EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Number: 4100228/2019

Held in Glasgow on 2 April 2020
(Reconsideration and Expenses Hearing, in chambers)

Employment Judge Ian McPherson

Miss Alicia Carpenter	**Claimant** **No Representations**
Switch2day Utilities Ltd	**Respondent** **Written Representations** **per Mr Leo Flores, Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that: -

(1) Having considered the respondent's written representations intimated on 13 September 2019, by their director, Mr Leo Flores, and in the absence of any representations from the claimant, in response, despite the opportunities provided to her by the Tribunal to make comment, or objection, the Tribunal has decided to proceed with this Reconsideration and Expenses Hearing in the absence of any representations from the claimant, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, taking into account the information available to the Tribunal from the casefile.

(2) Having considered the respondent's unopposed application, in terms of **Rule 70 of the Employment Tribunals Rules of Procedure 2013,** for reconsideration of the Default Judgment issued by the Tribunal in terms of **Rule 21** on 14 March 2019, the Tribunal **grants** that application, considering it to be in the interests of justice to do so, and, **on reconsideration, revokes that Default Judgment**, and **allows** the respondent's previously rejected ET3 response, intimated by Mr Flores on 2 April 2019, by email sent to the Tribunal at 15:50 hours, to be **accepted**, and, on the Tribunal's own initiative, **grants an extension of time** for that purpose, in terms of **Rule 20**, the content of Mr Flores' email of 13 September 2019 providing the Tribunal with greater information than had been available to the Judge on 19 August 2019, and that constituting a material change in circumstances, allowing the Judge to set aside his previous refusal to grant the respondent an extension of time.

(3) In these circumstances, the case will hereafter proceed as defended, and be listed, in due course, for a Final Hearing, for full disposal, including remedy, if appropriate. The Tribunal instructs the clerk to the Tribunal to issue **date listing stencils** to both parties for completion and return in due course.

(4) Further, having considered the respondent's opposition to the claimant's application, made at the previous Reconsideration Hearing held on 19 August 2019, for expenses and Preparation Time Order against the respondent, the Tribunal, having further considered that application, and the respondent's stated grounds of objection, as per Mr Flores' email of 13 September 2019, the Tribunal **grants** the claimant's application, but in part only, and **orders** the respondent to pay forthwith to the claimant the sum of **THREE HUNDRED AND TWENTY TWO POUNDS, EIGHTEEN PENCE (£322.18)**, being

£244.18 of expenses, and £78 of preparation time, in terms of **Rules 74 to 84 of the Employment Tribunals Rules of Procedure 2013.**

REASONS

Introduction

1 This case called before me again on the morning of Thursday, 2 April 2020, in chambers, with a time allocation of 2 hours, as an Expenses Hearing, further to amended Notice of Hearing sent to both parties by the Tribunal administration on 4 February 2020, advising them that they were not required to attend, and that the Notice of Hearing was for their information only.

2 The case had previously called before me, on 19 August 2019, for a Reconsideration Hearing of an earlier decision of the Tribunal to reject a late ET3 response submitted by the respondent. My Judgment, dated 26 August 2019, was sent to both parties by the Tribunal on 4 September 2019, along with the standard template Judgment letter, advising both parties of their right to seek a reconsideration of that Judgment within 14 days, and / or appeal to the Employment Appeal Tribunal within 42 days.

3 In that Reconsideration Judgment, I refused to grant the respondent an extension of time to lodge a late ET3 response, I confirmed a Default Judgment previously made by me on 14 March 2019, ordering the respondent to pay to the claimant a total amount of **£1,756.30,** and I also made case management orders as regards further procedure to determine the claimant's application for expenses and Preparation Time Order against the respondent, as applied for by the claimant at that Hearing.

4 By email sent to the Glasgow ET on 13 September 2019, the respondent's director, Mr Leo Flores, made an application for what I regarded as a reconsideration of that Judgment, and he also addressed and opposed the claimant's application for expenses and Preparation Time Order against the respondent, as made by her at the Reconsideration Hearing held on 19 August 2019, when the respondent was neither present, nor represented.

Background

5 The full procedural history of this case is set forth in my Judgment of 26 August 2019, to which I refer for the sake of brevity, but, for the purposes of this further Judgment, it is, I think, helpful to note certain key dates, as follows: -

6 Following ACAS early conciliation between 13 December 2018 and 13 January 2019, the claimant presented her ET1 claim form to the Employment Tribunal on 17 January 2019, complaining that, arising from the termination of her employment with the respondent on 26 November 2018, as an Admin Clerk, she was owed certain monies by the respondent.

7 Her claim form was accepted by the Tribunal on 24 January 2019, and a copy sent to the respondent, for them to lodge an ET3 response by 21 February 2019. No ET3 response was presented by that date and, following referral to me, by Default Judgment issued on 14 March 2019, in terms of **Rule 21 of the Employment Tribunal Rules of Procedure 2013**, I decided to issue Judgment for the claimant on the available material.

8 A copy of that Default Judgment was sent to the respondent, by the Tribunal, under cover of a letter dated 14 March 2019, advising that the respondent had the right to apply for a reconsideration of the Judgment, within 14 days of that date, and further advising that if the respondent now wished to defend the claim, they would also have to apply for an extension of time to submit their response.

9 Following referral of Mr Flores' e-mail of 28 March 2019 to Employment Judge Claire McManus, a letter was sent by the Tribunal to the respondent, with copy to the claimant, on 2 April 2019 stating that Judge McManus had treated the e-mails from Mr Flores as a request for reconsideration of the Default Judgment issued on 14 March 2019, no ET3 having been received, and she had further directed that the respondent had until 15 April 2019 to set out the

reasons for the Judgment being reconsidered in terms of **Rule 72 of the Employment Tribunal Rules of Procedure Regulations 2013.**

10 By e-mail of 2 April 2019, Mr Flores sent to the Tribunal office, with copy to the claimant, his completed ET3 response for the respondent, and supporting documentation. While disputing the dates of employment given by the claimant, they accepted that she had been employed by them as an Admin Assistant from 2 August to 26 November 2018. It was further stated that the claimant was given one week's notice as her final wage slip, and her last 3 months wage slips were attached. It was stated that they defended the claim.

11 Following the claimant's receipt of Mr Flores' e-mail of 2 April 2019, the ET3 response for the respondent, and supporting documents, the claimant e-mailed the Tribunal, on 3 April 2010, with copy to Mr Flores, stating that she had received his correspondence, including "***falsified contracts and wage slips"***, and that she was writing to provide a full account from her perspective "***in the hope of speedy justice***".

12 In her e-mail of 3 April 2019, the claimant stated as follows: -

> ***"Given these falsehoods, correlating inaccuracies are present in the ET3 form returned. Attached letters from myself to the respondent show that they were in fact aware of the proceedings against them, which I am sure ACAS can corroborate. I would also like to remind the respondent that I am not disputing my termination – their responses read as though I have received my wages and am disputing the grounds for my dismissal. The issue at hand is about unreceived wages, as the respondent was made aware in previous correspondence."***
>
> ***"… I am appalled that my perfectly reasonable request for what is legally owed is being met with avoidance and gaslighting. The conduct of the respondent from day one has been at best disorganised and unprofessional, and at worst deliberately fraudulent and exploitative."***

13 Following referral to me by the Tribunal administration, the respondent's correspondence of 2 April 2019 was considered, and I directed that the ET3 response form be rejected as it was late, but the respondent's e-mail of 2 April 2019 be treated as a **Rule 20** application for an extension of time, and I directed that a Hearing be fixed. My decision in that regard was intimated to both parties under cover of a letter from the Tribunal dated 9 April 2019.

14 Given the terms of parties' correspondence to the Tribunal between 20 March and 3 April 2019, I directed that the Tribunal administrative should fix a 2 hour Reconsideration / Extension of Time Hearing to be held before me, as I had issued the **Rule 21** Default Judgment on 14 March 2019, and I further directed that both respondent and claimant should attend in person.

15 Thereafter, by Notice of Hearing dated 22 May 2019, the Tribunal assigned 20 June 2019, as that Reconsideration Hearing. That date was subsequently postponed, on the application of the respondent, and the case relisted for the Reconsideration Hearing before me held on 19 August 2019.

16 When the case called before me, on the morning of Monday, 19 August 2019, as listed for the Reconsideration Hearing, the claimant was in attendance, accompanied by her mother, but representing herself, while the respondent was neither present, nor represented. My Judgment, dated 26 August 2019, was issued to both parties by the Tribunal on 4 September 2019.

Hearing in Chambers, and Issues before this Tribunal

17 When the case called before me, in chambers, for this Hearing, on Thursday, 2 April 2020, neither party attended, as previously requested, because the Hearing was always going to be conducted by me on the papers to hand, by way of parties' previously submitted written representations.

18 While listed as an Expenses Hearing, on 4 February 2020, it was clear to me from the casefile that there were two discreet issues for the Tribunal to determine, being (a) the respondent's application for reconsideration of the

Judgment dated 26 August 2019, and (b) their opposition to the claimant's application for expenses / Preparation Time Order against them.

19 In these circumstances, having considered the overriding objective under **Rule 2** to deal with case fairly and justly, including the avoidance of delay and saving of expense, so far as compatible with proper consideration of the issues, and that it was appropriate for me to make that decision, acting on my own initiative, under **Rule 29**, and my general case management powers, rather than give 14 days' fresh written notice of another Hearing being fixed to address the reconsideration application, I decided to addressed both issues before the Tribunal at this Hearing.

20 I did so because it was clear to me that neither party would be materially prejudiced by the change, as the claimant had not objected to the reconsideration application, and to have continued the matter to another date would have prejudiced the respondent by the incurring of yet further delay. That would not have been in accordance with the overriding objective, nor in the interests of justice.

21 Having considered the respondent's written representations intimated on 13 September 2019, by their director, Mr Leo Flores, and in the absence of any representations from the claimant, in response, despite the opportunities provided to her by the Tribunal to make comment, or objection, I decided to proceeded with this Reconsideration and Expenses Hearing in the absence of any representations from the claimant, in terms of **Rule 47 of the Employment Tribunal Rules of Procedure 2013**, taking into account the information available to the Tribunal from the casefile.

22 At this Hearing, notwithstanding the lack of written representations from the claimant, post 13 September 2019, I carefully considered both parties' respective positions, and also my own obligations under **Rule 2** to deal with the case fairly and justly. The interests of justice require that I have regard to the interests of not just one party to these Tribunals, but to the interests of

both parties, as also the wider public interest in the proper administration of justice.

Respondent's Application for Reconsideration

23 Having received the Tribunal's Judgment issued on 4 September 2019, Mr Flores applied to the Tribunal by email sent on 13 September 2019 at 18.40 hours, and copied to the claimant, in the following terms, which I set out here in full, because it is appropriate to do so: -

> ***Good Afternoon,***
>
> ***Please note my office only received Judge Ian McPherson today (13/09/2019). I feel very sad that the hearing went ahead without myself being present to defend the tribunal. I would like to appeal the judgement and have the above case reinstated on the following grounds:***
>
> ***1) I did not requested to have the tribunal date of the 19th August change. That request originally came from the Claimant, and the Tribunal ruled that the Tribunal on 19th August would be cancel and I was advised by this by email from the Tribunal. The Claimant then gave very short notice to say she had changed her mind and can now attend. I could not attend as I had taken a meeting request for the 19th in London from a client. All my travel arrangements had been booked, was I to cancel my meeting and loose the money for my flight and accommodation because all of a sudden Claimant decided last minute that she will go to the hearing, if that's the case why did she seek to cancel it in the first place, had she not done that I would have been able to attend as originally I had the date marked off in my diary.***
>
> ***2) The claimant produced bank statement showing that she did not get paid at the end of November and the reason it's not showing on her statement is because she asked to be paid with cash as she did not know how soon she would find employment***

else where and did not want her bank and direct debits to take the cash she had .

3) As far as myself falsifying information concern that is totally untrue and the Claimant knows this, she was on a zero hour contract as she was told at the beginning of her employment that when I am out of the country she won't need to come into the office as we will not have any work for her to do. Our payroll is done by our accountant, Argyle Accountant than can confirm this. Anyone falsifying information is the Claimant whom I see as desperate for money and would try to do so at any means. She has mention my lifestyle, that my daughter goes to private school and I am well off. So she decided to try and see if she can con more money from myself, someone who gave her money to help her out on her first day at work because she was complaining she had no money to travel to work and would walk.

4) It was the Claimant choice to move to Wales when she knew she had the case outstanding, therefore she knew she would have the expense of travelling back to Glasgow, which she would have been happy to pay. Flybe is a budget airline that sells cheap flight if you don't book it last minute, with the Claimant deciding last minute that she has change her mind and could attend the hearing she incurred charges of an expensive flight. There are cheaper means of transport had she taken a bus or train. Her boyfriend lives in Glasgow, that the reason she told her colleagues is the reason why she moved to Glasgow a few years ago and was living with him. £94.00 for accommodation is expensive as there are cheaper hotels in the city centre of Glasgow offering accommodation for £25 per night and surely if her mum stayed in the same hotel they would have shared a room.

5) We will therefore request an open hearing as far as the Claimant expenses is concern that she is claiming. We want proof that she is indeed working and was granted time off by her employer and proof of her hourly rate of over £10.00 per hour from her employer by means of her wage slip and confirmation from her employer on their letter headed paper.

6) The Claimant said I was a sexist employer and made comments on her religion, this is totally untrue and that just shows the type of character the claimant is and she has no integrity or values. When The Claimant attended her interview, she had bright pink hair, iI was asked by her if I had a problem with her hair, I reply no, what I care about is her ability to do the job. While working she regularly change the colour of her hair to bright green or blue. I am a very religious person, who goes to church every Sunday, My daughter goes to a Catholic private school because I want her to understand what Christianity is about and the role it play in our every day life. I respect everyone religion, for the Claimant to make a comment about me disrespecting her religion is a disgrace, and if she is truly a christian she will know that there is a higher being that knows the truth.

7) Mr Ashun is a witness that can verify that the Claimant was payed her last wage in CASH as he was in the office at the time along with two other witnesses.

8) Lastly Switch2day does not have the facility to pay any expenses if awarded to the Claimant. This can be proven by producing the company last three months bank statement in an open hearing. We oppose a correspondence hearing. I want to be given the chance to question the Claimant on all her lies.

Regards,

Leo Flores

24 As can be seen from the terms of that email, Mr Flores referred to "***appeal***", and to "***have the above case reinstated",*** but no appeal was taken by the respondent to the Employment Appeal Tribunal, by either party, against the Judgment dated 26 August 2019, and only the respondent sought reconsideration of that Judgment.

25 Mr Flores' email was treated by the Tribunal as being an application for reconsideration, and the claimant was invited to comment, or object, but despite reminders from the Tribunal, she failed to do so. As such, the respondent's application is unopposed by her, but it is still necessary that the Tribunal be satisfied that, as per **Rule 70**, it is in the interests to justice to grant a reconsideration. In coming to my decision in this case, I referred myself to the relevant law on reconsideration, and applicable case law authorities, as I described more fully in my Judgment dated 26 August 2019, to which I refer back, in the interests of brevity.

26 Having considered the respondent's unopposed application, in terms of **Rule 70 of the Employment Tribunals Rules of Procedure 2013,** for reconsideration of the Default Judgment issued by the Tribunal in terms of **Rule 21** on 14 March 2019, I have decided, after careful reflection, taking into account all relevant matters, comprising the procedural history of the case, the merits of the proposed defence, and also considering the balance of prejudice to each party if I do, or do not, grant reconsideration, that it is appropriate to grant the respondent's application.

27 In granting the reconsideration application, I consider it to be in the interests of justice to do so, and, on reconsideration, I have therefore decided to revoke the Default Judgment issued on 14 March 2019, and accordingly, it follows, that I therefore allow the respondent's previously rejected ET3 response, intimated by Mr Flores on 2 April 2019, by email sent to the Tribunal at 15:50 hours, to be accepted by the Tribunal.

28 In that regard, and acting on the Tribunal's own initiative, I have therefore granted the respondent an extension of time for that purpose, in terms of **Rule 20**, the content of Mr Flores' email of 13 September 2019 providing me with greater information than had been available to me as the presiding Judge on 19 August 2019, and that constituting a material change in circumstances, allowing me to set aside my previous refusal to grant the respondent an extension of time.

29 In coming to this decision, I took particular account of the fact that the claimant has not opposed the application, nor has she made any comment whatsoever on the various matters prayed in aid by Mr Flores in his email of 13 September 2019 to support his application.

30 In my Judgment dated 26 August 2019, I addressed the relevant law on reconsideration. I refer to that statement of the relevant law, for the sake of brevity, rather than repeat it at length here again. In particular, I noted the test for granting an extension of time as set out in previous case law authorities.

31 In this Hearing, taking account of the relevant law, and the discretion open to me, in light of the information provided by the respondent, I am revisiting my earlier decision, and setting it aside, because I now have a much clearer picture of the respondent's position in defence of the claim. I consider it appropriate that I take that into account, along with the context of the Tribunal's overriding objective and, having done so, it is now clear that there appears to be some merit to the stated defence and that requires a factual enquiry, hearing evidence from both parties.

32 In particular, it is averred that the claimant was paid in cash, and that this is why her bank statements show no payments from the respondent. The respondent offers to prove that by leading evidence from a Mr Ashun. It seemed to me, from perusal of the case papers available to me, that as the ET3 response form had, at section 2.2, given the name of the respondent's contact as Solomon Ashun, albeit Mr Flores had submitted it to the Tribunal

with his e-mail of 2 April 2019, and that, in a date listing stencil, returned by Mr Flores on 16 August 2019, Mr Ashun was identified as a witness for the respondent, to speak to accounting matters, that Mr Ashun presumably has some connection with the respondent's accountants, identified in the e-mail of 2 April 2019 previously provided to the Tribunal as being Argyle Accounting.

33 Turning to the balance of prejudice, the claim is already one year old and there is clearly prejudice to the claimant caused by revoking the Default Judgment. I understand from the Tribunal administration that, on 4 September 2019, when my Judgment dated 26 August 2019 was issued to both parties, the Secretary of the Tribunals issued the claimant with an Extract Judgment to allow her to instruct Sheriff Officers to recover from the respondent the sums awarded in that Default Judgment of 14 March 2019.

34 There was no information available to me, at this Hearing, from either party, as to whether or not the claimant had taken legal steps to execute diligence against the respondent and, if so, with what outcome, further to that Extract Judgment being sent to her to enforce the award in her favour from the Tribunal. The effect of that Default Judgment now being revoked, an extension of time having being granted, is that, as per **Rule 20(4)**, the **Rule 21** Default Judgment is set aside.

35 While the claimant is now residing in Wales, with her mother, and the respondent is a business operating in Glasgow, there is no obvious reason why a fair trial of the claim and response is not possible at a Final Hearing before another Employment Judge sitting alone.. The potential prejudice to the respondent in not being able to defend a claim where the stated defence does appear to be stateable, and to have some merit to it, if the respondent can establish its position in evidence, is, in my view, greater, than the delay prejudice which will impact on the claimant.

36 While the matter is finely balanced, because there is a public interest in the finality of litigation, there is equally a public interest in there being a factual enquiry into this case, where there are disputed facts, with both parties being able to lead relevant and necessary witnesses before an Employment Judge,

be open to cross-examination, and, if necessary clarification by a Judge, before that Judge then makes findings in fact, and applies the relevant law to the facts admitted or proven.

37 It is for these reasons that, weighing up all the relevant factors, I consider that it is just and equitable and within the overriding objective to deal with the case fairly and justly, to set aside the Default Judgment and allow the case to proceed to a full Hearing on its merits.

Claimant's Opposed Application for Expenses / Preparation Time Order

38 At the Hearing before me, on 19 August 2019, as I recorded in my written Judgment dated 26 August 2019, the claimant stated that she estimated she had spent two hours preparation time preparing for that Reconsideration Hearing, and in addition to the costs of her flight and hotel, she had also lost two days wages, as she had had to take time off as unpaid leave from her new employment.

39 She provided to the clerk, at that Hearing, for my consideration, a handwritten letter from her seeking a Preparation Time Order / Expenses Order, against the respondent. Her application for an Expenses and Preparation Time Order, which I set out in my previous Judgment, is reproduced here again. It read as follows: -

> "***Relating to attendance of the hearing of 19th August 2019, set up for the benefit of the respondent and not attended by them, I incurred the following costs: -***
>
> - ***£150 return flight – Cardiff to Glasgow***
> - ***£94 accommodation costs – nights 18th and 19th August 2019.***
> - ***2 days leave from work; 14 hours at £10.34 per hour***
> - ***2 hours preparation time for the hearing***

The respondent behaved in a disruptive and unreasonable manner by applying for a rejection of the original response and providing a period in which they would be available for hearings only to provide less than a weeks' notice of their inability to attend todays hearing.

The respondent is based locally while I am based in South Wales; they could have attended or sent a representative to a hearing for their benefit. The respondent's unavailability for the significant future made it necessary for me to attend at short notice, despite higher transport costs."

40 An e-mail from the claimant to the Tribunal office, copied to Mr Flores, at 11:32 on Monday, 19 August 2019, attached receipts for her travel and accommodation claimed as part of her expenses, being electronic ticket receipt from FlyBe dated 14 August 2019 in the sum of **£150.18** and booking confirmation for the Lorne Hotel, Glasgow, for two nights, 18/19 August 2019, in the sum of **£94.00**. In terms of **Rule 79**, the hourly rate was **£39 per hour** for preparation time after 6 April 2019.

41 In writing up my previous Judgment dated 26 August 2019, the clerk to the Tribunal had referred to me subsequent emails received from Mr Flores, and the claimant, dated 19 August 2019, and forwarded to the Tribunal by the claimant, on 20 August 2019.

42 Mr Flores' email of 19 August 2019, at 13:45, to the claimant, states "***We will not be paying these Expenses",*** as the passenger name given is not Alicia Carpenter. The claimant replied to him, at 16:46 that same day, advising that her passport is indeed in a previous surname, but if required, she can provide a change of name deed.

43 While a change of name deed was not required by the Tribunal, what the Tribunal did require was is respondent's comments or objections to the claimant's application of 19 August 2019 for expenses / preparation time. Mr Flores provided them in his email of 13 September 2019, specifically at

paragraphs, 4, 5 and 8 of his email, as reproduced above earlier in these Reasons at paragraph 23.

44 Specifically, he made the following points:

> ***4) It was the Claimant choice to move to Wales when she knew she had the case outstanding, therefore she knew she would have the expense of travelling back to Glasgow, which she would have been happy to pay. Flybe is a budget airline that sells cheap flight if you don't book it last minute, with the Claimant deciding last minute that she has change her mind and could attend the hearing she incurred charges of an expensive flight. There are cheaper means of transport had she taken a bus or train. Her boyfriend lives in Glasgow, that the reason she told her colleagues is the reason why she moved to Glasgow a few years ago and was living with him. £94.00 for accommodation is expensive as there are cheaper hotels in the city centre of Glasgow offering accommodation for £25 per night and surely if her mum stayed in the same hotel they would have shared a room.***
>
> ***5) We will therefore request an open hearing as far as the Claimant expenses is concern that she is claiming. We want proof that she is indeed working and was granted time off by her employer and proof of her hourly rate of over £10.00 per hour from her employer by means of her wage slip and confirmation from her employer on their letter headed paper.***
>
> ***8) Lastly Switch2day does not have the facility to pay any expenses if awarded to the Claimant. This can be proven by producing the company last three months bank statement in an open hearing.***

45 I have carefully considered each of those points in turn. By these written representations, I am satisfied that the respondent has had the reasonable opportunity, as per **Rule 77**, to make representations in response to the claimant's application.

46 On his point (4), Mr Flores has made generalised statements, based on his understanding of the claimant's position, and about the costs of travel from Cardiff, and accommodation in Glasgow. It may well be true that bus or train might have been less expensive, in overall financial terms, than flights, but in deciding whether travel expenses are fair and reasonable, it seems to me that regard must also be had to the overall likely time spent in transit. Again, it may well be that the claimant could have found cheaper accommodation. I do not know whether the claimant's mother shared the same room, but I consider it likely that that was the case, but the price is per room.

47 Mr Flores has produced no information as regards the cost of other modes of transport, from Cardiff to Glasgow return, for comparative purposes, nor for the costs of cheaper accommodation in Glasgow, not even the £25 per night he cites, and so I can take his points no further. The claimant has produced the Flybe invoice for **£150.18**, and Mr Flores' point about that, other than cost, is that it is not in the claimant's name. She has accepted that, and explained why.

48 In my view, nothing turns on that point – the claimant has incurred the expense, and the question for me is whether I should order the respondent to pay the claimant that sum. Likewise, the claimant has produced vouching for the **£94** for accommodation, and again the question for me is whether I should order the respondent to pay the claimant that sum.

49 **Rule 74** provides that costs includes expenses incurred by a receiving party, and **Rule 75(1)(c)** provides that an expenses order is an order that the paying party make payment to another party or a witness in respect of expenses

incurred for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal.

50 The claimant, as a party to these Tribunal proceedings, was also a witness – she made oral and written representations at the Hearing on 19 August 2019, whereas her mother, who was there, at the Reconsideration Hearing on 19 August 2019, was there for moral support, and as an observer, and not as her representative.

51 As such, in my view, the respondent has no liability for her mother's travel and accommodation expenses. Whether or not the respondent is liable for the claimant's travelling and accommodation costs is a matter where the Tribunal has to consider whether, in terms of **Rule 76**, this is a case when an expenses order may or shall be made.

52 **Rule 76(1)(a)** sets out the circumstances in which a Tribunal may make an expenses order, or preparation time order, and that includes where a party or a party's representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in the way they have conducted the proceedings. In my view, by failing to appear, or be represented at the Reconsideration Hearing on 19 August 2019, the respondents were disrupting proceedings, and that was unreasonable conduct.

53 While Mr Flores was engaged elsewhere, it is not clear why he regarded that business appointment as ranking in importance above him appearing at the Tribunal to pursue the respondent's application for reconsideration of the Default Judgment. In my view, then, and now, there was no good reason why he could not have arranged for a representative, perhaps Mr Ashun, who was identified as their representative on the ET3 response, and who was, as I understand it, the company's accountant, to appear on their behalf.

54 In these circumstances, I have decided to award the claimant expenses totalling **£244.18,** being the total of flight @ £150.18, and accommodation @ £94.

55 Further, on his point 5, in his email of 13 September 2019, Mr Flores wanted proof that the claimant was indeed working and was granted time off by her employer and proof of her hourly rate of over £10.00 per hour from her employer by means of her wage slip and confirmation from her employer on their letter headed paper. The claimant, of course, has made no written representations to the Tribunal in answer to this call for vouching documentation.

56 All the Tribunal knows, from her handwritten application on 19 August 2019, is that the claimant has claimed 2 days' leave, at 14 hours, at £10.54 per hour, which I calculate produces a sum claimed of **£147.56**. In the absence of vouching from the claimant to support that amount, I have decided to **refuse** that part of her application for expenses against the respondent.

57 Mr Flores has made no comment or objection to the claim for 2 hours' preparation time. **Rule 75(2)** provides that a preparation time order is an order that the paying party make payment to the receiving party in respect of that party's preparation time while not legally represented. Preparation time is defined as time spent by the receiving party in working on the case, except for any time spent at any Final Hearing.

58 The amount of a preparation time order is dealt with in **Rule 79**, and it is the product of the number of hours assessed by the Tribunal, under **Rule 79(1)**, of preparatory work, and the hourly rate under **Rule 79(2)**.

59 Under **Rule 76(1) (a)**, I am satisfied that a preparation time order is merited on account of the respondent's unreasonable conduct on 19 August 2019 in not attending, nor being represented, at the Reconsideration Hearing held on that date. As such, I have decided to award the appropriate amount, being 2

hours @ £39, producing **£78**, being the sum that I order for payment to her by the respondent.

60 Finally, on Mr Flores' point 8, it is for the respondent to provide any necessary evidence to the Tribunal in support of the suggestion that the company does not have the ability to pay any expenses or preparation time awarded against it. **Rule 84** provides that in deciding whether to make such an order, and if so in what amount, the Tribunal may have regard to the potential paying party's ability to pay. It is a discretionary matter for the Tribunal, as vouched by the use of the word "**may**" – the Tribunal is not obliged to do so.

61 The terms of **Rule 84** were flagged for the respondent in my previous Judgment. Mr Flores has failed to produce any evidence of the respondent's inability to pay as at 2 April 2020, the date of this Hearing. The company's circumstances may well have changed since 13 September 2019. I do not know, and the respondent has produced no up to date financial information for this Tribunal to take into account.

62 What is clear, from a search of the Companies House online website, is that the respondent remains, as at the date of this Hearing, an active company, under company number 10231152 registered in England & Wales, although trading in Scotland.

63 In all the circumstances, having considered the respondent's opposition to the claimant's application, made at the previous Reconsideration Hearing held on 19 August 2019, for expenses and Preparation Time Order against the respondent, and having further considered that application, and the respondent's stated grounds of objection, as per Mr Flores' email of 13 September 2019, I have decided that it is appropriate to grant the claimant's application, but in part only.

64 Accordingly, I have ordered the respondent to pay forthwith to the claimant the total sum of **£322.18,** being £244.18 of expenses, and £78 of preparation

time, in terms of **Rules 74 to 84 of the Employment Tribunals Rules of Procedure 2013.**

Further Procedure

65 As per part (3) of my Judgment above, the case will hereafter proceed as defended, and be listed, in due course, for a Final Hearing, for full disposal, including remedy, if appropriate. I have instructed the clerk to the Tribunal to issue **date listing stencils** to both parties for completion and return in due course.

Employment Judge: I McPherson

Date of Judgement: 06 April 2020

Entered in Register,

Copied to Parties: 09 April 2020