EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr C Vokes	v	TUI Airways Ltd

Heard at: Watford **On**: 4 January 2021

Before: Employment Judge George, sitting alone: remotely

Appearances
For the Claimant: In person
For the Respondent: Mr B Frew, Counsel

JUDGMENT

1. The employment tribunal has no jurisdiction to hear any complaint of unauthorised deduction from wages arising out of the alleged failure by the respondent to pay full salary to the claimant during the period 14 June 2018 to 20 March 2019 because any such claim was not brought within the time limit prescribed by s.23(2) of the Employment Rights Act 1996 (hereafter the ERA).

2. Any such complaint of unauthorised deduction from wages is struck out pursuant to r.37(1)(a) of the Rules of Procedure 2013 on the basis that it has no reasonable prospects of success.

3. Save as set out above, the respondent's application for the claims to be struck out pursuant to r.37 of the Rules of Procedure 2013 is dismissed.

4. The respondent's application for deposit orders pursuant to r.39 of the Rules of Procedure 2013 is dismissed.

REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V – by CVP. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. At the hearing I had the benefit of an electronic bundle of documents which ran to 149 pages including the index; a letter from Lisa Benge which the

claimant had sent to the Tribunal relating to his health; 2 documents sent to the Tribunal by the claimant the day before the hearing – his response to the respondent's Agenda and his response to their List of Issues; a skeleton argument written by Mr Frew on behalf of the respondent and the first stage grievance outcome letter which does not bear a date but which was apparently communicated on 10 May 2019. Since the issues included whether the claim had been brought within time and what the reason for any delay was, and there was no witness statement evidence to explain that, Mr Vokes gave evidence under affirmation about those matters.

3. The claimant's employment started on 8 March 2004 and he was promoted to operations duty manager. He is still employed by the respondent. He started the current period of certified sickness absence in December 2017 during which he was initially paid sick pay. His sick pay was reduced in June 2018 although this drop in income seems to have been partially covered by a claim on permanent health insurance. The claim for permanent health insurance (hereafter PHI) was rejected on 21 August 2018 and from 14 August 2018 he was absent because of sickness but his contractual entitlement to sick pay had expired. He complains that, had the respondent acted with reasonable expedition, he would have had earlier decisions about PHI and ill health retirement before his sick pay expired.

4. According to the claimant, he was certified fit to return to work by occupational health on 17 October 2018 and he claims financial loss caused by a failure to find him suitable work from that point. Since the employment is continuing, these claims can only be brought as claims of unauthorised deduction from wages – unless the claimant shows that he was subjected to an unlawful act of discrimination and that the financial loss was caused by the act of discrimination. As free-standing claims, they must logically have been brought under s.23 of the ERA.

5. He raised a grievance on 5 March 2019. According to the respondent the combination of conditions which the claimant has required further investigation and it was not until 12 March 2019 when they had a further occupational report that he was certified fit to return to work. His full salary resumed; the claimant talked of being put back on the payroll on 20 March 2019 and paid for the first time on 25 March 2019. In his response to the respondent's draft List of Issues v.1 the claimant set out the chronology of his grievance. There was a grievance meeting on 23 March 2019 and the outcome was released to him on 10 May 2019. He appealed against the outcome on 7 June 2019 and following an appeal hearing on 24 June 2019, the grievance appeal outcome was delivered on 8 August 2019.

6. Following a period of conciliation from 4 June 2019 to 17 July 2019, the claimant presented a claim form on 16 August 2019. Further details of the procedural chronology of the claim are set out in the case management summary of EJ Bedeau sent to the parties on 12 May 2020 and are not repeated here. He made attempts to clarify the claim and ordered the production of Further and Better Particulars as well as listing the claim for an open preliminary hearing.

7. On 7 April 2020, the respondent made applications for orders striking out the claims under rule 37 of the Employment Tribunal Rules of Procedure 2013 and for deposit orders under rule 39. The respondent relies upon two broad arguments under rule 37: that the claims or some of them are out of time and that where the claimant relies upon the acts of third parties (AXA, Legal & General and Medigold) there is no basis for holding this respondent liable for those actions. They also argue that the unauthorised deduction from wages claim has no reasonable prospects of success because no sick pay or salary was properly payable to the claimant under his contract of employment.

8. The claimant needs to understand that the Employment Tribunal only has power to decide the types of claim which parliament has directed it to consider. Furthermore, it is he who brings these claims. At the final hearing it will be for him to show that acts which caused him harm (whether financial, emotional or psychological) occurred in the way he alleges. Subject to the burden of proof in each specific case, it is for him to show that the acts complained of are unlawful in Employment Law rather than generally unfair. This is not to criticise him or to minimise the difficulty of his situation but rather to explain the limits of the Employment Tribunal's jurisdiction.

9. He has a combination of conditions including hypertension, chronic kidney disease, cerebral aneurysm and sleep apnoea. The respondent accepts that he is disabled within the meaning of the EQA as a result of those conditions. They also accept that they had knowledge of the condition of sleep apnoea from 5 February 2019 onwards and of the other conditions listed above at all material times. However, to the extent that the claimant relies upon the conditions of "fluid of right petrous apex and tinnitus" and "emotional health issues (encompassing anxiety and depression)" the respondent does not accept that those amount to disabilities within the meaning of the EQA. They accept that they had knowledge of them from 5 February 2019 and 24 April 2018 respectively.

10. The power to strike out a claim on the ground that it has no reasonable prospect of success comes from rule 37(1)(a) of the Employment Tribunal Rules of Procedure 2013. It is a power to be exercised sparingly, particularly where there are allegations of discrimination. In the case of Anyanwu v South Bank University [2001] IRLR 305 HL, the House of Lords emphasised that in discrimination claims the power should only be used in the plainest and most obvious of cases. It is generally not appropriate to strike out a claim where the central facts are in dispute because discrimination cases are so fact sensitive. It is also, in general, not appropriate to strike out a claim where particulars are needed.

11. That said, where it is plain that a discrimination claim has no reasonable prospects of success (interpreting that high hurdle in a way that is generous to the claimant), then the tribunal does have and, in a plain and obvious case, may use the power to strike out the claim so that the respondent and the tribunal system are not required to spend any more resources on a claim which is bound to fail.

12. Such as case might be one which the Tribunal has no jurisdiction to hear because it was not presented within the relevant time limit. The time for claims under the EQA is specified in s.123. For present purposes, that section provides that, subject to the effect on time limits of early conciliation, proceedings on a complaint within Part 5 of the EQA (which relates to employment) may not be brought after the end of,

> "(a) the period of 3 months starting with the date of the act to which the complaint relates, or
> (b) such other period as the employment tribunal thinks just and equitable."

13. By s.123(3) EQA, conduct extending over a period is to be treated as done at the end of the period.

14. Claims of unauthorised deduction of wages contrary to s.13 of the ERA are also subject to time limits. So, by s.23(2) of the ERA, again subject to the effect of early conciliation,

> "subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of three months beginning with
> (a) in the case of a complaint relating to a deduction by the employer, the date of the payment of the wages from which the deduction was made, …"

By s.23(3), time starts to run in the case of a complaint about a series of deductions from the date of the last deduction. By s.23(4), when the tribunal considers that it was not reasonably practicable for the complaints to be presented before the end of that period of three months the tribunal may consider the complaint if it was presented within such further period as the tribunal considers to be reasonable.

15. When the Tribunal is considering whether it has jurisdiction to consider a complaint of unauthorized deduction from wages which was not presented within three months of the effective date of termination, the burden of proof in relation to both stages is on the claimant. 'Reasonably practicable means more than merely what is reasonably capable physically of being done but less than simply reasonable. When considering the claimant's explanation for the delay, the employment tribunal needs to investigate what was the substantial cause of the claimant's failure. Examples of situations where it might not be reasonably practicable to present the claim in time were given by Brandon L.J. (as he then was) in Walls Meat Co Ltd v Khan [1979] I.C.R. 52 CA at paragraph 44,

> ''The performance of an act. . .is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike: or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of

> three months, if the ignorance on the one hand or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his soli- citors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him.''

16. Taking into account the effect of early conciliation upon time limits in the present case, a claim based upon an act which precedes 5 March 2019 is potentially out of time.

17. Where an employment judge considers that any specific allegation or argument in a claim or response has little reasonable prospect of success then, by r.39 of the Employment Tribunal Rules of Procedure 2013, a deposit of not more than £1,000 may be ordered as a condition of allowing that party to continue to advance that allegation or argument.

18. The test of "little reasonable prospects of success" has been described as being less rigorous than that for a strike out under r.37 but "there must be a proper basis for doubting the likelihood of a party being able to establish facts essential to the claim or the defence." (Hemdan v Ismail [2017] I.C.R. 486 EAT para 13). In doing so, the Employment Judge may take into account more than simply the legal issues but may take into account the likelihood of a party establishing the facts essential to their case: Arthur v Hertforshire Partnership University NHS Trust (UKEAT/0121/19).

19. Before making such an order the Employment Judge must take reasonable steps to find out whether the party will be able to satisfy a deposit order and take account of that information when exercising the discretion whether or not to make the order.

20. The claimant confirmed that he is not accusing the respondent of being responsible for any actions of Third Parties. He argues that they are responsible for their own management of those Third Parties and that those acts are acts of discrimination. He said that his issue against his employer was their process and the way it was managed or not managed. He accepted that each Third Party has their own process and the respondent was not responsible for the Third Party's processes. He maintains that they did not manage the Third Parties sufficiently robustly. In those circumstances, the List of Issues needs to be amended to reflect that and the argument that claims should be struck out as seeking to attribute liability in circumstances which are not provided for within the EQA does not need to be considered further.

21. The claimant explained that he had brought the claim after giving time for the internal grievance process because he had understood that he needed to engage with that before starting early conciliation through ACAS. As he put it:

> "I can't escalate to the Tribunal until I had gone through the grievance. I have to go through the employer's process then started the ACAS process. [I understood] I couldn't leave it for more than 3 months. Legal people told me about time limits and said the reason they were drawing out the grievance was to put me out of time."

22. He maintained that discrimination had continued up to the date of the hearing. The respondent has taken the pragmatic view that where the further and better particulars cover events which pre-dated the issue of the claim form but were not expressly referred to in it then, they did not object to applications to amend the claim to include them. They did object to amendments which would add claims which were said to postdate the issuing of proceedings.

23. I informed the claimant that he could apply to amend the claim (which may or may not be permitted) or bring a further claim but needed to take advice on the process to be followed. He would not need to contact ACAS before applying to amend the claim to add post issue allegations. He should not presume that a second period of EC prior to issuing a second claim would extend time for presentation of it.

24. In relation to his claim of unauthorised deduction from wages, it was clear from the Schedule of Loss that he was claiming underpayment of salary from 14 June 2018 to (he said) the 20 March 2019 when he had been put back on the payroll. However, his evidence was that he was paid, in the ordinary course of events, on the 25th of each month. It is clear that he was paid on the 25 March 2019 when his salary resumed and therefore the last date on which a deduction was made, from which the three month time limit starts to run, was 25 February 2019.

25. It was argued by the respondent that this should be struck out because it was out of time and in any event it wasn't properly payable because there was nothing due under the contract which wasn't paid.

26. The claimant argued that the deduction continued (or at least the effect of the deduction continued) until 19 March 2091 when he was put back on the payroll and he had contacted ACAS about this claim on 6 June 2019. He argued that time should run from the date covered by the missing payment. "as far as I knew the clock would stop when I reported it to ACAS within the 3 month period. I took the 3 month period from March because I was under the understanding that you needed to do the grievance before presenting a claim to the ET". He explained that the source of that information was friends who are solicitors but not expert in employment law.

27. It is clear to me that the claim under s.23 ERA was presented more than three months after the date of the last deduction and that the early conciliation does not operate to extend time because the claimant had not contacted ACAS within three months of the date of the last deduction. I reject the claimant's argument that time should only start to run from March (when he was put back on the payroll) as contrary to the clear terms of s.23(2) ERA.

28. I am of the view that it was reasonably practicable for the claimant to present the claim in time. He was under the mistaken view that it was necessary for him to undergo an internal grievance prior to contacting ACAS. He also seems to have been under the mistaken view that the three-month time limit started from the date of presentation of the grievance. This would only be the case if the grievance was the act complained of.

29. I do not think that this mistaken belief was reasonable, to the extent that it was, in part, based upon the information of a solicitor who is not expert in employment law. The claimant gave evidence that he probably searched on the internet. He had written a letter in early March - effectively a letter before action – threatening to take action if there was no response within 14 days. Taking all the circumstances into account, it was reasonably practicable for the claimant to present the financial claim within time; for which he would only have had to contact ACAS by 24 May 2019.

30. In those circumstances my view is that the employment tribunal does not have jurisdiction to consider any claim under s.23 of the ERA and it has no reasonable prospects of success. I therefore will strike out the claim for unauthorised deduction from wages because the Tribunal lacks jurisdiction to hear it. I do not need to go on to consider the alternative argument that there was no reasonable prospect of the claimant showing that any sums were properly payable. This does not prevent the claimant from arguing that he has suffered financial loss caused by any act of discrimination which may be proved against the respondent at final hearing.

31. The claimant was unwilling to answer questions about the dates on which particular events are said to have taken place which he relies on for his claims under the EQA. He considered himself to be disadvantaged by having to set those details out at short notice. He referred to his health conditions and the need that he be not put under pressure. In those circumstances, I turned to such information as I had which included the timeline set out in the grievance outcome letter and the chronology of that grievance which is set out above.

32. I asked him whether at the time he brought the grievance he was aware that there was a 3-month time limit for Tribunal claims. He did not directly answer the question but said that he was aware there was a time limit which was why he reported on 4 June [to ACAS] which was within 3 months “I was working to”. It had been unpalatable for him to have to go through a grievance with his employer. When asked at what point he had found out the time limit he said that he had probably looked online but couldn’t say when. He had believed that he had acted correctly. He had never said that he was unaware of the time limit.

33. It was argued by Mr Frew in his skeleton argument, based upon an extract from two letters sent by the claimant, that he had effectively made a choice not to claim having said that he would take action within 14 days. The claimant accepted that he had written in those terms. He had done so because it had been what his friend said he needed to do about the consequential losses. It was put to him in cross-examination that he had been advised by a solicitor and made a choice not to bring the claim in time but to go down the grievance route. His response was that that was counsel’s interpretation but things could be interpreted in different ways.

34. That may be – however I focused upon the evidence of the dates upon which various matters complained of may have happened. I bear in mind the early stage that this litigation is at: the absence of statements; no full disclosure and

a more cursory investigation of the history of what was decided upon when which will happen at a final hearing. I have to consider when time probably started to run for the individual acts complained of.

35. The major component of the claim is that there has been an unreasonable delay in facilitating the claimant's return to work in some capacity (see draft List of Issues paragraphs 3.1.2.a & b.) and a failure to make adjustments in terms of alternative employment or a trial period once he was certified fit for work. The respondent's case is, effectively, that claimant was not known to be fit until occupational health reports on 12 March 2019. Notwithstanding that, it was argued that I should consider the claimant's case which was that he was fit to return to work in October 2018 and that time runs from that as a one-off act with continuing consequences.

36. That is one possible finding of a Tribunal in final hearing. However, it seems possible to me that there was reconsideration of the management of the claimant's sickness absence as late as after the occupational health report on 12 March 2019. If so, then the last reconsideration is potentially in time. The separate complaints of failure to consider alternative employment are also, arguably, a continuing act. I am therefore of the view that the claimant has shown that there is a prima facie case that there was an act continuing over a period to at least the 12 March 2019 which would be in time.

37. Bearing in mind that this is not the claimant's primary case, it seems to me that the issue of jurisdiction should remain live. Issues relating to whether any or all of the claims under the EQA were made within the applicable time limits set out in s.123 of the EQA, subject to the affect of early conciliation, should be included in the List of Issues. This would include questions of whether or not there was an act continuing over a period and when time starts to run in relation to any failures to act.

38. I went on to consider whether there were little reasonable prospects of the claimant succeeding in any of his claims. The only evidence in the case that I was taken to, was the grievance outcome letter. The claimant argues that a number of alternative roles could and should have been considered and, although the manager considering his grievance found against him on that, I cannot conclude from what is in front of me that there is little reasonable prospect of him succeeding in those arguments. There are hotly contest disagreements about whether the claimant was fit to return to work and whether alternative roles were offered or rejected and why.

39. The information presented to me is insufficient for me to conclude that the claimant has little reasonable prospect of succeeding in the claims. Given his clarification about the basis of his complaint against his employer, the argument about alleging responsibility for acts of Third Parties does not arise. It is true that there remains some lack of precision about the allegations but the way the discrimination arising from disability and reasonable adjustments claims are said to be structured was clarified in the hearing before me. There will be revision to the List of Issues and any continuing dispute about it can be referred to me in accordance with the case management orders. This is a

more appropriate way to deal with the lack of precision and clarity than by way of deposit order, in my view.

40. The following case management orders were largely made by consent. Insofar as they are not made by consent, reasons, to the extent not set out below, were given at the time and written reasons will not be provided unless they are asked for by a written request presented by any party within 14 days of the sending of this written record of the decision.

ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure

1. List of Issues

1.1 A list of issues is a neutral bullet point summary of the allegations the parties rely upon placed within the legal framework of the claims the claimant has made. It is intended to be a decision-making template for the Tribunal at the final hearing. The respondent has drafted the first draft of the List of Issues and the claimant has made comments upon it.

1.2 The respondent is to serve an updated draft List of Issues on the claimant and the Tribunal (marked for EJ George's attention and copied to ukcourt.skype.0893@ejudiciary.net) by **8 January 2021** which should include any remaining questions which need to be answered in order for the respondent to understand the case which is brought against it;

1.3 The claimant is to reply to the updated draft List of Issues by **22 January 2021**,

1.3.1 answering all questions asked by the respondent;

1.3.2 explaining in the case of each alleged PCP set out in paragraph 36 of his further and better particulars (p.74 of the electronic bundle) which particular disadvantage set out in paragraph 37 it caused; and

1.3.3 indicating any remaining area of disagreement.

1.4 This is to be marked for EJ George's attention and copied to ukcourt.skype.0893@ejudiciary.net – which should only be used for these limited communications about the List of Issues. If there is any continuing dispute about the List of Issues that will be considered by EJ George not before 22 January 2021.

2. Applications

2.1 If the claimant seeks to include para.5.1.f. of version 1 of the draft List of Issues as a head of claim or any claim based upon an alleged act which post-dates 16 August 2019, he is to make an application to amend his

claim **as soon as possible**, in writing. Any such application is to be sent to the Tribunal at the usual email address for communication; WatfordET@justice.gov.uk.

3. Telephone preliminary hearing

3.1. The parties are to send to the Tribunal by **11 January 2021** dates to avoid between 5 and 28 July 2021.

3.2. There is to be a closed telephone preliminary hearing to check that the case is ready for final hearing on a date to be fixed approximately 4 weeks before the final hearing at 9.30 am with a time estimate of 30 minutes.

4. Statement of remedy / schedule of loss

4.1 The claimant must provide to the respondent by **26 February 2021** a document – a "Schedule of Loss" – setting out what remedy is being sought and how much in compensation and/or damages the tribunal will be asked to award the claimant at the final hearing in relation to each of the claimant's complaints and how the amount(s) have been calculated.

5. Disability issue

5.1 The claimant is to specify which disabling condition he relies on in relation to which complaint by **22 January 2021.**

5.2 If the claimant relies upon either the alleged disability of "fluid of right petrous apex and tinnitus" or "emotional health issues (encompassing anxiety and depression)" in relation to his disability discrimination claims as set out in the final draft List of Issues then, he must by **26 February 2021**,

5.2.1 serve on the respondent copies of any medical notes, reports, occupational health assessments and other evidence in his possession and/or control relevant to the issue of whether he was at all relevant times between 13 December 2017 and 16 August 2019 a disabled person under the EQA ("disability issue") by reason of those conditions. For the purposes of this paragraph: documentation already in existence that can be obtained by the claimant by requesting it from their GP or other treating healthcare provider is deemed to be within the claimant's possession and/or control.

5.2.2 provide the respondent with a witness statement (or statements): stating, in relation to each of the above alleged impairments, between which dates it is alleged the claimant was a disabled person because of that impairment; dealing, by specific reference to schedule 1 to the EQA and any relevant provision of any statutory guidance or Code of Practice, with the effect of the alleged disability (or disabilities) on the ability of the claimant to carry out normal day

to day activities. The claimant is referred to the part of the Presidential Guidance issued on General Case Management that relates to disability. It is available at *www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/*

5.3 The respondent must by **12 March 2021** inform the Tribunal and the claimant of the extent to which the disability issue is conceded, and if it isn't conceded in full, the reasons why. The respondent is also to make any application for further case management orders for medical expert evidence at the same time.

6. Documents

6.1 On or before **1 June 2021** the claimant and the respondent shall send each other a list of all documents that they wish to refer to at the final hearing or which are relevant to any issue in the case, including the issue of remedy. They shall send each other a copy of any of these documents if requested to do so no later than **15 June 2021**.

7. Final hearing bundle

7.1 By **29 June 2021**, the claimant must tell the respondent which documents he wishes to refer to at the final hearing; that he wishes to ask any witnesses about in evidence or in cross-examination and/or that the Tribunal will be asked to take into account.

7.2 The respondent must paginate and index the documents, put them into one or more files ("bundle"), and provide the claimant with a 'hard' and an electronic copy of the bundle by **12 July 2021**.

7.3 In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle
- the documents in the bundle must follow a logical sequence which should normally be simple chronological order.
- If an index is provided it should correspond to the electronic numbering within the PDF bundle.

8. Witness statements

8.1 The claimant and the respondent shall prepare full written statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their written statements to each other on or before **27 July 2021**. No additional witness evidence will be allowed at the final hearing without the Tribunal's permission. The written statements must: have numbered paragraphs; be cross-referenced to the bundle(s); contain only evidence relevant to issues in the case. The claimant's witness statement must include a statement of the amount of

compensation or damages they are claiming, together with an explanation of how it has been calculated.

9. Final hearing preparation

9.1. The following parties must lodge the following with the Tribunal so as to arrive to the hearing venue at least **two working days before the first day of the final hearing:**

9.1.1. four copies of the bundle(s), by the respondent;

9.1.2. four hard copies of the witness statements (plus a further copy of each witness statement to be made available for inspection, if appropriate, in accordance with rule 44), by whichever party is relying on the witness statement in question;

9.1.3. three hard copies of any skeleton argument which either party wishes to rely upon;

9.1.4. three hard copies of a cast list and chronology, preferably agreed, by the respondent.

9.2 Digital copies of the above documents must also be sent by email to the Tribunal at watfordet@justice.gov.uk at least **two working days before the first day of the final hearing**.

10. Other matters

10.1. The above orders were made and explained to the parties at the preliminary hearing. All orders must be complied with even if this written record of the hearing is received after the date for compliance has passed.

10.2. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside. Any further applications should be made on receipt of these orders or as soon as possible.

10.3. The parties may by agreement vary the dates specified in any order by up to 14 days without the tribunal's permission except that no variation may be agreed where that might affect the hearing date. The tribunal must be told about any agreed variation before it comes into effect.

11. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management', which can be found at: *www.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/*

12. The attention of the parties is also drawn to the joint FAQs drawn up by the Presidents of the Employment Tribunal in England & Wales and in Scotland about the impact of the COVID-19 pandemic on Employment Tribunal proceedings which is updated from time to time. This can be found at: *FAQ-edition-date-1-June-2020.pdf (judiciary.uk)*

13. The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise)…*". **If, when writing to the tribunal, the parties don't comply with this rule, the tribunal may decide not to consider what they have written**.

14. The parties are also reminded of their obligation under rule 2 to assist the Tribunal to further the overriding objective and in particular to co-operate generally with other parties and with the Tribunal.

15. **Public access to employment tribunal decisions**

    All judgments and reasons for the judgments are published, in full, online at *www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

16. **Any person who without reasonable excuse fails to comply with a Tribunal Order for the disclosure of documents commits a criminal offence and is liable, if convicted in the Magistrates Court, to a fine of up to £1,000.00.**

17. **Under rule 6, if any of the above orders is not complied with, the Tribunal may take such action as it considers just which may include: (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.**

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Employment Judge George

Date: 10 January 2021 ……..
12/02/2021
Sent to the parties on: .....
J Moossavi
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For the Tribunal Office

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