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THE EMPLOYMENT TRIBUNALS

Claimant: Mrs A Dooley

Respondents: (1) Mr Lee Williams
(2) WM Functions Limited in Creditors Voluntary Liquidation
(3) Woolston Manor Golf Club Limited
(4) Woolston Manor Golf and Leisure Limited

Heard at: East London Hearing Centre

On: Thursday 31st January 2019

Before: Employment Judge Prichard

Representation

Claimant: Mr T Pacey, counsel, instructed by Pinney Talfourd LLP
Hornchurch

Also attending: Ms E Hamit, trainee solicitor
The claimant & Mr R Dooley, husband

1st & 4th Respondents: Mr L Williams

2nd Respondent: No appearance or representation, no ET3

3rd Respondent: No appearance or representation, no ET3

JUDGMENT ON PRELIMINARY HEARING

1 This preliminary hearing on strike out / costs against the first and fourth respondent is now changed to a part-heard final hearing to be resumed on the agreed dates of **Tuesday to Friday 10 to 13 December 2019** at East London Tribunal Service, Import Building (Formerly Anchorage House), 2 Clove Crescent, LONDON E14 2BE, starting at **10.00 am**.

2 Directions for the continuing hearing are given below.

3 The applications for striking out and/or awarding costs against the first and/or fourth respondents are adjourned part-heard to the resumed hearing on 10 December.

REASONS

1 The issues for the final hearing remain as per my preliminary hearing summary of 16 July 2018, and also, as identified by Judge Goodrich on 15 November 2018.

2 I did not disguise my dismay at the fact this claim had not progressed at all. The parties seem incapable of progressing without being nursed through every step by the tribunal. However, today has in the event been quite a useful exercise. I was about to dismiss both applications when Ms Hamit pointed out that there was evidence in the bundle they provided that contradicted Mr Williams's assertion that all email accounts had crashed in the power outage when Npower cut off power sometime after 6 January 2018.

3 Significantly what contradicted the evidence that all these email accounts were deleted were random emails which were clearly printed out by Mr Williams or by somebody who logged in as him on the Woolston Manor system after the power was cut off. I heard evidence from the claimant that she did not have his password. She said this on oath. Mr Williams said she did.

4 I then asked for another witness to attend the tribunal today and she did so unprepared. As soon as she arrived at the tribunal she was called in to give evidence on affirmation. Eleni Chrysanthou still works there, now on a self-employed basis, full-time, as the Assistant Sales Manager in London. He says that she and her other colleagues all have Mr Williams' password to log in to the info@woolstonmanor.co.uk address. If one goes to Outlook under Mr Williams profile you will see that there are two inboxes. In Outlook there is Lee Williams and the other is info@. Ms Chrysanthou said that she did not look at his Lee Williams emails just at the info@ emails.

5 Her evidence had the great quality of apparent spontaneity. It was odd that she did not remember if she had lost any emails at all after the power outage. The letter put forward to the tribunal on behalf of the claimant from PLR IT consultants stated that this information was all irrecoverable because of the failure of an antiquated tape backup system for an antiquated server which they had replaced in 2018 after the N-Power disconnection.

6 This conflicting evidence gave me cause to have reservations about the assertion that the reason why emails were not disclosed was because they were unobtainable due to a catastrophic failure of the server following a power cut. There was no obvious explanation for why the emails which have now been disclosed would have been printed off at all. They come from August/September/December before the N-Power cutting off. The emails shown to me seemed routine and wholly unremarkable. Why would you need a hard copy? No-one could suggest any reason. They had nothing to do with purchase invoices or County Court judgments for Pilgrims.

7 Ms Dooley also stated that Emily Brooks, who worked there from May to November 2017, did not have Mr Williams' password and that she had obtained some of his emails because she was apparently logged in at her desk and when she

approached Mr Williams computer she saw emails from him suggesting the impending closure, redundancies etc. She had looked at few of these and taken pictures of the screen on her iPhone, which the claimant now has copies of. Mr Williams was announcing the termination of Emily Brooks' and the Claimant's contracts. I took a photocopy of those for the tribunal's file.

8 That is the current state of the evidence on this, and it is not all one way. Ms Dooley was absolutely clear that her employment was TUPE transferred to the fourth respondent and that is consistent with the stance of the liquidators who were saying that they had no liability for the debts arising from her 10 years' continuous service entitling her, in theory, to 15 x 1 week's pay by way of redundancy pay / unfair dismissal basic award.

9 I have not made findings of fact but I have recited some of the evidence I have heard today because, just to keep it fresh in everybody's minds for when we come back to it in nearly a year's time.

10 The claimant stated that they would never have given her Mr Williams' email log on because of all the dodgy dealings going on, recorded in his email. She had heard this from Dave Sherrin whose name I mentioned before. She also had information from Billy and Steve Jacobs, both "nominal" directors at the time the liquidators came in December 2017.

11 I was highly critical of the claimant's side because, having had a statement from the respondent's IT Consultant, an expert opinion, they never stated their disagreement until today. That was deeply unhelpful. They just threw the issue at Mr Williams and me, expecting me to sort it out and strike out Mr Williams' defence etc.

12 They never shared their views with the respondent and indeed were reluctant to share them with me until I demanded to see the information they had. The PLR IT report was written by somebody with certain amount of knowledge about how emails might have been recovered if there was a will to do so. Hence the whole issue of disclosure and recoverability of emails is still one of the issues that will now have to be decided by me at the 4-day final hearing.

CASE MANAGEMENT ORDERS

Made under the Employment Tribunals (Constitution and Rules of Procedure)
Regulations 2013

1 On **28 February 2019** the parties will both write to the tribunal stating whether or not they consent for the final hearing to be before myself alone as the Employment

Judge or if they wish to have a full panel of three to hear the discrimination complaints, which I have not heard in the evidence today. They are also to state if they are interested in judicial mediation.

2 On 14 February 2019, the respondent stated he would be happy for a single judge to hear the case, but the claimant's solicitors wanted a full panel, so that choice must prevail under the Rules. It will be a full panel.

3 On the same day, **28 February 2019**, the claimant will please provide the respondent and the tribunal with a schedule of loss.

4 On **28 February 2019** the parties are to please confirm whether or not they wish there to be an offer of judicial mediation in this case.

5 The schedule of loss has now been provided on 28 February 2019. Having seen it, the respondent says that they are so far apart, mediation would be a waste of time. Sodespite the claimant's willingness, there will be no judicial mediation with any of the parties. Mediation, like a single judge, needs the consent of both parties.

6 By **14 June 2019** the respondent will please provide the claimant with a hard copy, page numbered, indexed, and bound (in file(s)), as the consolidated bundle for the final hearing with everything, including what was provided today, in a logical and chronological order. 4 extra copies of the bundle must be provided to the panel on the first day of the resumed hearing (it is now a full panel).

7 By Thursday **31 October 2019** the parties will please exchange comprehensive witness statements of their witness evidence to the tribunal.

8 The final hearing will take place, by agreement between the parties and the tribunal, over 4 days from **Tuesday 10 to Friday 13 December 2019** at East London Tribunal Service, Import Building (Formerly Anchorage House), 2 Clove Crescent, LONDON E14 2BE, starting at **10.00 am**.

9 There will please be an updated schedule of loss by **3 December 2019**.

10 At the final hearing the panel will please be provided with a comprehensive cast list of all persons named in the whole narrative, and their roles, preferably in alphabetical order of second names.

11 Other matters

11.1 Public access to employment tribunal decisions

All judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

11.2 Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment

Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

- 11.3 Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**
- 11.4 You may apply under rule 29 for this Order to be varied, suspended or set aside.**

Employment Judge Prichard

29 May 2019