Case Number: 2200606/2017

EMPLOYMENT TRIBUNALS

BETWEEN

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

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 1 June 2020 (in chambers)**

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

On reading the written representations of the parties, the Tribunal, unanimously and on its own initiative, reconsiders para (2) of the judgment sent to the parties on 12 September 2019 ('the costs judgment') and varies it to provide as follows:

On the Respondents' application, the Claimant is ordered to pay a contribution towards their costs of the proceedings, limited to £20,000.

REASONS

Background

1 On 27 February 2019 following a final hearing held over four days earlier in the same month, this Tribunal issued a reserved judgment with reasons dismissing the Claimant's complaints of post-employment victimisation.

2 At a further hearing on 4 June 2019 the Tribunal heard a wasted costs application by the Claimant and a costs application by the Respondents. The latter application was supported by a schedule which put the Respondents' costs at more than £170,000. On 12 September 2019, following private deliberations on 28 August, we issued a reserved judgment with reasons, dismissing the wasted costs

application and granting the costs application, ordering the Claimant to pay the Respondents' entire costs of the proceedings (including their costs of making the costs application and resisting the wasted costs application), such costs to be the subject of a detailed assessment. We will call this the costs judgment. The detailed assessment has not taken place and, as a result of this judgment, will not take place.

3 The reasons for both judgments should be read with these.

4 The current claim was issued less than a year after the trial of the Claimant's first claim arising out of her employment by the First Respondents (case no. 2201005/2015), which was heard before a differently-constituted Tribunal and resulted in a calamitous defeat for her.

5 Before and since the decisions in these proceedings, the Claimant has bombarded the Tribunal with almost constant correspondence (the numbered documents on the file now exceed 530), containing a host of disparate applications, demands, allegations and complaints requiring countless hours' attention from the Tribunal's hard-pressed administrative staff and this Employment Judge ('EJ') as well as EJ Lewis (who dealt with the case at an interlocutory stage), Regional Employment Judge Wade (as she now is) and Judge Brian Doyle, until 8 May President of the Employment Tribunals (England & Wales) ('the President'). She has also raised unsustainable applications for reconsideration of both judgments, which have been rejected. In addition, she has pursued appeals against both judgments to the Employment Appeal Tribunal ('EAT'). Both have been rejected on the sift but a Rule 3(10) application is pending on the first and another may well follow on the second. It seems from her very recent correspondence that a third, and even a fourth, appeal may be underway.

6 On 1 April this year the Respondents' solicitors wrote to the Tribunal stating that the Respondents wished to limit their award of costs to £20,000 (the maximum that can be awarded as a specified amount)[1] and asked that the award be determined accordingly, by way of summary, rather than detailed, assessment.

7 A blizzard of correspondence followed, nearly all emanating from the Claimant. She fiercely challenged the proposal raised in the letter of 1 April. One of her many complaints was that the Respondents were seeking a reconsideration of the costs judgment and that they were out of time for doing so. In an email of 3 April the Respondents' solicitors stated that they were not seeking a reconsideration of the costs judgment. Rather, they argued (we summarise) that the way in which it was to be implemented should change in light of the Respondents' willingness to forgo most of the costs awarded. Specifically, the *mode of assessment* should be varied from 'detailed' to 'summary'.

8 By a letter of 20 April written on the instruction of this Employment Judge, the Tribunal invited the views of the parties on the way forward. The letter included the remark that the Respondents were not seeking a reconsideration of the costs judgment and that their change of position was hugely in the Claimant's favour. It

[1] See the Employment Tribunals Rules of Procedure 2013 ('the Rules'), r78(1)(a).

also explained that the judge was minded to (among other things) vary the costs judgment by limiting the amount payable to the Respondents to £20,000.

9 Copious furious correspondence from the Claimant followed. The Respondents agreed with the course proposed by the judge.

10 By a letter dated 7 May written on the instruction of this judge, the Tribunal notified the parties that the letter of 1 April was treated as raising questions of reconsideration under the Employment Tribunals Rules of Procedure 2013 ('the Rules'). They were given the opportunity, no later than 15 May, to send further representations if so desired (a) on the course proposed by the judge and (b) as to whether a hearing should be convened.

11 Yet more splenetic messages were received from the Claimant.

12 Some points which the Claimant has made in correspondence will be outlined below. Two are most conveniently mentioned at once. First, she demanded that this Employment Judge recuse himself for, it seems, apparent bias. Sitting alone, he declined the application for recusal. No remotely arguable ground was shown.

13 Secondly, the Claimant contended that a hearing should be held. This Employment Judge, sitting alone, declined the request for a hearing. His reasons were as follows. The matter in dispute was exceedingly simple and straightforward. It had been exhaustively argued in correspondence. Setting up a hearing would cause inordinate delay in concluding litigation dating back to 2017, based on events in 2014 and 2015. The Respondents would be compelled to incur yet more costs. The Tribunal would be required to devote yet more of its overstretched resources to accommodating the Claimant's apparent desire to perpetuate hostilities with the Respondents at public expense. In all the circumstances it was emphatically not, to quote the statutory language (see below), "necessary in the interests of justice" to hold a hearing.

14 By a letter dated 18 May the parties were given notice of the outcome of the application for recusal and the request for a hearing. The letter also notified the parties that the full Tribunal, having discussed the matter, was contemplating reconsidering the costs judgment on its own initiative and varying it by limiting the Claimant's liability to the Respondents to £20,000. The parties were granted until 29 May to make written representations if they wished.

15 In further correspondence the Claimant claimed that the Tribunal's position had changed and demanded a postponement to some unspecified later date to enable her to take advice. That application was refused by this Employment Judge for reasons summarised in an email from the Tribunal dated 19 May, which also re-stated the Tribunal's reasons for contemplating the reconsideration of the costs judgment.

16 In an email sent on the evening of 19 May the Claimant declared that she was ill and would not be "responding" for a period of three to six weeks, "all being well". The application to postpone the Tribunal's decision was repeated. That

application was refused by this Employment Judge, who held that there was no reason to delay disposal of the very simple question awaiting decision and that the Claimant remained at liberty to deliver further representations by 29 May.

17 On 21 May the Claimant submitted a two-line letter from a General Practitioner stating that she had been diagnosed with shingles and had been advised that the condition was likely to take three to six weeks to resolve. This Employment Judge noted the information but saw no reason to re-visit his decision to refuse the application to postpone.

The law

18 The Employment Tribunals Rules of Procedure 2013 ('the Rules') includes:

RECONSIDERATION OF JUDGMENTS

Principles

70. A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again.

Application

71. Except where it is made in the course of a hearing, an application for reconsideration shall be presented in writing (and copied to all the other parties) within 14 days of the date on which the written record, or other written communication, of the original decision was sent to the parties or within 14 days of the date that the written reasons were sent (if later) and shall set out why reconsideration of the original decision is necessary.

Process

72.—(1) An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked (including, unless there are special reasons, where substantially the same application has already been made and refused), the application shall be refused and the Tribunal shall inform the parties of the refusal. Otherwise the Tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the Judge's provisional views on the application.

(2) If the application has not been refused under paragraph (1), the original decision shall be reconsidered at a hearing unless the Employment Judge considers, having regard to any response to the notice provided under paragraph (1), that a hearing is not necessary in the interests of justice. If the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations.

(3) Where practicable, the consideration under paragraph (1) shall be by the Employment Judge who made the original decision or, as the case may be, chaired the full tribunal which made it; and any reconsideration under paragraph (2) shall be made by the Judge or, as the case may be, the full tribunal which made the original decision. Where that is not practicable, the President, Vice President or a Regional Employment Judge shall appoint another Employment Judge to deal with the application or, in the case of a decision of a full tribunal, shall either direct that the

> **reconsideration be by such members of the original Tribunal as remain available or reconstitute the Tribunal in whole or in part.**
>
> **Reconsideration by the Tribunal on its own initiative**
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> **73. Where the Tribunal proposes to reconsider a decision on its own initiative, it shall inform the parties of the reasons why the decision is being reconsidered and the decision shall be reconsidered in accordance with rule 72(2) (as if an application had been made and not refused).**

19 The 'overriding objective' of the Rules (r2) is to enable the Tribunal to deal with cases fairly and justly, which includes, so far as practicable, ensuring that parties are on an equal footing, respecting the principle of proportionality, avoiding undue formality and seeking flexibility, avoiding delay and saving expense.

20 A cardinal principle running through our law of civil procedure, applicable no less (arguably more) in the employment law context than elsewhere, is that there must be finality in litigation.

Outstanding applications

21 Among her many applications, the Claimant urged the Tribunal to stay the case pending the adjudication of the EAT. The Tribunal is unanimous that the application to stay must be refused. It obviously makes sense to determine any question of variation of the judgment *before* the EAT determines the appeal(s) (if it ever decides that an arguable appeal is raised at all). The EAT routinely stays appeals when reconsideration applications are pending in the Employment Tribunal.

22 The applications to postpone to enable the Claimant to take advice have been dealt with by the judge alone. There is no basis for entertaining them again as a Tribunal of three, but we take this opportunity to say that the non-legal members agree with the decisions of the judge.

23 Likewise, the lay members agree with the judge's decision on the further postponement application based on the Claimant's health. Moreover, the full Tribunal is satisfied that the subsequent letter from the GP changed nothing materially. In so far as there was anything further to say on the simple step which the judge had proposed, the Claimant was not impeded from saying it.

24 Generally, we find it hard to avoid the impression that the Claimant's core objective since 1 April has been to prevent the Tribunal from bringing this dispute at the first-instance level to an end. Whether or not that is so, her numerous applications have all sought rulings which would have that effect. Granting any of them would be contrary to the overriding objective and the interests of justice.

The short point at issue

25 We turn to the substance of the dispute as to reconsideration. In the judgment of all three members of the Tribunal, the reaction of the Claimant to the letters of 1 and 20 April and 7 May has been, even by her standards, extraordinary. She described the Respondents' request as "bait", which she would not be

tempted to take. She suggested that variation of the judgment would prejudice her appeal. She went further: the letter of 1 April was a cunning "ruse" conceived with that very purpose in mind. She contended that the Tribunal had no power to vary the judgment because the "application for reconsideration" (which she treated as having been made in the letter of 1 April) was out of time. She claimed to detect some sinister motivation underlying the judge's proposed course of action. She invoked the intervention of the Regional Employment Judge and the President. She advanced other arguments besides. It would not be proportionate to engage with them. None has any substance.

26 The Tribunal is unanimous that it is self-evidently appropriate, just and in keeping with the overriding objective to reconsider the costs judgment, para (2) and substitute the provision our judgment above. We have a number of reasons. First, we have jurisdiction to take this course. The Rules give us the power to vary judgments on reconsideration (r70). Second, the passage of time does not preclude reconsideration because the 14-day time limit applies to applications by parties, not to reconsideration by the Tribunal on its own initiative (compare r72 and r73). And the passage of time on the facts of this case is not a factor arguing against the exercise of the r73 power. Reconsideration now entails no true prejudice to the Claimant (see below) and a failure to vary the judgment now would certainly prejudice the Respondents (see below). Third, contrary to the Claimant's view, it is not right to regard the letter of 1 April as an application by the Respondents for reconsideration: their solicitor denies any such application and it is not for the Tribunal to treat them as making an application which they disavow. (For completeness we would add that, had we seen the letter of 1 April as containing an application for reconsideration, and had we not had the power to reconsider on our own initiative, we would have extended time for the application (under r5), the change of circumstances having arisen on 1 April, when the Respondents limited their claim for costs to £20,000, and, for the reasons given below, granted the application.) Fourth, the variation, although asked for by the Respondents, operates in the Claimant's *favour*, reducing her potential liability from over £170,000 to £20,000. She has shown herself willing to run many unpromising arguments in this case but even she has not attempted to argue that a detailed assessment would or could result in her being faced with a bill of £20,000 or less. In these circumstances, variation of the costs judgment is not prejudicial to the Claimant's financial interests. Fifth, reconsideration will not prejudice any other legitimate interest of the Claimant's. She may well resent being deprived of one last matter to litigate (the assessment of costs) or, if it is not another way of saying the same thing, the satisfaction of keeping the Respondents in unfinished litigation, with all the cost and trouble necessarily entailed. She may also be upset by the possibility of facing enforcement of her costs liability sooner than expected. But these are not legitimate interests and it is not the function of the law to protect them. Sixth, the variation will not prejudice the Claimant's rights on appeal. It will only vary – downwards – the *quantum* of her costs liability and has nothing whatsoever to do with her unsuccessful application for wasted costs. Seventh, the logic of the Claimant's case, from which she does not shrink (see her email of 21 April timed at 04:08), is that the only permissible way forward is to proceed with a detailed assessment of costs which the Respondents no longer seek, involving untold trouble and expense for the Respondents and a wholly needless burden on the over-stretched resources of the Tribunal. A contention more obviously at

variance with the overriding objective is hard to imagine. Eighth, the Claimant's logic goes even further: on her case a request by the Respondents to vary the costs order down to £1,000 or £100 or £1, or even revoke it *entirely*, would have left the Tribunal equally paralysed and unable to do otherwise than leave the detailed assessment to take its course. The absurdity of her position speaks for itself. Ninth, as the Claimant, a conspicuously intelligent person, knows perfectly well, the Respondents are not seeking to "re-open" this dispute but to bring it to an end. It is she who has fought a determined campaign to keep it alive. That campaign cannot be allowed to prevail. Reconsideration achieves the salutary benefit of finality. Tenth, for all these reasons it is plainly "necessary in the interests of justice" (r70) to reconsider and vary the costs judgment in the manner set out in our judgment above.

27 Finally, we would add this. Given the way in which the Respondents expressed themselves (through their solicitor) in the letter of 1 April and subsequently, it would arguably have been open to the Tribunal to take no action on the letter of 1 April and leave it to the costs-assessing judge[2] to consider how to give effect to the costs judgment in light of the Respondents' subsequent decision to confine their claim to £20,000.[3] What would have been the consequence of taking that course? We profess no expertise in the law and practice relating to the assessment of costs, but we venture the mild thought that (contrary, as already noted, to the Claimant's apparent view) the law would probably not have shown itself to be so unwieldy and irrational as to require the full detailed assessment exercise to be performed in a case where the receiving party's position had changed and it sought to recover only a specified sum which is awardable without assessment and (very substantially) lower than the lowest sum that a detailed assessment could conceivable yield. But it is not helpful for us to take these reflections further. On any view, leaving the costs judgment undisturbed would have resulted in further uncertainty and entirely avoidable delay and expense. It would have been unjust to the Respondents. It would also have been unjust to the Claimant in leaving her with a liability which the Respondents had disclaimed. In all the circumstances, we are quite satisfied that leaving the matter to the costs-assessing judge would not have met the interests of justice given the much clearer, simpler, swifter and more economical route open to us under r73.

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EMPLOYMENT JUDGE SNELSON
2 June 2020

Reasons entered in the Register and copies sent to the parties on 2 June 2020

.. for Office of the Tribunals

[2] In the London Central region there are two Employment Judges who are specially trained and authorised to conduct detailed assessments.

[3] It might have been argued that this was the right course to take, especially as the Respondents' solicitors had expressly stated that they were *not* pursuing an application for reconsideration. As we have noted, the Claimant did not take that line, arguing instead that, despite their protestations, they *were* making just such an application.