EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr T J Conlon **v Ringway Infrastructure Services Limited**

Watford **18 August 2020**

Before: Employment Judge Smail

JUDGMENT

1. The Claimant's application to set aside the unless order dated 26 October 2017 or its effects is struck out, alternatively dismissed.

REASONS

The Claim

1. This matter has a long history. On 3 October 2015 the claimant issued his claim form. He claimed that he had whistleblown on a manager whom he believed was acting fraudulently with public funds and that the employer took retribution on him by dismissing him. He claimed, in effect, automatic unfair dismissal on the basis that the reason, or principal reason, for his dismissal was that he had made a protected disclosure. He claimed that in the course of making disclosures he was subjected to a physical assault by a manager named Barry Lee on 3 November 2014. He said that he was on long-term sick leave from 12 November 2014 while the employer carried out their disciplinary process. He was dismissed on 21 May 2015, he claims without a hearing. He says he was first informed of his dismissal on 4 August 2015 by letter. Plainly, the claimant raised serious matters.

The Response

2. On 6 November 2015, the respondent served its response. The tribunal was informed that the respondent is a division of a large civil engineering group concerned with the provision of infrastructure services including road maintenance. Typically, its clients are local authorities. The claimant was employed by the respondent as a Local Network Technician. His role primarily focussed on prioritising and developing a programme of proactive preventative highway maintenance works and responding to public enquiries concerning highway maintenance issues. In particular his work concerned a road network for Hertfordshire County Council.

3. It was accepted that on 8 April 2014 the claimant made an allegation through Ringway's agent "Safe Call" that a manager at Ringway, Rob Payne, had "possibly" been involved in "directing public highway funds to rectify a private drain on private property adjacent to his house to rectify a flooding issue". The gist of the allegation was that Mr Payne had caused Hertfordshire County Council to incur an expense to fix drains which were Mr Payne's own responsibility to fix at his own expense.

4. The response contended that the allegation was investigated and it was rejected on 14 July 2014. Mr Payne had not directed any public funds to be spent on drains and the claimant had no grounds for suggesting that "possibly" he had.

5. Subsequently, the claimant indicated to the respondent that the private drain allegation had been reported to the Serious Fraud Office and/or the local Ombudsman. No member of the respondent's Management Team had been contacted by the Serious Fraud Office or the local Ombudsman concerning the private drain allegation.

6. It was denied that the respondent had subjected the claimant to any bullying or harassment because he raised the private drain allegation. It was admitted that the respondent had raised performance issues against the claimant. In particular, complaints had been raised against the claimant by his line manager, Hamid Kasserai, that amongst other things:

    6.1 The claimant was told to arrive at work at 9am but usually arrived between 10 and 11am and then left between 1.30 and 2.30pm.

    6.2 He was required to hand in weekly timesheets in order that his day-to-day activity could be monitored and managed. In the period October 2012 to November 2013 the claimant had submitted only one timesheet.

    6.3 After November 2013 timesheets were supplied more regularly but contained numerous errors which were not corrected.

6.4 He took time off work routinely on Tuesday afternoons allegedly on account of a physiotherapy appointment without requesting annual leave, or self-certifying absence or providing a medical note for the absence.

7. It was denied that the allegations of poor performance were made in consequence of the private drain allegation. The poor performance allegations concerning attendance and the failure to provide timesheets pre-dated the private drain allegation by over 12 months and were being investigated and managed both before and after the private drain allegation.

8. It was contended by the respondent that on 3 November 2014, with view to investigating the claimant's failure to comply with the instruction to attend work at the Kings Langley Deport at 9am from 28 October 2014 and each working day thereafter, Barrie Lee and Graham Hodson, went to see the claimant on 3 November 2014. It was averred that after a few words to tell the claimant the purpose of the meeting the claimant refused to take part and walked out. It is said that Barrie Lee followed the claimant back to his desk to ask him whether he understood that if he refused to answer their questions then that itself would give rise to disciplinary proceedings. The claimant subsequently alleged that during this conversation he was seriously assaulted by Barrie Lee. He asked for compensation in the sum of £110,000. The claimant wrote:

> "The weight of evidence against Barrie Lee is enormous. The police want my statement. Barrie Lee will be arrested, questioned/possible criminal record and the matter in the public domain, the police Victim Support Unit have said that he (the claimant) could not stop the judicial process once it had commenced."

9. Mr Lee denied assaulting the claimant. No assault of any description was witnessed by any colleague. No contact was ever made of Ringway by the police. The claimant was asked to name his two witnesses and to provide a copy of his video evidence. The claimant declined to do either. It was averred that the evidence available to the respondent all indicated that the allegation of assault was fabricated without any basis in fact at all.

10. A meeting with the claimant was convened to discuss this allegation. The claimant failed to attend. Given that there were three witness statements from three colleagues and the statement from Barrie Lee, and in light of the failure of the claimant to produce any statements, or names of any witnesses that he maintained had witnessed the assault, the allegation was rejected on 16 January 2015.

11. An investigation meeting was convened and the claimant was interviewed on 17 March 2015 to consider three matters. First, his own performance; secondly, the claimant's refusal to follow reasonable management requests and processes; thirdly, whether the claimant's allegations directed at Ringway

managers had been vexatious and aimed at discrediting the claimant's managers to deflect attempts at effective performance management.

12. A disciplinary meeting was rearranged for 21 May 2015. The claimant failed to attend this meeting. The meeting was held in the claimant's absence by a Regional Director of the respondent, Nick Goddard. He decided that the matters of alleged misconduct were proven, and that in consequence the relationship between the claimant and Ringway had irretrievably broken down and as a consequence the appropriate decision to take was the dismissal of the claimant.

13. The respondent found four things. First the claimant's performance had been unsatisfactory in terms of attendance at work; secondly, the claimant had deliberately, and without any just excuse, failed to report for work to the Depot as instructed between 28 October and 30 October in disobedience of a direct instruction; thirdly, there was a false allegation of assault coupled with an unfounded and unjustifiable request for £110,000 compensation; this was a knowingly untrue and vexatious attempt to derail the respondent's performance management. Fourthly, the claimant had misrepresented that the private drain allegation was actively being looked at by the Serious Fraud Office.

14. For these reasons, the respondent maintained that the relationship of trust and confidence had fundamentally and irretrievably broken down. The claimant was advised of his dismissal by a letter dated 27 May 2015, maintained the respondent.

15. The claimant had maintained in his particulars of claim that he struggled to comprehend English and that he required a translator in Gaelic. The respondent maintained in its response that there had never been any difficulty in the claimant's long career to communicate in English. In the course of his employment he had displayed an ability to compose careful and articulate letters in English and to express himself orally with similar skill.

<u>The Proceedings - Croydon</u>

16. The claimant provided further and better particulars on 1 May 2016 represented as he then was by Hancock Quinns Limited, a solicitors' firm in Watford. The claimant put in a schedule of loss that included a future claim for loss of earnings of £345,735.12, accompanied by a note saying that the claimant recognised that an award for future loss may be discounted to reflect early receipt.

17. There was a preliminary hearing in the London South Tribunal on 8 December 2015. Orders were made for the details of the protected disclosures, alleged detriments and dismissal.

18. There was a further preliminary hearing before Regional Employment Judge Hildebrand on 28 April 2016. Further case management orders were made. A 10-day hearing was listed to start on 5 December 2016.

19. There had been interlocutory correspondence about the production of a video alleged by the claimant to show the assault. On 1 December 2016 Regional Employment Judge Hildebrand instructed that since the claimant had not disclosed the video, he could not rely on it.

20. The hearing due to be heard in Croydon was switched to Ashford by letter dated 1 December 2016. That was objected to by the claimant. It was switched back to be hard at Croydon on 2 December 2016. However, that same day, the hearing was adjourned because the claimant was maintaining the need for a Gaelic interpreter which had not been arranged. By email on 6 December 2016, the respondent's solicitors contested whether a Gaelic interpreter was needed. Other interlocutory matters were raised in that email including the question of video media evidence.

21. The claimant wanted the matter transferred to Watford. The matter though came before Employment Judge Sage at Croydon on 6 February 2017. She listed the matter to start at Croydon on 20 November 2017. She entertained the use of a Gaelic interpreter. She ordered the claimant to produce, by 20 February 2017, video evidence relied upon.

22. The matter was then transferred to Watford.

<u>The proceedings – Watford</u>

23. The matter came before Employment Judge Henry on 11 September 2017. The claimant had purported to serve a photo and a DVD on the respondent. The DVD was damaged and the photo image poor. The respondent sought further copies. The claimant in turn submitted that the respondent retained correspondence relating to his making a public interest disclosure. Employment Judge Henry ordered that the respondent should, no later than 15 September 2017, furnish to the claimant a further copy of a Flash Drive containing relevant emails between the period November 2013 to November 2014. There would be a meeting on 29 September 2017 at the Holiday Inn in Watford where the claimant would give inspection of his mobile phone or phones containing the video recording of the assault on which he relies and the photo images of the injury on which he relies; the claimant would furnish the respondent with a DVD recording of the recording from his phone; the claimant would furnish the respondent with a photographic copy of the image of the injury as stored on the phone; the respondent would furnish to the claimant a further Flash Drive, if necessary, containing the emails listed above.

24. By email dated 14 September 2017, the claimant complained that there had not been a Gaelic interpreter present at the hearing before Employment Judge Henry. The claimant submitted that the hearing should be repeated. He maintained that Employment Judge Sage in Croydon had said that a Gaelic interpreter would be available. The failure to follow this made the Tribunal look chaotic, he submitted. He further complained about the stance adopted by Mr Sendall (Counsel) and Mr Blackie (Solicitor) for the respondent

25. On 14 September 2017, the respondent purported to send the memory stick containing files and directories and included a hard copy.

26. At approximately 20 past 2 on 22 September 2017, the claimant emailed the respondent's solicitor, Mr Blackie, that he would return to Ireland because of his father's illness. He was available that afternoon to attend the Holiday Inn, Watford rather than the following week. Mr Conlon claimed to have posted the photo and video.

27. Mr Blackie had been in court on the afternoon of 22 September 2017 and it was not possible to travel to Watford on short notice. He offered to travel to Watford that weekend to meet the claimant at the Holiday Inn. This di not bear fruit.

28. By letter dated 29 September 2017, the respondent's solicitors applied for an unless order consequent upon the claimant's failure to attend at the Holiday Inn on 29 September 2017.

29. On 26 October 2017, Employment Judge Henry ordered that unless the claimant attended at the respondent's solicitors offices in Godalming, Surrey, prior to 6 November 2017, to give inspection of his mobile phone or phones containing the video recording of the assault on which he relies and the photo image of the injury on which he relies; to furnish the respondent with a DVD recording of the recording from the phone; to furnish the respondent with an electronic copy of the image of the injury as is stored on his phone, the claim would be struck out without further consideration of the proceedings or the giving of further notice or the holding of any hearing.

30. On 30 October 2017, the claimant emailed Mr Blackie, the respondent's solicitor, that he had sight of an email from the court regarding an unless order. There was no problem, he said: he could meet Mr Blackie at the Jury's Inn Hotel, Clarendon Road at 2.30pm on Wednesday afternoon, 1 November 2017, to show him the phone. Unfortunately, he could not afford the cost of travelling to Mr Blackie's office. He added that Mr Blackie should note that the location is monitored by CCTV and he would not be permitted to handle the phone.

31. By email dated 30 October 2017, Mr Blackie wrote to Mr Conlon noting that he had received the unless order. He stated the terms of the order were clear. The meeting was to take place in Godalming. Furthermore, the claimant was required to give 48 hours' notice. He had failed to do so.

32. By email dated 31 October 2017, the claimant reiterated that he would be at the Jury's Inn Hotel, Clarendon Road, Watford at 2.30pm on 1 November 2017 to show him or his representative the mobile phone. Mr Blackie reiterated his position on 31 October 2017 by email timed at 17:55 that it was a matter of compliance with the tribunal order - if the claimant wished to comply with the order then he had to meet with Mr Blackie at the office in Godalming on 48 hours' notice. It was not a matter for negotiation.

33. There is in the file a not entirely clear photograph of reddening on someone's arm. The date of the photograph is not ascertainable from the copy of the photograph.

34. On 4 November 2017, the claimant emailed the tribunal and Mr Blackie stating that it appeared that he had mislaid the video of the assault on him by Barrie Lee. That was unfortunate and he would continue to look for it and as soon as he located it he would forward it to the relevant parties.

35. I should observe that there is a considerable amount of party and party correspondence much of which is copied to the tribunal. I endeavour in these reasons to highlight the most relevant.

36. By letter dated 9 November 2017, the tribunal confirmed that as the unless order had not been complied with by 6 November 2017, the claim had been dismissed under Rule 38 and the hearing listed to start on 20 November 2017 to end on 1 December 2017, had been cancelled.

<u>Application to set aside the effect of the unless order</u>

37. By email dated 12 November 2017, the claimant, in effect, applied for relief from sanction from the unless order under rule 38(2) of the Employment Tribunal Rules 2013. This enables the Tribunal to set aside the effect of an unless order if it is in the interests of justice to do so. He made five points. First, he was expecting a Gaelic interpreter at the hearing on 11 September 2017. Secondly, he had complied to the fullest extent possible with the unless order within his financial means. He could not afford to go to the Godalming office. He had provided a photograph. Thirdly, he said that Mr Blackie had failed to supply the email disc that he had been ordered to provide. Fourthly, he made clear to the court that he mislaid the video of the assault. Fifthly, he had not seen the application for an unless order.

38. By email dated 13 November 2017, the respondent's solicitors replied to this application. It was submitted by reference to the Civil Courts Guidance which applied, it was suggested, by way of analogy, that the claimant's application for relief would fail under Denton v TH White Limited [2014] EWCA Civ 906 Court of Appeal, with its three-stage test. First, was the breach serious or significant. Secondly, if it is, why did the default occur. Thirdly, consider all the circumstances of the case in order to deal with the application justly including (a) the need for litigation to be conducted efficiently and with proportionate costs and (b) the need to enforce compliance with rules, directions and court orders. It was observed that the claimant did not need an interpreter to take part in the proceedings. If the claimant was impecunious he would need to prove it by way of bank statements etc. This was in respect of whether he could travel from Watford to Godalming. Mr Blackie maintained he had complied with what he was ordered to do by the tribunal on 11 September 2017. A letter had been sent to the claimant with the flash drive sellotaped to it and enveloped duly stamped. The envelope also enclosed the hard copy material contained on the flash drive. Mr Blackie observed that this was the second time this material had been supplied to the claimant in compliance with the original order for disclosure. Copy of the letter including the application for an unless order had been served on the claimant and evidence was provided.

39. The Claimant's application was listed to come before the tribunal on 2 February 2018 with a two-hour listing. The hearing was postponed on 1 February 2018 because a Gaelic interpreter could not be found.

Employment Appeal Tribunal

40. The respondent appealed that decision to the Employment Appeal Tribunal. Mrs Justice Elizabeth Laing investigated the claimant's ability to speak English. The claimant maintained that his first language was Breton Gaelic. She concluded that throughout the proceedings the claimant had been asking for an Irish Gaelic interpreter, not a Breton Gaelic one. In any event, the fundamental question was his ability to communicate in English. The claimant expressed himself in English clearly and articulately. She concluded that the claimant was perfectly able to conduct the hearing before the Employment Appeal Tribunal without an interpreter. Mrs Justice Laing set aside the tribunal's decision to postpone dealing with the claimant's application to set aside the strike out pending appointment of an interpreter.

41. The matter came before me on 2 September 2019. The claimant attended at 9.50am. He informed staff that he was feeling unwell. A first aider sat with him for 10 minutes. It was agreed between the first aider and the claimant that he did not need an ambulance. Notwithstanding that, the claimant sent a message via the first aider that he could not face the proceedings and he left the building. Accordingly, the preliminary hearing took place in his absence.

42. In light of the judgment of the EAT on 15 February 2019, and in further light of the documentation in English before me, I ruled that the future proceedings would be conducted without the need for a court appointed interpreter because the claimant is competent in English.

43. I ordered for there to be a preliminary hearing on 22 November 2019. I ordered that the issue would be whether the effect of the unless order dated 26 October 2017, striking out the claim, would be set aside in the interests of justice. The claim was struck out because the claimant had failed to comply with that order. I recorded that for the avoidance of doubt the claims were struck out automatically on 6 November 2017 and remained struck out unless the effect of the unless order was set aside.

44. I ordered that the claimant may attend the hearing in November 2019, in person, or may attend by written representations in the form of a witness statement. The witness statement had to set out the factual basis as to why he contended that it would be in the interests of justice to set the unless order aside. That needed to be served by 30 September 2019. I ruled that if the claimant was contending that he could not afford to visit the respondent's solicitors in Godalming, Surrey, as required by the unless order, he must exhibit documentation showing his lack of financial means attached to the witness statement.

45. On 29 September 2019, the claimant sent an email as to finances. He suggested that the claim had been transferred to Watford from Croydon for financial reasons. He said that by November 2017 he had been out of full time work for three years save for some sporadic freelance contracts. He produced a bank statement for October to November 2017 showing a negative balance of £1,705.40. Card payments to Tesco's and McDonalds were evidenced on the statement as were direct debits to DVLA, Unison and Vauxhall Insurance. A personal overdraft fee of £1.50 a day was also visible. Whilst the account was overdrawn, it was not of itself clear that a rail ticket to Godalming could not be paid for bearing in mind that the arrangement for disclosure and inspection in Watford had collapsed, or for that matter that petrol could not be paid for, given that there was evidence he was running a vehicle in the bank statement.

46. As to the video of the assault: the claimant wrote that he could not provide the video of the assault at the time because he had misplaced it. However, he had since located a rough copy of the video and having made clear it was a rough copy he had supplied it to both the other side and the court. So, in all, he submitted, that the order of November 2017 had been complied with save for going to the respondent's solicitor's office.

47. On 19 November 2019, the claimant emailed the tribunal to say that he had just received news that his Father had died in Ireland and that the funeral was on 22 November, that is to say, the date of the adjourned preliminary hearing.

He said he would be grateful for the understanding of the court in postponing the upcoming hearing on 22 November. He said he put a great deal of effort into preparing for the hearing including trying to secure a Gaelic interpreter. He wished to exercise his right to be there in person. In addition to relying upon the statement he put in he said he had much to add and explain via an interpreter.

48. The application came before Employment Judge Heal on the papers. She ordered that given the long history of the case she would consider the claimant's application to postpone when he sent to the tribunal:

    48.1 Proof of the death, ie Death Certificate or Irish equivalent,

    48.2 Proof of the funeral date. For example, confirmation from the Funeral Directors or the Crematorium or Cemetery and/or person conducting the funeral, and

    48.3 A written explanation of how, given that he was the son of the deceased, the funeral was set for the same date as the hearing.

49. That order went out on 21 November 2019. The application to adjourn was opposed by the respondent.

50. The matter came before me on 22 November 2019. In the absence of the claimant I ordered that by way of a further unless order, unless the claimant complied with Employment Judge Heal's order of 21 November 2019 by 20 December 2019 by emailing copies of all relevant documentation to the respondent's solicitor and to the tribunal, the claimant's application for relief from sanctions would itself be struck out with further order. I added that if the claimant complies with the order by the date stipulated, a hearing of the application for relief from sanctions would be listed on 7 seven days' notice.

51. To my mind it was reasonable to seek to enforce Employment Judge Heal's order to check that genuinely the claimant was attending his father's funeral. I wanted some evidence confirming that.

52. On 11 December 2019, the claimant emailed the Tribunal and Mr Blackie saying that he had provided video evidence of an assault on his person by a Ringway Manager to Mr Blackie over three months ago. On 17 December 2019, he wrote that it was impossible for him to provide the requested information within the timeframe requested by the court because it took a number of months for a death certificate to be issued to the family in Southern Ireland. He said the area his family came from was a very remote Atlantic community with sparse government services. He said he had also requested undertaker's records but, again, the business served the entire community and was greatly stretched. He went on, that he believed that the court's request highlights a matter that had been troubling him for some time, namely that the case involves complex cultural and language aspects. The UK court

system was simply not recognising his article 6 rights and more specifically, Employment Judge Smail, that is myself, he contended, was failing to recognise this. He was entitled to a fair hearing and he was not getting it. He added that it was very unfair of Mrs Justice Laing to reach the decision over his Gaelic language needs that she did. He went on to state that it was very unfortunate there was a historical legacy of Irish people being unfairly treated in British courts despite recent efforts to rectify this. The court now needed to recognise the cultural difficulties that were involved. He asked that I recuse myself from further dealings with the case, that a judge with an understanding of Irish culture and sub-culture, such as his, should now be appointed. If such could be achieved in Northern Ireland to serve both communities, then, surely, it could be achieved in Hertfordshire. He requested that a judge be seconded from Northern Ireland and one that was a Catholic Judge to eliminate any possible sectarian bias. He submitted that there was hard evidence beyond any doubt. First, the video of the assault on him by Mr Barrie Lee; that was testable, verifiable, hard evidence. Secondly, the witness statement by Paul Tristram dealing with the assault on the claimant that he witnessed. Thirdly, the Serious Fraud Office currently investigating Ringway which verified and vindicated his whistleblowing.

53. On 7 December 2019, the claimant emailed the tribunal and Mr Blackie to record that he had reported Mr Blackie to the Surrey police. He alleged that Mr Blackie had fabricated a court document. It was repeated on 7 January 2020 that the claimant had reported Mr Blackie to the police.

54. On 15 January 2020, Mr Blackie emailed the tribunal, copying in the claimant, following up as to whether the claimant's application had been struck out. He took issue with whether the police had warned him in any way. He had received no visit, as alleged by the claimant, from Sussex police on 8 January 2020. There had been no visit by Sussex police and no warnings. Material in the claimant's emails amounted to fantasy.

55. On 9 February 2020, I directed that a letter be sent recording that the claimant's application for relief om sanctions was struck out on 20 December by reason of the claimant's failure to comply with the unless order dated 7 December 2019 requiring him to comply with Employment Judge Heal's order of 21 November 2019.

56. I was copied in to a further exchange of emails between the claimant and Mr Blackie to which I responded on 14 February 2020:

> "I am not going to be drawn into allegations and counter allegations between the parties about irrelevant matters. The fact is that the claimant did not comply by 20 December 2019 with Employment Judge Heal's order of 21 November 2019, made the subject of an unless order on 7 December 2019. The application for relief from sanctions was therefore itself struck out on 20 December 20192.

57. On 15 February 2020 the claimant wrote in that he wished to appeal the content of the letter dated 9 February 2020 from the tribunal asserting that his request for relief from sanction had not been properly and lawfully heard. He stated he was unavoidably absent from the 22 November 2019 owing to his father's death and funeral.

58. On 15 February 2020 the tribunal was copied in to an email from Mr Conlon to Mr Blackie saying that he would be pressing charges against him with Surrey police for racial hate crime for which he had received a formal warning from Surrey police.

59. On 18 February 2020, the claimant sent in an email containing a section headed "Skeleton argument/Grounds of Appeal submitting that it was wrong and inappropriate for an unless order to be made following his nonattendance at the 22 November 2019 hearing. He had very good reason not to be there owing to the death and funeral of his father in Ireland. Secondly, the unless order made as a result of his non-attendance and the information request order that proceeded it requested information over which he had absolutely no control as he had made the court aware of before 7 December deadline. Thirdly, it was not in the interests of justice to strike out his claim and was contrary to the recommendation of Lord Justice Smedley who said that everyone has the right to be heard. He had not been heard. Fourthly, it was inappropriate for the court not to reply to requests for clarity by both the claimant and the respondent for a period of more than two months. No explanation was offered for the delay. This may have jeopardised his case. Fifthly, serious issues potentially affecting the case had come to light both before 22 November 2019 hearing and since, which must be taken into a consideration by the court as follows:

    59.1 First, the request for Employment Judge Smail, ie myself, to step aside as the case Judge, owing to impartiality.

    59.2 Secondly, the appalling conduct of Mr Blackie, Solicitor for the defence.

    59.3 Thirdly, clarification as the court's position was not forthcoming or over two months.

    59.4 Fourthly, his case had become stronger since he submitted a video of the assault.

    59.5 Fifthly, there had been a failure of court process.

    59.6 Sixthly, there was scope under CPR Rule 39.3 where a party cannot attend a court hearing and has a good reason.

60. He submitted that granting his request for relief from the sanction and the setting aside the 22 November 2019 and 7 and 20 December orders would

put him back in position of having his case heard for a request from relief from sanction requested previously.

61. On 21 February 2020, the tribunal informed the claimant that the venue for appeal was the EAT.

62. I have decided to undertake a comprehensive review of the proceedings on the papers and record a decision. There are no grounds for recusing myself from this exercise. I was available on 2 occasions to hear the claimant's application. Opportunities he did not take up.

Discussion

63. There is a consistent pattern of the claimant not complying with orders. There is still no written corroboration, or any corroboration, that the claimant was attending his father's funeral on 22 November 2019. Not even a letter from an undertaker, which would not be difficult to obtain.

64. Whilst ordinarily Employment Judge Heal's request might seem insensitive, even distasteful, there is a long history to this case of the claimant simply failing to comply with orders. He did not comply with the orders for disclosure and inspection made by Employment Judge Henry. That resulted in an unless order he did not comply with. He had the opportunity, on 2 September 2019, to speak to his application for relief from sanction but he left the building. He had the opportunity further, on 22 November 2019, to speak to his application. He claims to have attended his father's funeral. The tribunal was entitled to have that explanation verified. No corroborative verification has been produced.

65. Importantly, the tribunal has not seen any video evidence confirming assault by the respondent's managers on the claimant in the same way that the respondent was not shown that evidence at the time of the internal process. The respondent, in the course of the disciplinary process, taking the allegations in the Response on their face, and the Tribunal in the course of these proceedings claim, have been dealt with in a consistently obfuscating way by the claimant.

66. In short, two hearings have been listed to hear the Claimant's application to set aside the unless order or its effects. The claimant failed to appear before the Tribunal on either. He left the Tribunal on 2 September 2019 claiming illness but not proving it. He claimed he was attending his father's funeral on 22 November 2019 but has adduced no evidence in support of the contention that such event happened when reasonably asked to do so given the history of the conduct of proceedings.

65. Further, the application to set aside the order does not have merits. There was ample opportunity for the claimant to provide the alleged information if

he had it. In breaking an appointment with Mr Blackie in Watford, it was incumbent on him to go to Mr Blackie's offices in Godalming. Whilst he was overdrawn, the Claimant could still afford a train ticket, or petrol, to get to Godalming.

66. The clear impression I have is that the Claimant has misled the Tribunal and, for that matter, the Respondent. He has obfuscated. He has claimed to need a Gaelic then a Breton Gaelic interpreter when there was no such need. He claims he has mislaid crucial evidence then pretends he has sent it, when there is no basis for thinking the evidence exists. He denies receiving that which was sent to him securely. He makes a very serious claim as to his whereabouts on 22 November 2019 but cannot or refuses to prove it. Accordingly, his application under rule 38(2) of the Employment Tribunal Rules 2013 is struck out by reason of failing to comply with Tribunal orders as to the production of evidence, alternatively dismissed on the merits.

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Employment Judge Smail

Date: ……1 June 2020……..

Sent to the parties on: ....18/8/20.....

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For the Tribunal Office