Claim No. 2205898/2022
2207875/2022

EMPLOYMENT TRIBUNALS

Claimant		Respondents
Mr Paul Whittaker	v	Dogwoof Limited
		Mr Anthony Tabatznik

PRELIMINARY HEARING

Heard at: London Central (by Cloud Video Platform)

On: 2nd August 2023

Before: Employment Judge Gidney

Appearances

For the Claimant: Mr Alex Macmillan, Counsel

For the Respondents: Mr Jonathan Davies, Counsel

JUDGMENT

The Judgment of the Tribunal is that:

1. **Issue 1a: The complaints in the 2nd Claim (2207875/2022) have been presented out of time.**

2. **Issue 1b: It was reasonably practicable for the 2nd Claim to have been presented in time. Permission to extend time for the Employment Rights Act claims is refused.**

3. Issue 1c: it would be just and equitable to extend time for presentation of the Equality Act claims by one month until 12th October 2022. Permission to extend time for the Equality Act claims is granted.

4. Issue 2: An application to amend the 2nd Claim to include a s20-21 Equality Act claim is not required and that claim proceeds.

5. Issue 3: The application to extend time to allow the Public Interest Disclosure complaints to proceed is refused. An application to amend the 1st Claim to include detriments is required and the said application is refused.

6. Issue 4: The Respondent's costs application in respect of the hearing on 10th May 2023 is refused.

7. Issue 5: The Respondent's costs application in respect of the hearing on 24th May is granted and is assessed in the sum of £5,040.00 inclusive of VAT.

8. The Respondent's costs application for today is refused.

THE ISSUES

1. The following issues were listed to be determined today:

1.1. **Issue 1**: Given the date the second claim form was presented and the dates of early conciliation, whether the complaints in the second claim (case number: 2207875/2022) have been brought in time.

1.2. **Issue 2**: If an application is required, should the Claimant's application to amend to include a complaint for failure to make reasonable adjustments (s20, s21 **Equality Act 2010**) be allowed.

1.3. **Issue 3**: Whether the Claimant is required to amend the 1st Claim to include the further information provided in respect of the detriments complaint.

1.4. **Issue 4**: Any costs application by the Respondent with respect to the hearing on 10th March 2023 (an application was made dated 19 May 2023).

1.5. **Issue 5**: The Respondent's costs application for its costs incurred on 24th May 2023.

1.6. **Issue 6**: Finalising issues in the claims, giving further case management directions and listing the case for a final hearing.

REASONS

2. The background to the applications before the Tribunal is as follows: The Claimant was employed by the Respondent as Chairman from 24 March 2003. The effective date of termination was 1 June 2022. Without any extension of time for the ACAS Conciliation process, the latest date that a Claim would have had to have been presented, in order to be in time, was 31st August 2022. Early conciliation started and ended on 12 August 2022. The parties both accept that the latest date for submitting any Claim Form was 12th September 2023. A second period of conciliation was entered into against the 1st Respondent only on 12 August 2022 and ended on 23 September 2022. Both parties accept that the second ACAS conciliation period does not extend the time to present a Claim (noting paragraph 2 of the Claimant's Skeleton Argument). The 1st Claim Form was presented on 15 August 2022, some four weeks prior to the expiry of the time limit. It was presented in time. The 2nd Claim Form was presented on 12 October 2022. It was presented approximately four weeks out of time.

3. In summary, the Claimant claims that he "blew the whistle" on various alleged business irregularities at the 1st Respondent. The alleged disclosures are said to have taken place between 21 March 2019 and 24 January 2022. The Claimant claims that as a result of these disclosures he was subjected to various detriments by the 1st and 2nd Respondent by (i) being isolated from decision making, (ii) having information withheld from him, and (iii) having a disciplinary process initiated against him resulting in his suspension. The Claimant also presents claims that his dismissal was automatically unfair for whistleblowing and/or unfair on ordinary s98(4) **Employment Rights Act 1996** ('**ERA')** basis.

4. The Claimant also claims that in conducting the disciplinary process against him the 1st Respondent breached its duty to make reasonable adjustments to accommodate his disability contrary to s.20-21 **Equality Act 2010** ('**EqA**'). The Claimant says his disability is stress, anxiety and depression. The 1st Respondent does not accept that the Claimant had the claimed disability at the relevant times and/or that it had knowledge of the alleged disability or substantial disadvantage.

5. Finally, the Claimant claims that he was discriminated against because of sex by 1st Respondent upholding Ms Godas' (a director of 1st Respondent and his former wife) grievance against him, subjecting him to the disciplinary process, suspending him and dismissing him. For the purposes of his direct sex discrimination claim the Claimant compares himself to Ms Godas, as an actual comparator.

6. At a preliminary hearing on 10th March 2023 the two claims were consolidated and the following Orders made:

    6.1. The Claimant's application to amend his second claim to include a complaint of wrongful dismissal/notice pay/breach of contract was refused;

6.2. The Claimant withdrew his claim of discrimination on the ground of marriage, which was dismissed.

6.3. It was clarified that the Claimant was not pursuing a claim for discrimination arising from disability (s15 Equality Act 2010).

7. The Respondent has made an application on 19th May 2023 for its legal costs incurred at the preliminary hearing on 10th March 2023. The basis for the application is, what the Respondent considers, the Claimant's shoddy approach to conducting the litigation prior to that date including the submissions of two claims when only one was necessary and the production of Further Particulars of Claim, this giving the Claimant effectively three bites of the cherry. The Respondent argues that information provided by the Claimant has been diffuse, confusing and overlapping in circumstances which amount to an unacceptable drip feeding of his case against the Respondent. The Respondent considers such conduct was unreasonable and had caused it to incur and waste unnecessary costs. It has quantified the costs that it seeks in respect of this application in the sum of £4,474.50 plus VAT **[164]**.

8. The Claimant made an application to the Tribunal on 6 April 2023 to give evidence from Singapore. The Claimant was informed the day before the hearing (23 May 2023) that Singapore had refused his application to give evidence from abroad. He still attended the hearing on 24th May remotely. At the outset of the hearing on 24th May 2023 reasonable adjustments for the day were discussed with Employment Judge Keogh and none were thought to be required. However during the course of the hearing the Claimant became unwell due to anxiety and a break was required. He was subsequently unable to rejoin the hearing. In the circumstances an application to adjourn was made and granted. The question of the respondent's costs incurred on 24th May 2023 is outstanding and forms Issue No. 5 for today.

9. During the hearing on 24th May 2023 Counsel for the Claimant conceded that the unfair dismissal claim had been presented out of time (i.e. not within the three month time limit as extended by ACAS conciliation). The question of

whether it was reasonably practicable to present in time remains. It was also confirmed that the holiday pay issue has now been resolved, so no application to amend the claims in that respect is pursued. The only issue arising from the further information provided by the Claimant on 31 March 2023 and the amended response was the question whether an application was required to amend the 1st Claim in respect of detriments. It was agreed by the parties at the hearing on 24th May 2023 that issue could be considered as part of any application to amend the claim. The issues to be determined at the adjourned preliminary hearing were adjusted accordingly.

10. The Claimant relied on the following matters to explain why he did not bring his PID detriment claim in time:

    10.1. He was in poor health in the period between May 2020 and July 2021;

    10.2. He was given inaccurate advice from ACAS to await the outcome of his appeal;

    10.3. He considered the dispute would be resolved through the grievance process.

11. The Claimant gave evidence under oath in support of his position on each of the issues to be determined. His case was tested in cross examination. The Claimant had been with the Respondent for 15 years as its CEO and Chairman. In his career he had worked for Marconi, Barclays Bank, Ebay and Granda, with 20-30 years in business. He had never engaged an Employment Tribunal. He was broadly aware of the right to present a Claim, even if more research would be needed to do so.

12. The Claimant accepted that he had submitted a further grievance on 13th October 2021 **[23]** which he attached to his Particulars of Claim **[11]** in his first claim on 15th August 2022. He asserted that he had been under the care of the Raffles Hospital since 2nd March 2021, having suffered TIAs (a minor form of stroke) and panic attacks. The Claimant had had a TIA in November 2021

which was no longer a problem to him by August 2022. He did not accept that he was free of health issues at the time of his dismissal on 1st June 2022, citing mixed anxiety and depression for the period June to August 2022.

13. The Claimant accepted that he undertook legal research into the requirement to notify ACAS of a dispute in May 2021 and that he appointed Shakespeares Martineau solicitors at that time, but was unable to take instructions after June 2022, and could not get advice when he presented his 1st Claim on 15th August 2022. He accepted he was aware of whistleblowing, unfair dismissal and discrimination.

14. The Claimant was represented at the time of the 2nd Claim. The Claimant asserts that he was unwell at the time. In re-examination he asserted that he was not aware of the relevant time limits

The Law

15. The applicable law is as follows:

15.1. **Time limits for ERA claims**. The statutory time limit for public interest disclosure detriment, public interest disclosure dismissal and ordinary unfair dismissal is a period of three months beginning with the date of the act or failure to act to which the claim relates, or where that act or failure is part of a series of similar failures, the last of them, or within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

15.2. It is a high bar test to extend time under this rule. In **Palmer v Southend-on-Sea Borough Council** [1984] ICR 372, CA, May LJ stated that the overall test is whether it was '*reasonably feasible*' to present the complaint to the employment tribunal within the relevant

three months.

15.3. An Employment Tribunal investigate what was the substantial cause of the employee's failure to comply with the statutory time limit; whether he had been physically prevented from complying with the limitation period, for instance by illness or a postal strike, or something similar. Factors to consider are:

15.3.1. When did the employee knew that he had the right to complain that he had been unfairly dismissed?
15.3.2. Had there has been any misrepresentation about any relevant matter by the employer to the employee?
15.3.3. Was the employee being advised at any material time and, if so, by whom; of the extent of the adviser's knowledge of the facts and of the nature of any advice which they may have given to him?
15.3.4. Has there been any substantial fault on the part of the employee or his adviser which has led to the failure to comply with the statutory time limit?

15.4. **Time limits for EqA claims**. The statutory time limit in discrimination cases is whether it would be just and equitable to extend the time limit to allow the claims to proceed. The onus lies on the Claimant to seek the exercise of the Tribunal's discretion to extend the time limit. The ET should consider all relevant factors including the balance of convenience and the chance of success: **Rathakrishnan v Pizza Express (Restaurants)** Ltd [2016] ICR 283, EAT.

15.5. The list of factors set out in s33 **Limitation Act 1980** may be of some use, as long as it is not used formulaically as a check list: **Adedeji v University Hospitals Birmingham NHS Foundation Trust** [2021] EWCA Civ 27. Those factors are:

15.5.1. the length of, and the reasons for, the delay on the part of the

plaintiff;

15.5.2. the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time limit:

15.5.3. the conduct of the Respondent after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the Claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant to the case;

15.5.4. the duration of any disability of the Claimant arising after the date of the accrual of the cause of action;

15.5.5. the extent to which the Claimant acted promptly and reasonably once he knew whether or not the act or omission of the Respondent;

15.5.6. the steps, if any, taken by the Claimant to obtain legal or other expert advice and the nature of any such advice he may have received.

15.6. It is only the 1st ACAS conciliation process that pauses the three month time limit. A second ACAS conciliation process between the same parties does not stop the clock: **HM Revenue and Customs v Mr Serra Garau** [2017] UKEAT/0348/16/LA.

15.7. **Legal Costs**. On the issue of legal costs, Rule 76 of the Tribunal's Rules of Procedure provides that a Tribunal may make a costs order and shall consider whether to do so, where it considers that:

15.7.1. 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;

15.7.2. any claim or response had no reasonable prospect of success;

15.7.3. a hearing has been postponed or adjourned on the application

of a party made less than 7 days before the date on which the relevant hearing begins.

15.8. Where the allegation is of unreasonable conduct, there is no legal requirement for a precise causal link between the conduct and the costs ordered: **McPherson v BNP Paribas** [2004] ICR 1398. However, causation is relevant and is a factor the ET must consider: **Barnsley MBC v Yerrakalva** [2012] ICR.

15.9. Rule 76(1)(c) covers the case of a postponement or adjournment. It operates independently of the principal costs rule and is not tied to vexatious or otherwise unreasonable conduct: **Ladbroke Racing Ltd v Hickey** [1979] ICR 525, EAT.

15.10. **Amendment**. The relevant law when dealing with applications to amend a Claim Form is as follows (**Selkent Bus Co Ltd v Moore** [1996] IRLR 661). The tribunal must take account of all the circumstances, with the paramount consideration being balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it. Factors to consider include:

15.10.1. the nature of the amendment application itself, i.e. whether it is minor or substantial;

15.10.2. the relevant time limits and, if the new claim is out of time, to consider whether the time should be extended under the appropriate statutory provision. The lack of a good reason for a any delay is not necessarily fatal to an application to amend. A Tribunal could fall into error if it concentrated entirely on the reason for delay at the expense of other factors, particularly that of prejudice: refer to **Pathan v South London Islamic Centre** [2013] UKEAT/0312/13 and **Szmidt v AC Produce Imports Ltd** [2014] UKEAT/0291/14.

15.10.3. the timing and manner of the application;

15.10.4. Different types of discrimination are different claims and

amendments to plead new discrimination claims are likely to be refused on the grounds that they seek to introduce entirely new claims (**Ali v Office of National Statistics** [2005] IRLR 201 and **Harvey v Port of Tilbury (London) Ltd** [1999] IRLR 693, EAT);

15.10.5. A cause of action is a set of facts that give rise to a legal remedy. The focus needs to be upon the facts that are alleged. If an amendment is in effect no more than or little more than applying a different legal label to the same set of facts, it is not a fresh cause of action; it is identifying rather a different way of looking at precisely the same facts for the convenience of the court and to enable justice to be done (**Redhead v London Borough of Hounslow** [2011] UKEAT/0409/11);

15.11. What is required is a focus on the substance of the amendment and the extent to which it gives rise to, on the one hand, minor or technical amendments at the low end of the spectrum, or a wholly new allegation raising altogether new matters not previously raised at the other end of the spectrum (**Abercrombie & Ors v AGA Rangemaster Ltd** [2013] ICR 213, CA).

15.12. In **Chaudhry v Cerberus Security Monitoring Services Ltd** [2022] EAT 172, HHJ Tayler emphasised the need to identify the amendment or amendment sorts and thereafter the need to balance the injustice and/or hardship of allowing or refusing the amendment or amendments, taking into account all of the relevant factors, including, where appropriate, those referred to in **Selkent**. In **Selkent** factors generally relevant to the exercise of discretion include (i) the nature of the amendment, (ii) the applicability of time limits and (iii) the timing and manner of the application. However, these factors are not a checklist to be ticked off. The keywords are '*the balance of injustice and or the hardship of allowing or refusing the amendment*'.

Conclusions

16. Turning now to my conclusions.

17. **Issue 1**: The Claimant has conceded that his second Claim Form is out of time, as recorded in the Order of Employment Judge Keogh of 24th May 2023 **[6]**. It contained a claim of automatic unfair dismissal, contrary to s103A of the **ERA** and a claim of sex discrimination and a failure to make reasonable adjustments, contrary to s13 and s20-21 **EqA**. The last date to present that claim in time was 12th September 2022 (four weeks after the ACAS Early Conciliation certificate). It was presented on 12th October 2022, making it out of time by a period of four weeks.

18. In the circumstances, the question for the tribunal is whether it was 'not reasonably practicable' for the Claimant to have presented his **ERA** claims in time and/or whether it would be just and equitable to extend the time for presentation of his **EqA** claims.

19. The Claimant relies on his mixed anxiety and depressive disorder (as detailed in his witness statement at paragraphs 6-16) as the principle reason why he was unable to present his claims in time. He said '*I have continued to receive treatment from Raffles Hospital as part of my ongoing recovery process*' and '*My health significantly deteriorated in the period leading up to and following my dismissal, and the significant stress caused by the circumstances I have been subjected to. These health challenges have had an adverse impact on my ability to manage my claims and to process complex issues and information*'.

20. The Respondent points to the fact that the Claimant was able to engage in a grievance process during this period, and presented his 1st Claim on 15th August 2022 and had experience of being in and commencing other litigation.

21. Was it reasonably feasible to have presented the 2nd Claim in time? This is

accepted as posing 'a high bar' for Claimants to navigate. The Claimant asserts that he relied on ACAS advice to wait until the end of the appeal. This is does not mean that it was not feasible for the 2nd Claim to be presented. In this case there is plain and demonstrable evidence that it was feasible for the Claimant to have presented his claim: he presented his 1st Claim in time. He could have included all of his claims within that Claim Form, notwithstanding the fact that his appeal remained unresolved at the time. The Claimant has instructed solicitors, Shakespeare Martineau, at the time of the 2nd Claim **[12-13]**. In my judgment it was reasonably practicable for the 2nd Claim to have been presented in time, and in the circumstances, the Claimant's application to extend time for the presentation of his automatic unfair dismissal claim is refused.

22. The test for determining whether time should be extended to present the discrimination claims (sex discrimination and a failure to make reasonable adjustments) is different. The question for the Tribunal is whether it would be just and equitable to extend the time required (in this case one month), taking all of the circumstances of the case into account, and following the guidance set out above. In my judgment a combination of (i) the Claimant's ongoing illness, (ii) the misleading advice he had received and, importantly, (iii) the lack of any demonstrable prejudice suffered by the Respondent by the one month delay, during which time the grievance and appeal process continued, are such that it would be just and equitable to allow the Equality Act claims of sex discrimination and failure to make reasonable adjustments to proceed.

23. **Issue 2**: it is the Respondent's position that the Claimant is required to apply for permission to amend his second claim to include a complaint of a failure to make reasonable adjustments, contrary to s20-s21 **Equality Act**. If an application is required, then the Respondent opposes it. The Claimant asserts that no permission is required as the claims already exist and the additional information is simply further particulars of the existing claim. The 2nd Claim Form ticks the 'disability' claim box in section 8.1 of the Claim Form **[34]**. Box 8.2 (which normally contains the details of the claim) was left blank as was box 9.2 (which normally contains details of how a Claimant values their claim).

In Box 12 the Claimant confirmed that he has a mental health disability. Box 15 contained additional information that made no reference to the Claimant's disability or his disability discrimination claim. Thereafter the Claimant provided further and better particulars of his disability claims. On 10th March 2023 Employment Judge Klimov required additional further particulars and ordered that the determination of whether a reasonable adjustments disability claim had been raised in the 2nd Claim Form with further particulars provided later, or not raised at all would be determined today. On 31st March 2023 the Claimant provided detailed particulars of his failure to make reasonable adjustments claim **[75-81]**.

24. In its Skeleton Argument (at paragraph 3b) the Respondent asserts that a successful application to amend would be required before a s20-21 Equality Act claim could be included. The Respondent stated that such an application would be opposed, whilst also (and sensibly, in my opinion) accepted that the determination of this point came down to the same issue as Issue 1, namely whether an extension of time should be granted. In my judgment the 2nd Claim Form referred to the Claimant's disability and presented a disability discrimination claim. It did not set out which type of claim was relied upon. The Claimant was asked to provide further details which he did, with the result that it was clear that a s20-21 EqA claim was being presented. I conclude that a disability discrimination claim was included in the 2nd Claim Form with particulars of it provided at a later date. As such, I consider the details provided to be further particulars of a claim that was included in the Claim Form. I have already determined Issue 1 by allowing the Equality Act claims to proceed on grounds that it would be just and equitable to do so. Accordingly an application to amend the 2nd Claim Form to include a claim of a failure to make reasonable adjustments is not required and the s20-21 claims shall proceed to the final hearing.

25. **Issue 3**: it is the Respondent's position that the issue of limitation should be considered first in respect of the Claimant's application to amend the 1st Claim to add claims for detriment. If time is extended, the amendment application is not opposed. The test for extension of time is whether it was not

reasonably practicable to have presented those claims in time, pursuant to s48(3)(b) **Employment Rights Act**. The Claimant notes at paragraph 20 of his Skeleton Argument that the amendment is not opposed by the Respondent, subject to the resolution of the limitation argument.

26. The detriments relied on in the Further Information **[57-74]** cover the period between March 2019 and June 2022, with the bulk of the detriments occurring in 2021. All could have been included in a Claim Form presented by 12th September 2022. For the reasons set out in paragraphs 17 to 22 above (Issue 1) it is my judgment that it was reasonably practicable for the Claimant to have presented his detriment claims within the three month period following his dismissal.

27. **Issue 4**: The Respondent's application for its costs made on 19th May 2023 relates to the costs it incurred by the hearing on 10th May 2023. It is based on the following submissions:

    27.1. The Claimant and his legal representatives have submitted 2 claims in place of 1, plus further information and applications to amend which amount to a number of 'bites of the cherry' to state his case.
    27.2. The Claimant has failed to cooperate with quests for further information. When provided, the responses are diffused, confusing and overlapping.
    27.3. The Claimant has drip fed the case he wishes to make. The effect of this is vexatious and amounts to unreasonable conduct.

28. The Claimant asserts that the application is misconceived and that the Claimant's conduct (in terms of presenting two claims and then further particulars and applications to amend) falls far short of the type of conduct that may merit a costs award. Whilst the presentation of the Claimant's claims has not been ideal and, I'm sure, costs could have been reduced had all of the Claimant's claims been coherently set out in one Claim Form, the question I have to ask is whether the Claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing the proceedings or the way

that the proceedings have been conducted. The Claimant was suffering from mental health issues at the time. I have not found any evidence of an intention to delay, confuse or to put the Respondent to extra costs. Unfortunately the types of delays involved in this case, and the process of requesting and receiving better particulars of a complex case such as this is not unusual and, in my Judgment, the behaviour identified by the Respondent in its application falls short of the behaviour set out in Rule 76(1)(a). Accordingly this costs application is refused.

29. **Issue 5**: The Respondent relies on its submissions contained within its application dated 7th June 2023 **[165-168]** for its costs wasted on 24th May 2023. The Claimant's representative applied during the hearing of 24th May 2023 for that hearing to be postponed. This placed the Claimant at risk of a costs order, pursuant to Rule 76(1)(c) as the request for a postponement was being made less than 7 days before the hearing. The adjournment was necessary after it became known that permission to give evidence from abroad had been denied. In addition Rule 76(2) allows for an Order for costs where a hearing has been postponed on the application of a party. Rule 76(2) is not a 'conduct' rule. Under Rule 76(2) the Tribunal is merely required to satisfy itself that the responsibility for the delay can clearly be attributed to the Claimant: refer to **Ladbroke Racing Limited v Hickey** 1979 I CR 525 E 80.

30. The Respondent's application for the costs that it had incurred at the hearing was adjourned by Employment Judge Keogh on the grounds that '*an explanation was likely to be needed as to why the Claimant did not apply to the Tribunal to give evidence from Singapore until the 6th of April*'. The prior case management order had warned the Claimant that he would need to apply. Paragraph 24(3) of that Order stated: '*parties should be aware that it could take at least eight weeks, if not longer, for an embassy or High Commission to respond to requests, so they should make the application as soon as possible*'. He did not do so promptly. It had been sent to the parties on the 13th of March 2023, some three weeks earlier. The Claimant allowed the hearing to proceed without having obtained permission to give evidence, or sought an adjournment of the hearing

31. The Claimant asserts that it was not his fault that the permission to give evidence from Singapore was refused, and that he had travelled to the UK to give his evidence. The Claimant asserts that his inability through illness to take part in the hearing is not something that should sound in costs. His witness statement said nothing about why he had delayed in seeking permission to give evidence from Singapore. It is clear that the Claimant knew that no permission had been granted, when he could have applied for a postponement without falling foul of Rule 76(1)(c). Instead the Claimant served a witness statement in the knowledge that he could not be tested on it at the hearing and only once uncontested evidence was refused that the application for an adjournment was made.

32. In my Judgment the case for a costs order has been made out under rule 76(2) and rule 76(1)(a) and (c). It was unreasonable for the Claimant to delay making the application for permission to give evidence from abroad and then to delay making the postponement application until the hearing itself as started. The Claimant became ill with stress once the hearing had started and the Respondent had made its point that it would be unfair to allow the Claimant's witness statement to be considered when it could not be tested.

33. As to the amount, the Respondent seeks £15,552.50 plus Vat (£18,663.00) for a 1 day hearing. It is over three times the amount of costs that it sought for the prior Case Management Hearing, of £5,369.40 inclusive of VAT. Whilst a substantive 1 day preliminary hearing is likely to cost more than a Case Management hearing, the difference between the two figures is not appropriate. Counsel's fees are likely to be higher for the preliminary hearing. However one would expect a lot of the costs incurred in preparing for the case management hearing, which included a bundle of documents, should have saved costs when it came to preparing for the preliminary hearing.

34. In considering the schedule of costs, it strikes me that it contains considerably more costs than the costs lost by the postponement of the Preliminary Hearing. Counsel's fees include a conference and amending the Grounds of

Resistance. The Solicitors have also claimed their fees for the conference. The Solicitors have charged for the costs of preparing their prior costs application. Doing the best that I can, in assessing the appropriate figure to be paid in costs to the Respondent, for the adjourned hearing on 24th May 2023, I assess the appropriate costs in the sum of £4,200.00 plus Vat, or £5,040.00 inclusive of VAT.

35. **Issue 6**: There was basis for any costs award to be made for the hearing that proceeded before me. The further case management of this case will be as follows:

35.1. Following the postponement of a ½ day Case Management Hearing arranged for 26th October 2023 due to lack of Judicial Resources, the parties are to write to the Tribunal by 10th November 2023 with dates to avoid for a ½ day Case Management Hearing.

35.2. The Respondent is to file the first draft of a list of Issues by 17th November 2023;

35.3. The Parties are to agree the List of Issues by 24th November 2023.

35.4. The ½ day Case Management Hearing shall be listed on the first available day after 1st December 2024, by Cloud Video Platform.

5th November 2023

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Employment Judge Gidney

Sent to the parties on:
06/11/2023
For the Tribunal: