



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss N Carr

**Respondents:** 1. Huntress Search Limited  
2. JCT600 Limited

## JUDGMENT

On the Claimant's application for reconsideration, paragraphs 3 to 5 of the Judgment of 8 March 2023 are confirmed.

## REASONS

1. In a Judgment delivered at the end of a Hearing on 8 March 2023 the Tribunal dismissed the Claimant's claims. She was ordered to pay £1,050 to the First Respondent in respect of its preparation time, £409.04 to the First Respondent in respect of a witness's expenses and £4,006 to the Second Respondent in respect of its costs. The Claimant was given until 30 June 2023 to pay these sums to the First Respondent and a further two months, to 31 August 2023, to pay the Second Respondent. In these reasons, these orders are referred to collectively as the Costs Order.
2. The Claimant's application for the Tribunal's Judgment on liability to be reconsidered was refused on 7 June 2023. She has made a further application for the Tribunal's Judgment relating to costs to be reconsidered.
3. The Claimant sent several emails to the Tribunal relating to her application, with substantial attachments. The principal document was an email of 15 May 2023 attaching, amongst other things, what appeared to be copies of the grounds for two appeals she has made to the Employment Appeal Tribunal (EAT) against the Tribunal's decisions on liability and costs. The Tribunal has taken the grounds relating to the Costs Order as being the basis of the Claimant's application for reconsideration.
4. In that document, the Claimant states: "The appellant either agrees or disagrees

with the costs orders. However, appeals on the grounds of ability to pay at present.” Later in that document, she says that she “considered it fair for the ET to take the order into account in the first instance, however, strongly disagrees that the time limits given in the order completely unreasonable”. The Claimant further states that the Tribunal had “evidence in the hearing which indicated a time frame for Convalescence of approximately three months on sick leave.” She says that ordering her to pay the First Respondent £1,459.04 by the end of June 2023 was a “disproportionate timeframe for a person to go back into work and likely be on a phased return or flexible working terms to train/resettle after one year’s maternity leave from 2022-2023”. The timeframe was unfair when she was on a reduced income, had two dependants to look after financially, namely her mother and her daughter, and was unable to save the money to pay the Order. The Claimant states that she was exposed to a high dosage of radiation during her CT scans and the risk was currently under investigation. The Claimant says she is on sick leave “for the foreseeable future due to side effects” and is “happy to provide fit notes in relation to the New Medical information”. She says that if the Costs Order remains in place “a reasonable timeframe will need to be extended over period of at least two years to avoid a further misunderstanding on the appellant ability to pay”.

5. The Tribunal gave the application initial consideration under Rule 72(1) of its Rules of Procedure. The application for reconsideration did not say that there were no grounds for the Costs Order. The Tribunal therefore directed the Respondents to provide their response to the application only as it related to size and timing of the Order, on the basis that it appeared there might be new evidence available relating to the Claimant’s health, namely the radiation exposure, that might be relevant to the terms of the Order.
6. The Tribunal also asked the parties whether they considered that the application could be decided without a Hearing. The Respondents confirmed that they considered a Hearing unnecessary and eventually the Claimant too confirmed that she was content for the application to be considered on the basis of what the parties had submitted in writing. Taking into account these views, the Tribunal decided that a Hearing was not necessary in the interests of justice, given that, having considered all the documentation the Claimant had submitted, it was satisfied that her application was in fact narrow in focus and related to the terms of the Order on timing of payments only. The Tribunal invited the parties to make further representations if they wanted to. On the basis of all the documentation submitted by the parties the Tribunal has reached the following conclusions on the application.
7. A Tribunal will reconsider a decision only if it is satisfied that it is necessary in the interests of justice to do so (Rule 70). On reconsideration, the decision may be confirmed, varied or revoked.
8. It is clearly in the interests of justice that there should be finality in litigation. A Tribunal is unlikely to consider it to be in the interests of justice to reconsider a

decision on the basis of arguments or evidence that it had already considered at the time it took its original decision, or that a party had the opportunity to raise or submit at that time but did not do so. The Tribunal has considered whether it would be in the interests of justice to vary the timing of the payments in the light of the matters the Claimant has now raised.

9. At the Hearing, the Claimant gave oral evidence and submitted documentary medical evidence on the basis of which the Tribunal accepted that she had received a diagnosis of ductal carcinoma in situ that had not spread. She was due to have surgery shortly after the Hearing, at the end of March, but had not yet decided on the extent of that surgery. Contrary to the Claimant's assertion in her application, she did not submit medical evidence at the Hearing that she would need 3 months to recover from her surgery. Nor did she submit any medical evidence to confirm that she was unfit for work, at the time of the Hearing or at any other time, although the Tribunal accepted that she had needed to take time off work recently to attend medical appointments connected with her diagnosis. The Claimant's evidence was that her GP was not prepared to provide her with a fit note until the nature of her surgery was clear, at which point the GP would issue her with a back-dated fit note. In the absence of medical evidence, the Tribunal made a working assumption that the Claimant would need at least two months to recover from her surgery and so would not be able to return to work until the end of May 2022. The Claimant gave evidence about her income and expenditure, including her childcare arrangements, but made no mention of financial liability for her mother.
10. The new evidence that the Claimant has provided is as follows:
  - a. A hospital appointment letter typed on 27 March 2023 confirming that her surgery was due to take place on 6 April 2023. That was around a week later than the date mentioned in her evidence at the Hearing.
  - b. A fit note from her GP dated 7 June 2023. This confirms that she was unfit for work because of "post-surgery" from 6 June to 5 July 2023 but states that the GP would not need to assess her fitness for work again at the end of the period.
  - c. A letter typed on 17 May 2023 from the Claimant's consultant oncoplastic breast surgeon confirming that the Claimant could receive hormone treatment. The letter lists common possible side effects of that treatment as "some menopausal symptoms". In an email of 27 June 2023 to the Tribunal and the Second Respondent the Claimant confirmed that she had not yet decided whether to take the hormone treatment.
  - d. A letter dated 12 June 2023 from the radiology department at the hospital at which the Claimant's cancer is being treated confirming a discussion on 18 May 2023 when the Claimant was told she had been given an unnecessary CT scan on 20 February 2023. This had resulted in her being given an unnecessary dose of radiation equivalent to 6 years' normal background radiation. The letter states that the main risk resulting from this is an increased risk of developing cancer at some later date, which could be several decades after the exposure. The level of risk is

approximately 1 in 1,000, which the letter states could be described as low. The letter makes no mention of any immediate effects on the Claimant's health that would affect her ability to work.

11. In an email to the Tribunal and the Respondents on 23 June 2023 attaching her GP fit note of 7 June 2023, the Claimant stated: "Please send recommendations for a future hearing or three months for me to get back into work and to have the ability to deal with these costs orders my health and wellbeing is a priority right now." In an email to the Tribunal and the Second Respondent dated 27 June 2023 the Claimant stated that she was still under stress and fatigue from the ongoing treatment to her breast, the unnecessary exposure to radiation and the fact she was "awaiting further testing for genes". This was a reference to the possibility of the Claimant being tested for genetic alterations indicating an increased risk of breast cancer. She said: "please can you put this cost order on hold for 2-3 months so I can get into a better position. Hopefully, in the meantime my appeal is successful as I believe this case still has prospects for success and I won't need to give you anything. If not, please respond to a reasonable timeframe extension". These last two sentences were presumably a request to the Second Respondent not to take steps to enforce the Order.
12. On 11 July 2023, and before considering the Claimant's application, the Tribunal gave her a final opportunity to submit witness evidence and any remaining medical evidence upon which she wanted to rely by 18 July 2023. An email from the Claimant dated 19 July 2023 stated that she had "been through a very difficult time this year regarding my health and I have a very young baby to look after". She was still off work "due to my health" and was currently on Universal Credit. She did not supply a witness statement or any further medical evidence. The Tribunal took into account at the Hearing her evidence that she was in receipt of Universal Credit.
13. In summary, the Claimant provided no medical evidence that she is now or has been unfit for work, other than a GP fit note covering a period from 6 June to 5 July. The Tribunal accepts that the Claimant is worried about her health. It also accepts that since the Hearing she has received news of an increased risk of her developing cancer because of an unnecessary dose of radiation. The Tribunal acknowledges that her anxiety about her health will have been exacerbated by that news, but the fact remains that she has provided no medical evidence that she is unfit to return to work. The Tribunal does not accept that this development is a sufficient basis for it to conclude that it would be in the interests of justice to vary the due dates for payment in the Costs Order.
14. The Claimant has given no other information about her ability to pay that was not explored at the Hearing.
15. The Claimant may wish to note that the fact that a party's ability to pay is limited does not oblige a Tribunal to limit the amount of costs it awards to a figure that can be paid either at the time of the Order or within some specified timescale. It is enough that there is a realistic prospect that the party might at some point in the future be able to afford to pay (see Chadburn v Doncaster & Bassetlaw Hospital NHS Foundation Trust UKEAT/0259/14). It is open to the parties to negotiate terms on which the Respondents would be willing not to enforce the Order if the Claimant makes payment within a certain timeframe, but that is a matter for them, not the Tribunal.

16. The Tribunal concludes that it would not be in the interests of justice to vary the Costs Order and it is therefore confirmed.

Employment Judge Cox

Date: 18 August 2023