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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109291/2021

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Held on the Cloud Video Platform on 17, 18 and 19 January 2022

**Employment Judge A Jones
Tribunal Member L Brown
Tribunal Member W Muir**

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Mr B Hewitson

**Claimant
In person**

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Nash Asset Holdings Ltd

**Respondent
Represented by
Ms E Nash
HR Manager**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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The claimant's application for a preparation time order is refused.

Reasons

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Introduction

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1. The claimant made an application for the Tribunal to reconsider its judgment of 31 January 2022 in a number of respects. That application was initially refused. However the application in respect of his application for a preparation time order had not been dealt with at that time. The Tribunal has now reconsidered its judgment in relation to the an application for a preparation

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time order. The application for reconsideration is successful to the extent that the Tribunal varies its judgment of 31 January 2022 to record its consideration of the claimant's application for a preparation time order and its decision in that regard which is set out below.

5 **Relevant law**

2. Rule 75 of Schedule 1 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provides that:

10 (2) A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing.

15 (3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings. A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to
20 make.

3. Rule 76 sets out the circumstances in which a preparation time order may or shall be made:

25 (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

30 (b) any claim or response had no reasonable prospect of success.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing; and

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

4. Rule 79 sets out the amount of costs which may be awarded.

(1) The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of—

(a) information provided by the receiving party on time spent falling within rule 75(2) above; and

(b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

(2) The hourly rate is £33 and increases on 6 April each year by £1.

(3) The amount of a preparation time order shall be the product of the number of hours assessed under paragraph (1) and the rate under paragraph (2).

- 5 5. The claimant initially made an application for a preparation time order to be made in respect of 110 hours, which included 20 hours 'administration work', days at Tribunal (although that was based on the original dates on which the hearing was listed and the case concluded in half the time), together with time spent at preliminary hearings. The claimant then made an additional request for a preparation order in respect of a further 10 hours spent in making the application for reconsideration and an appeal to the Employment Appeal Tribunal.
- 10 6. Parties were invited to confirm their positions in writing and advised that consideration would be given to the claimant's application on the basis of parties' written submissions. Neither party requested a hearing to be listed for consideration of the application and the tribunal did not think it necessary for a hearing to be convened.
- 15 7. The claimant did not provide any break down in relation to the preparation time claimed for or provide any other detail of the basis on which he had calculated administration time of 20 hours or the additional 10 hours which were said to be in respect of work on the reconsideration request and appeal.
- 20 8. The claimant did not call any witnesses to give evidence at the final hearing and his cross examination of the respondent's witnesses was brief. He did not make any submissions at the conclusion of the evidence. The respondent produced the bundle of documents for use by the Tribunal at the final hearing. Taking these factors into account the Tribunal found it difficult to understand on what basis 20 hours had been calculated. The Tribunal was of the view
25 that the estimate of the claimant was not reasonable or proportionate.
9. Moreover regulation 75(2) makes clear that a preparation time order cannot be made in respect of time spent at a hearing.
- 30 10. The claimant did not specify the basis of his application for a preparation time order. He did not point to any behaviour by the respondent or its witnesses which he said justified a preparation time order being made. The claimant's claim had only been partially successful, in that his claim for disability

discrimination was dismissed. The claimant did not suggest that any part of the respondent's defence to his claims had no reasonable prospects of success. There were no postponements or adjournments in the case which the claimant founded upon. The claimant did not specify any respect in which it was being alleged that the respondent had acted vexatiously, abusively, disruptively or otherwise unreasonably in the way in which the proceedings had been conducted.

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11. The Tribunal nonetheless considered whether there had been any such conduct on the part of the respondent. The respondent was represented by a member of staff who candidly admitted that she had no experience of tribunal process or procedure. While the Tribunal was surprised that the respondent had approached the final hearing in this manner, the Tribunal was satisfied that there was nothing in the representative's conduct or that of the witnesses who gave evidence on behalf of the respondent which could be said to have been vexatious, abusive, disruptive or otherwise unreasonable.

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12. In addition, while the claimant was successful in some of his claims before the tribunal he was not wholly successful. It was clear to the Tribunal that the respondent had a stateable defence to the claimant's claims (other than the failure to provide the claimant with a statement of terms and conditions of employment timeously). The Tribunal did not however form the view that the omission on the part of the respondent in this regard was such that an award of expenses against it would be appropriate, particularly given the claimant had already been compensated for this omission.

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13. Even if the rules allowed a preparation time order to be made in respect of time spent pursuing a request for reconsideration or an appeal, which the tribunal did not think was likely to be within the scope of the rules, it did not form the view for the reasons set out above that there were grounds on which to make such an order or that the time the claimant said he had spent in that regard was proportionate or reasonable. There was nothing in the respondent's conduct in relation to the claimant's application for reconsideration which could be said to be in any way unreasonable.

14. In these circumstances, the claimant's application for a preparation time order is refused.

5 Employment Judge: Amanda Jones
Date of Judgment: 01 September 2022
Entered in register: 01 September 2022
and copied to parties

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