



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Saunders  
**Respondents:** Chic Flower Design Limited (in liquidation)

**Heard at:** Watford Employment Tribunal  
**On:** 7<sup>th</sup> July 2023

**Before:** Employment Judge Shrimplin

## Representation

**Claimant:** Litigant in person  
**Respondent:** Mr Buckle (counsel)

## RESERVED JUDGMENT ON REMEDY

1. The claimant was employed by Chic Flower Design Limited (now in liquidation). In a reserved judgment dated 19<sup>th</sup> April 2023 (sent to the parties on 21<sup>st</sup> April 2023) the claimant's dismissal on 15<sup>th</sup> January 2020 was found to be unfair. The claimant is awarded a basic award of £9,450. The claimant is awarded a compensatory award of £26,836.69 and £250 for loss of statutory rights.
2. At the time the proceedings commenced, the respondent was in breach of section 1 of the Employment Rights Act 1996 having failed to provide a statement of terms of employment. The claimant is awarded £1,050.
3. The claimant's claims for notice pay and unpaid annual leave are successful. The claimant is awarded £20,769.30 for notice pay and £2,942.31 for unpaid annual leave. The claim for unpaid overtime is dismissed.
4. The Respondent must pay the Claimant the sum of £61,298.30, calculated as follows (all figures are gross):

|                          |           |
|--------------------------|-----------|
| 4.1. Basic Award         | 9,450.00  |
| 4.2. Compensatory Award  | 26,836.69 |
| 4.3. Notice Pay          | 20,769.30 |
| 4.4. Unpaid annual leave | 2,942.31  |

|  |           |
|--|-----------|
| 4.5 Failure to provide statement of employment | 1,050.00  |
| 4.5 Loss of statutory rights                   | 250.00    |
| Total  | 61,298.30 |

5. The Employment Protection (Recoupment of Jobseeker's Allowance & Income Support) Regulations 1996 apply and attention is drawn to both the following paragraph and the Annex to this judgment. The total monetary award made to the Claimant is £61,298.30. The prescribed element is £26,836.69. The dates of the period to which the prescribed element is attributable are 16<sup>th</sup> January 2020 to 13<sup>th</sup> June 2022. The total monetary award exceeds the prescribed element by £34,461.61.

## **REASONS**

### **Preliminary matters**

6. The claimant made his claim for unfair dismissal by Chic Flower Design Limited in May 2020 and also claimed owed holiday pay, arrears of pay, and unspecified other payments. The claim was later amended to include failure to provide the claimant with a statement of initial employment particulars in accordance with s1 Employment Rights Act 1996. The claims against two other respondents were dismissed.
7. Within the remedy hearing bundle, the claimant also made a claim for costs from the respondent and the respondent's representative.

### **Hearing**

8. The remedy hearing was heard via cloud video platform on 7<sup>th</sup> July 2023. Judgment was reserved as there was insufficient time available.

### **The Evidence**

9. Two bundles of documents were provided for the purposes of the remedy hearing. The Respondent's bundle was 75 pages and the claimant's bundle was 122 pages. References to page numbers in this judgment refer to the hearing bundle unless otherwise stated and may refer to the first page of a document or to a particular page within a document.

10. The claimant gave evidence and was cross examined by counsel for the respondent.

**The issues**

11. A list of issues was set out in my Case Management Order of 19<sup>th</sup> April 2023 and was not amended by the parties. It read as follows: -

1. *Does the claimant wish to be reinstated to their previous employment?*
2. *Does the claimant wish to be re-engaged to comparable employment or other suitable employment?*
3. *Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*
4. *Should the Tribunal order re-engagement and if so, on what terms? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*
5. *If there is a compensatory award, how much should it be? The Tribunal will decide:*
  - *What financial losses has the dismissal caused the claimant?*
  - *Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?*
  - *If not, for what period of loss should the claimant be compensated?*
  - *Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*
  - *If so, should the claimant's compensation be reduced? By how much?*
  - *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
  - *Did the respondent or the claimant unreasonably fail to comply with it by summary dismissal*
  - *If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?*
  - *If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?*
  - *If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?*

- *Does the statutory cap of fifty-two weeks' pay or the relevant statutory maximum award apply?*
- 6. *What basic award is payable to the claimant, if any?*
- 7. *Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?*

**Holiday Pay**

- 8. *Whether the claimant was entitled to a payment on termination in lieu of untaken leave that accrued prior to the TUPE transfer to the respondent, or during the claimant's time with the respondent. What the claimant's leave entitlement was and whether the statutory minimums within the Working Time Regulations apply.*

**Wrongful dismissal / Notice pay**

- 9. *What was the claimant's notice period?*
- 10. *Was the claimant paid for that notice period?*
- 11. *If not, was the claimant guilty of gross misconduct? Did the claimant do something so serious that the respondent was entitled to dismiss without notice?*

**Remedy**

- 12. *How much should the claimant be awarded?*
- 13. *Is it just and equitable to increase or decrease any award payable to the claimant?*
- 14. *By what proportion, up to 25%?*

**S38 Employment Act 2002**

- 15. *When these proceedings were begun, the respondent was in breach of its duty to give the claimant a written statement of employment particulars.*
- 16. *Are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.*
- 17. *Would it be just and equitable to award four weeks' pay?*

**Background**

12. The claimant was the director of Seasonal Transformations Limited, a company which installed and then removed seasonal decorations, especially at Christmas time. That company entered liquidation and on 19<sup>th</sup> July 2019 its business was sold to Chic Flower Design Limited (Chic) by written agreement, for which Peter Lidgett was guarantor (p88). The business was continued by Chic under the trading name Seasonal Installations. The directors and shareholders of Chic were Mr Lidgett and Ms Amy Roberts, although the company was run, as were others in which Mr Lidgett was involved, by Mr Malcolm Smith. On 7<sup>th</sup> February 2023, Chic entered creditors' voluntary liquidation.
13. It was agreed that the claimant was dismissed on 15<sup>th</sup> January 2020. At the full merits hearing, I concluded that the reasons given by the respondent for the dismissal were not the correct ones and that therefore the dismissal was unfair.

#### **Remedy sought**

14. The claimant confirmed that he did not wish to be reinstated to his previous employment or to be reengaged. As the respondent company is now in creditors' voluntary liquidation, neither were viable options in any event. The claimant sought compensation only and produced a revised schedule of loss setting out his claims.
15. The Claimant sought compensation for injury to feelings and I explained to him that I no power to award a sum for that in his case.

#### **Weekly pay**

16. At the Full Merits Hearing, I found that the claimant's net salary was £6,000 per month. Multiplying by twelve months in a year and dividing by fifty-two weeks, this equates to a weekly net pay of £1,384.62.

#### **Grossing up**

17. .As both the basic and compensatory awards will be taxed, I have grossed up the award on the basis that there is a tax-free amount of £30,000 in any particular tax year and that the marginal rate would be 20%.

#### **Basic award**

18. The claimant sought a basic award reflecting 16 years' service which was agreed by the respondent. The respondent was 60 years old when he was dismissed on 15<sup>th</sup> January 2020.
19. The basic award is calculated by multiplying the years of service, by the net weekly wage, by 1.5 to reflect that the claimant was over 41 years old for the entirety of his service. The statutory cap of £525 on the amount of the gross weekly wage for the basic award as at 15<sup>th</sup> January 2020 applies (Employment Rights (Increase of limits) Order 2019). As the claimant's net weekly salary was above this statutory maximum, the figure of £525 gross weekly pay applies. The basic award is therefore  $1.5 \times £525 \times 16 = £12,600$  gross.
20. The Employment Rights Act 2002 (ERA) s 122 sets out instances where the basic award may be reduced. For these purposes, s122(2) reads as follows:

*Where the tribunal considers that any conduct of the complainant before the dismissal ... was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce the amount accordingly.*
21. Mr Buckle for the respondent argued that there should be a reduction in the basic award because of the claimant's conduct in relation to the money paid into his bank account on account of scrap metal which the claimant did not give back to the company. This was a serious breach of the trust and confidence between the claimant and the respondent. Mr Buckle argues that the claimant would have been dismissed for this conduct as he was a senior manager and the award should be reduced by 100%.
22. In response, the claimant stated that at the time he had been working ridiculous hours and he was waiting until the end of the month to deal with it as part of his petty cash expenses, rather than his motor expenses. Mr Smith had told him he was to use the money for the Christmas staff lunch. He disagreed that he would have been dismissed.
23. For the basic award (but not other awards), conduct which was not known to the employer and cannot have caused or contributed to the dismissal can still be taken into account (see ***Optikinetics Ltd v Whooley [1999] ICR 984, Parker***

***Foundary Ltd v Slack [1992] IRLR 11 and Renewi UK Services Ltd v Pamment [2021] UKEAT 2021-000584).***

24. I conclude that the claimant's conduct in respect of the monies received for the scrap metal was blameworthy in that he had opportunity to account for them to the company prior to his dismissal and did not do so. Mr Smith was aware that some money had been received for scrap metal but made no enquiries. The claimant's blameworthy conduct did not cause or contribute to his dismissal. I consider it just and equitable to reduce the basic award by 25 % or £3,150 which gives a basic award of £9,450 gross.

***Notice Pay***

25. I deal first with the claim for Notice pay as the claimant was dismissed with immediate effect. I note that I found that the contract does not reflect the terms on which he was engaged, and that no other information was provided. Under s86 Employment Rights Act 1996, the minimum period of notice is not less than 12 weeks if the period of continuous employment is twelve years or more. There is no statutory limit on a week's pay for these purposes. I therefore make an award of £20,769.30 gross.

***Compensatory award***

26. s123 of the ERA 1996 provides that the compensatory award shall be:  
*'...such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal insofar as that loss is attributable to action taken by the employer'*
27. The compensatory award usually consists of two elements, past losses from the date of termination until the remedy hearing and future losses from the date of the remedy hearing onwards.
28. The claimant provided two schedules of loss for the full hearing and an updated one for this remedy hearing. The latest one set out losses between the Effective date of termination and 13<sup>th</sup> June 2022 which was the date the case was listed for a full merits hearing which was adjourned. The claimant did not claim for future losses after that date. I have therefore not calculated future losses.

29. The claimant gave evidence and was cross examined about the work he had undertaken following his dismissal in January 2020 which was, of course, just before the Covid 19 pandemic. This included freelance work in the same field as Chic which ceased as he and the company disagreed on how the work should be done, work as an artist as he had done prior to his dismissal and various roles designing and building garden offices or playgrounds, resulting in him working as a sole trader. He also explained that he had claimed benefits through DWP but was unable to provide dates or details.
30. In his hearing bundle, the claimant provided the following documents
- HMRC tax calculation for 6/4/19 to 5/4/20 showing a repayment owed (p56)
  - A copy of a tax return for 6/4/21 to 5/4/22 showing income of £24,622 and expenses of £8,144 – a net profit of £16,478 (p58)
  - Monthly tables of income and expenses from January 2020 to June 2022 (p 78-92 and 94-105, 107-109)
  - Tables summarising his income and expenses as follows (p93, 106)
    - 20-21 - income: £29,975.33; expenses: £10,782.77; profit: £19,192.56
    - 21-22 income: £23,529.65; expenses: £8,997.62; profit: £14,532.03
  - A table summarising his income and expenses as follows (p110)
    - 20-21 income: £34,308.81; expenses: 5,815.69; profit: £28,493.12
    - 21-22 income: £23,529.65; expenses: £8,997.62; profit: £14,532.03
    - 22-23 income: £21,678.57; expenses: £37,113.46, loss of £15,434.89
31. There were no supporting documents for the information in the tables and there were numerous inconsistencies.
32. The claimant sought past losses of £6,000 net per month from dismissal in January 2019 to June 2022 (a period of 40 months). In fact, the claimant was dismissed on 15th January 2020 (not 2019) and the hearing date was 13<sup>th</sup> June 2022. Adjusting for that error and calculating in weeks, there were 125 weeks and 5 days in that period.
33. As noted above, the net weekly pay of the claimant was £1,384.62. Multiplying the two gives a claim total of £174,060.58 net.



34. There is no limit on a week's pay for the compensatory award, although, as noted above, the compensatory award has an overall statutory cap which is also set out in the Employment Rights (Increase of limits) Order 2019 and for these purposes is £86,444 gross.
35. Mr Buckle argued that, since the claim was in excess of the statutory cap, any sums mitigating the loss should be deducted from the statutory cap figure rather than the overall claim. I disagree. The guidance is clear that the statutory cap should be applied last.
36. There were no payments made by Chic, save for the purchase of personal items from the claimant.

#### **Deduction of earnings during the period**

37. I have considered carefully whether it is fair and equitable to award losses for whole of the period from 15<sup>th</sup> January 2020 to 13<sup>th</sup> June 2022 and whether the claimant mitigated his losses.
38. The claimant confirmed to me that he was made bankrupt in October 2021. In his schedule of loss, the claimant noted income received and estimated of £38,792.98 up to the 13<sup>th</sup> June 2022 hearing date. Mr Buckle highlighted that this figure differed from the figure in previous schedules of loss at ps60-65 of the main hearing bundles which was £69,198.88 (described as both including and not including estimated income).
39. I asked the claimant how he had arrived at the figure of £38,792.98 but he was unable to explain it to me. The summary tables he provided were inconsistent. I note for example that the total profit for 20-21 on p110 is different from the other tables at ps93 and 106. I also note the figures differ to those on his 20-21 tax return.
40. The income and expenses for 22-23 reflects a loss of about £15,000, however I assume this was for the whole of the financial year. The three monthly summary sheets for April to June 22 inclusive at pages 107-109 include a profit figure at p109 of £5,068.39. Adding that to the profit figures on p110 gives £48,093.54 and

to the profit figures on p106 gives £38,792.98, which is the figure in the schedule of loss.

41. As Mr Buckle pointed out, there were no underlying documents to support the figures in the schedule produced by the claimant. There were no pay slips or invoices for work done by him or supporting receipts for expenses. There were no copies of bank statements through which the respondents or I might confirm his actual income. There was also no evidence of the dates on which he did work nor his efforts to seek work on other dates. In response, the claimant said that the spreadsheets were the only documents required and had been completed honestly.
42. Mr Buckle referred to the claimant's website on which he sells his artwork, which the claimant agreed he had started in July 2021, and noted that there were no receipts for sale within the spreadsheets. I note that this work was not mentioned in the schedule of loss, although the expenses include, for example £660 in March 20 for a welder, which appears to have been used for this purpose.
43. I also confirmed with the claimant that the expenses for his office claimed in the spreadsheets were part of his home and the utilities incurred there had been calculated for tax purposes.
44. The claimant secured a role with a rival company – noted in the accounts as "Agent fees – MK" - at the start of March 2020 and worked for them up to and including June 2020 at £1,500 per month. He would do site surveys and design. He stopped working with them as they were not set up to deal with smaller jobs and would not change their ways of working to deal with them.
45. Mr Buckle raised the possibility that the claimant would have been subject to the UK Coronavirus Job retention scheme (known as furlough) during the pandemic at £2,500 per month. The claimant was unable to comment on whether that would have happened but did say he would not have been able to survive on such a sum. He did note that while installations happened around December, the peak time for securing orders was early in the year. The respondents did not provide any information on the scheme or its application nor how they had applied it at the time within Chic.

46. The claimant also confirmed that he had claimed benefits for a number of months but was unable to provide any detail about the type of payment or sums paid as his partner had dealt with it. He informed DWP of his earnings and the benefits finished after a few months as his earnings were over the limits. These figures were not included in his spreadsheets and again, there were no bank statements against which this could be checked.
47. There is a lack of clear documentation to support the income and expenses of the claimant between his dismissal and the hearing on 13<sup>th</sup> June 2022. He had clearly taken on some work in this period, some in the same area of work and some not. The schedules are inconsistent and do not include all income, for example government benefits. The steps the claimant took to secure work during the whole of this lengthy period of just over two years are not clear, especially in the light of his comments that income of £2,500 per month would not have been sufficient for him to survive.
48. I do not consider it proportionate or in keeping with the overriding objective to ask the parties to expend further time and cost to provide additional information. I also bear in mind that the claimant's dismissal was just before the pandemic when there were significant restrictions on work.
49. I deduct from the claim the maximum amount of profit as shown by the documents produced by the claimant, namely for January 20 to March 21 £28,493.12, for 21-22 £16,478 and for April-June 2022 £5,068.39 which totals £50,039.51. Deducting that from the net losses figures from paragraph 33 reduces the claim to £124,021.07 net.

### **Polkey Deduction**

50. I now consider a 'Polkey' deduction to reflect the chance that the claimant would have been dismissed in any event had the employer acted fairly (*Polkey v AE Dayton Services Ltd [1987] IRLR 50 (HL)*). Mr Buckle said that the respondent would have dismissed in any event for the retention of the scrap metal monies as that had led to a loss of trust and confidence in a senior manager. As noted in my judgment, I did not consider that that was the reason for the dismissal. It was however, something which was known to the respondent, and which might have

formed the grounds of a dismissal, as indeed might the reduction of costs of the company, and the pandemic.

51. I have to assess the chances that the claimant would have been dismissed by the respondent acting fairly, although it did not do so in January 2020, and reduce the award by that amount. I consider that the claimant's dismissal was almost inevitable. Firstly, the respondent was aware that the claimant had received monies for the sale of scrap metal. I have considered the chances that an investigation could have been conducted into the circumstances and that the respondent could have considered whether the conduct was such that summary dismissal was appropriate. Secondly, I considered the chances that the respondent could have sought to reduce its costs and review the number, seniority and costs of its employees. In both instances, I consider the chances are high that the respondent would have taken that action and could have followed a fair process. In the circumstances I consider it just and equitable to reduce the compensatory award by 75% to give £31,005.27 net.

#### **Adjustment for interest**

52. Although this case has taken some time to be dealt with, I do not consider it just and equitable to include interest on past losses.

#### **Uplift for failure to apply ACAS codes**

53. Mr Buckle suggested that the claimant had not appealed the decision and had gone to work for a rival. I reject that assertion. Emails from the claimant to Chic and its directors went unanswered. I consider it just and equitable to increase the award by 10% to reflect an unreasonable failure by the respondent to comply with the ACAS principles in the disciplinary and grievance code (s207A TULR(C)A). This increases the award to £34,105.80 net.

#### **Reduction for blameworthy conduct by the claimant**

54. I also reduce the award by 25% for blameworthy conduct on the part of the claimant under s123(6) ERA 1996 on the same basis as I did for the basic award. This decreases the award to £25,579.35 net and results in a gross award of £26,836.69 allowing for the tax free amount and tax at 20%.

#### **Loss of statutory rights**

55. I make an award of £250 gross for the loss of statutory rights as just and equitable.

**S38 Employment Act 2002 written particulars of employment**

56. When these proceedings were begun, the respondent was in breach of its duty to give the claimant a written statement of employment particulars. Many of the difficulties in this case are due to fact there were no written particulars provided when the staff transferred to Chic. There are no exceptional circumstances that would make it unjust or inequitable to award 2 weeks' pay which is capped at the gross statutory rate of £525 per week. I do not consider it just and equitable to award 4 weeks' pay on the basis that the claimant also bore some responsibility for not resolving these issues.

**Statutory Cap**

57. Finally, I apply the statutory cap of £86,444 but make no adjustment as the awards fall below this threshold.

**Additional claim for Holiday Pay**

58. The claim also included holiday pay. The claimant confirmed an error in the schedule of loss and that he sought 4.4 weeks holiday pay for the leave year April 2019 to March 2020. This was on the basis of 25 days a year, based on the contract which purported to be signed on 1<sup>st</sup> October 2017, less three days leave taken.
59. I found as a matter of fact that that contract did not reflect the terms of the contract agreed when the TUPE transfer occurred on 19<sup>th</sup> July 2019.
60. The claimant did not include any documents apart from that contract to support his claim. There were no documents to show his leave year, any untaken leave when the TUPE transfer was made, his leave entitlement or the leave he had taken. However, the respondent did not challenge the figures given.
61. In the circumstances, I do consider it just and equitable to make an award representing the statutory entitlement to leave from the date of the TUPE transfer of 19<sup>th</sup> July 2019 to the date of termination on 15<sup>th</sup> January 2020.

62. The Working Time Regulations 1998 (WTR) provide workers with a right to paid holiday. There are two elements to that right: a right to four weeks' leave in each leave year under reg 13 and, separately, a right to an additional 1.6 weeks' leave in each leave year under reg 13A, making a total of 4.6 weeks (4 weeks and 3 days).
63. As the claimant had worked for Chic for approximately 6 months, I consider that half that entitlement applies from which should be deducted the three days which had been taken. I have multiplied this by the net weekly pay of £1,384.62 to give a total of £2,353.85 ie (2.3 entitlement - 0.6 taken) and grossed up the award on the basis that there is a tax-free amount of £30,000 in any particular tax year and that the marginal rate would be 20%. The total gross award is therefore £2,942.31.

#### **Additional claim for Unpaid overtime**

64. The claimant sought payment of specific sums for his overtime worked as part of an installation crew for which the company charged the client. I note again that I found that the contract does not reflect the terms on which he was engaged. The claimant did not provide any other documentation, such as client invoices or contracts to support either that as a term of his contract or the work which was done. I therefore find that he was not entitled to any overtime payments and dismiss this part of the claim.

#### **Costs**

65. The claimant made an application for an award of costs against the respondent and the respondent's representative.
66. The procedural requirements relating to costs and preparation time orders (PTOs) against parties are identical. Rule 77 of the Employment Tribunal Rules 2013 (The Rules) provides that a party may apply for either a costs order or a preparation time order at any stage, but no later than 28 days after the date on which the judgment finally determining the proceedings was sent to the parties.
67. Mr Buckle submitted that, since my judgment on liability was sent to the parties on the 14<sup>th</sup> April 2023 and the claimant's bundle for this hearing was received by

the respondent's representatives on the 9<sup>th</sup> June, the application was made out of time.

68. I have been unable to find a direct authority on the interpretation of "judgment finally determining the proceedings". However, my judgment on liability did not conclude the proceedings as it did not deal with remedy and I therefore do not consider that the application was made outside of the period in Rule 77. If I am wrong in that, I would in any event extend the time limit for the application under Rule 5.
69. For the purposes of these proceedings, in summary, Rule 75 provides that a costs order reflects costs while legally represented or represented by a lay representative and a preparation time order is for preparation time while not legally represented. The claimant seeks payment of £212.40 in legal fees and 140.8 hours of preparation time at £41 per hour making a total of £5,985.88.
70. Rule 76(1) provides: "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 (b) any claim or response had no reasonable prospect of success.
71. Rule 80 provides : (1) A Tribunal may make a wasted costs order against a representative in favour of any party ("the receiving party") where that party has incurred costs— (a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or (b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay. Costs so incurred are described as "wasted costs".
72. Both Rule 76(1) and Rule 80 require the Tribunal to consider whether there was conduct which was "improper, unreasonable or negligent". If, and only if, there was, then the Tribunal should consider whether it would be appropriate to make an award. (*Ridehalgh v Horsefield 1994 ch 205 and Wentworth Wood v Maritime Transport Ltd UKEAT/0184/17*)

73. The claimant set out in his hearing bundle extensive correspondence between himself and the respondent's representatives and a short list of events he complains about. Although the claim for costs was made against the respondent company, there was nothing provided which raised issues about the respondent's conduct. I therefore dismiss the application for costs against the respondent as the conduct does not meet the required threshold under Rule 76.
74. In relation to the respondent's representative, in summary, the claimant highlighted the following conduct: -
- a) A failure to engage with the claimant in preparing the agenda, list of issues and bundle for the hearing in April 2021
  - b) A failure to attend at the hearing at short notice due to illness
  - c) A failure to comply with the terms of the following case management order made at the hearing
  - d) A failure to comply with the preparation orders for the hearing in August 2021, requiring the hearing to be postponed
  - e) A request to strike out the proceedings in January 2021 when the claimant did not respond to an email within 5 days
  - f) Producing a witness who was in France and unable to give evidence requiring the case to be relisted
  - g) Producing the same witness at the March 2023 hearing
  - h) Making a request to strike out the claim following the claimant's request to extend the date for exchange of documents.
75. Mr Buckle for the respondent noted that the conduct complained of was not exceptional and did not meet the required threshold, and in any event, the claimant had not been put to extra time or cost.
76. I note that in the Employment Tribunal, unlike other jurisdictions, the losing party does not as a matter of course pay the costs of the successful party. The award of costs is the exception rather than the rule and the discretion is to be exercised with great care.
77. Having carefully considered the correspondence and the submissions of the respondent and claimant, I find that the conduct of the respondent's



**Case No: 3304690/2020**

representatives highlighted does not meet the threshold required in Rule 80 and was within the range of reasonable responses in such litigation. I therefore dismiss the application for costs against the respondent's representatives.

Employment Judge K A Shrimplin

Date: 4 August 2023.....

Sent to the parties on:

4 August 2023

For the Tribunal Office