Case number 1400799/2017

EMPLOYMENT TRIBUNALS

Claimant | **Respondent**

Mr T Robins | **CAB Special Batteries Limited**

RESERVED JUDGMENT OF THE TRIBUNAL

IN RESPECT OF THE APPLICATIONS OF THE PARTIES DATED 4 AND 5 DECEMBER 2018 FOR COSTS PURSUANT TO RULE 76 OF SCHEDULE 1 OF THE EMPLOYMENT TRIBUNAL (CONSITUTION AND RULES OF PROCEDURE) REGULATIONS 2013

Exeter On 19 August 2019

Before: Employment Judge Goraj

Representation
The claimant – Mr J Bromige, Counsel.
The respondent – Mr G Probert, Counsel.
DAS Law Limited Mr M Smith, Counsel (in attendance in part).

The Judgment of the tribunal is that: -

1. **The respondent's application for costs against the claimant dated 4 December 2018 is dismissed.**

2. **The claimant's application for costs against the respondent dated 5 December 2018 is dismissed save that the claimant is awarded, and the respondent is ordered to pay to the claimant the sum of £833.28 (inclusive of VAT) pursuant to paragraph 75 below.**

INTRODUCTION

1. The purpose of this Hearing was to determine applications by both parties (against the other) for costs.

2. By a claim form which was presented to the Tribunals on 22 May 2017, the claimant alleged that he had been constructively unfairly and wrongfully dismissed by the respondent and further that the respondent had made unlawful deductions from his

wages in respect of unpaid holiday monies. The claims were resisted by the respondent save that the claim for unpaid holiday monies was subsequently resolved between the parties by agreement.

3. There were substantive Hearings on 12 – 14 March 2018 and 8 – 11 October 2018. On 10 October 2018 the respondent conceded (as explained further below) that the claimant had been constructively and unfairly dismissed.

The Judgment

4. The Tribunal determined by a reserved Judgment which was sent to the parties on 8 November 2018 (as subsequently corrected by a Certificate of Correction dated 10 January 2019) ("the Judgment"), that (a) in respect of the claimant's unfair dismissal claim, the claimant was not entitled, pursuant to sections 122 – 123 of the Employment Rights Act 1996 ("the Act") to any basic or compensatory awards (including by reason of his conduct on 2 August 2016) and (b) in respect of the claimant's breach of contract claim for notice, the claimant's contract of employment with the respondent terminated by reason of the claimant's acceptance of the respondent's admitted repudiatory breach of contract, and that the claimant was therefore entitled to damages in respect of his agreed notice entitlement of seven weeks.

5. It was subsequently agreed between the parties that the claimant was entitled to damages in the sum of £3,364.83 in respect of his breach of contract claim for notice. This was recorded in a consent Judgment which was sent to the parties on 11 January 2018.

THE COSTS HEARING

6. This Hearing was listed to consider: -

    (1) The respondent's application for costs against the claimant dated 4 December 2018.

    (2) The claimant's application for costs against the respondent dated 5 December 2018 and

    (3) The respondent's further/alternative application dated 4 December 2018 against its former legal representatives DAS Law Limited ("DAS Law") for wasted costs. The respondent's application against DAS Law is addressed in a separate Judgment.

    (4) All applications are resisted.

7. The purpose/ambit of the costs hearing was agreed as recorded in the Case Management Orders dated 9 February 2019 and 9 May 2019 including that if the Employment Judge determined that it was appropriate to make any award of costs the assessment of any such costs award would be determined by the Tribunal at a separate hearing. It was however agreed with the parties at the costs hearing that if the Tribunal determined that it was appropriate to make any award of costs in respect of the respondent's email to the claimant dated 7 October 2018 (page 140 of the bundle) as referred to further below, the Tribunal would also determine the amount of any such award.

Documentation

8. The parties submitted/ relied upon (a) the applications referred to above together with associated schedules of costs (b) an agreed bundle of documents ("the bundle") (c) an agreed bundle of legal authorities (a copy of the agreed list of authorities is attached) (d) the bundle which was used during the substantive hearing ("the hearing bundle") and (c) written skeleton arguments. The parties also relied on the Employment Tribunals – President Guidance (relating to disclosure, costs and judicial mediation) and the Civil Procedure Rules (paragraph 44.2).

9. The Tribunal has not heard any oral evidence in support/defence of the applications and has therefore not made any formal findings of fact.

BACKGROUND AND MATTERS WHICH ARE RELEVANT TO THE COSTS HEARING

10. This is a long -standing and highly acrimonious matter. The Tribunal proceedings have involved multiple disputed applications, several telephone case management hearings, the adjournment of the substantive hearing in March 2018 (12-14 March 2018) and a final restored hearing in October 2018 (8- 11 October 2018).

The original listing of the matter for Hearing in September 2017 and subsequent postponement

11. Following the acceptance of the claimant's claim form, the Tribunals wrote to the parties by letter dated 25 May 2017(pages 17 – 19 of the bundle) notifying the respondent of the claimant's claim and listing the matter for a one-day hearing on 12 September 2017. This letter also included a standard timetable of case management orders including an order requiring the disclosure of documents by list by 6 July 2017.

12. The claimant's solicitors wrote to the Tribunal by letter dated 20 July 2017 explaining that they did not consider that a one-day hearing would be sufficient to hear the case in the light of the matters identified in that letter including having regard to the volume of documents identified following the exchange of lists of documents on 6 July 2017 and the proposed number of witnesses for both parties. The claimant's solicitors accordingly requested the postponement of the existing hearing date together with a variation of the existing case management orders. The claimant solicitors confirmed that the application had been copied to the respondent's then representatives (DAS Law) advising them of their right to object to the application.

13. The respondent's representatives wrote to the Tribunal by letter dated 31 July 2017 confirming their agreement to the claimant's application and requesting that the matter be relisted for hearing for four days.

14. The Tribunal wrote to the parties by letter dated 11 August 2017 acceding to the joint application of the parties for the postponement of the hearing in September 2017 and listing the matter for a telephone case management preliminary hearing ("CMPH) on 29 August 2017. The parties were further directed to agree various matters in preparation for the CMPH including a list of issues and remaining directions.

The subsequent conduct of the case

15. The matter was the subject of CMPHs on 29 August 2017 and 15 January 2018 during which directions were given requiring the parties to agree a list of issues for determination (including with regard to remedy). The matter was listed for a 4-day hearing commencing on 12 March 2018.

16. A summary of the subsequent conduct of the case prior to the restored hearing in October 2018 is contained in particular in (a) the written reasons dated 13 June 2018 relating to the adjournment of the hearing in March 2018 (" the Reasons dated 13 June 2018") and (b) the Order dated 28 September 2018 determining the respondent's application for relief from sanctions dated 25 August 2018 in respect of the Unless Order dated 27 February 2018 and an associated application (" the Order dated 28 September 2018 ").

17. The above mentioned documents record, amongst other matters, the disputes between the parties regarding disclosure including in respect of the respondent's failure to comply with the terms of an Unless Order dated 27 February 2018 requiring it to disclose any documents upon which it sought to rely in support of any contention that any compensation awarded to the claimant for the purposes of remedy should be reduced pursuant to sections 122 - 123 of the Act.

The Hearings on 12 – 14 March and 8 – 11 October 2018

18. The hearing commencing on 12 March 2018 was adjourned, upon the application of the respondent on the basis set out in the Order dated 16 March 2018 ("the Order dated 16 March 2018") and in the Reasons dated 13 June 2018. The matter was relisted for hearing from 8 – 11 October 2018. DAS Law subsequently made settlement of the claimant's wasted costs of the adjournment of the hearing in March 2018.

The concessions by the respondent and amended list of issues

19. On 10 October 2018 the parties agreed an amended List of Issues for determination by the Tribunal in which it was recorded that (a) the respondent admitted that the alleged breach of contract (previously identified as item 12 of the List of Issues) relating to the respondent's letter to the claimant dated 10 February 2017 (in which it intimated that it might take disciplinary action against the claimant in respect of the claimant's witness statement in the civil case against the respondent's former accountants) breached the implied term of trust and confidence (b) in such circumstances the claimant's resignation on reliance on such breach constituted a dismissal for the purposes of section 95 (1) (c) of the Act and consequentially, the respondent admitted that the claimant had been unfairly dismissed (c) the respondent further accepted that it had breached the ACAS Code in relation to issue 12 of the List of Issues and (d) the parties had agreed a percentage uplift of 15% in respect of such breach. The remaining issues in dispute were set out at paragraph 3 of the Amended List of Issues (in respect of the unfair dismissal) namely respect of remedy, and paragraphs 1-2 in respect of the claimant's wrongful dismissal claim (the damages for breach of contract in respect of notice).

The High Court proceedings

20. This matter has been complicated further by the fact that the parties have also been engaged in High proceedings which were initiated by the respondent against the

claimant as summarised at paragraph 4 of the Judgment (page 26 of the bundle). The parties confirmed at the commencement of the Costs Hearing that the High Court proceedings against the claimant had all been dismissed save that there is an ongoing dispute relating to the respondent's application for the claimant to be committed to prison in respect of the claimant's alleged conduct in respect his affidavit in the High Court proceedings dated 10 May 2018 relating to the events of 2 August 2016.

The involvement of the police and the Solicitors Regulation Authority

21. The parties also confirmed at the commencement of the Costs Hearing that (a) the police had declined to pursue a complaint by the respondent concerning documentation allegedly taken by the claimant from the respondent on or around 2 August 2016 and (b) the Solicitors Regulation Authority ("the SRA") had dismissed a complaint by the respondent in respect of the alleged conduct of the claimant's solicitor in respect of the matters referred to in the respondent's solicitors' email to the claimant's solicitor dated 7 October 2018 (page 140 of the bundle referred to below).

The Respondent's solicitors email dated 7 October 2018

22. In summary, the respondent's solicitors stated in the email to the claimant's solicitors dated 7 October 2018 (which is recorded as having been sent at 16.29 on Sunday, 7 October 2018 – the afternoon prior to the restored hearing on 8 October 2018) (at page 140 of the bundle) that (a) it was the professional view of the respondent's solicitors that the claimant's Counsel may be professionally embarrassed as he had allowed into evidence at the hearing on 12 March 2018 a schedule of emails (relating to the traffic of emails on 2 August 2016) which were likely to damage the claimant's interests and credibility and thereby giving rise to a conflict of interests between the claimant's Counsel, the claimant and the claimant's solicitor (b) a potential conflict of interest had arisen as a result of the admission of the emails in evidence as the claimant's prospects of success were likely to be lower and that the claimant should therefore be informed of that fact (c) further that such issue might motivate Counsel or the claimant's solicitor to advise the claimant to continue to advance a claim against his own interests in order that professional negligence did not crystallise against Counsel or the claimant's solicitors (d) the claimant's Counsel and solicitors could have no reasonable objective belief in the claimant's case on the emails and generally having considered the relevant material which established on a criminal burden of proof that the claimant had taken emails which he had denied taking on oath in the High Court action (d) that there was a risk that claimant's Counsel and solicitors might inadvertently mislead the Tribunal by calling the claimant to give oral evidence in relation to the events of 2 August 2016 (e) the Tribunal would have been misled if the original hearing had gone ahead on 12 September 2017 as the claimant did not voluntarily disclosure the documentation which he had taken from the respondent until December 2017 (f) if the claimant's Counsel proceeded with the hearing on 8 October 2018 and the respondent did not receive confirmation that the claimant had been informed of the contents of the email dated 7 October 2018, the respondent would report the claimant's Counsel to the Bar Standards Board at the end of the Tribunal hearing and also the Claimant's solicitors to the SRA and (g) the Respondent's solicitors asked for confirmation that the claimant's Counsel and the claimant had been put on notice/ had received a copy of the email and confirmed that they had notified their own Counsel of the above matters that day.

23. The claimant quantified its claim in respect of this element of the claimant's application in the total sum of £833.28 (inclusive of VAT) (as confirmed in an email dated 19 August 2019) which was comprised of (a) £494 plus VAT in respect of the claimant solicitors' costs and (b) £240 (inclusive of VAT) in respect of Counsel's fees. The claimant contended that VAT was recoverable as the claimant was not registered for VAT.

Without prejudice discussions judicial mediation and associated matters relating to costs

24. It is agreed between the parties that (a) the claimant made a without prejudice offer to settle the outstanding Tribunal claims (the holiday pay claim having previously been settled) in the sum of £25,000 in full and final settlement (the letter dated 7 February 2018 at pages 100-114 of the bundle) (b) the Respondent did not respond to such letter and (c) the claimant made a further without prejudice offer to settle the outstanding Tribunal claims in the sum of £20,800 (to include £13,904.28 in respect of the claimant's claim for costs relating to the adjourned hearing in March 2018) (the letter dated 23 May 2018 at pages 119-121 of the bundle) which was rejected by the respondent (without a counteroffer) by letter dated 30 May 2018.

25. It is recorded in the case management order of the Tribunal dated 22 August 2018 (at page 21 of the bundle) that the Tribunal discussed with the parties whether, even at such a late stage of the proceedings, there was any possibility of the matter have been dealt with by way of judicial mediation (subject to the agreement of the Regional Employment Judge) in the light of escalating costs. The claimant subsequently wrote to the Tribunal by letter dated 30 August 2018 (page 134 of the bundle) confirming that he did not wish the matter to be considered for judicial mediation. The respondent wrote to the Tribunal by letter dated 28 August 2018 confirming that the respondent wished the matter to be considered for judicial mediation and that they had communicated such position to the claimant solicitors (page 135 of the bundle).

26. The respondent wrote to the claimant by letters dated 25 September 2018, 26 September 2018 and 7 October 2018 regarding costs (pages 136, 137-138 and 139 of the bundle). In the letter dated 26 September 2018 the respondent advised the claimant that, in the event that the Tribunal concluded that the claimant had given evidence on oath denying that he had sent relevant emails on 2 August 2016 when he had in fact sent them, the costs of the entire defence of the claimant's claim would be sought from the claimant on the basis that such behaviour constituted unreasonable behaviour within the scope of Rule 76 (1) of the Rules (page 138 of the bundle).

27. Neither party requested the Tribunal to consider making a deposit order pursuant to rule 39 of the Rules as a condition of the other being allowed to pursue or defend its claims/ response.

28. There are no issues in this case regarding the claimant's ability to make payment of any award of costs.

THE RESPONDENT'S APPLICATION FOR COSTS AGAINST THE CLAIMANT DATED 4 DECEMBER 2018 AND ASSOCIATED SUBMISSIONS

29. The respondent has made an application for costs against the claimant dated 4 December 2018 ("the respondent's costs application ") pursuant to Rules 76 and 77 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules"). The respondent's costs application is at pages 1-8 of the bundle. The respondent's costs application is made in respect of the following alleged unreasonable conduct by the claimant in the bringing or conducting of proceedings against the respondent namely:- (a) breach of his duties of disclosure (b) refusal to engage in judicial mediation and (c) dishonest oral and written evidence including, but not limited to, his sworn affidavit evidence in the High court and Tribunal proceedings.
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(**a) The claimant's alleged breach of his duties of disclosure**

30. In summary, the respondent relied in respect of the claimant's alleged breach of his duties of disclosure, in particular on the following: -

    (1) Paragraphs 6-12 of the respondent's costs application.

    (2) The Employment Tribunal Presidential Guidance ("the Guidance") -note to paragraph 8.

    (3) The Case Management Order dated 25 May 2017 requiring the parties to comply with their disclosure obligations by 6 July 2017 (pages 18 and 19 of the bundle).

    (4) The alleged discovery by the respondent in late November 2017 that the claimant was in significant breach of his disclosure obligations.

    (5) The subsequent disclosure by the claimant on 11 December 2017 of a cache of relevant documents following the production of a witness statement dated 1 December 2017 in the High Court proceedings in which he stated that he fully understood his obligations of disclosure.

    (6) The claimant's alleged attempt deliberately to conceal the existence of relevant documents because they would have impacted directly on any compensation in his unfair dismissal claim. Accordingly, if the substantive hearing (which was originally listed for hearing in May 2017) had gone ahead it could have resulted in the claimant obtaining compensation which would have been manifestly unjust.

(b) the claimant's alleged refusal to engage in judicial mediation

31. In summary, the respondent relied in respect of the claimant's alleged unreasonable refusal to engage in judicial mediation, in particular, on the following:-

    (1) Paragraphs 13-15 of the respondent's costs application.

    (2) It was apparent following the evidence of the claimant during the hearing in March 2018 that the claimant had admitted taking on 2 August 2016 commercially sensitive documents belonging to the respondent.

(3) At the case management hearing on 22 August 2018 the Tribunal had made it plain to the parties that judicial mediation would be a sensible way to deal with the case in the light of mounting costs and the claimant's previous admissions regarding the events of 2 August 2016 (page 21 of the bundle).

(4) The claimant was not prepared to engage in judicial mediation (page 134 of the bundle).

(5) The respondent was however, prepared to engage in mediation and further wrote to the claimant on 26 September 2018 to warn the claimant of the costs that could be consequential in respect of the claimant's unreasonable refusal to engage in mediation (pages 135 and 137-138 of the bundle).

(6) Although there was no obligation on the claimant to engage in judicial mediation there was a strong onus, particularly upon represented parties, to understand their duties to consider alternative dispute resolution and the claimant's refusal to engage in such process was in all the circumstances unreasonable. The respondent relied in support of its contentions in particular on the Court of Appeal Judgment **in Halsey v the Milton Keynes General NHS Trust [2004] 1 WLR 3002.**

(c) The Claimant's alleged dishonesty

32. In summary, the Respondent relied, in particular, in respect of the claimant's alleged dishonesty, on the following: –

(1) Paragraphs 16-29 of the respondent's application for costs.

(2) The claimant's alleged dishonesty was a repeated and serious attempt to mislead the Tribunal. The claimant had been found to have lied on oath and by affidavit in the following written documents :- (a) the claimant's witness statement for the High Court proceedings dated 1 December 2017 (page 84 of the bundle) (b) the claimant's sworn affidavit in the High Court proceedings dated 10 May 2018 (page 76 of the bundle) and in the letter submitted to Tribunal by his representatives in the present proceedings dated 31 July 2018 (page 128 of the bundle) and (d) the claimant's sworn affidavit for the purposes of the Tribunal proceedings pursuant to an order of the Tribunal dated 29 August 2018 (page 81 of the bundle).

(3) The Tribunal made clear findings in relation to the sending of commercially and legally sensitive emails to the claimant's personal email account on 2 August 2016 (paragraphs 23-25 of the respondent's costs application) which make a mockery of the claimant's denials that he had taken the disputed emails/accessed Mr Robinson's computer and that he had deleted his sent emails to cover his tracks. The claimant's deliberate attempt to mislead the Tribunal should sound in costs being awarded against him on the basis of his patently unreasonable conduct.

(4) The respondent submits that the claimant predicated his claims on fundamentally dishonest grounds in relation both to his disclosure failures and continued denials about his misconduct in relation to the 2 August 2016 emails.

The claimant's conduct had caused significant costs on the part of the respondent and the claimant ought to be required to bear such costs.

(5) Further, the Tribunal and the respondent both made it clear to the claimant the seriousness of lying under oath and by affidavit. The claimant was given every opportunity to pull back from his assertions but did not do so (pages 22, 136 and 137-138 of the bundle.)

(6) The respondent relies in particular on the authorities of **Zurich Insurance plc v Romaine [2019] EWCA Civ 851, Daleside Nursing Home Limited v Mathew UK EAT / 0519/08, Arrowsmith v Nottingham Trent University [2012] ICR 159 (CA) and HCA International Limited v May- Bheemul UK EAT/ 0477/10.**

(7) Further, the respondent contended, in summary, that (a) it accepts that there is no rule of law that dishonest testimony in the Tribunal will necessarily result in costs been awarded and the Tribunal will always have to consider whether the threshold of conduct is met (b) however the wording of rule 76 (1) of the Rules is clear and the Tribunal is required to consider a costs award when the threshold is met and (c) further, it may be perverse not to award costs where there has been serious dishonesty by a party such as in the case of the **Daleside**.

THE CLAIMANT'S RESPONSE TO THE RESPONDENT'S COSTS APPLICATION AND ASSOCIATED SUBMISSIONS

33. The claimant resists the respondent's costs application and, as explained above, brings its own application for costs against the respondent which is summarised below.

34. In summary, the claimant resists the respondent's costs application, in particular, on the following grounds:-

Generally

(1) The claimant succeeded in his constructive unfair dismissal (which was conceded by the respondent) and wrongful dismissal claims.

(2) The respondent's application for costs is fundamentally misconceived as a claimant has a right under section 94 of the Act to have his claim decided by an Employment Tribunal and to pursue his claim for such purposes. The claimant relies on the authorities of **Information Services Ltd v Wilkinson [1991] IRLR 148** and in particular, the Court of Appeal judgment in **Gibb v Maidstone and Tunbridge Wells NHS Trust [2010] IR LR 786.**

The allegations of dishonesty

(3) Taking the respondent's application at its highest, the claimant's alleged dishonesty had no impact upon the finding of either constructive unfair dismissal or wrongful dismissal or upon the compensation which the claimant received in respect of his wrongful dismissal claim. Even if the claimant had withdrawn his constructive dismissal claim the Tribunal would have heard the

same evidence and submissions regarding the emails in the context of the claimant's wrongful dismissal claim.

(4) It is not accepted that the Tribunal found that the claimant had deliberately attempted to mislead the Tribunal or that he had lied or advanced his claims on fundamentally dishonest grounds.

(5) Paragraphs 54 and 115 (2) of the Judgement (pages 35 and 58 of the bundle) make it clear that the Tribunal made its findings of fact on the balance of probability. The findings of the Tribunal fall short of a finding of fundamental dishonesty.

(6) The issue of the traffic of emails on 2 August 2016 was not a central plank of the claimant's claim as it only went to the issue of remedy.

(7) The claimant relied in particular on the judgment in **Kapoor v Governing Body of Barnhill Community High School UK/ EAT / 0352/ 13** and also the Judgments in **Arrowsmith and HCA** (also relied upon by the respondent as referred to above).

Judicial mediation

(8) The respondent's application in this respect is without foundation. The claimant relies in particular on paragraph 1 of appendix 3 to the ET Presidential guidance on Alternative Dispute Resolution (22 January 2018) in which it is clearly stated that the process of judicial mediation is entirely voluntary. It would therefore be perverse for the Tribunal to extend the ambit of Rule 76 (1) of the Rules to cover situations where a party had declined to enter into a voluntary process. Further the claimant disputes any contention by the respondent that the respondent made any offer to pay for the costs of judicial mediation.

(9) Further both parties were in any event legally represented throughout and the respondent could have made a without prejudice offer at any stage however no offer of settlement was forthcoming by the respondent including a, "drop hands" offer. The claimant relies in particular on (a) its without prejudice offers of settlement contained in its letters to the respondent dated 7 February 2018 and 23 May 2018 and (b) the letters from the respondent dated 25 and 26 September 2018 in which the respondent placed the claimant on notice of/ reiterated its intention to seek costs against the claimant.

Disclosure

(10) The claimant denies any suggestion by the respondent that the claimant had been hoping for a hearing in September 2017 in order to conceal his alleged deceit with regard to the emails of 2 August 2016. The claimant made an application to the Tribunal to postpone the hearing on 20 July 2017 which was agreed by the respondent on 31 July 2017 and it cannot therefore be said that the claimant was trying to conceal the fact of the emails by applying for an adjournment.

(11) The claimant further contended that (a) the respondent did not confirm until the CMPH on 15 January 2018 that an argument was being pursued pursuant to sections 122/123 of the Act and (b) if the Tribunal found that there

had been any breach by the claimant of its disclosure obligations such obligations were, in any event, rectified at least three months prior to the hearing in March 2018 and (c) any alleged breaches of disclosure should, in any event, be considered in the context of the respondent's own repeatedly failed to disclose potentially relevant information as of 16 February 2018 prompting the issue of an unless order by the Tribunal.

(12) Further, if the Tribunal considers that the claimant acted unreasonably it, in any event, has to analyse what effects such conduct had in accordance with the judgment in **Yerrakalva.** The claimant disclosed all of the relevant emails to the respondent by 11 December 2017 and the respondent is seeking its costs almost exclusively from the period of 9 January 2018 onwards. The claimant costs therefore have no bearing on the issue of late disclosure.

THE CLAIMANT'S COSTS APPLICATION AGAINST THE RESPONDENT DATED 5 DECEMBER 2018 AND ASSOCIATED SUBMISSIONS

35. The claimant has made an application dated 5 December 2018 for costs against the respondent pursuant to rules 76 and 77 of the Rules (the claimant's costs application). The claimant's costs application is at pages 11-16 of the bundle.

36. The claimant's costs application is pursued in respect of the following matters:- (a) that the respondent's defence to the constructive and wrongful dismissal claims allegedly had no reasonable prospects of success for the purposes of rule 76 (1) (b) of the Rules (b) that the respondent's failure to engage with the settlement/offer letters of 7 February and 23 May 2018 amounted to unreasonable behaviour for the purposes of Rule 76 (1) (a) of the Rules and (c) the alleged vexatious conduct on behalf of the Respondent in respect of the email which was sent by the respondent's solicitor to the claimant's solicitor on 7 October 2018 (page 140 of the bundle).

(**a) The respondent's defence to the constructive and wrongful dismissal claims allegedly had no reasonable prospects of success**

37. In summary, the claimant relied in respect of this contention, in particular, on the following: -

(1) The respondent made an extremely late concession to the repudiatory breach of contract relied upon for the claimant's constructive unlawful dismissal claims in respect of the respondent's letter dated 10 February 2017 (item 12 of the List of Issues). The concession occurred during the evidence of Mr Robertson on day three of the adjourned hearing (on 10 October 2018) and prior to Mr Robertson's cross examination regarding such letter.

(2) The claimant had previously sent to the respondent on 7 February 2018 a without prejudice letter in which it had set out in detail its position regarding the respondent's case including in respect of the respondent's letter to the claimant dated 10 February 2017 (item 12 of the list of issues) (pages 109 – 110 of the bundle).

(3) By 26 September 2018, the respondent had had the benefit of Counsel's advice and it could not be sensibly argued by the respondent that there was a material change in circumstances between the time of Counsel's advice and the making of the concession in respect of item 12 of the list of issues as Mr Robertson had not yet been cross-examined on such matter.

(4) Relying on the authorities of **Keskar v Governors of All Saints Church [1991] ICR 493** and **Cartiers Superfoods Limited v Laws [1978] IRLR 315** the claimant contended that (a) the only logical explanation open to the Tribunal was that the respondent's response to the pleaded repudiatory breaches of contract had no reasonable prospects of success and (b) the respondent was aware by 7 February 2018 that it had failed to address the issues and that its position was indefensible.

(b) the respondent's failure to engage with the without prejudice letters from the claimant dated 7 February 2018 and 23 May 2018.

38. In summary, the claimant relied, in respect of the respondent's alleged failure to engage with its without prejudice letters, in particular, as follows: -

(1) Although the respondent must have been aware of the futility of advancing its defence to issue 12 of the list of issues relating to the respondent's letter dated 10 February 2017, the respondent did not even acknowledge the claimant's without prejudice letter dated 7 February 2018 (or respond in substance to the subsequent letter dated 23 May 2018) and it therefore acted unreasonably in the face of the claimant's reasoned approach. The respondent could, instead, have conceded liability and elected to have had a hearing limited to remedy which would saved significant time and expense.

(2) It is clear from the authorities that a failure to engage with a costs warning letter, or in this case the detailed settlement letters, (including any arguments as to why the parties case was unlikely to succeed) constitutes unreasonable conduct for the purposes of costs. The claimant relied in particular, on the EAT judgment in **Peat v Birmingham City Council UKEAT/0503/11 [2012].**

(**c) the alleged vexatious conduct of the respondent in respect of the email dated 7 October 2018**

39. In summary, the claimant relied in respect of the respondent's alleged vexatious conduct regarding the respondent's solicitors' email dated 7 October 2018 (page 140 of the bundle) on the following: -

(1) The email dated 7 October 2018 constituted vexatious behaviour on behalf of the respondent as (a) it was sent at 16:29 hours on Sunday, 7 October 2018 on the day before the adjourned hearing was due to recommence (b) it had little or no discernible basis in law and (c) its obvious intention, having regard in particular to the timing of the email, was to subject the claimant to "inconvenience, harassment and expense" in accordance with **G v Barker [2000] 1 FLR 759 at paragraph 19**.

(2) The matters to which the Respondent's solicitors referred in the email dated 7 October 2018 occurred on 12 March 2018 and were well known to the

respondent's solicitors as they were in attendance at the hearing at the relevant time. It was therefore untenable for the respondent to contend that it was a matter of which it had only recently become aware/ that there was any good reason for any such concerns not having been notified earlier.

(3) Having regard to the authority of **Yerrakalva** (which required the claimant to identify the conduct, what was unreasonable about it and what effects it had) the claimant contended that the respondent's solicitors' vexatious conduct had the effect of creating additional cost for the claimant on the morning of 8 October 2018 which also created additional stress in the process for which there was no proper motive.

THE RESPONDENT'S RESPONSE TO THE CLAIMANT'S COSTS APPLICATION AND ASSOCIATED SUBMISSIONS

40. In summary, the respondent resisted the claimant's application for costs, in particular, on the following grounds: –

(a) The concession of liability (including the timing of the concession)

(1) Whilst the respondent accepted that it could theoretically be unreasonable for a party to concede liability at a late stage in the proceedings the position would always depend upon the specific context of the concession and whether there was something unreasonable about it.

(2) The respondent denied that it had acted unreasonably in resisting the allegation that the respondent's letter of 10 February 2017 (page 338 in the hearing bundle and item 12 in the list of issues) amounted to a repudiatory breach of contract. It was reasonably arguable that the respondent's letter of 10 February 2017 did not constitute a threat of disciplinary action but rather a notice that disciplinary action might follow.

(3) Further, the contents and substance of the respondent's letter dated 10 February 2017 fell to be considered in the context of the other issues to be determined by the Tribunal. In the light of the unusual set of circumstances facing the respondent, it was reasonably arguable that it could defend the fairness of the alleged dismissal including having regard to its duty to protect the respondent's legal interests and that in all the circumstances it had genuine, reasonable and proper cause to send the letter dated 10 February 2017.

(4) The respondent should not be criticised for the timing of the concession of liability in respect of the unfair dismissal claim. A Tribunal hearing is a living thing. It is common practice for practitioners to pick up on indicators from the flow of evidence and from the Judge. In this case the respondent was responding in a sensible way in order to allow the Tribunal to focus on the essential elements of the case which was especially pertinent given the clear evidence from the claimant that he had taken commercially sensitive information

(b) the respondent's alleged vexatious conduct in respect of the email dated 7 October 2018.

(5) The respondent denied that there had been any vexatious conduct on the part of the respondent's solicitors in respect of its email to the claimant's solicitors dated 7 October 2018 (page 140 of the bundle). The respondent contended in particular that (a) the respondent's solicitors were acting in accordance with their professional obligations regarding the conduct of the claimant's legal advisers and (b) there was nothing inherently vexatious in the correspondence as the matters raised in the email related to the conduct of the claimant relating to the emails taken on 2 August 2016 and associated matters.

THE LAW

41. The Tribunal has had regard in particular to the following statutory and associated provisions :-

    (1) Rule 76 (1) (a) and (b) of the Rules provides that:-

    " (1) A Tribunal may make a costs order or preparation time order, and shall consider whether to do so, where it considers that-

    (a) a party (or that party's representative) 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";

42. The Tribunal has also had regard, in particular, to the legal authorities and other documents referred to above and in the attached list.

43. The Tribunal has reminded itself in particular of the following matters: -

    (1) When considering an application for costs the Tribunal is required to adopt a two stage process namely (a) firstly to consider whether the costs threshold has been triggered including whether the conduct of the party against whom costs are sought was unreasonable or vexatious and if so, in what way and (b) secondly, if the costs threshold is triggered the Tribunal is required to consider whether to exercise its discretion in favour of the party claiming costs having regard to all the circumstances of the case.

    (2) When exercising its discretion to award costs the Tribunal is required to consider the whole picture when deciding whether there has been unreasonable conduct by the parties in bringing/ defending and/or conducting the case and further to identify such conduct including (a) what was unreasonable about it and (b) the effects thereof (**Yerrakalva).**

44. Cost awards are compensation for the successful party and not punishment for the loser. Costs awards in the employment tribunals are still regarded as the exception rather than the rule **Gee v Shell (UK) Limited [2002] EWCA Civ 1479.**

45. In order for conduct to be considered as vexatious there needs to be either (a) evidence of some spite or desire to harass the other side or the existence of some other improper motive or (b) in the light of the judgment of the Court of Appeal in **Scott**

v Russell 2013 EWCA Civ 1432, that whatever the intention may be, its effect is to subject the other party to inconvenience, harassment and expense out of all proportion to any gain likely to accrue and that it involves an abuse of the process of the court namely, a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of such process.

46. For the purposes of Rule 76 (1) (a) of the Rules "unreasonable" has its ordinary English meaning and is not to be interpreted as something similar to "vexatious". When determining whether to make an order under this ground a Tribunal should (a) take into account the nature gravity and effect of a party's unreasonable conduct (b) consider the whole picture including whether there has been unreasonable conduct by the paying party including the nature of any such conduct, what was unreasonable about it and the effect thereof.

THE CONCLUSIONS OF THE TRIBUNAL

THE RESPONDENT'S COSTS APPLICATION

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47. The Tribunal has considered first the respondent's costs application. When determining this application, the Tribunal has however also had regard to the (a) the matters raised in the claimant's costs application (b) the overall position including the matters referred to at paragraph 48 below and (c) the relevant legal and associated provisions. The Tribunal has adopted a similar approach when determining the claimant's costs application.

48. This is an unusual case for a number of reasons including as (a) the parties are pursuing applications for costs against each other (and in the case of the respondent in the further and/alternative against its former legal advisers DAS Law) (b) both parties have to some degree been successful/unsuccessful in the proceedings including in particular, that although the respondent conceded that the claimant was constructively unfairly dismissed for the purposes of section 95 (1) (c) and 98 of the Act and was held to have wrongfully dismissed the claimant (in respect of notice), the Tribunal did not award the claimant any compensation in respect of his unfair dismissal by reason in large part of the claimant's conduct (c) the Tribunal proceedings have been conducted in a highly acrimonious manner with multiple disputed applications (d) the proceedings have been conducted against the background of related High Court Proceedings which were not fully disclosed to the Tribunal by either party until the hearing in March 2018 and (e) at the time of the costs hearing there was an extant application/ cross application by the parties in the High Court in respect of the respondent's application to commit the claimant to prison for alleged dishonesty in those proceedings as identified at paragraph 20 above.

49. The Tribunal has considered first whether the costs threshold has been triggered for the purposes of Rule 76 (1) of the Rules in respect any of the grounds of claim contained in the respondent's costs application.

(**a) the claimant's alleged breach of his duties of disclosure**

50. Having given the matter careful consideration, the Tribunal is not satisfied that the costs threshold has been triggered for the purposes of Rule 76 (1) of the Rules in respect of the claimant's alleged breach of his duties of disclosure as alleged by the respondent at paragraph 6-12 of the respondent's cost application.

51. When reaching this conclusion, the Tribunal has had regard in particular, to the matters referred to at paragraphs 10 – 17 above together with the matters referred to below: -

(1) The respondent's allegations relate to the claimant's failure to give full disclosure of documents (including in particular in respect of sensitive/ commercially sensitive documentation taken by the claimant from the respondent on 2 August 2016 without the respondent's knowledge or consent which conduct was discovered by the respondent in November 2017 following the termination of the claimant's employment with the respondent) by 6 July 2017 in breach of the Tribunal's standard order for directions dated 25 May 2017.

(2) This failure however, occurred at an early stage of the proceedings (July – November 2017) at which time the issues in the case were not fully identified (including in particular regarding remedy) and at which time it was recognised /agreed by both parties that the original listing of one day was insufficient and that the matter would need to be relisted for hearing (and which was subsequently relisted for hearing for 5 days in March 2018). Further there is no evidence to indicate that the claimant's application to postpone the one day hearing originally listed for hearing in September 2017 was made for any reason other than the recognition by the claimant's solicitor that a one day hearing would be insufficient to determine the matter having regard to the complexity and volume of evidence.

(3) The documents in question (as identified above) primarily relate to remedy.

(4) The claimant subsequently complied with his disclosure obligations providing further documents to the respondent between 27 December 2017 and 9 February 2018.

(5) The issues in dispute between the parties were still not finalised in January 2018 (including in respect of the respondent's position with regard to sections 122/ 123 of the Act) and the parties were required by the terms of the Order dated 17 January 2018 to agree an updated list of issues (including with regard to remedy).

(6) The respondent's own failure to comply with its obligations of disclosure including in particular, with regard to any documents relating to sections 122 - 123 of the Act culminating in the issue of the Unless Order dated 27 February 2018 debarring the respondent from relying on any contentions pursuant to the above provisions unless such documents were served on the claimant by 1 March 2018 (which the respondent failed to do) (further details are contained in the Tribunal's Order dated 28 September 2018.)

52. In all the circumstances, the Tribunal is not satisfied that there has been any unreasonable conduct by the Claimant in respect of its obligations of disclosure as alleged by the respondent such as to trigger the costs threshold for the purposes of Rule 76 (1) of the Rules.

53. Further, if any reason the Tribunal is incorrect and the threshold is triggered for the purposes of Rule 76 (1) of the Rules by reason of the claimant's failure to give disclosure of the relevant remedy documents until December 2017 the Tribunal is, in any event, satisfied that it is not appropriate in all the circumstances of this case to exercise its discretion to award any costs to the respondent in respect of any such failure by the claimant having regard in particular to the respondent's own conduct regarding such matters as referred to above.

54. This element of the respondent's claim for costs is therefore dismissed.

(b) the claimant's refusal to engage in judicial mediation

55. The claimant accepts that he declined to engage in judicial mediation (paragraph 25 above and page 134 of the bundle). Having given the matter careful consideration, the Tribunal is not satisfied however, that the costs threshold has been triggered for the purposes of Rule 76 (1) of the Rules in respect of such refusal.

56. When reaching this conclusion, the Tribunal has had regard in particular, to the matters referred to at paragraphs 24- 27 above together with the matters referred to below:-

    (1) It is clear from the provisions of the Presidential Guidance (Rule 3 Alternative Dispute Resolution issued on 22 January 2018 – Appendix 3 - explanation for the parties) that the process of judicial mediation is entirely voluntary. Further, in order for a case to be accepted for the judicial mediation process the Regional Employment Judge has to be satisfied that there was a high prospects of success including that the parties must demonstrate a real willingness to compromise.

    (2) The purpose of judicial mediation is not to allow one party to explain to the other why they consider that their claim/ defence will not succeed.

    (3) It is clear from the documentation which has been provided for the purposes of this costs hearing (as referred to at paragraphs 24-26 above) and from the confirmation which was received from the parties at the costs hearing that the respondent did not at any point during the course of these proceedings put forward any proposals of settlement including by way of any financial offer (including in response to the claimant's monetary proposals) or a "drop hands agreement".

    (4) In all the circumstances, the Tribunal is satisfied there is no reasonable prospect that the matter would have been considered by the Regional Employment Judge as a suitable case for judicial mediation/ that the matter would, in any event, have been resolved by judicial mediation.

    (5) Accordingly, the Tribunal is not satisfied that there has been any unreasonable conduct by the claimant in respect of his refusal to engage in judicial mediation such as to trigger the costs threshold for the purposes of section Rule 76 (1) of the Rules. This element of the respondent's application for costs is therefore dismissed.

(**c) the claimant's alleged dishonesty**

57. The respondent's application for costs relates in particular to the matters of alleged dishonesty by the claimant identified at paragraph 32 above.

58. Having given the matter careful consideration, the Tribunal is not satisfied that the costs threshold has been triggered for the purposes of Rule 76 (1) of the Rules in respect of the claimant's alleged dishonesty and/or that it is, in any event, appropriate

in all the circumstances of this case to exercise its discretion to award any cost to the respondent in respect of any such conduct having regard to the matters referred to below:-

(1) The findings of fact of the Tribunal at paragraph 38-56 of the Judgment were reached by the Tribunal, on the balance of probabilities, having regard to the available documentary and oral evidence including in particular the contents of the Analysis document for 2 August 2016. Further, whilst the Tribunal rejected the claimant's evidence regarding his conduct that day (including in respect of the accessing of Mr Robertson's work computer and the subsequent transfer of documents) the Tribunal did not find as a matter of fact that the Claimant had been dishonest in his evidence including that he had lied on oath. Further, the issue as to whether the claimant has been dishonest (including whether he has lied on oath in respect of his actions on 2 August 2016) were extant issues in the High Court at the time of the costs hearing.

(2) Although the findings in respect of the events of 2 August 2016 were important to the question of remedy, including the claimant receiving no compensation for his unfair dismissal claim pursuant to sections 122 / 123 of the Act, such findings were not central to the claimant's complaint of constructive unfair dismissal and/or wrongful dismissal which were both found in the claimant's favour (by concession in respect of the constructive unfair dismissal). Further, the respondent did not make any concession regarding the fairness of the claimant's constructive unfair dismissal claim until 10 October 2018.

(3) The Tribunal is satisfied, in all the circumstances, that the facts of this case are distinguishable from **Daleside** and the further authorities referred to at paragraph 32 above.

59. Further, the Tribunal is not satisfied that if the threshold has in fact been triggered for the purposes of Rule 76 (1) of the Rules that it is, in any event, appropriate in all the circumstances of this case to exercise its discretion to award any costs to the respondent in respect of the claimant's alleged dishonest conduct. When reaching this conclusion the Tribunal has taken into account the matters referred to above together with the further matters relied upon by the claimant as summarised at paragraph 34 above including the right of the claimant to have his claim decided by an Employment Tribunal in the light of the authorities referred to at paragraph 34 (2) above).

60. This element of the respondent's claim for costs is therefore also dismissed.

61. The respondent's application for costs against the claimant is therefore dismissed.

THE CLAIMANT'S COSTS APPLICATION

62. The Tribunal has gone on to consider the claimant's costs application. When determining this application, the Tribunal has approached the matter as set out at paragraph 47 above.

(a) the respondent's defence to the claimant's constructive and wrongful dismissal claims allegedly had no reasonable prospect of success.

63. The claimant's application relates to the matters summarised at paragraph 37 above including in particular (a) the respondent's late concession on 10 October 2018 in

respect of the alleged breach of contract (for the purposes of the claimant's constructive unfair dismissal and wrongful dismissal claims) relating to the respondent's letter dated 10 February 2017 (item 12 of the List of Issues) and (b) that the respondent's contentions in respect of such alleged breach of contract in any event had no reasonable prospect of success as identified in the respondent's without prejudice letter to the claimant dated 7 February 2018 (pages 109 of the bundle).

64. Having given the matter careful consideration, the Tribunal is not satisfied that the costs threshold has been triggered for the purposes of rule 76 (1) of the Rules in respect of the matters referred to above and/or that it is, in any event appropriate in all the circumstances of this case to exercise its discretion to award any costs to the claimant in respect of such matters for the following reasons:-

    (1) The Tribunal is not satisfied that the respondent acted unreasonably, in all the circumstances of the case in making a concession on 10 October 2018 in respect of the alleged breach of contract relating to the respondent's letter dated 10 February 2017 (item 12 of the list of issues). When reaching this conclusion the Tribunal has taken into account in particular, that the concession came about as part of agreed amendments to the existing list of issues following (a) sensible cooperation between the parties' respective Counsel having taken stock of the evidence to date in accordance with the principles of the overriding objective and (b) in recognition by 10 October 2018 of the fact that the any award of compensation in respect of the claimant's unfair dismissal claim was likely to be subject to significant reduction by reason of the claimant's admitted conduct on 2 August 2016.

    (2) Further, The Tribunal is not satisfied that the respondent's defence to the alleged breach of contract in respect of the respondent's letter to the claimant dated 10 February 2017 (item 12 of the list of issues) had no reasonable prospect of success and/or that the respondent should have appreciated as such in the light of the claimant's without prejudice letter dated 7 February 2018 (pages 109-110 of the bundle).

    (3) When reaching this conclusion the Tribunal has taken into account in particular:- (a) the claimant's previous involvement in the respondent as a director and shareholder in the business and (b) the findings of the Tribunal regarding the deteriorating relationship between the claimant and Mr Robertson of the respondent between in particular August 2016 and February 2017, including the contribution of the claimant to such deteriorating relationship (paragraph 129 of the Judgment). The Tribunal has also taken into account that the claimant's without prejudice letter to the respondent dated 7 February 2018 (pages 100-113 of the bundle) contains lengthy and wide-ranging contentions regarding the alleged weaknesses in the respondent's case and does not set out its contentions regarding the respondent's letter dated 10 February 2017 until the 10th page of that letter (page 109 of the bundle).

    (4) The damages awarded to the claimant in respect of his wrongful dismissal claim

65. In all the circumstances, this element of the claimant's application for costs is dismissed.

(b) the respondent's failure to engage with the without prejudice letters from the claimant dated 7 February 2018 and 23 May 2018

66. The respondent accepts that it did not respond/respond in a substantive manner to the claimant's without prejudice offers of settlement.

67. The Tribunal is not however satisfied, in all the circumstances of this case, that the costs threshold has been triggered for the purposes of rule 76 (1) of the Rules in respect of such conduct/ that it is, in any event, appropriate in all the circumstances of the case to exercise its discretion to award in respect thereof.

68. When reaching this conclusion the Tribunal has taken into account in particular :- (a) that the monies recovered by the claimant in respect of his wrongful dismissal claim were significantly less than the monies sought by the claimant in his letter dated 23 May 2018 (page 120 of the bundle) (b) the claimant's conduct on 2 August 2016 (including the concessions which were made during the course of his evidence on 13 March 2018 when he acknowledged that he had taken commercially sensitive information from the respondent without their authorisation/knowledge) and in respect of which the Tribunal is satisfied that the respondent was entitled to conclude that any compensation awarded to the claimant was likely to be significantly limited and (c) the further matters referred to at paragraph 64 above.

69. This element of the claimant's claim for costs is therefore dismissed.

(c) the respondent's alleged vexatious conduct in respect of the email dated 7 October 2018

70. The respondent accepts that it sent the email dated 7 October 2018 but contends that it was entirely appropriate in all the circumstances of the case. The respondent further, in any event, disputes the amount of costs claimed in respect of claim (which it says should, in any event, be no more than £500).

71. Having given the matter careful consideration, including the contents and timing of the email dated 7 October 2018 (paragraph 22 above and page 140 of the bundle) the Tribunal is satisfied that the claimant has established that the costs threshold has been triggered for the purposes of rule 76 (1) of the Rules including that the respondent's conduct in respect of such email constituted both unreasonable and vexatious conduct for the purposes of such provisions.

72. When reaching such conclusion, the Tribunal has taken into account in particular, the following matters: -

    (1) The email was sent by the respondent's solicitors to the claimant solicitors on Sunday, 7 October 2018 at 16.29 pm which was the afternoon immediately prior to the resumed hearing on 8 October 2018.

    (2) The email was sent at such time notwithstanding that the matters in respect of which the respondent raised concerns (the admission of the Analysis document for 2 August 2016) had occurred on 12 March 2018.

(3) The respondent had had plenty of opportunity since 12 March 2018 to (a) discuss any concerns with its new legal adviser/ Counsel and (b) raise any such concerns with the claimant. Further the respondent has been unable to provide to the Tribunal with a cogent explanation for its conduct on 7 October 2018 . For the avoidance of doubt, the Tribunal does not accept that any such conduct can be justified by the receipt of the claimant's further affidavit in August 2018 as contended by the respondent as (a) there is no reference to any such affidavit in the email dated 7 October 2018 and (b) the respondent in any event had over a month to raise any such concerns following receipt of such affidavit.

73. In all the circumstances, the Tribunal is satisfied that the email dated 7 October 2018 constituted vexatious conduct on the part of the respondent including that its intention, on a balance of probabilities and having regard to all of the above, was to subject the claimant to inconvenience harassment and expense **(Barker)** immediately prior to the commencement of the restored hearing and further, in any event, also constituted unreasonable conduct for the purposes of rule 76 (1) (a) of the Rules.

74. The Tribunal has gone on to consider whether, in all the circumstances, to exercise its discretion to award costs against the respondent in respect of such conduct including what effects it had the purposes of any award of costs. The claimant's claim in respect of such conduct is summarised at paragraph 23 above and in the letter dated 19 August 2019.

75. The Tribunal is satisfied that in the light of its findings above it is appropriate to exercise its discretion to award costs against the respondent in respect of such conduct. The Tribunal is further satisfied that the costs sought by the claimant in the total sum of £833.28 (inclusive of VAT as the claimant is not VAT registered) as identified above flow from the respondent's conduct and are further reasonable in all the circumstances.

Employment Judge Goraj

Date: 16 October 2019

Judgment sent to parties on:16 October 2019

FOR THE OFFICE OF THE TRIBUNALS

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The Employment Tribunal (ET) is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. It has recently been moved

online. All judgments and reasons since February 2017 are now available at: https://www.gov.uk/employment-tribunal-decisions

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