EMPLOYMENT TRIBUNALS

Claimant: Mr Jose de Araujo

Respondent: Surecare Barnet Limited

Heard at: Bury St Edmunds **On:** 10 September 2019

Before: Regional Employment Judge Byrne (sitting alone)

RESERVED REASONS
Provided by the Tribunal in accordance with Rule 62(2)

1. On the 12 April 2018 the claimant presented claims under S.47B of the Employment Rights Act 1996 (ERA), that is claims of detriment for having made protected disclosures, claims of automatically unfair dismissal under the provisions of S.100 of the Employment Rights Act 1996, that is where the reason, or if more than one the principal reason for dismissal is carrying out or proposing to carry out health and safety activities and related matter as is fully set out in Section 100 (1) (a) to (e) ERA , automatically unfair dismissal under the provisions of Section101A ERA for a reason related to the exercise or prevention of the exercise of entitlements under the Working Tine Regulations 1998 as fully defined in Section 101A (1) (a) to (d), a claim of automatically unfair dismissal under Section.103A where the reason or if more than one the principal reason for dismissal is having made a protected disclosure and a claim of automatically unfair dismissal for asserting a statutory right as defined in Section 104A (1)(a) and (b) of the ERA. In addition, the claimant pursued claims described as a claim for breach of contract which related to outstanding holiday pay and which is a claim under the provisions of the Working Time Regulations, alternatively a claim for damages for breach of contract.

2. On the 13 April 2018 the claimant's counsel Mr Wayne Lewis emailed the Watford Employment Tribunal stating that a full version of particulars of claim would be posted to the Watford Employment Tribunal in addition to the claim form that had been presented on line. A response was presented on 5 June 2018 and sent to the claimant's counsel at Access Lawyers, Gibson House, 800 High Road, Tottenham, London N17 0DH. A preliminary hearing was listed for 17 July 2018 before the Watford Employment Tribunal in order to identify the claims and issues and make all necessary case management orders. Regrettably, due to the current work levels within the Employment Tribunals and

the need to cover already listed and part-heard cases and the lack of judicial resource the hearing listed for the 17 July 2018 was vacated and re-listed to 14 December 2018.

3. On 6 August 2018 the respondent's solicitors wrote to the Tribunal requesting an order from the Tribunal requiring the claimant provide further information requested in the respondent's first draft list of issues in order to clarify the claims and issues. The correspondence was referred to a judge and on the 5 November 2018 in a letter from the Employment Tribunal to the parties Employment Judge Smail directed:

> ***3.1 The claimant's representative must be in a position to fill in the blanks of the respondent's draft list of issues, as sent out on the 6 August 2018, at the forthcoming preliminary hearing on the 14 December 2018.***

4. The preliminary hearing took place before Employment Judge R Lewis on the 14 December 2018. The claimant was represented by Mr M Walker of counsel, from same the chambers as Mr Wayne Lewis, and the respondent by Mr Kemp of counsel. Of particular relevance for the matters for my consideration at the hearing on 10 September 2019 are the following paragraphs of the case management summary of Employment Judge R Lewis.

5.

> "***The issues***
>
> ***1. At the start of this hearing Mr Walker told me that he had attended this hearing on the footing that no response had been presented. The tribunal file showed a wealth of correspondence sent to Mr Wayne Lewis of Access Chambers about this claim since June 2018. That included arrangements for a preliminary hearing in July 2018, its postponement and re-listing, and a letter from the tribunal of 15 November, in which the claimant was directed to complete a draft list of issues prepared by Mr Kemp. Mr Walker could show no basis on which it might have been thought that there was no response, and no correspondence from Mr Lewis checking the point.***
>
> ***Costs***
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> ***7. Mr Walker represented the claimant (who was present). His colleague in chambers, Mr Wayne Lewis, has conduct of the matter, and is the correspondence point for the tribunal. Mr Walker had attended today having been told that no response had been presented. He was not prepared to deal with any issue of substance, including a direction from the tribunal by letter of 15 November 2018, requiring the claimant to complete the draft list of issues prepared by the respondent.***
>
> ***8. The tribunal file showed about eleven items of correspondence sent to Mr Lewis. A number were sent,***

correctly, by email. Although the postal address given on the ET1, and used by the tribunal staff was incomplete (800 Tottenham, London N17 8HU instead of 800 Tottenham High Road), there was no correspondence on file which had been returned by Royal Mail.

9. Mr Kemp applied for costs against the claimant. Having heard counsel, it seemed to me right that the application should be adjourned, so that a wasted costs application should be made. I was concerned that the application indicated that the claimant individually was blameless, and that the application should be properly directed and professionally answered.

10. I declined to order either the claimant or Mr Lewis to provide disclosure for the purposes of rule 84. If a party makes an assertion of impecuniosity, it is a matter for the party to support the assertion with evidence, but he does not have to."

6. Judge R Lewis then made a number of orders, including, crucially, the following:

UNLESS ORDER
Made pursuant to the Employment Tribunal Rules of Procedure

1. Unless by 4pm on Friday 18 January 2019 the claimant sends to the respondent and the tribunal the following document, the claim will be struck out without a hearing:

2. The claimant is to send in completed form the draft 'List of Issues' provided by the respondent, answering all the points indicated as 'TBC' and / or requiring his information, except for paragraphs 3, 6 and 9.

7. A second preliminary hearing was listed to take place on Monday 29 April 2019 before the Employment Tribunal sitting at Bury St Edmunds in order to consider any matters of case management, to review the listing of the matter in January 2020 (the claims have been allocated with a hearing date 13-24 January 2020), to consider any application to strike out or for a deposit order, and to consider any application for costs or wasted costs.

8. On the 17 January 2019 Mr Wayne Lewis submitted by email the respondent's list of issues with certain parts of that list of issues completed.

9. On the 6 February 2019 the respondent wrote to the Tribunal stating that there had been material non-compliance by the claimant with the Unless Order because in answer to the question at paragraph 2 of the list of issues which reads;

"Did the claimant have a reasonable belief at the time he made each disclosure that the disclosure intended to show failure or likely failure to comply with the legal obligation to which the respondent was subject namely [IN RESPECT OF EACH DISCLOSURE OF INFORMATION ABOVE,

CLAIMANT TO SPECIFY THE NATURE OF THE LEGAL OBLIGATION RELIED UPON, IF ANY AND/OR WHETHER ANY OTHER CATEGORIES OF QUALIFYING DISCLOSURE IN S.43B(1)(a) – (f) ARE RELIED UPON],

The respondent asserted that the claimant had simply listed the categories and not specified the nature of the legal obligation relied upon and that the claimant having failed to answer the request the claim should be struck out .

10. That application was referred to Employment Judge R Lewis and on 5 March 2019 on his direction a letter was sent to the parties stating;

"Employment Judge R Lewis does not agree to the respondent's application of 6 February 2019. It is open to the respondent to re-apply at the hearing on the 29 April 2019."

11. By letter dated 5 April 2019 the respondent's solicitors wrote to the Tribunal and to the claimant's counsel notifying them of the intention of pursuing strike out of the claim for breach of the unless order , alternatively strike out on the merits, alternatively for a deposit order at the hearing listed for the 29 April 2019. Strike out for breach of the unless order was on the basis set out at paragraph 9 above and further and in the alternative an application that the unfair dismissal claims be struck out because they had no reasonable prospect of success, that the breach of contract claim be struck out because it had no reasonable prospect of success and that the claim for detriment referring to holiday pay and failure to provide payslips be struck on the basis that all holiday pay owed to the claimant had been paid directly to the claimant's partner at the claimants request. The respondent further contended that the last act in respect of the detriment claim pre-dated the claimant's resignation on the 6 November 2017, that the claims were presented on the 12 April 2018 and accordingly were out of time. Finally, and in the alternative, the respondent sought deposit orders in respect of each claim on the basis that they had little reasonable prospect of success.

12. On the 29 April 2019 Mr Kemp for the respondent attended at the Bury St Edmunds Employment Tribunal for the preliminary hearing to consideration of the application set out above. Unfortunately Mr Lewis and his client attended at the Watford Employment Tribunal and accordingly the hearing did not proceed and was re-listed to the Bury St Edmunds Employment Tribunal on 22 May 2019. On 21 May 2019, given that due to existing part-heard cases and judicial availability it was not possible to hear the application on 22 May 2019, I directed that the hearing be adjourned and a hearing date of Tuesday 10 September 2019 was fixed.

The Hearing of 10 September 2019.

13. I heard from Mr Grey of counsel for the respondent and from Mr Wayne Lewis of counsel for the claimant. I had the benefit of a bundle prepared for the hearing together with a bundle of authorities. The bundle included a statement from Mr Wayne Lewis signed by him and dated 8 April 2019 in which he set out his reasons for objecting to the costs application against him.

14. For the respondent Mr Grey submitted that the unless order made by Employment Judge R Lewis was clear and unambiguous. The claimant's response to paragraph 2 of the draft list of issues as set out above indicated reliance on S.43B(1)(a) ERA in respect of each disclosure (save for disclosure 11 of 2/3 October 2017)but failed to specify the nature of the legal obligation relied upon and accordingly that amounted to partial non-compliance with the unless order by the claimant. He went on to say the claimant had done nothing since serving the draft list of issues in January 2019 to remedy that non-compliance and that given the wide ambit of the unless order the entire claim must be struck out even though there had been only partial breach of the order (***Royal Bank of Scotland -v- Abraham UKEAT/0305/09 at [27]-[28]*** *and* ***Scottish Ambulance Service -v- Laing UKEAT/0038/12 at [15]***). He submitted that the unless order had come into effect and the claim was effectively struck out after 4:00pm on the 18 January 2019.

15. Further or in the alternative he sought a strike out on the basis that the claims had no reasonable prospect of success. He accepted that a strike out order should only be made in plain and obvious cases and accepted that prospects do not have to be so weak as to be "fanciful", (**Ezsisa -v- North Glamorgan NHS Trust [2007] ILRL 603 [26])** but that the claim might be struck out even where facts were in dispute **Ezsisa at [27]** . He also referred to **Ahir -v- British Airways Plc [2007] EWCA Civ 1932 [16]** per Underhill LJ,

"Employment Tribunals should not be deterred from strike out claims, including discrimination claims, which involve a dispute of fact if they are satisfied there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such conclusions in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context. Whether the necessary test is met in a particular case depends on an exercise of judgment……".

Mr Grey further referred to the function of the ET being to determine the claims which have actually been brought rather than being claims that might have been brought and that the claimant is limited to complaints set out in the agreed list of issues **(Land Rover -v- Short UKEAT/0496/10/RN)** cited with approval by the Court of Appeal in **Scicluna -v- Zippy Stitch Limited [2018] EWCA Civ 1320 at [15] and [17]** pointing out there was no application by the claimant to amend the ET1 or the agreed list of issues or to clarify in further extent the claims in pursuit.

16. Turning to the unfair dismissal claim he submitted that the claimant having insufficient qualifying service to bring a claim of ordinary constructive unfair dismissal he was relying on an automatic unfair dismissal claim applying the provisions of S.100 ERA (Health and Safety Cases) S.101A (Working Time Cases) S.103A (dismissal for having made a protected disclosure) and S.104 (Asserting a Statutory Right). Mr Grey submitted that the responses provided simply did not set out any factual information that would enable the claimant to bring an automatically unfears dismissal claim that fell within any of the statutory requirements imposed by the relevant sections of the ERA.

17. The claimant in answer to the request for detail of how his claim of automatically unfair dismissal fell within S.100 ERA stated ***,"moving a patient without the relevant health and safety procedures in place. The claimant refused to engage in this activity."*** That was the extent of the response and it simply failed to address the health and safety procedures relied on, what should have been the procedure ,or provide detail in any meaningful way.

    In answer to the request to explain the basis of the S.104 ERA 1996 automatically unfair dismissal claim the response simply stated ***" November 2017 (Requesting his holiday payslips from Farah Yatally).-Section 11(2) ERA 1996. The claimant did not engage in this activity"***. That fails to set out any basis on which the clamant could engage with S. 104.

    In answer to the request to explain the basis of the S.101A ERA 1996 claim the reply stated, ***" August, September and November 2017 the claimant (between August 2017 to November 2017) verbally requesting his holiday pay from Mrs Yatally. The claimant did not voluntarily engage in this activity".*** Mr Grey submitted that yet again that failed to set out any basis on which the claimant could engage with S101A ,and that the automatically unfair dismissal claims had no reasonable prospect of success and should be struck out.

18. Turning to the breach of contract claim he referred to a document headed "Nat West Transactions" which detailed the period from 10 February 2017 to 31 January 2018 in relation to respondent's business current account number 60163046 and showed various payments which Mr Grey said were made on the claimant's instruction by the respondent and which were payments of holiday pay direct to the claimant's partner Liz Maziarka on nine occasions between the 17 July 2017 and 25 October 2017. He submitted that was evidence of holiday pay having been paid and that on that basis the alleged detriment suffered by the claimant for failing to provide holiday pay and failing to provide payslips had no reasonable prospect of success .

19. Mr Grey also raised a limitation point. The dispute was referred to ACAS on the 15 February 2018 and the claim presented on the 12 April 2018 .Accordingly he submitted that any acts relied on that took place before the 16 November 2017 were out of time. On the basis of the claimant's pleaded case he resigned on the 16 November 2018 and accordingly any detriment claims that preceded the date of his resignation were out of time. He further submitted in the alternative relying on the analysis of the claims set out above that they had little reasonable prospect of success and the claimant should be ordered to pay a deposit of up to £1000 in order to proceed with each allegation or argument made.

20. The respondent's final application was for wasted costs order . Mr Grey relied on the principles set out in **Ridehalgh -v- Horsefield [1994] CH205**. He also referred to the comments of Judge Lewis as paragraph 5 and 8 of the case management summary referred to at paragraph 5. above. He took me to Mr Wayne Lewis's witness statement provided to the Tribunal, in particular his comment at paragraph 4 of his statement which reads,

"I have been trying to understand the basis of the wasted costs order being sought against me and I assume it is the issues summarised in the said order at paragraph 5 of the issue. I am assuming that the wasted costs must be that the lack of responses or correspondence since June 2018 from me and not completing the draft issues prepared by Mr Kemp as a result a preliminary hearing was wasted, and a second preliminary was now needed.

At paragraph 9 of the witness statement Mr Wayne Lewis states as follows,
" I have checked my various corresponds in this case and agree that my input on this case has been extraordinarily low. I have written a number of emails to my client around 16th July 2018 in preparation for the preliminary hearing on the 17th July 2018 and I had a conference with my client to discuss the forthcoming preliminary hearing and I recalled that I prepared an agenda for the hearing and put in it the issue of late or no response ET3 form the Respondents as I had concluded that my client was entitled to judgment in default. I also was instructed about the disclosures that was needed and the number of witnesses we expect to call. I believe that I had sent my agenda to the Respondents and to the Tribunal late on the 16th July 2019, but I cannot now find any trace of it."

21. Mr Grey also directed me to paragraph 15 of Mr Wayne Lewis's statement in which states as follows;

I would urge the Tribunal to consider the Court of Appeal 3 stage Rule in Ridehalgh v Horsfield 1994 and find it does not apply in this case as a)no actions of mine can be described as "improperly, unreasonably" as explained the crucial period began on the 15th November 2018 as directed by the Tribunal but I concede it was rude and unprofessional not to have responded, (b) my actions or omissions did not cause the Respondents to incur unnecessary costs , as the issue of the "Blanks" (reference to uncompleted parts of the response to the order for additional information) ***was dealt with on the 14 December 2018 despite the fact they had not supplied the ET full grounds of resistance, (c) on the facts and circumstances of this case it is not just or reasonable to ask me to compensate the respondent for any of their costs. They should have provided their amended grounds of resistance as required to do under the rules. My view is that this case does not meet threshold to be a wasted cost order as per the example's rulings of conduct of representative which I have listed above".***

22. Mr Grey submitted that it was because of Mr Lewis's actions that the Employment Tribunals' direction of the 15 November 2018 was ignored and that was the reason why Mr Walker attended the first preliminary hearing unprepared to deal with any issue of substance, as recorded by Judge Lewis at paragraphs 7 of his case management orders of 14 December 2018.

23. Mr Grey submitted that because of all of that very little progress could be made to clarify the claims at the hearing on the 14 December 2018 and the costs of that first preliminary hearing were thrown away. He applied for counsel's fee in

the sum of £2,121 on the basis that Mr Lewis' conduct as conceded by him in his witness statement was negligent and that any reasonable competent barrister would have engaged with the correspondence from the Employment Tribunal and in particular the direction to complete the draft list of issues at the first preliminary hearing.

24. I invited Mr Lewis to respond to those submissions. He started by asking if I was going to address his application for disclosure made to the Tribunal on the 9 May 2019. I asked how any application , which I was unaware of until he raised the matter in the hearing, was relevant to the application that I had to determine given that it post-dated the hearing of 14 December 2018 which gave rise to the applications I was considering . He said to me that it was relevant. I checked the Employment Tribunal file to see if there was any record of any application of 9 May 2019 having been received from the claimant . I was told by Mr Lewis that it was accompanied by specific disclosure request. I could not find any documents of that description on the Tribunal file. I did find, and read, an email from the claimant to the respondent of 9 May 2019 which had been copied to the Employment Tribunal. It requested voluntary disclosure of documentation and said, "***I ask that you do this within the next 7 days otherwise this will be an additional issue at the next preliminary hearing".*** I reminded Mr Wayne Lewis that any application for an order from the Tribunal must be made to the Tribunal and copied to the respondent and the email of the 9 May 2019 was not such an application. He said he thought it was an application. I said that if it had been considered by him to be an application had he made any enquiries with the Tribunal to find out why they had not responded to it, to which the answer was no. He said that there was information required by that request to the respondent that was relevant to the claim. I said that in the absence of any application having been made to the Tribaunl for an order could he now move on and respond to the respondent's application.

25. Mr Lewis submitted that the hearing in December had been effective and had progressed the case. He went on to argue that the unless order that had been made had been complied with. He said the respondent's delayed in submitting their amended response. He suggested initially that they had not made any application to the Tribunal for leave to serve an amended response and it was pointed out to him by Mr Grey that the Tribunal had given leave to the respondent to serve an amended response by the 15 February 2019. An amended response was in fact presented late on 1 April 2019.

26. Mr Lewis said that more information needed to be disclosed by the respondent and that it would be necessary to amend the claim form. Turning to the costs application he submitted that his delay had not delayed the process overall, that the December hearing was effective and that in his view the Tribunal was not affected adversely.

Conclusions

27. I considered the respondent's applications carefully. The dismissal of proceedings under an unless order is a draconian penalty. Tribunals must be

wary in adopting an overzealous approach to the sanction of automatic strike out. It is clear to me that is the reason for Judge Lewis' direction referred to at paragraph 10 above, namely that he did not consider he was in a position to take a view on 5 March 2019 whether or not the unless order had "bitten" and taken effect, but that was not to say it those matters could not be considered carefully at the hearing then due to take place on the 29 April 2019.

28. The critical question I have to consider is whether the unless order was complied with. The unless order was wide in the sense that it was stated to be apply to all claims. However, I accept the deficiencies in the claimant's pleaded case as explained by Mr Grey. Were those deficiencies a lack of important information necessary in order to enable the claim to be understood and defended? In my view they are .It is essential that the claimant set out clearly the relevant sub-sections of S43B (1) they rely on and why. The claimant has not done so. In weighing up whether or not there has been non-compliance I have taken into account the fact the claimant has been legally represented by counsel from the outset of these proceedings and that the claimant's counsel was well aware of the need to provide that additional information. That additional information was initially requested as long ago as the 6 August 2018 and ordered by an unless order on the 15 December 2018 onwards. As at 10th September 2019 it was still outstanding.

29. Unless orders have their own specific provisions. Rule 38(1) states "an order may specify that if it is not complied with by the date specified the claim or response, or part of it, shall be dismissed without further order. If the claim or response or part of it, is dismissed on this basis the Tribunal shall give written notice to the parties confirming what has occurred."

30. All that is required from the Tribunal is written notice sent to the parties informing them that the unless order has taken effect. I take account of the overriding objective in seeking to deal with the case just and fairly to the parties, but take the view that the deficiency in the information provided is with regard to the S.47B detriment part of the claim are such that the order has not been complied with in relation to those claims .

31. I have also taken into account the fact that the claimant has been well aware since April 2019 of the deficiencies in the information provided and has had ample opportunity to remedy those deficiencies but has not done so. In all the circumstances I am satisfied that the unless order takes effect with regard to the Section 47B detriment claim and the judgment sent to the parties is the written notice to the parties referred to in the Rule 38(1) as set out in paragraph 29 above.

The strike out application

32. I have considered whether the claims of automatic unfair dismissal brought on the various statutory grounds relied upon have no reasonable prospect of success. Dealing with the claim under S.100 the claimant has provided no factual information that supports his assertion that the reason or principal

reason, if more than one, for his dismissal was one that falls within the provisions of Section 100 (1) (a) to (e). The claimant refers to "***Moving a patient without the relevant health and safety procedures in place".*** What were the relevant health and safety procedures that should have been in place? What were the risks to health and safety at work? Did he refuse to leave or did he leave his place of work in circumstances of danger which he reasonably believed to be serious and imminent which he could not reasonably have been expected to avert? It is simply impossible to understand the basis of the claim under Section 100 without answers to questions such as this. This is why the request for additional information was made. As pleaded, I am satisfied that claim has no reasonable prospect of success.

33. The same analysis applies to the Section 101(A) claim of automatic unfair dismissal because on the one had the claimant says he asked for holiday pay and on the other that he did not voluntarily engage in that activity, an apparent contradiction of the earlier statement and not a logically understandable pleading. I am satisfied that claim has no reasonable prospect of success.

34. Turning to S.104 claim of automatic unfair dismissal for assertion of a statutory right the statement of the activity relied upon is ***"Requesting his holiday payslips from Farah Yatally -Section 11(2) ERA 1996 .The claimant did not engage in this activity."*** What is a holiday payslip? Is he complaining of not receiving payslips , which payslips would include details of holiday pay, a claim which could give rise to a reference to an Employment Tribunal under Section 11 and thus fall within Section 104 (1) (b) being an allegation that an employer had infringed a right of his which is a relevant statutory right under Section 8 ERA namely the right to an itemised pay statement. If I assume that is the correct interpretation of the claim as pleaded once again the supporting information from the claimant is illogical and contradictory. He either asked for some form of payslip or he did not. I am satisfied that as set out by the claimant this claim has no reasonable prospect of success.

35. On the basis there are no protected disclosures on which the claimant can rely , they having been struck out as a result of the failure to comply with the unless order, the claim under Section 103A has no reasonable prospect of success as there is no protected disclosure to rely on and this claim is struck out.

36. Turning to the holiday pay/breach of contract claim the documentation provided by the respondent indicating that the claimant's holiday pay was paid at his direction to his partner is compelling. The claimant has not provided any details as to how he calculates unpaid holiday pay at 36 days referred to in his claim form . I take the view that on the basis of the information before me I cannot say that claim has no reasonable prospect of success but I am satisfied it has little reasonable prospect of success. I made enquiries of the claimant at the hearing as to his ability to pay. He is currently receiving gross a week approximately £550 working as an Uber taxi driver. From that he has to pay the cost of his vehicle of £225 per week. He told me that he has no savings and that he does not own any property. In all the circumstances I am satisfied an appropriate deposit order is £500 to be paid by 22 October 2019.

Wasted Costs Order

37. The final matter I have to is consider is the application for wasted costs. I consider the principles in **Ridehalgh -v- Horsefield**. It is a three-stage test ("the test"):

    37.1 Has the legal representative of whom the complaint is made acted improperly, unreasonably or negligently?

    37.2 If so, did the conduct cause the applicant to incur costs?

    37.3 If so, is it in all the circumstances just for the legal representative to compensate the applicant for the whole or any part of the relevant cost?

38. Negligence should be given an untechnical meaning, failure to act with a competence reasonably to be expected of ordinary members of the profession. I am entirely satisfied having considered all the circumstances and indeed the comments Mr Lewis has made in his own witness statement (see paragraphs20 and 21 above) that he failed to act with the competence reasonably expected of an ordinary member of the profession in failing to respond to the Tribunal's direction of 15th November 2018 and in allowing Mr Walker to attend before Employment Judge R Lewis on the 4 September 2018 under the mistaken view that the respondent had failed to file a response to the claim. That caused the applicant to incur costs in instructing counsel to attend a hearing that was ineffective and unable to deal fully and properly with those matters it was meant to deal with namely identifying the claims and issues and making all orders necessary for the expeditious hearing of the claim. Costs were wasted on the 14 December 2018 because the case was not properly prepared for the claimant despite there having been ample time to do so.The second stage of the test is satisfied in that the conduct of Mr Lewis caused the respondent to incur costs .

39. Mr Lewis accepted , at paragraph 15 of his witness statement that his failure to comply with Tribunal's' direction of 15th November was " ***rude and unprofessional"***. However, it goes further than that because consequences flowed form a failure on the part of Mr Lewis to act in all the circumstances with the competency reasonably to be expected of an ordinary member of the profession . I refer to paragraph 9 of his witness statement and to paragraphs 5,7 and 8 of the case management summary to Judge R Lewis's case management orders made on 14th December 2018. I find the third stage of the test made out and that in all the circumstances it is just for Mr Lewis to compensate the respondent for part of the relevant costs , the sum of £2,121 being counsel's fees for Mr Kemp for the hearing before the Watford Employment Tribunal on 14 December 2018 and I order that Mr Wayne Lewis pay that sum to the respondent.

40. Finally, I apologise to the parties at the length of time it has taken to conclude these reserved reasons. The last few months have been an extremely busy time for me involving training conferences for both judiciary and non-legal members across the South East Region together with other regional

responsibilities and hearings and that has not assisted in my making time to finalise these reserved reasons.

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Regional Employment Judge Byrne

Date: .06.12.19……

Sent to the parties on:

…….06.12.19…….

For the Tribunal:

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