EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4106868/2017

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Held at Dundee

Employment Judge: Mr C Lucas (Sitting Alone)

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Ms Veera Paterson	**Claimant** **Represented by:** **Mr G F Bathgate** **Solicitor**

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Tayside Public Transport Co Ltd **(t/a "Xplore Dundee")**	**Respondent** **Represented by:** **Mr S E Allison** **Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL ON RECONSIDERATION OF THE JUDGMENT - ("THE ORIGINAL DECISION") - ISSUED ON 21 MAY 2018 AND ENTERED IN THE REGISTER AND COPIED TO THE PARTIES ON 23 MAY 2018

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After reconsideration of the judgment on liability as issued on 21 May 2018 and entered in the Register and copied to the parties on 23 May 2018 – (hereinafter, "the Original Decision") – the Judgment of the Employment Tribunal is in two parts, namely, -

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FIRSTLY:

The Original Decision is varied as follows, -

(a) The word "three" where it appears in the first line of the "JUDGMENT OF THE EMPLOYMENT TRIBUNAL"

section of the Original Decision is deleted and the word "two" is inserted between the words "in" and "parts" in that line so that, as amended, that line reads, "The Judgment of the Employment Tribunal is in two parts, namely: - ".

And

(b) The phrase, "and any fees paid by her to her solicitors or – (if different) – her representative" where it appears in paragraph numbered "(Third)" which begins on the second page of the Original Decision and continues on to its third page is deleted so that, as amended, that paragraph beginning on the second page of the Original Decision and continuing on to its third page reads, "(Third) That the Respondent is ordered to reimburse the Claimant in respect of expenses reasonably incurred by her as a result of being unfairly dismissed by the Respondent on 2 September 2017, such expenses to include additional travel costs incurred by her in attending her present place of work, all as such expenses may be agreed between the parties' respective representatives or, failing such agreement being reached before 8 August 2018, as may be determined by a Tribunal at a purpose-specific Hearing on Expenses – (which the Tribunal will ensure is convened to take place on a date not earlier than 9 August 2018) - , all so as to ensure that the Claimant is put in the position in all respects as if she had not been unfairly dismissed by the Respondent on 2 September 2017".

SECONDLY:

Except in so far as varied by "FIRSTLY" above, the Original Decision is confirmed.

REASONS

1. A fully reasoned judgment on liability was issued on 21 May 2018, entered in the Register and copied to the parties on 23 May 2018 and, where the context permits, is hereinafter referred to as "the Original Decision".

2. Reference is made to, -
   a. The Original Decision.
   b. The Notice of Appeal received by the Employment Appeal Tribunal from the Respondent on 27 June 2018.
   c. The decision of the Employment Appeal Tribunal dated 15 March 2019 – (hereinafter, "the EAT's March 2019 decision").

3. The EAT's March 2019 decision refused the Respondent's appeal to the Employment Appeal Tribunal and remitted matters back to the Employment Judge both "to deal with remedy" and "to deal with the submission" made in part 7.2 of the Notice of Appeal on the bases – (as stated in the EAT's March 2019 decision) - that "if an error has been made it can easily be corrected" and that "if there is an explanation then the Employment Judge can articulate it and can hear submissions".

4. Reference is made to letters sent by the Tribunal Office to the parties' respective representatives on 4 April 2019 which stated, -

   "Employment Judge Lucas has considered the decision of the Employment Appeal Tribunal. As he understands it the EAT has not made a decision about whether an error of law was made in this case but instead has asked him to, in effect reconsider, that part of the reinstatement order which required the respondents to make payment of legal fees incurred by the claimant at the same time as he considers more generally the matter of remedy given the claimant has not been reinstated.

   The Judge would welcome observations from both parties as to whether they agree he has correctly interpreted the EAT Order so far as further procedure is concerned.

Judge Lucas would also like you to add in to your respective responses anything further that he might usefully consider before fixing a date for any Hearing.

Please respond within 14 days (18/04/2019)".

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5. On 18 April 2019 the Respondent's representative replied to the Tribunal Office's 4 April 2019 letter by stating both "Unfortunately I did not attend the EAT hearing so am unable to assist with the EAT order" and "I would suggest that there was no basis for making an order for fees under 10 regulation 76 and this submission does not appear to have been opposed by Mr Bathgate". No response to the Tribunal's 4 April letter has been received from the Claimant's representative.

6. A tele-conference (closed) Preliminary Hearing was scheduled to take 15 place at Dundee on 13 May 2019, did take place as scheduled – (with the Claimant being represented by Mr Bathgate and the Respondent being represented by Mr Allison) – and is hereinafter referred to as "the Preliminary Hearing".

20 7. Separately, a Hearing on Remedies was scheduled to take place at Dundee on 25 June 2019, i.e. is now imminent.

8. Referring to the invitation implicitly contained in the EAT's March 2019 decision to articulate any explanation for the Order implicit within the 25 original Decision that the Respondent should reimburse any fees paid by the Claimant to her solicitors or (if different) her representatives, the Employment Judge explained to the parties' respective representatives at the Preliminary Hearing that prior to receiving a copy of the EAT's March 2019 decision sometime after 15 March 2019 he had not been aware that 30 an appeal had ever been made to the Employment Appeal Tribunal in respect of any part of the original Decision, that he had never been made aware of any application by the Respondent to have any part of the original Decision reconsidered and even as at the date of the Preliminary Hearing had no reason to believe that any such application for reconsideration had 35 ever been made to the Employment Tribunal in terms of Rules 70, 71 and

72 as contained in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 – (hereinafter, “the Regulations”).

5 9. During the course of the Preliminary Hearing the Employment Judge referred to what he had, at the time of issuing the Original Decision, perceived to be a dichotomy between Rule 76(1) as contained in Schedule 1 to the Regulations, on the one hand, and the wording of section 114 of the Employment Rights Act 1996, on the other, and in so doing referred to 10 paragraph numbered 25 of the Judgment issued by the Employment Appeal Tribunal in the case of **Oxford Health NHS Foundation Trust v Dr V Laakkonen and others, UKEAT/0536/12/BA**. Having given that explanation – (as he had been invited by the EAT’s March 2019 decision to do) – the Employment Judge noted both the parties’ respective 15 representatives’ acceptance of the explanation provided by him and that the Claimant does not intend, at the Hearing on Remedies, to seek reimbursement of any fees paid by her to her solicitors or (if different) her representatives, i.e. does not intend to rely on the wording of the Order in the original Decision which required the Respondent to reimburse her in 20 respect of such expense.

10. Having taken into account what was said in the EAT’s March 2019 decision about the submission made in part 7.2 of the Notice of Appeal the Employment Judge interprets that referral by the Employment Appeal 25 Tribunal back to him as justification of his intention to refer both to Rule 73 as contained in Schedule 1 to the Regulations and the overriding objective set out in Rule 2 as contained in that Schedule to those Regulations and, having done so, to consider whether – [given the consensus which prevails between the parties’ respective representatives about non-30 reliance on the wording of the Order in the original Decision which required the Respondent to reimburse any fees paid by the Claimant to her solicitors or (if different) her representatives] – it is “necessary in the interests of justice” to formally reconsider any part of the original Judgment.

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11. Rule 70 as contained in Schedule 1 to the Regulations states that "The 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" and makes it clear that after reconsideration the original decision of the Tribunal may be confirmed, varied or revoked but it permits a Tribunal to reconsider a decision only where it is necessary in the interests of justice to do so.

12. The Employment Judge has borne in mind that in terms of Rule 70 as contained in Schedule 1 to the Regulations – (a prerequisite which applies to a reconsideration carried out in terms of Rule 73 just as it does to a reconsideration applied for on the application of a party or, indeed, a reconsideration reflecting a request from the Employment Appeal Tribunal) – that any Judgment may only be reconsidered "where necessary in the interests of justice to do so". He has also taken into account that in terms of Rule 2 as contained in Schedule 1 to the Regulations it is an overriding objective that dealing with cases fairly and justly includes both avoiding delay - (in so far as compatible with proper consideration of the issues) - and saving expense.

13. In the context of the Rules referred to the Employment Judge has also borne in mind both the very specific wording used by the Employment Appeal Tribunal – (when, to paraphrase, it asked him to, in effect, reconsider, that part of the reinstatement order which required the respondents to make payment of legal fees incurred by the claimant at the same time as he considers more generally the matter of remedy given the claimant has not been reinstated) - and the fact that at the Preliminary Hearing he had noted both that the parties' respective representatives' accepted the explanation provided by him and that the Claimant does not intend, at the Hearing on Remedies, to seek reimbursement of any fees paid by her to her solicitors or (if different) her representatives, i.e. does not intend to rely on the wording of the Order in the original Decision which required the Respondent to reimburse her in respect of such expense.

14. Having borne all of these factors in mind and having taken cognizance of the underlying law and relevant authorities the Employment Judge has determined that there will be no prejudice caused to either party by him varying the terms of the Original Decision in the way that he has done in the Judgment section set out earlier in this document, that doing so will not incur any additional delay in bringing this case to a conclusion following the already scheduled Hearing on Remedies, that there should be no additional expense caused to either party by his doing so and, generally, that it is necessary in the interests of justice for the wording of the Original Decision to be varied to the extent – (but only the extent) – directed in the Judgment section set out earlier in this document and that except in so far as so varied all parts of the Original Decision should be, and are, confirmed.

Employment Judge: **Christopher Lucas**
Date of Judgment: **29 May 2019**
Entered in register: **30 May 2019**
and copied to parties