EMPLOYMENT TRIBUNALS

Claimant: Miss V Anderson

Respondent: Cheshire and Wirral Partnership NHS Foundation Trust

JUDGMENT

The claimant is ordered to pay the respondent the sum of £1,000.00 in respect of the respondent's costs.

REASONS

Introduction

1. I have reached this judgment without a hearing. My decision that there should not be a hearing was made under rule 77 of the Employment Tribunal Rules of Procedure 2013. My reasons for dispensing with a hearing have previously been explained in two documents. The first was my case management order sent to the parties on 1 July 2022. The second was a letter sent at my direction on 4 August 2022.
2. Before deciding upon the costs application itself, I read the following documents:
   2.1. A 53-page bundle e-mailed by the respondent to the tribunal and the claimant on 10 June 2022; and
   2.2. The claimant's e-mails and attachments sent on 15 June 2022, 20 June 2022 and 21 July 2022.

   (The respondent's bundle contained further e-mails from the claimant containing arguments as to why a costs order should not be made. I took these into account, too.)

Background

3. The claimant was employed by the respondent as a Recovery Mentor from 11 February 2014 until 6 August 2019. Her employment terminated on the expiry of notice given by her in a resignation letter dated 8 July 2019.
4. About three weeks after handing in her notice, the claimant changed her mind. On 30 July 2019, she asked her manager if she could stay in her job. By that

time, she had had a supervision meeting with her line manager on 23 July 2019. She had not asked to withdraw her notice at that meeting. The respondent did not consent to her retracting her notice, meaning that her employment came to an end when her four-week notice period expired.

Procedural history

5. By a claim form presented on 12 December 2019 the claimant raised a single complaint of unfair dismissal.

6. Box 8.2 included the following information:

   6.1. that the claimant had "come from surfing [suffering] with a mental health illness";

   6.2. that the claimant had decided "that after a period of anxiety that I would give my notice in";

   6.3. that she gave her notice on the same day as a Stage 2 appeal meeting relating to a period of absence with a fractured fibula, and that she had decided to "leave rather than go off sick and be punished again";

   6.4. that she later came to realise that her decision to resign was the "impact" of "another member of staffs behaviour and intimidation"; and

   6.5. that she had attempted to retract her resignation, but the respondent had not allowed her to do so.

7. The remainder of Box 8.2 described the further efforts she made in order to get her job back, all to no avail. She added, "The whole incident has triggered my depression".

8. The claim form did not state that the respondent had breached her contract, or that she had been entitled to resign because of the respondent's conduct, or that she had been constructively dismissed.

9. The respondent presented a response. Box 6.1 of the response form set out the respondent's grounds for resisting the claim. The respondent engaged with the factual allegations in Box 8.2 and argued the respondent's case that the claimant had not been dismissed. The concluding paragraph of the response read:

   > "The claimant made a decision to leave which was unequivocal and which the respondent was entitled to and did accept. There were no special circumstances which would or should have put the respondent on notice that the claimant's resignation was not a real resignation which it was entitled to accept at face value. Her evident subsequent upset that the respondent did not accede to her request to be allowed to change her mind later is not evidence of unfairness, whether as alleged or at all, nor does it change a resignation into a dismissal. Accordingly, her claim for unfair dismissal is without merit and is denied."

10. A final hearing was listed to take place on 11 September 2020.

11. On 3 September 2020, the respondent's solicitor wrote a costs warning letter to the claimant. The letter reminded the claimant of the grounds on which the claim was being resisted. It pointed out that the respondent had already incurred £7,428.50 in legal costs and would incur further about £1,500 to £2,000 in further costs if the claim were pursued to a final hearing. After setting out the relevant provisions of rule 76, the letter asserted that the claim had no reasonable

prospect of success and had been brought unreasonably. The claimant was then given an opportunity to withdraw the claim in return for the respondent agreeing not to apply for a costs order. She was encouraged to obtain legal advice.

12. The claimant replied the following day. She did not accept the respondent's offer. What the e-mail did contain was two pages of text recounting things that had allegedly happened both before and after she had handed in her notice. In "the lead up to my resignation", the claimant set out some very worrying events in her personal life, together with some causes of stress emerging from work. One alleged cause of workplace stress was that a colleague (A) was meeting and calling people in the office at a time when A was suspended from work pending an investigation into alleged abuse of a client. Another alleged management failing was a lack of supervision after meeting with a patient. The claimant also mentioned being "under duress" at the time she handed in her notice – it was not clear from the e-mail what the cause of her duress was, but it appeared to be connected to the Stage 2 sickness absence appeal.

13. Later on 4 September 2020, the respondents' solicitors replied, briefly repeating the earlier costs warning.

14. Overlapping with this exchange was the claimant's request to have the 11 September final hearing postponed. She stated that her physical and mental health had deteriorated. On 10 September 2020, her request was granted. The final hearing was relisted to take place in February 2021.

15. On 7 January 2021, the claimant wrote to the tribunal asking for the final hearing to be postponed again. At that time the claimant said that her mental health had been "stable since October". Her difficulty was that she was employed as a keyworker and living in France. The final hearing was postponed.

16. The final hearing eventually took place before me on 27 July 2021. At the start of the hearing, I attempted to clarify with the claimant how she was putting her case. She confirmed that her case was that she should have been allowed to withdraw her notice. As the claimant saw things, it should have been clear to the respondent that, although her words were clear, her resignation had been given in circumstances of such pressure that it might not truly have been what she intended to do. That meant that the respondent could not hold her to the consequences of giving her notice without first giving her a reasonable opportunity to change her mind. (Lawyers sometimes call this the "heat of the moment" argument.) I asked the claimant what the outcome of the hearing should be if I disagreed with that argument – would it mean that she would lose, or would she want to argue that she had been dismissed in some other way? The claimant confirmed that she would lose. She did not say that she had been constructively dismissed. She did not say that she had the right to resign because of the way she had been treated.

17. The claimant gave evidence and called witnesses. Their evidence lasted longer than it needed to last. That was because questions and answers tended to stray from the heat of the moment argument into issues about the respondent's conduct prior to the claimant's Stage 2 absence appeal. It took a number of interventions from me to keep the parties focused on the issue in the case.

18. After hearing the evidence and the claimant's submissions, I concluded that the respondent had been entitled to treat the claimant as having resigned. The respondent's refusal to allow the claimant to withdraw her resignation did not

amount to a dismissal. There being no dismissal within the meaning of section 95 of the Employment Rights Act 1996, the claim had to fail. I explained my judgment and reasons to the parties, by which time it was 3.56pm. Neither party raised anything further and the hearing concluded.

19. My written judgment confirming the outcome was sent to the parties on 5 August 2021.

20. The respondent applied for costs by letter dated 23 August 2021. After one costs hearing was postponed due to coronavirus travel restrictions, a further costs hearing took place before me on 17 June 2022. The claimant did not attend. My case management summary explains the circumstances. Following the hearing I gave the claimant an opportunity to request a further hearing at which the costs application could be decided. I also gave the claimant the opportunity to put forward an argument that she could not afford to pay a costs order. My order made clear that, if she wished to pursue that argument, she would need to provide some basic information in writing. One of those pieces of information was whether she had any savings or not. The order stated that, if the claimant did not provide that information, the tribunal may assume that the claimant can afford to pay the costs order.

21. The claimant did not request a hearing. She did not state whether she had any savings or not.

Submissions

22. The respondent's argument is, essentially, that the claim was always doomed to fail because of the claimant's delay in trying to retract her resignation. That point had been made in the response form and again in the costs warning letter. The claim therefore had no reasonable prospect of success from the outset and it was unreasonable of the claimant to persist with it in the face of the respondent's clear warning. The respondent's defence of the claim has caused it to incur £14,635.00 in legal costs, apparently for work done over the lifetime of the case.

23. The arguments in the claimant's e-mails are not as clearly structured. I have attempted to pull the claimant's main points out of the text. As I see it, the claimant's arguments are:

    23.1. The claimant has "fluctuating" "mental capacity".

    23.2. The claimant's ability to participate in the proceedings is impaired by (a) the complexity of employment law, (b) her lack of legal knowledge (c) her mental disabilities which "affect me cognitively", with symptoms such as "memory problems, mind fog, dissasociative periods and severe anxiety and depression".

    23.3. The respondent should have applied for costs at the final hearing itself. The respondent's failure to do so put her at a disadvantage. She left all her papers in the tribunal room, not wanting to have anything further to do with the case.

    23.4. Since the respondent applied for costs, the claimant's mother was diagnosed with a terminal illness.

    23.5. She did not have legal representation. This led to her attaching the wrong legal label to her claim, causing it to fail. In the claimant's words, "I am

not a barrister nor do I fully comprehend employment law. My case should have been heard as constructive dismissal."

23.6. The claimant cannot afford to pay a costs order as she is unemployed and "essentially homeless", having no fixed address, having put her home up for sale some years ago.

Relevant law

Costs

24. Rule 76 of the Employment Tribunal Rules of Procedure 2013 provides, relevantly:

> **"76.**—(1) A Tribunal may make a costs order…, and shall consider whether to do so, where it considers that—
>
> (a) a party… has acted … unreasonably in either the bringing of the proceedings (or part) or in the way that the proceedings (or part) have been conducted; [or]
>
> (b) any claim… had no reasonable prospect of success.
>
> …"

25. Rule 84 provides, so far as is relevant:

> **"84.** In deciding whether to make a costs… order, and if so in what amount, the Tribunal may have regard to the paying party's … ability to pay."

26. A tribunal faced with an application for costs must decide, first, whether the power to award costs under rule 76 has been triggered and, second, whether in its discretion it should make a costs order and, if so, in what amount.

27. A tribunal cannot know whether a claim has a reasonable prospect of success if it has misunderstood what that claim is: *Oni v. NHS Leicester City* UKEAT 0133/14.

28. It is not uncommon for respondents to write to claimants, pointing out weaknesses in their case and warning them that if the claim is pursued, the respondent will seek its costs. Where such a letter has been written, the claimant does not engage with the arguments in it, and the claim subsequently fails for substantially the same reasons as were stated in the letter, it is open to the tribunal to conclude that the claimant acted unreasonably in continuing with the claim in the face of the warning: see *Peat v. Birmingham City Council* UKEAT 0503/11.

29. In deciding whether unreasonable conduct should result in an award of costs, the tribunal should have regard to the "nature", "gravity" and "effect" of the conduct. There is no need for rigid analysis under the separate heading of each of those three words. 'The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects if had': *Barnsley Metropolitan Borough Council v Yerrakalva* [2011] EWCA Civ 1255, [2012] IRLR 78.

30. Unrepresented parties are not immune from costs. The tests in rule 76 are the same for represented and unrepresented parties alike. But unrepresented

parties should not be held to the same standards as professionally-represented parties. If a party has no lawyer, that fact is relevant both to the question of whether the threshold test is met under rule 76, but also to the exercise of the tribunal's discretion: *AQ v. Holden* [2012] IRLR 648.

31. When exercising the tribunal's discretion to award costs against an unrepresented claimant for pursuing a hopeless claim, it is a relevant factor that it has been apparent to the respondent that the claimant was unrepresented and has not understood the essential weakness in her case: *Rogers v. Dorothy Barley School* UKEAT 0013/12. (In that case it was also considered relevant that the respondent had not warned the claimant of the risk of costs.)

Capacity to litigate

32. A person lacks capacity in relation to a matter at the material time if he is unable to make a decision for himself in relation to that matter because of an impairment of, or a disturbance in the functioning of, his mind or brain: see section 2(1) of the Mental Capacity Act 2005.

33. Section 3 of that Act provides, relevantly:

> (1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable—(a) to understand the information relevant to the decision
>
> (b) to retain that information,
>
> (c) to use or weigh that information as part of the process of making the decision, or
>
> (d) to communicate his decision (whether by talking, using sign language or any other means).
>
> (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
>
> …

34. Questions sometimes arise as to whether a person has the mental capacity to bring or defend proceedings in the employment tribunal. In *Jhuti v. Royal Mail Group Ltd* UKEAT 0061/17 at paragraph 39, Simler J gave the following guidance:

> (a) First and foremost, a person is assumed to have capacity unless it is established that they lack capacity. The assumption of capacity can only be overridden if the person concerned is assessed as lacking the mental capacity to make a particular decision for themselves at the relevant time: see the Mental Capacity Act 2005, which provides a formula to be used in making that assessment. The burden of proof is on the person who asserts that capacity is lacking and if there is any doubt as to whether a person lacks capacity that is to be decided on the balance of probabilities: see s2(4) Mental Capacity Act 2005.
>
> (b) …
>
> (c) …Evidence must also be provided establishing the basis of the litigation friend's belief that the party lacks capacity to conduct the proceedings."

Dismissal

35. The right not to be unfairly dismissed is contained in Part X of the Employment Rights Act 1996.

36. For the purposes of Part X, an employee is dismissed if (amongst other things):

> *Section 95(1)(a)* – the contract under which he is employed is terminated by the employer, whether with or without notice; or
>
> *Section 95(1)(c)* – the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct. This is often called "constructive dismissal".

37. An employee whose employer has fundamentally breached the contract of employment is entitled to resign without notice. If they resign in response to the breach whilst they still have that right, they will be constructively dismissed. The employee may, however, lose that right by demonstrating their willingness to allow the contract to continue despite the breach. This is called "affirming" the contract.

38. It is an implied term in every contract of employment that the employer will not conduct itself without reasonable and proper cause in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence. Breach of that term is always fundamental.

Conclusions

Capacity

39. I am not persuaded that the claimant lacks capacity to participate in this costs application. Her e-mail did not say that she was currently lacking capacity, only that it fluctuated. The claimant did not say that she was unable to make decisions about the costs application for the whole of the time she had in which to make written representations. The first two factors that she identified as placing her at a disadvantage were not caused by any impairment or disturbance to the function of her mind or brain. They were the complexity of employment law and her lack of specialist legal knowledge.

40. I am therefore satisfied that I can proceed to determine the costs application without appointing a litigation friend for the claimant.

Power to award costs

41. Before I can make a costs order, I have to be satisfied that I have the power to make such an order under rule 76(1).

Rule 76(1)(b) – no reasonable prospects of success

42. My assessment of prospects starts with the claim form itself. In Box 8.2, the claimant was clear in her contention that the respondent had acted unfairly by not allowing her to withdraw her notice. What was not quite as clear was how, in law, the respondent was alleged to have dismissed her. That was a crucial element of the claim. Without a dismissal there can be no unfair dismissal.

43. Doing the best I could, I interpreted the claim form as saying (in non-legal language) that the respondent had dismissed her within the meaning of section 95(1)(a) of the Employment Rights Act 1996. I took the claimant to be alleging that the respondent's failure to allow the claimant to retract her resignation given

in the heat of the moment was, in reality, a termination of the contract by the employer. In other words, it is the "heat of the moment" argument.

44. Another possible, but less likely, interpretation of the claim form was that the claimant was alleging that she had been constructively dismissed within the meaning of section 95(1)(c). I describe that interpretation as being "possible", because the claim form alleged that she resigned partly because she was being "punished" for her sickness absence, and partly because of "intimidation" by a colleague. That interpretation was, however, less likely than the heat of the moment argument. This was because of the absence of any reference to "constructive dismissal", which is relatively commonly understood in the workplace, or any assertion that could be understood to mean that she was entitled to resign without notice because of her employer's conduct. I did consider whether the claimant was implying that she had resigned in response to conduct that was calculated or likely to seriously damage the relationship of trust and confidence. But I thought it unlikely that a person who had made such a determined effort to ask for her job back would also be arguing that the relationship of trust and confidence with her employer had broken down.

45. It was the ambiguity in the claim form that led me to try to clarify the claim at the start of the final hearing and to ask the questions that I did. The claimant confirmed that her claim was based on the heat of the moment argument. She said nothing to suggest any alternative allegation of constructive dismissal.

46. What rule 76(1)(b) requires is an assessment of the prospects of success of the claim that the claimant brought, not the claim that she might have chosen to bring. At this stage of the analysis, it is therefore the prospects of the heat of the moment argument that have to be assessed. That is not to say that it is irrelevant to consider the prospects of any alternative contention that she might have been advanced, but the proper stage to do that is when considering the exercise of the tribunal's discretion.

47. In my view, the heat of the moment argument had no reasonable prospect of success. The words of resignation were unambiguous. Although it was arguable that she had handed in her resignation in a pressurised moment, she had had a three-week cooling-off period in which she could have tried to retract her resignation. It was not in dispute that she had had a supervision with her line manager in the meantime. By the time three weeks had gone by, there was nothing to suggest to the respondent that the claimant had not meant what she said when she gave notice of termination. She was never going to be able to argue successfully that the failure to allow her to retract at that stage amounted to a dismissal.

48. All I have done so far is conclude, objectively, that the claim was hopeless. That is not the same as saying that the claimant *knew* that the claim was bound to fail. Nor does it necessarily mean that the claimant *ought to have known* that her claim had no reasonable prospect of success. I consider these questions below.

Was the claim brought or conducted unreasonably?

49. I am not persuaded that the claimant acted unreasonably in pursuing her claim at the time she first presented her claim form. She was not legally represented. She did not know the law. The point of law in hand was the question of when an employer may have to allow an employee to withdraw an unambiguously-worded notice of resignation given in pressurised circumstances, on pain of being treated

as having dismissed the employee. That is not straightforward. Even after doing a reasonable amount of research, I would not expect an unrepresented person necessarily to get it right.

50. Once the respondent had identified the weakness of the heat of the moment argument in its ET3 response, the claimant had a chance to think again. I have considered whether her decision to continue was so misguided as to amount to unreasonable conduct. I do not think it was. I take into account the claimant's state of health at that time. I also take into account that the claimant might not have realised how expensive it would be for the respondent to prepare for a final hearing.

51. In my view, the tipping point came when the claimant received the costs warning letter. The points she made in reply tended to underpin her general sense that the respondent had acted unfairly in not allowing her to withdraw her notice, and suggested that she might possibly want to argue that she had been entitled to resign because of the respondent's conduct. But those points failed to engage with the fundamental point that the costs warning letter made about the weakness of the heat of the moment argument.

52. The claimant still did not understand the legal concepts involved. Her reply demonstrated that. But if she did not know the law, she must have known that she was taking a risk. The respondent was telling her that unambiguous notice of termination could not be retracted three weeks later without consent, and that the employer's withholding of consent would not change a resignation into a dismissal. She did not know whether the respondent's legal argument was right or wrong. Without any particular basis for disagreeing with the respondent's argument on that point, she continued with the claim in the hope that the tribunal might somehow find in her favour. She also knew that if she continued, the respondent's costs would continue to escalate in the estimated sum of £1,500 to £2,000, and that the respondent would seek to get its costs back from her.

53. I have considered the claimant's mental health in deciding whether or not the claimant acted unreasonably.

54. First, so that we are clear, I should say that I believe what the claimant says about how her mental health was affecting her. Although there is very little medical evidence, I find the claimant's own description reliable. This is not just an excuse that she has made up in order to avoid a costs order. The claimant was telling the tribunal about her mental health long before the possibility of a costs application had been raised. I did not get any sense that the claimant was making assertions about her mental health as a tactic to gain advantage in the litigation. She did not, for example, include any complaint of disability discrimination in her claim.

55. Having concluded that the claimant was telling the truth about her mental health, what I must now do is assess the impact of her health on the reasonableness of her conduct of the proceedings. Based on the claimant's self-description, her depression worsened between her resignation and October 2020. Between October 2020 and January 2021 her mental health was "stable". During periods of improved mental health, she had opportunities to reflect on the wisdom of pursuing her claim. In my view it was unreasonable of her to continue with the claim after October 2020.

<u>Should I make a costs order?</u>

56. I must now decide whether or not to exercise my discretion to make a costs order and, if so, in what amount.

57. The effect of the claimant bringing a hopeless claim has undoubtedly been to cause the respondent to incur costs that it would not otherwise have had to incur.

58. Here I deal with the claimant's argument that, had she been legally represented, she would have alleged that she had been constructively dismissed. This argument counts in the claimant's favour, but only to a limited extent. The claimant had certainly raised factual allegations about the way in which she was treated, especially by Colleague A and by those managing her sickness absence process. These are allegations of the kind that are commonly found in complaints of constructive unfair dismissal. Her decision not to present her claim in that way has saved the respondent money: the final hearing would undoubtedly have lasted much longer if the tribunal had to make findings about the respondent's conduct prior to her resignation. On the other hand, any allegation of a constructive dismissal on the facts of the claimant's case would have encountered the difficulty that she had asked for her job back. I do not consider that this would inevitably have been fatal to her claim. But it would have been a weakness in her case. The magnitude of that weakness cannot be assessed precisely, but it might have given the tribunal the power to make a costs order in respect of the constructive dismissal complaint.

59. In my view, it is more helpful to view the claimant's lack of legal representation as being relevant to the *gravity* of her conduct of the proceedings, rather than its *effect.* The claimant's lack of legal knowledge is fairly clear from the claim form and the claimant's reply to the costs warning letter. She undoubtedly had a genuine sense of grievance, and was able to explain why she thought she had been unfairly treated. Her pursuit of a hopeless claim was, I am sure, mainly due to her lack of understanding of the law relating to what is a dismissal. The claimant was encouraged by the respondent to seek legal advice, but affordable legal advice is not widely available. The claimant's decision-making is likely to be explained in part by a sense of mistrust in the respondent's solicitors. It is not uncommon for self-represented claimants who have lost their jobs to be highly (and incorrectly) suspicious when their former employers' lawyers explain to them that their claim will fail. Although the claimant had a period of "stable" mental health, there were also times when her thinking was impaired through no fault of her own.

60. Having regard to these factors, I do not think it would be right to make an award for any costs incurred before October 2020. These factors are, however, less compelling when it comes to the time from October 2020 onwards. I have already found that the claimant acted unreasonably in proceeding in the face of the costs warning letter during a time of stable mental health. In my view, some costs consequences ought to follow.

61. I now turn to some of the other points made by the claimant.

    61.1. The claimant says that, if the respondent wanted a costs order, it should have applied at the conclusion of the final hearing. There was time available at the conclusion of the hearing for a costs order to be heard. That is not a reason for refusing to make a costs order altogether. The respondent was not to know that the claimant would leave all her papers in the tribunal room. If she felt disadvantaged in responding to the costs application

because of lack of access to documents, the claimant could have requested spare copies of the bundle and witness statements from the tribunal or the respondent. The claimant's argument ought, however, to be revisited when it comes to assessing the amount of costs.

61.2. I hardly need to say that the claimant's mother's current state of health must be worrying and upsetting. But it does not make it unfair for me to make a decision on the costs application. The claimant has still been able to make written representations. Nor does it mean that I should not make a costs order. It might have been different had the claimant's mother had her diagnosis before the final hearing. In that imaginary scenario, the claimant might have been so preoccupied with her mother's health that she might have had a good reason for not concentrating properly on the merits of her claim. What I must be alive to is the possibility that the claimant may now need time and money to care for her mother. That means less money to pay a costs order and potentially less opportunity to earn that money. That is a factor that should be taken into account in deciding on the amount of costs.

62. Having taken all these arguments into account, my conclusion is that I should order the claimant to pay the respondent some of its costs. The question is now, how much?

Amount of the costs order

63. In deciding on the amount of the costs order, I have taken the following considerations into account:

63.1. The respondent's solicitors' hourly rate is not excessive.

63.2. It would not be right to award the claimant's solicitors the costs of pursuing the costs application. The principal cause of the respondent's costs after August 2021 was their decision to seek a costs order. The claimant did not act unreasonably in opposing the application. The respondent could not safely assume that, just because it obtained an order for costs, the costs of its costs application would follow the event. Reinforcing such an assumption would encourage satellite litigation and would not help to achieve the overriding objective. In any case, both parties were responsible for the final hearing not finishing until 3.56pm. If they had focused on the issue in the case, there would have been plenty of time left for the costs application to be considered at the hearing.

63.3. The claimant had a legitimate expectation in September 2020 that the respondent would not incur more than £2,000 of further costs if she disregarded the costs warning letter. She knew that the respondent had already incurred costs of £7,428.50, but those were sunk costs. Withdrawing the claim (as she should have done) would not enable the respondent to get those costs back.

63.4. I find that the claimant can afford to pay some costs. She has earning potential. She managed to find employment as a "key worker" in France for a a period of time since her employment with the respondent ended. She is likely to have savings. I have drawn that conclusion from two sources. First, she sold her house a few years ago. Second, she was told exactly what she would have to do if she wanted to argue that she could not afford to pay a costs order. She was required to state whether she had savings or not. The

tribunal specifically warned her that, if she did not answer that question, the tribunal might conclude that she could afford to pay the costs order.

63.5. On the other hand, the evidence available to me suggests that there are likely to be constraints on her finances. It is likely that she has to pay rent wherever she is living in France. It is also likely that she will need to spend some of her money on supporting her mother, for example, by incurring travel costs. It is also possible that her support for her mother may limit her earning opportunities.

64. Taking all of these factors into account, I have decided that the appropriate amount of costs should be £1,000.00.

Employment Judge Horne
11 November 2022

SENT TO THE PARTIES ON
17 November 2022

FOR THE TRIBUNAL OFFICE