1)(a) of the Employment Rights Act 1996, the Claimant is not entitled to a redundancy payment.

39 I then considered the discretion afforded by section 140(3) which permits the Tribunal to order part or full payment if it appears in the circumstances of the case just and equitable that the employee should receive it. As Mr Hussain rightly submitted, the Claimant was a long-serving employee with 23 years of service. I considered whether it was just to deprive an employee of such service of his redundancy payment by reason of the specific gross misconduct he committed. The photographs relied upon by the Respondent showed shoes which Mr Luff could identify as styles dating back 12 to 15 years in some cases. This suggests that the problem of odd shoes and the Claimant's misconduct was not an aberration in the last year or so of employment but had extended over many years and been concealed until the closure of the shop revealed the same. When his misconduct was revealed, the Claimant refused to engage with the disciplinary process and has offered no explanation or mitigation for his gross misconduct. Even now, he categorically denies that the problem was genuine and instead makes very serious allegations of dishonesty against the

Respondent and even its solicitor. In all of the circumstances, I do not consider it just and equitable that the Claimant should receive any part of his redundancy payment.

40 The Claimant was paid until his employment ended and as he was dismissed for an act of gross misconduct he is not entitled to pay for the balance of his notice period. As for holiday, there was no evidence of any outstanding sums not paid and the issue was not addressed in the Claimant's witness statement or closing submissions made on his behalf. As such, the claim is not proved.

41 For all of these reasons, all claims fail and are dismissed.

Costs

42 Having given Judgment with oral reasons, the Respondent made an application for costs. Mr Luff initially sought both a cost order and a preparation time order but it is clear from Rule 75(3) that both orders cannot be made in favour of the same party in the same proceedings. In the circumstances, the Respondent elected to apply for its legal costs.

43 Rules 74 to 78 of the Tribunals Rules of Procedure 2013 govern the award of costs. Costs do not follow the event so it is insufficient that the Claimant's claims failed. The Tribunal must be satisfied that the paying party has conducted itself either vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings or part. Even if that threshold is satisfied, the Tribunal retains a discretion as to what, if any, costs it will award and may take into account the Claimant's means if relevant. There does not need to be a direct causal link between the unreasonable conduct and the cost incurred instead a broad-brush approach will apply.

44 In deciding whether the Claimant's conduct of proceedings has been unreasonable, I had regard to the extent of his requests for disclosure, his data subject access request and the sheer volume of correspondence sent to the Respondent and to the Tribunal. This was such that at one point the Tribunal wrote to the Claimant telling him that correspondence should stop. The Respondent has incurred significant legal cost in responding to his requests and letters. As the Claimant's case was to deny entirely the existence of the oddments and allege dishonesty and fabrication, the Respondent was required to adduce more evidence than would otherwise have been required in response, for example the auditors letter and the details of previous shop closures. I have found that the oddments issue was discussed with the Claimant at the time and his evidence has been so unreliable and implausible that the case was highly unlikely ever to succeed. In the event, this has proved to be the case. I am satisfied that the Claimant's conduct in bringing and in conducting these proceedings passes the threshold of unreasonable conduct for a costs order.

45 Mr Luff relied upon a cost schedule covering legal fees dating back to 13 April 2017. These were costs incurred in relation to dismissal and not the proceedings in the Tribunal which were not issued until 19 September 2017, as such they are not recoverable. The detailed breakdown on the billing guide reveals a number of emails which have nothing to do with this case at all, they are also unrecoverable.

46 Having considered the billing guide, I agree with Mr Hussain that the number of

emails and the amount charged seems to be excessive. For example, the solicitor has billed for four hours work in connection with sending Mr Luff a copy of a single legal authority. The Claimant is not a wealthy man, he has had only one job for one month since he left the Respondent's employment and currently has no income although there is no evidence of significant debts or other domestic financial responsibilities.

47 Having regard to the total value of the cost bill, the Claimant's means and the extent of his unreasonable conduct, I award the Respondent the sum of £5,000 in costs.

Employment Judge Russell

Dated: 20 February 2019