EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr L Roberts	AND	Logo Design GRP Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 1 April 2020
(Public Hearing by telephone)

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Mr J Munro, Solicitor
For the Respondent: Ms V Whelan, Solicitor

JUDGMENT AND ORDER

The respondent's application for an award of costs against the claimant is dismissed. There is no application by the claimant.

REASONS

1. In this case the respondent seeks an award of costs against the claimant.
2. General Background
3. This matter has a long and rather complicated history. The claimant issued these proceedings on 18 August 2017. His claim was for unfair dismissal, for discrimination on the grounds of his age, for entitlement to a statutory redundancy payment, for breach of contract in respect of his notice pay, for unpaid wages, and for accrued but unpaid holiday pay. The claims were brought against Logo Commercial Creative Partners. No response was received, and the claimant was asked to confirm the exact identity of his employer. By letter dated 24 October 2017 the claimant confirmed that the trading name of his employer had been Logo Commercial Creative Partners, but that he understood that a limited company namely Logo Design GRP Ltd was the limited company trading under that name which had employed him. He applied for this company to be added as a second respondent, and these proceedings were accordingly served on Logo Design GRP Ltd on 2 November 2017.
4. By letter dated 14 November 2017 Mr Wells of Lucas Johnson Ltd wrote to the tribunal to inform the Tribunal that he was the Liquidator of Logo Design Ltd, a company which was now in liquidation and which was the claimant's previous employer, and that he was in a

position to process the claimant's minimum statutory employment claims. He also asserted that the claimant had never been an employee of the respondent Logo Design GRP Limited. The Tribunal responded to the effect that Logo Design Ltd (in liquidation) was not a respondent to the proceedings, and asking for documentary proof of the claimant's previous employment, for instance by way of a contract of employment or forms P45 or P60. Despite a reminder, the Liquidator failed to reply.

5. The matter then came before me for a case management preliminary hearing by telephone on 24 May 2017. Mr Munro the claimant's solicitor attended on behalf of the claimant. No one attended on behalf of either of the two named respondents, namely Logo Commercial Creative Partners, and Logo Design GRP Limited. Although the Liquidator Mr Wells subsequently asserted that he had attended by telephone, that was not the case. In any event the company for which he was the Liquidator was not a party to these proceedings.
6. Neither respondent had entered a response. Mr Munro asserted on behalf of the claimant that his employer had been Logo Design GRP Ltd. Accordingly, at that case management hearing I dismissed Logo Commercial Creative Partners as the first respondent because it was not a legal entity, and I entered judgment under Rule 21 against Logo Design GRP Ltd as the sole and remaining respondent. It is also to be noted that the Liquidator of Logo Design Ltd (in liquidation) had still failed to provide any documentary evidence as requested to the effect that it was that company which had employed the claimant.
7. The matter then proceeded to a remedy hearing before Employment Judge Housego. He entered judgment dated 5 September 2018 in the claimant's favour against the respondent in the total sum of £210,212.19 ("the Remedy Judgment"). It is to be noted that the Liquidator of Logo Design Ltd (in liquidation) had still failed despite requests to provide any supporting documentation to show that it had employed the claimant. In addition, despite the fact that the respondent had been served with the proceedings and subsequent correspondence and notice of hearing, the respondent had taken no part in these proceedings and had not sought reconsideration of the judgment under Rule 21.
8. Mr Wells the Liquidator then sent an email to the Tribunal on 28 September 2018 to the effect that Logo Design Ltd (in liquidation) should be the only respondent to the claim, and that he would "respond in detail next week". That company had never been a respondent to the claim, and the respondent had still not entered a response, nor had it notified the Tribunal that the Liquidator was authorised to submit a response on its behalf. On 8 October 2018 Mr Wells wrote further to the same effect, but the position remained that Logo Design Ltd (in liquidation) was still not a party to the proceedings, and no authority had been received from the respondent to the effect that Mr Wells was acting for the respondent.
9. On 25 October 2018 I directed that a detailed letter be sent to the claimant, the respondent, and the Liquidator to this effect: (i) Logo Designs Ltd was not a party to the proceedings and that company and/or the Liquidator had no standing in the proceedings; (ii) it remained open for the respondent to make an application for reconsideration of the Rule 21 Judgment and the Remedy judgment, provided that any such application was in accordance with the Tribunal Rules. To that end I directed that any such application should include the following information: (a) that whoever makes the application must confirm that he or she is instructed to do so by the respondent; (b) the grounds for the application in full; (c) why the application had been made outside the 14 day time limit, and what reasons were relied upon for any extension of time; (d) a full detailed written response to the claimant's originating application; and (e) that it must all be copied to the claimant for potential agreement. I made it clear that in the absence of any successful application for reconsideration, the Rule 21 Judgment and the Remedy Judgment would still stand.
10. Although this Tribunal played no part in the process, the claimant apparently commenced the High Court enforcement process to seek to enforce the Remedy Judgment against the respondent. By letter dated 18 February 2019 Mr Burrage wrote to the Tribunal to the effect that he was the Managing Director of the respondent, that it had never employed the claimant, and that he wished to appeal the Judgment in order to prevent enforcement by the High Court. The Tribunal repeated and confirmed the information which it would need from the respondent if the respondent wished to make a formal application for

reconsideration of the Remedy Judgment, and/or the Rule 21 judgment, which information or application had still not been received.

11. The respondent then instructed solicitors. By letter dated 20 March 2019 the respondent's solicitor Ms Whelan wrote to this Tribunal on the respondent's behalf enclosing a copy of an order of the High Court dated 11 March 2019 which was a stay of execution of the Remedy Judgment. Her letter also made an application to this Tribunal to set aside the Rule 21 Judgment, and to strike out the claimant's claim. However, there was no application for reconsideration accompanied by the necessary information as earlier directed, and this was confirmed by email from the tribunal on 1 April 2019. The respondent's solicitor then made that formal application for reconsideration by email dated 17 April 2019 which included the relevant supporting information as directed. The claimant's solicitor subsequently confirmed that the respondent's application was opposed.
12. I then listed the matter for a preliminary hearing in person to determine the respondent's application for reconsideration, and that hearing took place on 9 July 2019. It was clearly essential to determine which limited company had been the claimant's employer. Surprisingly the claimant failed to attend that hearing, although Mr Munro his solicitor did appear on his behalf. The respondent also attended, with Mr Burrage present to give evidence to the effect that there had been a contract of employment between the claimant and Logo Design Ltd (in liquidation), and no contract of employment with the respondent. Equally surprisingly however the photocopy of the suggested contract of employment between the claimant and Logo Design Ltd (in liquidation) which was produced by the respondent was incomplete, and it was not the case that it proved (i) that the claimant had been employed by Logo Design Ltd (in liquidation), or that (ii) the claimant had never been employed by the respondent. I therefore decided to adjourn that hearing and to list it for a further preliminary hearing in person, in the first place to determine who had been the claimant's employer, and then subsequently to determine the respondent's application for reconsideration.
13. I Informed the claimant's solicitor at that hearing that if the respondent was able to prove at that forthcoming hearing that it had never employed the claimant then any continuing assertions made to that effect by the claimant might subsequently be taken to be unreasonable conduct such as to attract an adverse costs award.
14. That hearing was listed to be heard on 12 September 2019, but was adjourned because of lack of judicial resource. It was relisted to be heard on 18 October 2019. Two days before the hearing by letter dated 16 October 2019 the claimant withdrew his claim as against the respondent, and his claim was subsequently dismissed on withdrawal.
15. It is important to note that as at the time of the claimant's withdrawal of the claim (i) there had been no judicial determination as to whether or not the claimant had been employed by the respondent (although Employment Judge Housego appears to have been satisfied that this was the case as at the hearing on remedy), and (ii) the Rule 21 Judgment and the Remedy Judgment against the respondent were still valid because the respondent's application for reconsideration had not yet been determined.
16. In the meantime, there has recently been without prejudice negotiations between the parties with a view to reaching agreement upon which the proceedings might be resolved. The respondent asserts that terms were agreed between the parties, and that there was a settlement agreement (the "Settlement Agreement"). The respondent asserts that one of its terms was that the claimant would contribute the sum of £2,000 towards the respondent's costs, and that the claimant remains in breach of that agreement. The claimant denies that he is in breach of any Settlement Agreement
17. <u>The Application for Costs</u>
18. During the course of this hearing, it became clear that the respondent does not make an application for its costs in accordance with the Employment Tribunals Rules of Procedure 2013 ("the Rules"), and in particular Rule 76(1) which provides: "a Tribunal may make a costs order or a 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."

19. It became clear that the respondent was seeking to enforce the terms of what it asserts to be a concluded and enforceable Settlement Agreement, because it asserts that the claimant is in breach of contract by failing to pay an agreed contribution of £2,000 towards the respondent's costs (as specifically agreed in the Settlement Agreement).
20. It seems to me that the correct forum for determining that dispute is the County Court. If, as the respondent suggests, there is an enforceable Settlement Agreement, then the respondent can issue proceedings against the claimant in that jurisdiction.
21. In circumstances where there is no application by the respondent for costs before this Tribunal under The Rules I can make no costs award, and I decline to do so.
22. It is to be noted that the claimant denies that there is an enforceable Settlement Agreement, but in any event, there is no application made by the claimant under the Rules as against respondent.
23. I therefore decline to make any order.

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Employment Judge N J Roper

Dated 1 April 2020