Case Number: 2200606/2017

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Ms L Coats		**(1) Great Marlborough Productions Ltd** **(2) Ms S Fell** **(3) Mr B Bocquelet**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 4 June; 28 August 2019 (in chambers)**

BEFORE: Employment Judge A M Snelson **MEMBERS: Mrs M Pilfold**
Ms L Moreton

On reading the Claimant's written representations and on hearing Mr S Sweeney, counsel, on behalf of the Respondents, the Tribunal adjudges that:

(1) The Claimant's application for a wasted costs order is refused.
(2) On the Respondents' application, the Claimant is ordered to pay to them their costs in the proceedings, such costs to be determined by detailed assessment if not agreed.

REASONS

Introduction

1 On 27 February this year following a final hearing held on 11 to 15 February (the last day was devoted to private deliberations), this Tribunal issued a reserved judgment with reasons dismissing the Claimant's complaints of post-employment victimisation. Those reasons should be read with these.

2 On 27 March this year[1] the Tribunal received an application by the Claimant for a wasted costs order against Ms Louise Martin, the Respondents' solicitor, and an application by the Respondents against the Claimant for a costs order. The

[1] The last day on which either party was at liberty to apply: Employment Tribunals Rules of Procedure 2013, r82.

Claimant claimed £5,604, the cost of instructing Leading Counsel for a hearing on 18 June 2018.[2] The Respondents' application was supported by a schedule giving a total of over £170,000.

3 A costs hearing was set for 4 June this year. The Claimant elected not to attend but to rely on written submissions. The Respondents did attend and were represented by Mr S Sweeney, counsel. The paperwork was voluminous and Mr Sweeney's submissions took some time to deliver. Accordingly, it was not possible to reach a decision on the day and we adjourned for private deliberations to 28 August, when we arrived at conclusions on both applications.

4 As she had done following the liability hearing, the Claimant wrote to the Tribunal after the hearing on 4 June, seeking to raise fresh points and issues. We had made no provision for further written submissions. The correspondence remains, unread, on the file.

The Law

5 The power to make costs or awards is contained in rule 76 of the Employment Tribunals Rules of Procedure 2013, the material part of which is the following:

> **(1) A Tribunal may make a costs order … , and shall consider whether to do so, where it considers that –**
>
> **(a) a party … has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or**
> **(b) any claim or response had no reasonable prospect of success.**

As the authorities explain, the rule poses two questions: first, whether the Tribunal has power to make an order; second, if so, whether the discretion should be exercised.

6 By rule 78 a Tribunal may award costs in a specified sum not exceeding £20,000. It also has unlimited power to award larger sums but only in circumstances where a detailed assessment of costs has been performed.

7 If the Tribunal decides to make a costs order, it should approach assessment in a broad brush manner: rather than seeking to calculate precisely what costs are attributable to what instance of (say) unreasonable conduct, it should step back and survey the whole picture and make an award which reasonably reflects the conduct in question and its effects: see *Yerrakalva v Barnsley Metropolitan Borough Council* [2012] ICR 420, CA.

8 One factor which may bear upon the Tribunal's decision whether to make an order and, if so, as to the sum to award is the means of the paying party. By rule 84 it is provided that, in deciding whether to make a costs order and if so in what amount, the Tribunal may have regard to the paying party's ability to pay. In *Jilley v*

[2] She also sought to recover for her preparation time but that was not open to her under the wasted costs provisions.

Birmingham and Solihull Mental Health NHS Trust and others UKEAT/0584/06/DA (case concerning the predecessor of rule 84) HH Judge Richardson, giving judgment on behalf of the EAT, observed (para 53) that in many cases it will be desirable to take account of the paying party's means, although sometimes there will be a good reason not to, such as where he or she has not attended or has given unsatisfactory evidence as to means.

9 We are mindful of the fact that orders for costs in this jurisdiction are, and always have been, exceptional. Employment Tribunals exist to provide informal, accessible justice for all in employment disputes. We recognise that, if Tribunals resorted to making costs orders with undue liberality, the effect might well be to put aggrieved persons, particularly those of modest means, in fear of invoking the important statutory protections which the law affords them. It would be contrary to the purpose of the Tribunals if parties to disputes declined to exercise their right to bring (or contest) proceedings as a result of unfair economic pressure. On the other hand, we also bear in mind that, when our rules of procedure were revised in 2001, the Tribunal was for the first time not merely permitted, but obliged, to consider making a costs order where any of the prescribed conditions (vexatiousness, abusiveness etc) was fulfilled, and a new and wider criterion of unreasonableness was added. It seems to us that these innovations, preserved in both subsequent revisions of the rules, indicate a desire on the part of the legislature to encourage Tribunals to exercise their costs powers more freely than they did in the past, where unmeritorious cases are pursued or where the manner in which litigation is conducted is improper or unreasonable.

10 Wasted costs orders are covered by the 2013 Rules, rule 80, which, so far as material, provides:

> **(1) A Tribunal may make a wasted costs order against a representative in favour of any party ('the receiving party') where that party has incurred costs –**
>
> **(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative …**

11 As the statutory language makes clear, the Tribunal is required to have regard to three main questions: whether any improper, unreasonable or negligent conduct is established; whether the receiving party has incurred relevant costs; and whether such costs have been incurred as a result of such conduct.

12 There are several important recent authorities on wasted costs but, in view of the conclusions we have reached on the facts, we do not think it necessary to recite any.

The Judgment on Liability

13 In our reasons we introduced the dispute in these terms:

> **1. The First Respondent is an entertainment production company. One of its creations is a series called *The Amazing World of Gumball* ('*Gumball*'). The Second and Third Respondents were at all material times senior employees of the First Respondent. The Claimant was employed by the First Respondent as a script editor from November 2013 to November 2014, when she was dismissed.**

2. In proceedings under case no. 2201005/2015 ('the first case'), the Claimant brought complaints under the Equality Act 2010 ('the 2010 Act') of harassment and victimisation and under the Employment Rights Act 1996 of victimisation on 'whistle-blowing' grounds. The matter was heard over 17 sitting days with six further days of private deliberations in chambers. By a reserved judgment issued on 3 June 2016 with reasons running to 82 pages, all claims[3] were dismissed. The Tribunal's findings and conclusions must have made uncomfortable reading for the Claimant. Every one of her claims was rejected as unfounded. Some of her evidence was simply disbelieved. One 'whistle-blowing' claim was defeated by a finding that she had acted with an ulterior motive. Not one of her countless criticisms of Ms Fell was vindicated. Her appeal to the Employment Appeal Tribunal was rejected as raising no arguable point of law.

3. In the current proceedings, issued on 15 March 2017, the Claimant complains of post-employment victimisation. All claims are resisted.

4. A list of issues was agreed prior to the hearing. It identified 11 'protected acts' and the following six detriments:

(a) The second Respondent allegedly falsely telling colleagues between the period 11 November 2014 and October 2015 that a letter which had been hand-delivered to her home on 11 November 2014 was an 'unpleasant communication' which had shocked, intimidated and threatened her, leading those colleagues to believe it was "hate mail". The Claimant's case is that this was not true as the letter was expected and contained a copy of the formal grievance with a polite note. The Claimant found this upsetting and contends that the second Respondent was 'demonising' her with this "smear". The Claimant became aware of this from the sworn witness statements in case number 2201055/2015. This claim is also brought against Ms Fell's employer the first Respondent.

(b) The first second and third Respondents did not notify the Claimant that the two shows she co-wrote and script-edited had been nominated for BAFTA awards thus denying her the excitement and satisfaction that news of such a double nomination would have brought.

(c) The second and third Respondents permitted the Claimant's replacement Ms Paglia to attend the televised winners' interviews conducted by BAFTA and broadcast worldwide on its website, thus diverting the recognition due to work carried out by [the Claimant] to her replacement who played no part in their success. Industry viewers will assume that it was not [the Claimant's] work being recognised, but her replacement's at a later date. This claim is also brought against the first Respondent, as employer of the second and third Respondents.

(d) The second and third Respondents permitted the Claimant's replacement to pose as a winner with them in the BAFTA official winners' press photographs. These photographs are published worldwide. The Claimant's case is that this authenticated the untruth that the work being recognised was not carried out by her, but carried out by her replacement at a later date. The Claimant says that this made it almost impossible for her to capitalise on her success as Google searches would indicate that it is the Claimant who is taking credit for the work of her replacement, rather than the other way round. This claim is also brought against the first Respondent as the employer of the second and third Respondents.

(e) When [the Claimant] complained to the first Respondent it, and the second and third Respondents, refused to take any steps to correct the misleading impression they had given to the industry and the wider public.

(f) For almost a month after the Claimant had complained the first, second and third Respondents refused to allow her to have a photograph taken holding the awards.

We will refer to the first item as 'the Smear Claim' and the other five as 'the BAFTA Claims'.

14 Our conclusions on the Smear Claim were as follows:

[3] There were over 40 numbered 'Allegations' but many divided into discrete elements, so that the total number of claims was much greater.

51. The Claimant repeatedly expressed outrage at the use of the expression "hate mail" in Mr Locket's witness statement. She was determined to confine that reference to the document which she delivered to Ms Fell's address. In doing so she adopted a somewhat legalistic construction of a witness statement made over three years ago by someone who did not give evidence before us. It is, however, illuminating that the witness statement used the past continuous tense ("was receiving"). It seems to us much more likely than not that what Ms Fell complained about to Mr Locket was not the isolated incident of the delivery of the letter but a course of conduct which included that incident. We have quoted from correspondence directed at Ms Fell before and after the delivery of the letter. We have noted in particular the personal references including the mention of Ms Fell's parents in the message of 13 November 2014. We have also noted the finding of the first Tribunal about the impact of the delivery of the letter to her home. We can well understand why the Tribunal made that finding. We accept that she found the constant barrage from the Claimant distressing and disturbing. In the context of what had happened before and what happened after the delivery of the letter, we find that she did feel that she was being persecuted and that the words she used to describe her experience, to Mr Locket and Mr Klein, reflected that sentiment, whether or not she used the precise words "hate mail".

52. In our view the Claimant's treatment of Ms Fell was disgraceful and she has no possible reason to feel aggrieved on learning of how she felt about it. There was no 'smear'. Accordingly, if the Claimant's declared sense of grievance is genuine, we are satisfied that it is in any event unwarranted and unreasonable. It follows that no detriment is made out and the complaint of victimisation necessarily fails.

53. Even had a detriment been established the claim would have failed. Proceeding on the footing that all communications relied upon were protected acts, we are quite satisfied that the fact that the Claimant had exercised her right to raise complaints was not what lay behind Ms Fell's remarks to Mr Locket and Mr Klein. Rather, it was her behaviour in writing incessant, personal, intimidating and wholly unreasonable correspondence. For these reasons, we find that even if there was a detriment it was not an act of victimisation.

15 On the BAFTA claims, we said this:

54. These claims are entirely without merit. The Claimant raises legal claims based on events about which she has simply no reasonable ground to complain.

55. There was no practice of advising former employees of BAFTA nominations. It was no detriment for the Claimant not to be told the news.

56. The events on the night of the awards ceremony are quite incapable of sustaining any legal claim. The Respondents did not favour Ms Paglia. They did not engineer her attendance on the evening. They did not enable her to misrepresent herself or her achievements. They merely responded in a friendly way to a request by a former colleague who had worked on the relevant show to join the festivities backstage. The idea that Ms Paglia would be able to advance her career by joining the party is absurd and, self-evidently, did not figure in the thinking of Mr Bocquelet or Ms Fell (or anyone else). The assertion that they had such an intention is all the more fantastical. The absurdity of the Claimant's case is heightened by two further stages in the reasoning. The first was the suggestion that the supposed plan to promote Ms Paglia's career development was motivated by a desire to undermine the Claimant's by giving the impression that she (the Claimant) had not contributed to the BAFTA-winning work. The theory needs only to be recited to be seen as preposterous. To state the obvious, to allow X to be present at a celebration of an award cannot be seen as implying that Y did not make a contribution to the work which won it over two years earlier. The second extension consisted of the Claimant's argument that if she (quite properly) claimed credit for what she had contributed to the award-winning episodes she would be putting herself at risk of

being suspected by potential employers of attempting to take credit from Ms Paglia. We simply cannot accept that that this argument is sincere. In evidence she spoke in of the supposed danger of mentioning the BAFTA awards on her CV but when asked if she had in fact done so she told us that she could not remember. We do not believe that answer. As she knows very well, there was no detriment to her on the night of the awards.

57. Nor was there any detriment in the alleged failure to clear up the "misleading impression" resulting from the BAFTAs publicity. The fact that someone was photographed at a festive occasion did not create a misleading impression. The complaint is hopeless.

58. Nor was there any detriment in relation to the alleged delay in permitting the Claimant to take photographs with the award. The chronology speaks for itself. She suffered no disadvantage and the lion's share of the delay was at her behest. Moreover, there is no evidence to sustain the theory that permission was given only once the First Respondents became aware that the Claimant intended to bring legal proceedings. There is no evidence that they were aware that she had contacted ACAS at the time when Ms Browne sent her email of 20 December 2016. The theory fails for the further reason that, as we have noted, the Claimant had signalled an intention to bring legal proceedings well before that.

59. These claims fail not only because they are based on matters about which no sensible complaint can be raised but also because in any event the things complained of were not connected in any way to any protected act. If, which we do not accept, they are connected personally to the Claimant, the natural inference would be that the explanation lies in the acrimonious relationship between the parties resulting from the Claimant's extraordinary behaviour as documented by the first Tribunal. In line with the *Hewage* case, we arrive at this conclusion simply by weighing the relevant evidence. We have not needed to apply the burden of proof provisions. But had we done so, the same result would have followed. We would have found that the burden was not shifted and that, even if it was, the Respondents had amply discharged it by demonstrating that their actions were not materially influenced by the fact that the Claimant had done any of the things relied upon as protected acts.

16 We then turned to the jurisdictional defence in relation to the Smear Claim:

60. The logic of our reasoning so far is that the claims all fail on their merits. That necessarily leads to the conclusion that the Smear Claim fails for the further reason that it is out of time. The Claimant contacted ACAS for the purposes of Early Conciliation on Thursday, 15 December 2016. She was aware of the alleged 'smear' in November 2015 and the conduct actually complained of dated back further still. There was no "conduct extending over a period" to bring it within time. The Claimant invokes the 'just and equitable' discretion but demonstrates no possible ground for extending the primary period. The length of the delay and the absence of any good reason for it argue compellingly against an extension. We reject as untrue her evidence that she was inhibited from complaining by a natural reluctance to raise a complaint. It is a statement of the obvious to say that the history of her relationship with the First Respondent (as chronicled by the first Tribunal) and its aftermath is not easily reconciled with that statement. She also said that she was not aware of the power of the Tribunal to extend time on 'just and equitable' grounds. We reject that evidence too. She was well aware of the rules on time because they figured in a significant way in the first case. She may well have been, as she said, very busy studying for a postgraduate degree, but that did not make presentation of a timely claim impossible or even problematic.

61. Moreover and in any event, since of necessity we are addressing the jurisdictional question at the end of the case and have concluded that the first claim has no merit, it would be a manifestly irrational exercise of discretion to extend time.

The Wasted Costs Application

17 The application rested on two allegations against Ms Martin: first, that she had, “on a false premise” sought to have a preliminary hearing listed to consider whether the BAFTA claims should be struck out; second, that she “knowingly” advanced “a false case”. We will consider these in turn.

The “false premise” allegation

18 A little background is required. A preliminary hearing for case management was conducted on 17 May 2017 before EJ Auerbach (as he then was). The Claimant attended in person and the Respondents were represented by a member of the firm of solicitors then acting for them, Bryan Cave. Among other things, the judge granted the Claimant permission to amend the claim form. It seems that he had before him a draft of the proposed amended pleading, which withdrew her original allegation that Ms Paglia had gone on stage to receive the BAFTA award. At all events, he certainly had sight of emails of 10 and 13 May containing the amendment application (see his record of the hearing, para 3). The judge also decided against the Respondents’ application for an order to strike out the BAFTA claims as having no reasonable prospect of success. In his record of the hearing (para 29) he stated: “… I decided *at this present hearing* [emphasis added] that this is *not* suitable for PH to consider strike out or deposit orders on the merits, in short because it is essentially fact sensitive …” He went on to say that he was not expressing any view about the strength or weakness of the BAFTA claims and that the Respondents were “not precluded from pursuing their contentions in that regard for any other purpose”.

19 Ms Martin’s firm, Squire Patton Boggs (UK) LLP, replaced Bryan Cave as the Respondents’ solicitors in August 2017. On 23 August she wrote a long letter to the Tribunal in which, among other things, she sought to revive the application for the striking-out of the BAFTA claims. Her letter included this passage:

> **We appreciate that the Tribunal has previously considered that there should not be a Preliminary Hearing in respect of merits and strike out regarding the “BAFTA allegations” because of the view that there may be potentially too much factual dispute in respect of this case. We assert that the Tribunal Judge drew this conclusion without having had the benefit of reviewing the footage, which the Claimant substantially relies on in respect of her “detriment” claim.**
>
> …
>
> **It is the Respondents’ position that … based on the film footage and pictures of the night, the Claimant is not going to [be] able to demonstrate … that she has been subjected to a detriment … the footage will follow … which demonstrates that Ms Paglia:**
>
> 1) **was not mentioned by anyone from the Respondent during any of the acceptance speeches or the backstage interviews …**
> 2) **was not on stage at any point (despite the Claimant’s original allegation that she was); and**
> 3) **the Respondents (sic) attributes none of the success … to any one particular individual and points out repeatedly that the work is a team effort.**

20 The case came before EJ Auerbach again on 29 August 2017 (six days after Ms Martin's letter of application). The Claimant appeared in person and Ms Martin represented the Respondents. As is evident from the judge's brief summary and separate reasons, the main focus of that hearing was on the question whether the proceedings should be stayed pending the Claimant's appeal in the first claim. The judge decided in favour of a stay. It is also plain from the record that other issues were ventilated, although not ultimately adjudicated upon. In the end, all outstanding procedural issues were left for determination at a later point, once the stay was lifted.

21 The renewed strike-out application was eventually heard by Employment Judge Elliott on 18 June 2018, following the lifting of the stay. Mr Tom Coghlin QC appeared on behalf of the Claimant and Ms Martin represented the Respondents. The judge decided that there had been no material change of circumstances after 17 May 2017 and accordingly, that there was no basis on which she could properly re-visit EJ Auerbach's decision to decline the request to list a preliminary hearing to consider the strike-out application. In her summary (para 35) she placed on record her understanding that the draft amended particulars of claim had been before EJ Auerbach when he took that decision and noted that Ms Martin was in no position to confirm or deny that point.

22 In support of the "false premise" allegation the Claimant puts forward seven propositions which we will take in turn. Proposition (1) was that Ms Martin's claim in her letter of 23 August 2017 that the footage did not show what the Claimant said it showed was false and untrue. "There was no dispute over any footage." There is nothing in this point. Ms Martin said nothing misleading. She merely urged the Tribunal to entertain the strike-out application on the basis that, once the footage was viewed, it was plain and obvious that the Claimant had not been subjected to any detriment. Self-evidently, it was open to her as the Respondents' representative to argue their case in that way.

23 Proposition (2) was that Ms Martin misled Employment Judge Goodman at a hearing on 23 October 2017 by representing that EJ Auerbach's decision not to grant a preliminary hearing on strike-out "did not exist at all". This allegation makes no sense. As EJ Goodman's summary (para 3) makes clear she had EJ Auerbach's document before her and there is nothing in her record to suggest that Ms Martin said anything incompatible with it. Besides, as already noted, Ms Martin had acknowledged at the outset (in her letter of 23 August) that EJ Auerbach had decided to decline the application for a preliminary hearing on strike-out. That letter was also on the file and was no doubt read by EJ Goodman.

24 Proposition (3) accuses Ms Martin of being untruthful in her letter to the Tribunal of 31 October 2017, by asserting that, on 29 August, EJ Auerbach had "refused to rule out" a strike-out of the BAFTA claims. Unfortunately, the Claimant here misrepresents what Ms Martin actually wrote. She said no more than that he "did not rule out the possibility" of a strike-out hearing. That was consistent with the judge's record: he expressed no view on *any* of the outstanding procedural issues.

25 Proposition (4) in part repeats proposition (1). To that extent, we need say no more about it. It also appears to charge Ms Martin with improper conduct in assembling a comprehensive bundle of documents for use at the hearing on 18 June 2018. Of course, there was no impropriety. By that stage the Claimant had accused her of improper and unprofessional behaviour and no doubt she was conscious of being vulnerable to such allegations being repeated if any potentially relevant document was not put before the Tribunal.

26 Proposition (5) repeats (in passing) proposition (1) but also appears to accuse Ms Martin of attempting to mislead the Tribunal by placing the record of the hearing of 17 May 2017 in a "bizarre" place in the bundle, so as to make it "effectively unfindable". The supposed purpose of this manoeuvre, as we understand the Claimant, was to conceal from the Tribunal the fact that her amendment application had been before EJ Auerbach on 17 May. The argument is ludicrous. It was plain and obvious that the records of the hearings before EJ Auerbach were of central importance to any proper understanding of the procedural history of the case. Ms Martin, like any practitioner, would have appreciated that in all probability the judge hearing the matter on 18 June 2018 would have read the key documents on the file, including all records of case management hearings, before the hearing was called on and before he or she was presented with the bundle. In any event, it was inevitable that the events of 17 May 2017 and the judicial record of that day would be referred to at the hearing before EJ Elliott.

27 Having attacked Ms Martin for producing an over-large bundle (proposition (4)), the Claimant moves seamlessly in proposition (6) to castigating her for leaving out three emails to do with the May 2017 amendment, again as a ruse to mislead the Tribunal. Our observations on proposition (5) are repeated.

28 In similar vein, proposition (7) makes the charge that Ms Martin so arranged the bundle as to attempt to conceal the date of the May 2017 amendment. Here is, we find, another wild and fantastical theory that has no basis in reality.

29 Having analysed the "false premise" allegations individually and in the round, we are quite satisfied that they are utterly groundless. The Claimant comes nowhere near to making out her extraordinary claims. There is no possible basis for saying that Ms Martin has acted improperly, unreasonably or negligently, as alleged or at all.

The "false case" allegation

30 The second limb of the wasted costs application seems to rest largely on the undisputed fact that Ms Martin has written correspondence citing the findings of the Tribunal in the first claim and seeking to ensure that the Claimant was not permitted to reopen those findings. To state the obvious, that correspondence was appropriate, proper and entirely unobjectionable.

31 The general allegations that Ms Martin "knowingly advanced a case she knew to be false" and "assisted her clients in the concealment of evidence" (see the final paragraph of the fourth page of the application) are preposterous. The

Claimant offers no evidential basis in support of these exceedingly serious charges. We reject them as baseless.

Conclusions on the wasted costs application

32 We are satisfied that this intemperate and painfully ill-judged application is utterly meritless and must be dismissed.

The Costs Application

33 Mr Sweeney advanced two grounds in support of his costs application: first, that the Claimant acted vexatiously and/or unreasonably in bringing the proceedings and they had no reasonable prospect of success; second, that she acted unreasonably in the way in which she conducted the claims. We will address these in turn.

Claims vexatious and unreasonable and/or with no reasonable prospect of success

34 We will leave our reasons for the liability judgment to speak for themselves. These were claims which should never have been brought. The Claimant is a conspicuously intelligent and articulate person. We regret to say that we cannot avoid the conclusion that she was well aware that this litigation had little or no chance of succeeding, particularly given the chastening defeat in the first claim. What possessed her to repeat the exercise? What shines through the evidence which we have absorbed at length is her visceral hatred and contempt for those against whom she directed her allegations (principally Ms Fell and Mr Bocquelet), and we fear that these emotions overcame her reason and precipitated the disastrous decision to go to law a second time. Her central motivation, we find, was to cause distress vexation, and financial harm. This is, in our view, as plain a case of vexatiousness as one could find.

35 In any event, we are satisfied to a very high standard that the Claimant acted unreasonably in bringing these proceedings. The immense difficulties with the substantive merits of the Smear Claim were plain, or should have been. If she could not see them, it was because she had entirely closed her eyes to her own behaviour and its effect on Ms Fell. It was that deplorable behaviour, as we have found, which caused Ms Fell to feel persecuted and to pass the comment, ultimately seized on as the basis for the claim. In short, the Claimant had no reasonable ground to feel aggrieved.

36 Moreover, the Smear Claim was, as we have noted, hopelessly out of time. As the Claimant herself acknowledged, she needed the BAFTA Claims in order to bring the Smear Claim within time, but that was a forlorn hope. The BAFTA Claims could not serve that purpose because they themselves were entirely without merit (see below). In any event, any argument that they and the Smear Claim could together be seen as ‘conduct extending over a period’ was obviously doomed. The differences in time, subject-matter and personnel speak for themselves. The Claimant was familiar with the law relating to time limits as a result of the first claim. It was, or ought to have been, very clear to her that the prospects of the

Tribunal accepting jurisdiction in respect of the Smear Claim were exceedingly poor.

37 Turning to the BAFTA Claims, we refer again to our findings in the reasons already published. The claims rested on events about which no sensible complaint could be made. If the Claimant felt aggrieved about them, she had no good reason to do so and certainly no possible reason to bring legal proceedings on the strength of them. Her unreasonableness is compounded given our finding that, in one respect at least, this part of her case was simply bogus: as already noted we have rejected her assertion in evidence that she could not remember whether she had cited the BAFTA success in her CV. That was a false answer designed to protect a false assertion that publication of the photographs of the awards night had inhibited her from drawing attention to, or claiming credit for, her work on *Gumball*.

38 In the circumstances, we are quite satisfied that the Claimant acted unreasonably in bringing the BAFTA Claims and for the same reasons we hold that they had no reasonable prospect of success.

39 The result of our reasoning so far is that we have jurisdiction to make a costs order. Should we exercise our discretion to do so and if so what order for costs should we make?

40 In our judgment, this is a proper case in which to make an award of costs. We have noted that the Claimant is a capable individual. She had first-hand experience of Employment Tribunal litigation. It is not in question that was aware of sources from which legal advice can be obtained. She has not given any disclosure as to her means (see below) but it is a matter of record that she has instructed Leading Counsel on two occasions during these proceedings. From this, we think it safe to infer that her means were such as to enable her to obtain legal advice on the merits before launching this litigation. And she was made aware as early as January 2017 by the solicitors then acting for the Respondents (in the first claim) that if she brought a fresh claim she was threatening to do, she would expose herself to a costs risk.

41 We have of course borne in mind that the Tribunal did not entertain the interlocutory attack on the merits of the BAFTA Claims. That is a factor but, we think, a small one. As we have noted, EJ Auerbach explicitly stated that his refusal on 17 May 2017 to list a strike-out hearing should not be taken as an indication of any view as to the strength or weakness of either side's case.

42 One consideration which would ordinarily be expected to figure in a case of this sort is the paying party's means. Here, however, the Claimant has taken the decision to offer no information on that subject. In the circumstances, we cannot take her means into account.

43 What is the proper sum to award? In the end, we have reached the conclusion that proper consequence of the Claimant's vexatious and grossly unreasonable action in bringing the proceedings is that she should be made liable for the entirety of the Respondents' costs, including those incurred in dealing with

the costs and wasted costs applications. She had the experience of the first case. She was on warning as to costs before she issued proceedings. And she pursued claims which were untenable and should never have been brought. She tells us nothing about her means and puts forward nothing else by way of mitigation.

Unreasonable conduct of the proceedings

44 In view of our decision on the first ground of application, the second ground falls away. No doubt, the Respondents' contention that the Claimant has hugely inflated the legal costs through the way in which she conducted the case, and her contrary arguments, will be explored to the extent necessary in the course of the detailed assessment.

45 Had we not upheld in full the first ground of application we would have made a substantial award of costs under the second, but we think it right to say no more than that. Otherwise, the Claimant would arguably be entitled to complain that we had tainted the detailed assessment.

Outcome

46 For the reasons given the Claimant's application for a wasted costs order is dismissed and the Respondents' application for costs is granted in the terms set out in our judgment above.

47 The effect of the Tribunal's judgment is that the Respondents' costs will be the subject of a detailed assessment by a specially trained Employment Judge. The Claimant will be entitled to participate in the assessment exercise.

EMPLOYMENT JUDGE -Snelson

Date: 11th Sept 2019.

Sent to the parties on :12/09/2019

For Office of the Tribunals