



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr P Hamilton**

**v**

**SABA Park Services UK Limited**

**Heard at:** Watford Employment Tribunal

**On:** 5 September 2019

**Before:** Employment Judge Daniels

**Appearances:**

**For the Claimant:** Mr W Lewis (counsel)

**For the Respondent:** Ms Chute (counsel)

## JUDGMENT

1 The Tribunal makes an order for 50% of the costs claimed by the respondent, against Mr Wayne Lewis (the claimant's representative) in the sum of £17,100.96 (including vat) to be paid to the respondent within 28 days.

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Employment Judge Daniels

Date: .....7 October 2019

Judgment sent to the parties on

24 October 2019

.....  
For the Tribunal office

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**For the Respondent:** Ms Chute (counsel)

The following reasons are provided for the costs award made against Mr Wayne Lewis:

## REASONS FOR COSTS AWARD

### The facts

1. The respondent provides car parking services. The claimant was employed as a Financial Controller by the respondent between 10 February 2014 and 15 June 2018 when he tendered his resignation.

### First Claim

2. The claimant brought his first claim alleging race discrimination and breach of contract on 10 March 2017 (case number 3323747/2017) while still employed by the respondent. The claimant was represented and continues to be represented by Mr Wayne Lewis trading via Access Lawyers Chambers.
3. A Case Management Summary in respect of the first claim was held on 5 June 2017.

4. At that hearing, claim 3323789/2017 was withdrawn by consent and the breach of contract claim struck out.

### **Background to the Second Claim**

5. The claimant brought a second claim on 20 September 2018 (case number 333311/2018). The second claim also alleged race discrimination, together with constructive unfair dismissal and claims for breach of contract, unlawful deduction from wages and under the Working Time Regulations. The claimant was again represented and remained represented by Wayne Lewis, of Access Lawyers Chambers who settled the claim.
6. Paragraph 7 of the ET1 stated that the claims brought were as follows:

*“the claimant will allege as set out in Appendix B that he was:*

- a. *Treated differently from his fellow management employees on account of his race, as he was put on disciplinary because of delays to invoice the respondent’s clients despite a history of previous delays caused by other employees in the pass amounting to several £100,000. However, the other employees were not subject to any disciplinary process.*
- b. *The respondent’s system, and more importantly the contracts with the respondent’s clients; did not stipulate how often or quickly any invoices should be submitted, and this disciplinary action was in breach of the claimant’s contract as no obligation was stated there in or in the job descriptions to put the claimant on disciplinary for these mere reasons of delays.*
- c. *Furthermore, the claimant at all material times was performing his job in accordance with the stated job description and the action taken by the respondents amount to victimisation of him in the circumstances.*
- d. *In any event, the claimant does not admit that he caused any delays as claimed in the disciplinary allegations and attributes any delays to the poor manner in which the resignation of Florence Medee was handled by the respondent. The responsibility for Florence Medee was under the financial director, not the claimant and the respondents are put to strict proof.*
- e. *The claimant further attributes the delay as being due to the inability placed on the claimant to make necessary staff changes. The claimant was over burdened with a long list of tasks in his role as a Financial Controller and was expected to complete all the tasks with the help of his staff, but he did not have the power to hire or dismiss such staff like other senior managers could do as he was treated differently because*

of his race. The claimant has all the accountability, but not the authority of his role.

- f. *On several occasions during his employment, the claimant was humiliated and abused in the respondent's open plan office by Florence Medee. However, although these matters were discussed at length amongst the staff and senior management, no action was taken to stop or address these problems by the respondents.*
- g. *On the When Sandy Jarmin: The Assistant Management Accountant reporting to the claimant resigned, and subsequently withdrew her resignation approximately 6 weeks later, as the claimant, in his capacity as Financial Controller, had undertaken some not inconsiderable change to accommodate and mitigate her departure, the claimant had made it clear that he did not want her back. But the respondents still accepted her back to work and her withdrawal of her resignation. The claimant avers that this was done to undermine the claimant's authority and to continue victimisation and racial discrimination of him, so he would eventually leave.*
- h. *The claimant was wrongly blamed and accused in this alleged disciplinary process for the actions of his subordinate staff member: Atika Ahktar, who had been responsible for making the LM settlement and reconciling the related bank account. Despite confirming to the claimant that she had posted and reconciled the bank account, it transpired she did not do so, at all and failed to complete her task of posting the client account.*
- i. *Therefore, in all the circumstances, it was wrong to blame the claimant for her failings as it was unfair on the claimant and it was a false allegation against the claimant by the respondent. Particularly as no disciplinary action was brought against Atika Ahktar. The claimant lost trust and confidence in the respondents.*
- j. *All the allegations made in the earlier case is continuing and the details in this case are explained in Appendix B. The claimant avers that the plans of the respondent against him was designed to force him to resign as it was clear the respondents did not have their trust and confidence in the claimant, so they made all these wild and unfair allegations to support their disciplinary actin brought against the claimant by using his interactions with the junior staff.*

*The respondents caused the claimant to suffer a detriment as result of these protected acts set out in Appendix B and explained above, Contrary to Equality Act 2010, s.27.*

- 7. The respondent's response was dated 5 November 2018. On the same date the respondent requested Further and Better Particulars of the discrimination allegations in the claimant's Particulars of Claim.

8. The respondent's request went unanswered.

### **Case management hearing 1 February 2019**

9. A Case Management Summary in respect of the second claim was held on 1 February 2019 before Employment Judge Andrew Clarke QC. At that hearing both cases were consolidated and listed for hearing on 27 January 2020 for 10 days.
10. In respect of the second claim EJ Clarke note that:

#### **The claims**

“The narrative accompanying that claim does assert claims... including claims for direct and indirect race discrimination and for victimisation. However, the narrative is confused and it is unclear what is said to be the basis for those various types of claim. The respondent responded to the claims, so far as it was able, on 5 November 2018 and sought further and better particulars of the various allegations of discrimination. No such particulars were provided” (para 6)

#### **The issues**

“It has not been possible to identify the issues arising from the most recent claim form” (para 7)

#### **Other matters**

“The parties are reminded of their obligations under rule 2 to assist the Tribunal to further the overriding objective and in particular to cooperate generally with the other parties and the Tribunal.” (para 10)

#### **Orders**

“Unless by 4pm 1 March 2019 the claimant shall have submitted to the respondent and to the tribunal the written particulars set out below, the claims of race discrimination made in the 2018 claim [the second claim] shall be struck out without any further order of the tribunal being necessary”.

11. The EJ noted that the respondent when serving its request for Further Particulars on the claimant had attached to it a Table of Allegations which isolated the factual allegations in the second claim. He went on to order that:  
“As regard each such passage from the claim form, numbered 1 to 10 on the Table of Allegations, the claimant must identify whether the allegation is one of direct or indirect discrimination, or is one of victimisation. Having so identify the nature of the claim, the claimant must also supply the particulars sought by the respondent. This will require the claimant, in respect of each such passage from the claim form to set out the particulars required in paragraphs 2, 3 or 4 of the request for particulars as appropriate”. (para 2)

12. It was made clear to the claimant that he was not permitted to add additional allegation of discrimination, or otherwise to widen the factual scope of his claim. (para 3)

13. The EJ said:

“If and insofar as the claimant supplies appropriate particulars in respect of any of the 10 passages isolated in the Table of Allegations, the claims in respect of that paragraph (and only that paragraph) will not be struck out. Insofar as there is a failure properly to particularise any paragraph, the claims in respect of that paragraph will be struck out in accordance with the unless order set out above”.

(para 4)

An Unless Order is made in this case for the following reasons. The claim form, so far as the allegations of discrimination are concerned, is confused and it is wholly unclear what is the case that the respondent has to meet. Mr Lewis for the claimant, told the tribunal that he accepted that the particulars requested needed to be provided, but explained that they had not been provided because he had not obtained instructions sufficient to enable him to provide them. He informed the tribunal that he immediately had sought instructions but that the claimant ‘is in his own world’ and had not provided the required information. Mr Lewis apologised to the tribunal for failing to follow up his prompt request for information. Had particulars been provided the need for a further preliminary hearing would have been avoided. It is imperative that the case is fully particularised prior to the further preliminary hearing in order to allow for the case to be appropriately case managed at that hearing. In those circumstances, it was considered that the interests of justice require the making of an unless order so that the matter can promptly be preceded with”

(para 5)

### **Further Particulars of the Second Claim**

14. On 1 March 2019 the claimant purported to provide further particulars as ordered through his representative Wayne Lewis of Access Lawyers.

### **Respondent’s request for Further Particulars of other aspects of the claimant’s claim**

15. On 14 March 2019 the respondent wrote to the claimant and noted that other aspects of the claimant’s second claim lacked particularity, namely:

- (i) His holiday pay claim;
- (ii) His bonus pay claim and
- (iii) His breaches of Acas Guidelines claim.

16. It asked that the claimant provide the necessary details by 21 March 2019.

17. On 21 March 2019 the claimant purported to provide further particulars as requested through his representative Wayne Lewis of Access Lawyers.

**Respondent's request for the claimant's discrimination claim in his second claim to be struck out**

18. On 21 March 2019, the respondent wrote to the tribunal applying for the claimant's discrimination claim in his second claim to be struck out pursuant to the unless order, having reviewed those particulars and found them wanting giving reasons as to why it said this was so.
19. Having not heard anything in response the respondent wrote to the tribunal again on 4 April 2019 seeking a strike out.

**Respondent's request for the claimant's holiday pay, bonus pay, and breach of Acas Guidelines claims in his second claim to be struck out.**

20. On 11 April 2019, the respondent wrote to the tribunal applying for the claimant's holiday pay, bonus pay, and breach of Acas guidelines claims in his second claim to be struck out.
21. On 23 April 2019, the claimant's representative wrote to the tribunal rejecting the respondent's assertion that the claimant had failed to comply with the unless order. On the contrary he said that the claimant had "fully complied" with it. The letter was silent in respect of the respondent's other strike out application in respect of the bonus claim etc.
22. The claimant's position meant that the respondent had to write to the tribunal again on 24 April 2019 requesting a further preliminary hearing.

**Case management hearing 1 May 2019**

23. At a case management hearing on 1 May 2019 before Employment Judge Daniels, the tribunal:
  - (i) Struck out the claimant's claim for breach of contract in respect of a 2018 bonus as having no reasonable prospect of success;
  - (ii) Struck out the claimant's claim for breach of contract in respect of holiday pay as having no reasonable prospect of success; and
  - (iii) Refused the respondent's application to strike out the claimant's claims for unreasonable conduct and/or breach of a tribunal order.

24. At that hearing the tribunal made the following orders:

"The claimant is **ordered that unless** he replies to the table of allegations prepared by the respondent at page 113 of the preliminary hearing bundle setting out precisely which cause of action (eg "direct race discrimination" or "indirect race discrimination") as further explained by the respondent in the request dated 5 November 2018) by **29 May 2019**, his claim may be struck out for breach of a tribunal order/orders and/or unreasonable conduct.  
(para 2.2)

25. The respondent was then ordered to populate the table with the further particulars it required and following this:

“The claimant is ordered that unless he replies to the updated table of allegations prepared by the respondent above, in full, (as further explained by pages 108-112 and the request dated 5 November 2018, by **19 June 2019**, his claim may be struck out for breach of a tribunal order/orders and/or unreasonable conduct. (para 2.4)

26. The respondent was then to have until 10 July 2019 to amend its response (para 2.4).
27. A List of Issues was to have been agreed between the parties by 31 August 2019. (para 6.2).
28. The parties were told to inform the tribunal within 14 days if what was set out in the case management summary was inaccurate in any way (para 6.1).
29. A further preliminary hearing was listed for 5 September 2019. In that regard the employment judge stated that:

“The respondent has stated that it intends to apply for costs arising from the above matters and today’s hearing and/or to seek deposit and/or strikeout orders in respect of any continuing failure of the claimant to properly plead his case. Any applications that are pursued at that stage should be filed within 14 days prior to the PH” (para 3.2)

30. On 28 May 2019, the claimant’s representative purported to comply with the order as set out in paragraph 25 above and he populated the table with the causes of action as ordered save for in respect of para 7 (d).
31. The respondent then populated the table with the particulars it sought in respect of each cause of action as ordered.
32. On 19 July 2019, the claimant’s representative then purported to supply the particulars that the claimant sought in respect of each cause of action.

### **Respondent’s letter to the tribunal dated 2019**

33. On 19 June 2019, the respondent wrote to the tribunal noting that at the preliminary hearing on 1 May 2019 that Employment Judge Daniels had ordered the claimant to particularise his Acas claims in the respondent’s Table of Allegations. It noted that however the case management order had not included an unless order requiring the claimant to do so. It asked for confirmation that this had been the tribunal’s intention and that this had been an omission from its order. Alternatively, the respondent requested a fresh unless order in this regard. The respondent also sought clarity that all aspects of the claimant’s bonus claim in his second claim was struck out including the LTIP element of his claim. It is clear that the claimant’s bonus claim in his



first claim had already been struck out by virtue of Employment Judge Alliott's order of 5 June 2017.

34. Having not heard anything in response, the respondent wrote to the tribunal again on 1 July 2019 requesting the matter be listed for an urgent preliminary hearing if the tribunal was not minded to strike out the claimant's claims in light of the two unless orders dated 1 February 2019 and 2 May 2019. The respondent pointed out that the claimant had now had three opportunities to comply with the respondent's request for further particulars but had failed to do so.
35. The respondent acknowledged that a preliminary hearing had been listed for 5 September 2019, but it asked for an urgent preliminary hearing to be listed before as if it was not listed until that date the respondent would be in breach of the tribunal's order that it respond to the claimant's particulars by 10 July 2019. It said it would be applying for the costs of the next hearing and the costs thrown away incurred to date due to the claimant's repeated failure to comply with the tribunal's orders. The respondent copied in the claimant on its application.
36. Neither the claimant nor his representative acknowledged or replied to the respondent's letter.
37. The respondent did not hear back from the tribunal. It wrote to the tribunal again on 21 August 2019. It made the following applications:
  - (i) That the claimant's discrimination claim and Acas uplift "claim" be struck out pursuant to rule 37;
  - (ii) That the case management direction be amended;
  - (iii) It applied for its costs against the claimant pursuant to rule 75 and/or
  - (iv) Wasted costs against the claimant's legal representative pursuant to rule 80.
38. In doing so, the respondent set out why it felt that the claimant's discrimination and Acas uplift "case" should be struck out but also why it was said it was entitled to its costs.
39. The claimant was copied in on the respondent's application but the respondent did not receive a reply.
40. The tribunal emailed the parties and said the parties should come ready to deal with the applications mentioned in the recent correspondence and asked them to confirm their attendance. The respondent did so. The claimant's representative, however, emailed the tribunal and said:

“I have only now got notice of this hearing is to proceed tomorrow and I have a large email from the respondent’s that I have not been able to access, so I am not prepared to deal with all the issues but will have to attend and re-arrange my other appointments at this late stage”.

41. The respondent replied making the point that both parties had always known that this hearing was listed for 5 September 2019 and that this was the first it had heard that the claimant’s representative had been unable to access the bundle for today’s hearing and that in any event the documents within the bundle were all documents that the claimant had had previously anyway. The respondent pursued those applications.
42. On 21 August 2019 the respondent applied for a strike out of the claimant’s discrimination claims and Acas uplift claims on the following grounds:
  - 44.1 The manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious.
  - 44.2 The claimant had not complied with many of the Employment Tribunal Rules/Orders of the Tribunal (including failing to comply with two unless orders).
  - 44.3 The claimant was not actively pursuing his claim.
43. The respondent contended that the claimant had been given three opportunities (two of which were the subject of unless orders) to particularise his discrimination claims and he had materially failed to do so each time and that any purported “compliance” with unless orders on the claimant’s behalf had been materially defective as he had either entirely failed to provide the information ordered, or he had provided unsatisfactorily vague information that lacked sufficient particularity. Further, that by failing to comply with two unless orders, the claimant had demonstrated scandalous and unreasonable behavior. Finally, that the claimant’s discrimination claims remained wholly defective and the respondent was none the wiser as to the specific allegations and claims to which it needed to respond. The Acas uplift claims also remained unparticularised.
44. The respondent submitted that a strike out of these claims was now the only option and there was no less draconian alternative as the claimant or his representative had demonstrated his blatant disregard for each unless order imposed to date. Non-compliance with two previous unless orders should, on its own, they submitted, be sufficient to justify a strike out of the relevant claims.
45. Further, the final hearing is listed from 27 January 2020 and any further delay on the claimant’s behalf in particularising his case risked jeopardising the hearing date. This case has been going on since March 2017 and it was in accordance with the overriding objective that it is disposed of at the final hearing without further delay. The claimant’s rep opposed the applications.

46. At the PH on 5 September 2019, the claimant's claim for indirect race discrimination at 7a of the particulars of claim was struck out forthwith on the basis the claim had no prospect of success.
47. The claimant (via his representative, Mr Lewis) also withdrew at the hearing the following claims (following his being invited to make submissions as to how such claims were brought):
  - 2.1 For indirect race discrimination regarding the contention at 7b (regarding the typical practices under the company invoice systems);
  - 2.2 For direct race discrimination and/or unlawful victimisation regarding 7c (the suggestion the claimant was performing his job as per the job description);
  - 2.3 For direct race discrimination (or any other claim) regarding 7d (that the claimant did not admit any alleged delays were his fault);
  - 2.4 For direct race discrimination regarding 7e (and his alleged inability to make staff changes or hire and fire);
  - 2.5 For direct race discrimination regarding alleged abuse from Florence Meedee as set out in para 7f;
  - 2.6 For direct race discrimination and/or unlawful victimisation regarding Sandy Jarmin's resignation and reappointment as set out in para 7g;
  - 2.7 For direct race discrimination regarding 7h and allegedly being wrongly blamed for actions of Atika Ahktar;
  - 2.8 For direct race discrimination regarding 7i (which largely repeated 7h);
  - 2.9 For direct race discrimination regarding 7j (which the claimant's representative related to the unfair dismissal claim); and
  - 2.10 For any alleged breach of the ACAS procedures.

## **COSTS ORDER**

48. The respondent applied for a costs order under rule 76(1)(a) and 76(2).

### Conclusion

49. An award of costs is in the interests of justice for the following reasons.
50. In its ET3 and Grounds of Resistance (in response to claim number 3333311/2018) dated 5 November 2018, the respondent requested further and better particulars ("FBP Request") of the claimant's discrimination claims. This request was ignored by the claimant. The majority of the claim was inadequately pleaded.
51. The claimant and his representative was repeatedly warned. During the Preliminary Hearing on 1 February 2019, Employment Judge Clarke QC was critical of the claimant's failure to provide further and better particulars as requested by the respondent. At Order 5 of Employment Judge Clarke QC's Order he stated:

**“Mr Lewis, for the claimant, told the tribunal that he accepted that the particulars requested needed to be provided, but explained that they had not been provided because he had not obtained instructions sufficient to enable him to provide them.** He informed the tribunal that he immediately had sought instructions, but that the claimant “is in his own world” and had not provided the required information. Mr Lewis apologised to the tribunal for failing to follow up his prompt request for information. **Had particulars been provided, the need for a further preliminary hearing would have been avoided.** (Emphasis added).

52. During this preliminary hearing, Mr Lewis added that the failure to respond to the FBP request:

*“was an oversight by [him] not addressing the matter”.*

*He went on to say that he “thought he shared the response with [his] client and he was meant to provide instructions but has not done so.”*

When asked by Employment Judge Clarke QC whether he had instructions in relation to the allegations, Mr Lewis responded that

*“[he] had no response.”*

53. During this Preliminary Hearing, Employment Judge Clarke QC granted an unless order in respect of the claimant’s discrimination claims. The claimant and his representative were plainly on notice of the seriousness of the breach and the importance of addressing the issue.
54. On 1 March 2019, the claimant purported to comply with the unless order by providing Further and Better Particulars of Claim. The document provided to the respondent fundamentally failed to comply with Employment Judge Clarke’s directions and the unless order. The claimant failed to answer any of the five specific questions posed in the respondent’s FBP request. Further, he attempted to widen the scope of his claim by introducing new facts and allegations (most of which were withdrawn by the Claimant on 5 September 2019).
55. On 14 March 2019, noting that the remaining unparticularised elements of the claimant’s claim were not subject to an unless order, the respondent again wrote to the claimant to request further and better particulars in relation to his holiday pay, bonus pay and Acas uplift claims. The claimant subsequently responded to this request on 20 March 2019. Again, the further and better particulars provided by the claimant’s representative were wholly inadequate. Such conduct was unreasonable conduct.
56. The respondent wrote to the tribunal on 21 March 2019 to draw its attention to the claimant’s failure to comply with the unless order and asked for confirmation that the claimant’s discrimination claims were now struck out. Over a month later, on 23 April 2019, Mr Lewis (the claimant’s representative) wrote to the tribunal to object to the strike out application.

57. The preliminary hearing took place on 1 May 2019. Employment Judge Daniels was not minded to strike out the claimant's discrimination claims and instead made a further unless order in relation to the claimant's discrimination claims. Employment Judge Daniels did, however, warn the claimant and his rep again and that it seemed to him that,
- “There is a case to answer regarding costs. We are here today because of inadequate compliance with an Order by the claimant”.** (Emphasis added).
58. Employment Judge Daniels, at the respondent's request, struck out the claimant's holiday pay and bonus pay claims and ordered that the claimant provide further and better particulars in relation to his Acas uplift claim.
59. The respondent contended that the holiday pay and bonus pay claims always had no reasonable prospect of success, and the claimant's representative has wasted significant time having to deal with these issues which have now been properly struck out.
60. The claimant purported to comply with the 1 May 2019 unless order but materially failed to do so. Although in relation to some allegations he did provide further detail, the claimant did not answer the specific questions posed to him and he provided unsatisfactorily vague information that lacked sufficient particularity. As such, the respondent applied for his discrimination claims to be struck out on 1 July 2019.
61. In my conclusion, the respondent has incurred unnecessary and wasted costs as a result of the unreasonable way that the claimant via his representative has conducted this litigation.
62. This had so far resulted in two (potentially three) wasted Preliminary Hearings, two unless orders, numerous interim applications and very substantial correspondence with the tribunal.
63. The overriding objective of the Employment Tribunal Rules is to enable Employment Tribunals to deal with cases fairly and justly which includes dealing with cases in ways which are proportionate to the complexity and importance of the issues.
64. It was clearly a breach of the overriding objective for the claimant, via his representative, to fail to properly particularise his claim at least three times (two of which under orders of the Tribunal), leaving the respondent unable to respond to the claims, thereby preventing their efficient disposal of the claim and then withdrawing virtually all additional claims when pressed as to how and why they were brought.
65. The claimant's representative acted unreasonably in the way the proceedings had been conducted. The claimant's representative repeatedly failed to properly particularise the claim (which includes noncompliance with two

unless orders), despite being given at least three opportunities to do so. This had resulted in two wasted preliminary hearings, resulting in significant and unnecessary wasted costs for the respondent.

66. The application for a wasted costs order in accordance with rule 80(1)(a) and/or (b) is well founded. The respondent incurred substantial wasted costs as a result of the unreasonable and negligent acts and/or omissions on the part of the claimant's representative relating to the failure to particularise the claimant's claims despite several requests and the unless orders requiring him to do so.
67. The respondent was put to significant additional expense due to the unreasonable actions of the claimant's representative.
68. Not only have there been three largely wasted preliminary hearings, the respondent has had to make several interim applications in order to deal with the claimant's representative's unreasonable conduct and had even had to list the legal test in relation to each of the claimant's allegations (which was the job of the claimant's representative, not the respondent).
69. The claimant (via his representative) then ultimately withdrew at the last hearing the following claims:
  - (for indirect race discrimination regarding 7b)
  - For direct race discrimination regarding 7c
  - For direct race discrimination regarding 7d
  - For direct race discrimination regarding 7e
  - For direct race discrimination regarding Florence Meedee and 7f
  - For direct race discrimination regarding Sandy Jarmin (7g)
  - For direct race discrimination regarding 7i
  - For direct race discrimination regarding 7j
70. No explanation (let alone a good one) was provided for why those claims were withdrawn at this stage.
71. The Claimant's representative expressly accepted at the PH that he has been responsible for the pleading of the case. He also did not make any submission that the claimant was responsible for the incorrectly pleaded claims or the late withdrawal of these claims. Moreover, his explanation for the bringing of the claims for indirect discrimination and victimisation was misconceived. In answering questions about this claims brought (which he accepted that he had pleaded for the claimant) he displayed a serious lack of knowledge of the nature and legal requirements of such claims. He did not appear to understand the difference between direct and indirect discrimination at all or what a protected act is for the purposes of victimisation claims.
72. The tribunal was bound to conclude that his bringing of those claims by the claimant's representative on the claimant's behalf and/or his conduct of the proceedings in that respect was negligent and/or unreasonable conduct. No

explanation whatsoever has been provided for why these claims were initially brought, repeatedly not particularised and then ultimately withdrawn.

73. Whilst the claimant's representative did mention the claimant being uncertain about dates and that was part of the reason for withdrawing certain claims at this stage he did not explain why this position was not reached much sooner. The failure by the claimant's representative to clarify the nature and dates surrounding such claims was further unreasonable conduct by the claimant's representative. Had the claimant's representative not conducted the proceedings unreasonably he would have been bound to clarify the dates and the pleaded claims long before he did so.
74. Based on the facts and evidence before me, I could see no basis for an order for cost against the claimant himself. It is not clear he had been kept updated in respect of the above issues and he was not present at the PH. No evidence was submitted on his behalf. There was nothing before me to suggest he was at fault as opposed to the claimant's representative. In view of the claimant's representative's startling lack of knowledge of the key features of the claims brought it appeared highly likely that any decision to plead in the misconceived way it was pleaded was due to the claimant's representative not the claimant.
75. In these circumstances, I have concluded that the material failures on the claimant's side described in detail above are solely those of the claimant's representative and/or over matters for which he was responsible.

76. Amount of award

Ability to pay

Having given the claimant's representative an opportunity to make submissions as to his and/or the claimant's ability to pay any costs order, no grounds were set out relevant to the claimant's representatives lack of ability to pay any award.

Conclusion

In all the circumstances and carefully applying my discretion I consider it would be in the interests of justice to make an order for costs against the Claimant's representative.

I consider that the amount of costs ordered should be reduced from the amounts claimed by the respondents for the following reasons. First, the claimant's observations as to whether the full amount of such costs of £34,201.92 were reasonably incurred. The costs claimed are substantial and should only be recoverable based on the normal rules on third party costs orders, not on an indemnity basis. I make a 30% deduction for this. Second, the lack of clarity as to which time entries relate to the additional time spent as a result of the claimant's representative's unreasonable conduct. I make a 10% deduction for this, Third, the fact that some costs would have been

incurred in any event in dealing with case management issues covered. I make a 10% deduction for this. I am clear that the balance of costs incurred relate directly to the unreasonable conduct of the claimant's representative.

Conclusion

In all the circumstances, and for the detailed reasons above, I made an order for 50% of the costs claimed by the respondents, against Mr Wayne Lewis in the sum of £17,100.96 (inc vat) to be paid to the respondent within 28 days.

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Employment Judge Daniels

Date: .....7 October 2019

Judgment sent to the parties on

24 October 2019

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For the Tribunal office