



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4112577/2018

5

Held in Glasgow on 10 June 2019 (Final Hearing)
and 11 June 2019 (Deliberation)

10

Employment Judge I McPherson

Miss Jade Haddow

Claimant
In Person

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Premier Convenience Ltd

Respondents

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Not Present and
Not Represented

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

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- (1) The respondents having failed to appear or be represented at this Final Hearing, and the claimant being present, and ready and prepared to proceed, the Tribunal, after making telephone enquiries of the respondents as regards their non-appearance, proceeded in their absence, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, and took into account submissions from the claimant, and the information from the respondents already on the Tribunal's casefile, there having been no prior application from the respondents to consider postponing the listed Final Hearing to a later date, and the Tribunal being satisfied that it was in the interests of justice, and consistent with the Tribunal's overriding objective to deal with the case fairly and justly, in terms of **Rule 2**, to proceed to determine the claim on the basis of the information available to the Tribunal.

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E.T. Z4 (WR)

- 5 (2) Having considered the information available to the Tribunal, the Tribunal finds the claimant's complaints of unlawful deduction from wages in respect of unpaid statutory sick pay of £61.37, failure to pay 2 days' holiday pay of £109.62 , and failure to pay one week's notice pay of £251.40, to all be successful, and **orders** that the respondents shall pay to the claimant the total sum of **FOUR HUNDRED AND TWENTY TWO POUNDS, THIRTY NINE PENCE (£422.39)**.
- 10 (3) Further, having heard submissions from the claimant, in further explanation of her written application intimated on 12 April 2019 for a Preparation Time Order against the respondents in the sum claimed of £798.00 (for 21 hours @ £38 per hour), and the respondents not having intimated any comment or objection to that application, the Tribunal treated that application as unopposed by the respondents, and decided that it would be determined as part of this Final Hearing, it being
- 15 satisfied that such an approach is consistent with the interests of justice, and the Tribunal's overriding objective, under **Rule 2**, to deal with the case fairly and justly, including avoiding any further delay, so far as compatible with proper consideration of the issues, and saving of further expense to parties, and to the Tribunal.
- 20 (4) Having further considered the claimant's submissions, and the Tribunal's powers under **Rules 74 to 84 of the Employment Tribunals Rules of Procedure 2013**, and the respondents having provided no information to the Tribunal about their ability to pay any such Order, if so ordered by the Tribunal, the Tribunal has **granted** a Preparation
- 25 Time Order against the respondents, in terms of **Rule 75(2)**, but restricted to a total amount of **ONE HUNDRED AND EIGHTY TWO POUNDS (£182.00)** for **5 hours**, being three hours @ £38, pre-6 April 2019, and two hours @ £39, post- 6 April 2019, which the Tribunal considers as a fair, reasonable and proportionate amount of time for
- 30 the claimant to spend on preparatory work in all the circumstances, and which further sum the Tribunal **orders** that the respondents shall also pay to the claimant.

(5) Finally, in terms of the Tribunal's powers under **Rule 75(1) (c) of the Employment Tribunals Rules of Procedure 2013**, and the respondents having provided no information to the Tribunal about their ability to pay any such Order, if so ordered by the Tribunal, the Tribunal has also **granted** an Expenses Order against the respondents, in respect of the claimant's travelling expenses incurred in connection with her attendance as a witness on her own behalf at this Final Hearing, and the Tribunal **orders** that the respondents shall pay to the claimant the further sum of **FIFTY SIX POUNDS, SEVENTY PENCE (£56.70)** being reimbursement for mileage incurred using her private motor vehicle on a 126 mile round trip, at 45 pence per mile, being the HMRC approved amount.

REASONS

Introduction

1. This case called again before me on the morning of Monday, 10 June 2019, at 10.00am, for a one-day Final Hearing, for its full disposal, including remedy if appropriate, as assigned by the Tribunal by Notice of Final Hearing issued to both parties under cover of a letter from the Tribunal dated 26 April 2019.
2. The claim, originally presented to the Tribunal, on 13 July 2018, after ACAS early conciliation, was defended by ET3 response submitted on 10 August 2018. The case, which has already had a long, procedural history before the Tribunal, had already called before me on two earlier occasions, firstly on 17 October 2018, for a Case Management Preliminary Hearing, and secondly on 14 March 2019 for a Reconsideration Hearing.
3. On the first occasion, in the absence of the claimant, and on the respondents' application, I dismissed the claim, for the claimant's apparent failure to actively pursue it, as per my written Judgment and Reasons, dated 19 October 2018, and entered in the register and copied to parties on 13 November 2018.

4. Thereafter, on the second occasion, I dismissed the unfair dismissal complaint, under **Rule 52**, it being agreed that the claimant did not have the requisite 2 years' qualifying service, and I otherwise revoked my earlier Judgment of 19 October 2018 in part, refused the respondents' application for a Preparation Time Order against the claimant in the sum of £228, and ordered that, in respect of the remaining monetary claims outstanding against the respondents, the case should proceed to this Final Hearing.
5. My written Judgment and Reasons dated 22 March 2019, and entered in the register and copied to parties on 22 March 2019, was followed by a reconsideration application of 5 April 2019 from the respondents, which I refused, under **Rule 72(1)**, as having no reasonable prospects of success, for the detailed reasons then given in the Tribunal's email of 9 April 2019 to both parties.
6. In terms of the Tribunal's email of 9 April 2019, both parties were advised that the case would proceed to Final Hearing, and any application by either party against the other for a Preparation Time / Costs Order must be intimated to the Tribunal, and copied to the other party, at least 14 days before the date fixed for the Final Hearing.
7. On 9 April 2019, the respondents' representative, Mr Farhan Rana, emailed the Tribunal, with copy to the claimant, stating that the respondents had decided to make payment of **£421.43** to the claimant, but without admission of liability, and sending her a letter with a cheque in settlement.
8. By email to the Tribunal, later that same day, the claimant replied stating that she did not want to accept that offer, as it stated that the company still did not accept liability for her claim, that she had been waiting a long time already, and she intended to seek a Preparation Time Order against them within the 14 days allocated by the Tribunal.
9. Mr Rana emailed the Tribunal later on 11 April 2019, but not copied to the claimant this time, as it should have been under **Rule 92**, stating that should the case go forward to a Final Hearing, the respondents must prepare further, and they would submit an application for a Preparation Time Order against

the claimant within the given deadline, but should the case be withdrawn, they were happy to finish at that stage "**due to business needs.**" No application was thereafter submitted by the respondents seeking any Preparation Time Order against the claimant.

- 5 10. The claimant did not withdraw her claim, and confirmed that she wanted to continue with it. By email of 12 April 2019 from the claimant, intimated to the respondents, as also to the Tribunal, the claimant sought a Preparation Time Order against the respondents in the sum of **£798.00** (for 21 hours @ £38 per hour).

10 **Final Hearing before this Tribunal**

11. When the case called before me, as an Employment Judge sitting alone, at 10.14am on Monday, 10 June 2019, i.e. after the 10.00am scheduled start of this Final Hearing, only the claimant was in attendance, unrepresented. The
15 respondents were not present and not represented.

12. The clerk advised me that the claimant had been accompanied by her mother for moral support, but not as a witness. Once the Hearing started, her mother remained in the claimant's waiting room, despite me advising the claimant that
20 her mother could sit in the public Hearing room, so long as she was not going to be a witness. The claimant declined that offer.

13. In the absence of the respondents, or any representative on their behalf, the Tribunal clerk telephoned the respondents at the phone number on the ET3 response, at around 10.05am, and the clerk was advised by their employee, identified as Alan, that Mr Rana was in hospital, and he would not be attending
25 the Hearing. No application was made for a postponement of the Hearing. Alan was asked to have the respondents write in and explain their non-appearance at the listed Hearing.

14. In the absence of the respondents, or any representative on their behalf, the Hearing commenced at 10:14am, when I explained the reason for the delay
30 to the claimant, and having heard from the claimant, who was in attendance, ready and prepared to proceed with her case, the Hearing then proceeded,

as listed, in terms of **Rule 47**, the Tribunal having made enquiries of the respondents by the clerk's telephone call.

- 5 15. The claimant advised me that she had not heard from the respondents since she sent her letter on 12 April 2019 seeking a Preparation Time Order against them. Further, while she had received Mr Rana's email of 9 April 2019, she had not been to the Post Office to pick up the hard copy letter, and the respondents' cheque for **£421.43**, which she assumed the Post Office would have returned to the respondents as sender, it not being collected by her.
- 10 16. The claimant described it as "**shocking**" that the respondents were not at this Final Hearing, and she recounted how she has been trying to get her outstanding monies from them for over a year now, and how she could not believe that they had not turned up for this Hearing. She felt the explanation provided to the Tribunal clerk, which I recounted to her, sounded "**like lies**" to her. She stated she did not want me to postpone the Hearing, and fix another date, and she simply wanted me to "**crack on.**"
- 15 17. Further, I had available to me, in the Tribunal's casefile, the respondents' correspondence to the Tribunal which I noted, most recently Mr Rana's emails of 9 April 2019 @ 14:38, offering the claimant a cheque for **£421.43** in settlement, and his further email of 11 April 2019, @ 16:07, stating that the respondents would submit a "**time preparation order within the given deadlines**" of the Tribunal's email to both parties on 9 April 2019 @ 11:35, refusing the respondents' application for reconsideration of the Reconsideration Judgment issued on 22 March 2019.
- 20 25 18. I also noted how parties were to intimate any application for Preparation Time Order / Costs Order against the other party at least 14 days before the start of the Final Hearing. The claimant made timeous application to the Tribunal, by letter of 11 April 2019, attached to her email of 12 April 2019 @ 09:20, copied to the respondents, as required by **Rule 92**. As per Employment Judge Garvie's directions, which the Tribunal emailed to both parties on 16
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April 2019, @ 11:19, I noted how it stated, by way of a reminder, that **Rule 92** compliance was required by both parties.

19. I pause here to note and record that after I had concluded this Hearing, at
5 10:43am, an email from the respondents sent by somebody at the
respondents on 10 June 2019 at 10:53am, was referred to me by the Tribunal
clerk, at around 11.20am. I noted that the respondents had failed yet again
to comply with **Rule 92**. As the email was presumably sent by Alan, given its
author is not identified, in a reply sent to both parties by the Tribunal, later on
10 10 June 2019, I excused non-compliance by the respondents on this
occasion, and ordered intimation to the claimant direct by the Tribunal.

Matters determined at this Final Hearing

20. At this Final Hearing, in considering the information available to me, I noted
15 that there was no application from the respondents for a Preparation Time
Order against the claimant, and no reply from them to her application by letter
of 11 April 2019, as intimated to them by her email of 12 April 2019, and so I
heard further from the claimant in that regard, as also on her principal claim
for monies owed, and at the end of the Hearing, at 10:43 am, I reserved
20 Judgment to be issued, in writing, to both parties as soon as possible.

21. The claimant produced an small, additional Bundle of Documents for my
consideration. I allowed them to be received, notwithstanding they had not
been intimated to the respondents at least 14 days before the start of this
25 Final Hearing, as per the case management order set forth at paragraph 101
of my Reconsideration Judgment dated 22 March 2019.

22. These additional documents for the claimant comprised a Gov.UK website
calculating the claimant's total SSP at **£153.42**, a further copy of her letter of
30 11 April 2019 seeking a Preparation Time Order of **£798**, a duplicate Med 3
certificate from her Sanquhar GP certifying her unfitness for work from 4 to 18
May 2018 on account of "**stress at work**", a further copy of a calculation of
the sums she regarded as owed to her by the respondents (as provided at the

last Hearing on 17 October 2018), and copy text messages between her and the respondents' Farhan Rana on 4, 10, 11, 19 and 20 May 2019.

5 23. I took the view that there was no prejudice to the respondents in allowing in these documents, because although the claimant told me the CAB had helped her with the SSP online calculation, she had not copied it to the respondents, as the total figure of £153.42 was made up of two sums, **£61.37** for week ending 12 May 2018, and **£92.05** for week ending 19 May 2018, and so there was only a 96p difference between what she had previously sought, and
10 these figures, where the respondents had agreed to pay **£60.41**, as per Mr Rana's letter of 8 April 2019 to the claimant, as emailed to her and the Tribunal by the respondents on 9 April 2019.

15 24. The sum of **£60.41** is the amount which the claimant provided at the Reconsideration Hearing on 17 October 2018 as part of her calculation then of sums she believed owed to her by the respondents.

20 25. As the other documents were copies of what had previously been intimated, I saw no prejudice in them being allowed, nor the copy text messages, as although the respondents could not be examined on them, in the absence of any witness for the respondents to be open to cross-examination by the claimant, and any clarification questions from me as the Judge, they did bear to be a contemporary record of text discussions between the claimant and the respondents' Mr Rana in May 2018.

25 26. As the claimant's application of 11 April 2019 for Preparation Time / Costs Order against the respondents was unopposed, no comment or objection having been intimated by the respondents, I treated that application as being undefended, and advised the claimant, at this Final Hearing, that I would deal
30 with it in my reserved Judgment.

27. Specifically, I decided that it would be determined as part of this Final Hearing, rather than left for determination after this Hearing, as had been directed by

5 Employment Judge Jane Garvie on 16 April 2019, as per the Tribunal's email of that date to both parties. It seemed to me that that was consistent with the interests of justice, and the Tribunal's overriding objective, under **Rule 2**, to deal with the case fairly and justly, including avoiding any further delay, and avoiding further expense to parties, as well as to the Tribunal.

Post Hearing correspondence from the Respondents

10 28. As mentioned earlier in these Reasons, after the close of this Final Hearing, I was advised by the Tribunal clerk, around about 11.20am, that an email had been received by the Tribunal from the respondents. It was sent at 10:53 am, i.e. after I had closed the Hearing, and reserved Judgment. It was not copied to the claimant, as it should have been under **Rule 92**.

15 29. On my instructions later that same day, a reply was sent from the Tribunal to the respondents, with copy to the claimant, advising that the respondents email had been placed on casefile, and referred to me. Both parties were advised that my written Judgment with Reasons on the principal claim for unpaid monies, and the claimant's unopposed Preparation Time / Costs Order application, would follow by ordinary post as soon as possible after it has been typed up, and signed off by me as the Judge.

20 30. Meantime, I ordered that, as soon as possible, and certainly within no more than the next 7 days, the respondents shall produce to the Tribunal, with copy sent at the same time to the claimant, as required by **Rule 92**, medical certification from the relevant admitting hospital, or GP, as regards each of
25 Mr Rana and Mr Ahmad, and a written explanation why, if neither was able to attend this Final Hearing, on grounds of medical unfitness to do so, they did not advise the Tribunal in advance.

Discussion and Deliberation: Monetary Claims

30 31. In considering this matter, in private deliberation in chambers on Tuesday, 11 June 2019, I had available to me the Bundle of Documents from the

Reconsideration Hearing, as also some new documents which the claimant brought to the Final Hearing in her additional Bundle, as detailed earlier in these Reasons.

5 32. There being no contrary evidence led by the respondents to challenge the
claimant's calculations, I took the view that the claimant had proved her case,
on balance of probabilities, and as such I have found her complaints of
unlawful deduction from wages in respect of unpaid statutory sick pay of
£61.37, failure to pay 2 days' holiday pay of £109.62, and failure to pay one
10 week's notice pay of £251.40, to all be successful. In these circumstances,
and the claimant having advised me that the respondents had still not paid
her these amounts, I have ordered the respondents to pay to the claimant the
total sum of **£422.39**.

15 **Discussion and Deliberation: Preparation Time Order and Expenses Order
against the Respondents**

33. At the Final Hearing, I heard brief oral submissions from the claimant, in
further explanation of her written application intimated on 12 April 2019 for a
Preparation Time Order against the respondents in the sum claimed of
£798.00 (for 21 hours @ £38 per hour). She confirmed to me that she sought
20 payment of that full amount of £798.

34. In the Tribunal's email of 9 April 2019 to both parties, given they were both
unrepresented, a full copy of the text of **Rules 75 and 79** was provided,
detailing the procedural rules about Costs Orders and Preparation Time
25 Orders, and the amount of a Preparation Time Order, including the different
hourly rates in play during the course of the case's progress through the
Tribunal, pre and post 6 April 2019, being £38 and £39 per hour respectively.
Those Rules provide as follows:

Costs orders and preparation time orders

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**75.—(1) A costs order is an order that a party (“the paying party”) make
a payment to— (a) another party (“the receiving party”) in respect of the**

costs that the receiving party has incurred while legally represented or while represented by a lay representative; (b) the receiving party in respect of a Tribunal fee paid by the receiving party; or (c) another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal. (2) A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing. (3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings. A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

The amount of a preparation time order

79.—(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of— (a) information provided by the receiving party on time spent falling within rule 75(2) above; and (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required. (2) The hourly rate is £33 and increases on 6 April each year by £1. (3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2).

35. It is appropriate, at this point, to note and record what the claimant stated in her application for a Preparation Time Order. For ease of reference, I have

inserted into her letter numbered paragraphs (1) to (10) against the text of her calculation producing her figure of £798, so as to make my commentary on what she said to me, in further explanation, more meaningful. As so revised, her letter reads as follows:

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“I would like to confirm that I want to continue with my claim and I do not wish to withdraw it.

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I received numerous phonecalls and emails from ACAS stating that Premier would like to offer me £250 which I rejected. I also stated that I would wish to continue with my claim due to time it has taken for them to come to this decision, the email also states that Premier does not take liability for the amount I am owed. I find this very insulting as they are still not taking responsibility after a year. I then received an email from Premier saying they have sent me my cheque for £421.43 but still not accepting liability. As I have had previous issue with items they have said have been sent to me I did not accept the letter. I do not trust them and would rather the situation was dealt with professionally instead of sending a cheque which seems more like a bribe to stop me continuing with my case. I have no reason to believe they dealt with it correctly as I had previously rejected their offer through ACAS so was suspicious when they suddenly posted a cheque to me after all this time.

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My application for a costs and time preparation is calculated as;

(1) Numerous phonecalls and emails to ACAS = 3 hours in total

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(2) Return trip from Sanquhar to Dumfries to attend Citizens Advice Bureau for advice on how to get my money from my employer, 1 and half hours return journey + 3 hours in Citizens Advice = 4.5 hours

(3) Phone calls to HMRC when sick pay wasn't received = 30 mins

5 **(4) Time spent addressing the false information in the company's response. Sorting through old rotas and text messages to show every time and date I was in the shop on the days accusing me of various things. All days referred to I was either not present or I didn't see the person accusing me due to me finishing my shift before she arrives. I was also off sick one of the days as well so this took up my time unnecessarily as I wasn't even in the shop on the days in question. This was a massive waste of my time as the things written about me had no evidence to back them up so I had to spend a lot of time proving they were wrong = 8 hours in total**

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(5) Breach of contract – dismissing me on the spot with no reason and no previous warnings, code of conduct was not followed.

15 **(6) Printing out bank statements to show they hadn't paid me, letters sent to the company asking for my money which were ignored.**

(7) Stress not being able to pay my bills due to my money being withheld.

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(8) Return trip from Sanquhar to Glasgow for reconsideration hearing = 3 hours

(9) Reconsideration hearing = 2 hours

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(10) The total of this is 21 hours x £38 per hour = £798

Plus the original £421.43 I was originally owed.

All of these things could have been avoided if I had been paid the money I was owed to start with instead of withholding what was rightfully mine.”

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36. In her oral submissions to me, at the Final Hearing, the claimant advised me as follows:

- 36.1 The claimant stated that this was for 3 hours of telephone calls and emails to ACAS, after her ET1 claim form was lodged. No further detail was provided, nor any diary of events, and calls / emails made.
- 36.2 The claimant stated that the 4.5 hours for meetings etc with the CAB was before her ET1 was lodged. Again, no further detail was provided.
- 36.3 Her 30 minutes for calls to HMRC regarding her sick pay (in May 2018) was before her claim was lodged.
- 36.4 As regards the 8 hours claimed, to address the “**false information in the company’s response**”, the claimant stated that this was for work after her ET1 claim form was lodged, specifically when she got the respondents’ ET3 response, and that it was therefore before October 2018, when she did not attend the first Hearing. No further detail was provided, nor any narrative of the specific preparatory work undertaken by her.
- 36.5 The claimant stated she accepted she could not complain of unfair dismissal, as she did not have the requisite 2 years’ qualifying service, but she still felt the respondents had breached her contract. While there was no unfair dismissal complaint before the Tribunal, I explained to her that her complaint about failure to pay notice pay was a breach of contract claim, and thus one of the matters for determination at this Final Hearing, so it did form part of what I could consider for an award in respect of preparation time.
- 36.6 While the claimant stated that she had had to print off various things, over the course of these Tribunal proceedings, she further stated that she had no vouching to show what, or when, and not even an estimated cost of printing outlays incurred.
- 36.7 The claimant was clear and unequivocal that she had been caused stress by the respondents’ conduct of matters, and not being able to pay her bills due to her monies being withheld by the respondents. I explained to her that in the context of her monetary claims, the

Tribunal, being a creature of statute, cannot award compensation for any injury to her feelings, as that is not within the statutory powers of the Tribunal in this type of claim. She noted, and accepted that explanation. She provided no detail, or quantification, of any claim for financial loss attributable to any unlawful deduction from wages, such as bank charges, etc, as the Tribunal would have power to address, if adequately vouched and proved, under **Section 24(2) of the Employment Rights Act 1996**.

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36.8 The claimant stated that, to attend the Reconsideration Hearing, on 14 March 2019, she had travelled from home to the Glasgow ET by car, an old Vauxhall Corsa, 52 plate, and it was 63 miles each way, making a 126 mile return journey to the Eagle Building, Glasgow. She had made the same return trip for this Final Hearing, and she described it as just typical that the respondents had not attended, and offered her opinion that they are just avoiding the case, as there's nothing else they can do. She then added that they had definitely been unreasonable in their conduct of the case, and she further stated she believed they had not turned up deliberately. She sought payment of whatever is the appropriate mileage rate for her private car mileage incurred to attend two Hearings at the Glasgow ET.

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36.9 She further stated that she had attended the Reconsideration Hearing on 14 March 2019, which could not proceed to a Final Hearing, as the respondents had to leave on account of a family bereavement.

36.10 The claimant invited me to make an appropriate award for Preparation Time, and / or travelling expenses / mileage, as might be appropriate.

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37. In deciding upon this part of the case, in my private deliberation in chambers, I was conscious that the respondents had not intimated any comment or objection to that application, which is why I treated that application for a Preparation Time Order as unopposed by the respondents.

38. I decided that it would be determined as part of this Final Hearing, being satisfied that such an approach is consistent with the interests of justice, and the Tribunal's overriding objective, under **Rule 2**, to deal with the case fairly and justly, including avoiding any further delay, so far as compatible with proper consideration of the issues, and saving of further expense to parties, and to the Tribunal.
39. I have carefully considered the claimant's submissions on this application, and the Tribunal's powers under **Rules 74 to 84 of the Employment Tribunals Rules of Procedure 2013**, where I have specifically considered **Rule 75(3)**, which provides that a Costs / Expenses Order under **Rule 75(1) (a)** and a Preparation Time Order may not both be made in favour of the same party in the same proceedings, and **Rule 84** which deals with a potential paying party's ability to pay. **Rule 75(1) (c)** allows for witness expenses to be awarded, even if a Preparation Time Order is made.
40. The precise terms of **Rule 84**, which were not set forth in the Tribunal's email of 9 April 2019 to both parties, are as follows:

Ability to pay

84. In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

41. The respondents having provided no information to the Tribunal about their ability to pay any such Order, if so ordered by the Tribunal, I have decided that it is appropriate to grant a Preparation Time Order against the respondents, but restricted to a total amount of **£182 for 5 hours**, being three hours @ £38, pre-6 April 2019, and two hours @ £39, post-6 April 2019, which, on a fairly broad brush approach, I consider is a fair, reasonable and proportionate amount of time for the claimant to spend on preparatory work in all the circumstances. Travelling time is not preparatory work.

42. Finally, I turn to the claimant's request that I pay her appropriate travelling / mileage expenses, by way of an Expenses Order against the respondents. In terms of the Tribunal's powers under **Rule 75(1) (c) of the Employment Tribunals Rules of Procedure 2013**, and the respondents having provided no information to the Tribunal about their ability to pay any such Order, if so ordered by the Tribunal, I have decided that it is appropriate to make an Expenses Order against the respondents, in respect of the claimant's travelling expenses incurred in connection with her attendance as a witness on her own behalf at this Final Hearing, but not at the Reconsideration Hearing on 17 October 2018.
43. At this Final Hearing, the claimant was clearly needed to give evidence on her own behalf, and to be cross-examined by the respondents, had they attended, or been represented. They did not appear, and they were not represented. As such, there was no evidentiary Hearing, where sworn evidence from both parties was tried and tested. The claimant was however in attendance to pursue her claim, and to give evidence – had she done so, there is no doubt she would have been a witness led in evidence. She attended, in good faith, expecting to be a witness.
44. In my view, that stands in contrast to her attendance at the Reconsideration Hearing. There, she attended as the applicant, seeking reconsideration of my original Judgment, and she was successful, resulting in this Final Hearing being fixed. As that Reconsideration Hearing did not progress that day to a Final Hearing, she did not give evidence, and so her attendance that day was not as a witness. It is therefore not appropriate that she recovers her mileage for that date.
45. In all the circumstances, I am satisfied that the just and equitable award of witness expenses incurred is for this Final Hearing only, on 10 June 2019, and accordingly I have decided to award the claimant the further sum of **£56.70**, being reimbursement for mileage incurred using her private motor vehicle on a 126 mile round trip, at 45 pence per mile, being the HMRC approved amount.

Employment Judge: Ian McPherson

Date of Judgement: 12 June 2019

Entered in Register,

5 Copied to Parties: 18 June 2019