EMPLOYMENT TRIBUNAL

Claimant: Mr Igor Donskoy

Respondent: Hogan Lovells International LLP

HELD AT: Birmingham (CVP) **ON:** 30 October 2023

BEFORE: Employment Judge Kelly

REPRESENTATION:

Claimant: In Person (with assistance of a Russian Interpreter – Ms A Leice)

Respondent: Ms S Berry (Counsel, Littleton Chambers)

JUDGMENT

1. The Tribunal's decision to strike out the Claimant's Claim is confirmed.

2. The Respondent's Application for a costs award against the Claimant on the basis that (a) the Claimant's application for reconsideration had no reasonable prospect of success, and (b) unreasonable behaviour, is granted, and the Claimant is required to pay to the Respondent a further sum of £4,000 in respect of the reconsideration application (meaning a total of £8,000) is payable by the Claimant to the Respondent).

3. The £4,000 ordered on 11 April 2023 should have been paid within 14 days of the date of that decision, and these costs must be paid within 14 days of receipt of this decision by the parties.

REASONS

1. On 11 April 2023, I heard the Respondent's Application for strike out of the claimant's claim under Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 ("the Rules") ("the Strike Out Application"). I provided written reasons setting out my conclusions in respect of the Strike Out Application, as required by the Rules ("the Judgment").

2. The Strike Out Application succeed before me and the Claimant's claim was struck out (part of the claim, for ordinary unfair dismissal had been previously struck out by order of Employment Judge Broughton and all that remained was a claim for automatic unfair dismissal said to arise by reason of a dismissal arising due to a protected disclosure (per s.43 of the Employment Rights Act 1996 ("the 1996 Act") being made).

3. By an application to the Tribunal by letter and accompanying documents dated 28 April 2023, the Claimant requested the Tribunal to reconsider its decision ("the Reconsideration Request"). A party may seek a reconsideration of a judgment under Rule 71 of the Rules, and this was a request made within 14 days of the Judgment.

4. There is only one ground upon which a reconsideration request may be made, albeit a broad one, that it is "*necessary in the interests of justice*" to do so. In this particular case, the Claimant says that this test is met, because, he says, in broad terms, that the Tribunal misunderstood his position in material respects and that he was disadvantaged by the way in which the hearing on 11 April 2023 proceeded, because he did not have the benefit of a translator – the Claimant is a native Russian speaker. A number of other grounds were raised, which I set out below extracted from the 17-page Reconsideration Request, which criticised the majority of my earlier decision.

5. The Respondent referred me to a number of authorities in relation to reconsideration, which essentially point out that there is no general right for a losing party to have a second attempt at obtaining a different decision. The effect of the authorities essentially is to identify that the tribunal has a broad discretion about when to reconsider a judgment, but that such discretion should be exercised by reference to principle.

6. I am satisfied that, in light of the alleged difficulties said to arise by the absence of a translator, and given the numerous issues raised, I considered it appropriate to proceed to a hearing of the Reconsideration Request and hear more fully from the parties. That hearing took place on 30 October 2023.

7. From the content of the Reconsideration Request, it has been possible to discern the following grounds of challenge to the Judgment (taken in order in which they are raised in the Reconsideration Request):

7.1. That no interpreter was invited to the hearing on 11 April 2023, despite it was said, the Claimant having difficulties "*to perceive a foreign language, English) by ear, and also to speak it, especially on the topic of labour law*";

7.2. That the Tribunal had "*completely ignored the Claimant's arguments and evidence*" and the "*Claimant's statements and appeals to the ET regarding obtaining evidence from the Respondent …*";

7.3. That answers given by the Claimant were "*distorted*" and that I had "*inserted the distortions into the text of the decision*";

7.4. That the Strike Out Application was decided only on the basis of "*the allegations of the Respondent without any evidence of the Respondent to support such allegations*";

7.5. That the Claimant had proven that the Respondent lied to the Tribunal "*as to the reasons and circumstances of the dismissal*" and that the Tribunal failed to find out why the Claimant was dismissed;

7.6. That the Tribunal "*did not examine the materials to which the Claimant refers as constituting a protected disclosure*";

7.7. That "*all [his] objections re significant deviations from the proper proxcedural order made in favour of the Defendant, etc*.";

7.8. That the Tribunal did not apply the balance of proof standard in deciding the case.

8. At the conclusion of the Reconsideration Hearing, I confirmed the outcome of the Reconsideration Request, and that I would not reverse the decision to strike out the claim. I informed the Claimant that, despite not yet being provided with written reasons, which I confirmed I would provide, that his time to appeal my decision would run from the date of that hearing.

9. I turn to consider the specifics of the issues raised by the Claimant.

Interpreter / language grounds

10. There was no interpreter at the hearing on 11 April 2023, although I am more than satisfied that this did not render the hearing unfair.

11. I was satisfied at the time, and remain satisfied, that the Claimant fully understood the hearings before me, and was able to effectively and fully engage with all issues raised before the Tribunal, both on 11 April 2023, and indeed, at the reconsideration hearing on 30 October 2023 ("the Reconsideration Hearing").

12. Despite the Claimant's suggestion of difficulty speaking on the topic of labour law, there was nothing in the English used at that hearing, or indeed, at the Reconsideration Hearing, that was technical or complex by reference to employment law principles. A fundamental objective of the approach in the Employment Tribunals is to ensure accessibility to lay

litigants, including those whose first language is other than English, by adopting an informal approach and avoiding the use of complex and technical terms. I am quite satisfied that such an approach was adopted at the April hearing, and indeed, at the Reconsideration Hearing. Not once did the Claimant seek to clarify with me the meaning of any words of phrases.

13. Notwithstanding my view of the Claimant's language abilities at the hearing in April, I decided that, in light of his arguments in the Reconsideration Request, that the appropriate step to take was to ensure that a Russian interpreter was present. This would ensure that there could be no suggestion of any misunderstanding or difficulties in language being said to arise.

14. At the outset of the Reconsideration Hearing, the Claimant was content to address me and liaise in English, despite having an interpreter present, and I suggested that, given his stated position on language in the Reconsideration Request, he ought to perhaps use the interpreter.

15. This is, for the most part, then what the Claimant then did. However, it is important to note that, despite this suggestion from me, on occasion, the Claimant proceeded to answers questions from me in English without awaiting the translation or in seeking assistance in translating his answer. Indeed, on one occasion, he seemed unhappy with the translation actually provided, and told the translator that he would explain his position to me directly.

16. Furthermore, I note, with interest, that the Claimant's Curriculum Vitae (set out in English), which was sent to the Respondent when applying for his role, that the Claimant set out the following information:

    16.1. as regards his language abilities, he stated: "*Languages: native Russian speaker; English – fluent; Ukrainian, Belarusian – reading comprehension*"; and

    16.2. that he had worked for 13 employers in the UK, including defending cases as a locum lawyer, and that he had an "*LLM in Maritime Law at the University of Southampton, UK*".

    16.3. An individual that has clearly achieved an LLM, a masters' degree, in a highly technical area such as Maritime Law, is not likely an individual that would struggle in any way with the language used at the hearings on 11 April 2023 and 30 October 2023, albeit, I recognise, this does not necessarily mean his oral comprehension is as advanced as his reading and/or written abilities. Nonetheless, my assessment of him was that he had no difficulties whatsoever with understanding and engaging in the issues in either hearing before me.

    16.4. On 12 July 2021, the Tribunal directed the Claimant to inform it immediately if he required an interpreter for a case management hearing listed for 14 July 2021. The Claimant made no request for an interpreter either before or at that hearing.

    16.5. I do not accept any argument by the Claimant that there has been a misunderstand, or distortion, as he puts it, on anything which he said at the 11 April 2023 hearing (indeed, he suggests that the same misunderstandings or distortions were made by Employment Judge Broughton).

16.6. Indeed, I have formed the view that the Claimant raising language issues as he has is nothing more than an unmeritorious attempt to try and find fault with the procedure from the first hearing in the hope that the decision will be reversed.

17. To the extent, therefore, that any "*distortions*" are said to have arisen by reason of a language barrier – I reject that view. Further, I am satisfied that there are no such "*distortions*" in what has been recorded in my written reasons, from what had been said by the Claimant.

Witnesses and evidence related issues

18. A claimant must set out his case and it is for him to prove that case. In ordinary unfair dismissal claims, the burden of proving the dismissal was for a potentially fair reason switches to the employer, but this is not so in complaints of automatic unfair dismissal.

19. In any event, I have proceeded on the basis, as is right to do so on an application for strike out, that the Claimant will succeed in establishing the facts upon which he relies. As such, the Claimant's criticism that the balance of probability should be applied is wrong in principle, as the approach adopted is to assume that the facts relied upon by the Claimant will ultimately be proven and so they should be taken at their highest now.

20. A claimant presents his or her case by setting out the facts upon which they say form the basis for bringing a claim. A claimant does not need to prove their claim at the time they present an ET1 claim form. No evidence is required. Unfortunately, the 78-page document filed by the Claimant is unduly convoluted, setting out almost every piece of detail that the Claimant could identify the set out his complaint, and indeed, to argue it at the same time.

21. The requirement to prove the claim comes later, at trial, following the provision of witness statements and documentary evidence in accordance with directions from the Tribunal. The initial ET1 does not need, and indeed, should not contain detailed evidence to prove a basis of claim.

22. The difficulty with this case is not realistically one related to evidence. It is one related to a lack of evidence, because even if the Claimant's evidence (as set out in his 78-page document) is accepted, it remains that his case cannot succeed.

23. It is wrong for the Claimant to say that there has been no consideration of his evidence. It is further wrong for the Claimant to say that there needed to be evidence from the Respondent - there does not, because this is claim that could not succeed even if the facts relied upon by the Claimant, without any further input from the Respondent, were proven at a final hearing.

24. At the Reconsideration Hearing, the Claimant sought to persuade me that, if I was not satisfied there was enough to go on in respect of his claim before me at this stage, I should make a disclosure order that required the provision of evidence from the Respondent relating to his dismissal. This would then assist him in getting to the truth of his dismissal, he believes.

25. This is not an appropriate approach to take. A tribunal will not make disclosure orders to enable a basis of claim to be identified, nor in relation to a fishing exercise to try and find a basis of claim that might stick in circumstances when the only remaining head of claim does not amount to a cause of action.

Queries 1 to 14 – Protected Disclosures?

26. The Claimant says that his "*Queries 1 to 14*" should have been considered at the initial hearing. However, this was not necessary, simply because the Claimant accepted that they were not a disclosure of information at the initial hearing and that any disclosure arose only after he was dismissed.

27. The Claimant seems to disagree that this is what happened at the initial hearing now. Indeed, he seems to disagree about quite a few things, including, what was said to EJ Broughton (and recorded by him on the face on his order), and indeed, what was said to me at the April 2023 hearing (and recorded by me in the written reasons given).

28. He told me at the April 2023 hearing, I specifically recall him saying so, that he was "*on his way*" to making a disclosure.

29. In his initial 78-page pleading, filed on 12 November 2023, the Claimant stated:

> ***"[a]fter my dismissal*** *the following happened. In almost three months, I have read through on the Claimant's case in the open press to get the understanding, based on my knowledge and past experience, of how the fraudulent scheme works (para 2.8) ...* ***At that point I finally realised that [R] did not understand the essence of the Client's case they were 'investigating'*** *(para 2.0) ... I was hired by [R] to find evidence in favour of the Client, and I did it honestly, and I was fired precisely because I did it well (para 2.14) ... In my comments emailed to [R] in early November 2020, I deliberately did not mention a possible wilful misconduct of [R], sincerely assuming that [R] was simply mistaken in their incorrect instructions (para 2.15) ..."*
>
> ***(my emphasis added)***

30. In his Amended Particulars of Claim, at paragraph 12.1, the Claimant states:

> *"12.1. In my ET1 claim I stated (and this was in fact) that during my work for the Respondents I did not reported (sic) to the Respondents that they were either incompetent or negligent, or colluded with the defendants in the case of their Clients ....* ***It was because I saw only a several signs of these and did not realise the whole picture****. I thought that these were mere mistakes of the Respondents (it happens time after time and not just with the Respondents). I flagged the "errors" to the Respondents and suggested how to fix them and/or how to improve the work of the Respondents' Team. // 12.2.* ***Only after my dismissal while studying all possible reasons the Respondents could have against me and Mr Olivier's strange statement that I was dismissed for my doing some investigation of their Clients (Privatbank) case I realised that the Respondents were either incompetent or negligent, or colluded with the defendants in the case of their Clients, and were afraid that I could***

understand it and expose them. I started to explain this to the Respondents in my Comments emailed to the Respondents right the next working day after the dismissal".

(***my emphasis added***)

31. Indeed, what I have recorded him saying, and what EJ Broughton records his accepting, is indeed consistent with his pleaded position. However, that appears to now be something the Claimant wishes to resile from, no doubt, I expect, as a consequence of the conclusions reached by the Tribunal that his claim cannot succeed by reason of his own stated position.

32. It is clear from the written position set out by the Claimant that he only discovered that there was something potentially to report, in this case, that the Respondent's alleged negligence and/or incompetence, and/or collusion with the defendants in the underlying case, after his dismissal.

33. Nonetheless, without the need to do so, but out of a desire to be seen to be as fair and reasonable to the Claimant as possible, I consider the essence of the queries the Claimant now seeks to rely upon as being protected disclosures.

34. A disclosure is a protected disclosure if it comes within the definition of a "*qualifying disclosure*" in section 43B of the 1996 Act. By the section, it must have the following characteristics:

    34.1. it must be a disclosure of information;

    34.2. the subject matter of the disclosure must be one of six listed types of failure in section 43B(1)(a) to (f));

    34.3. there must be a reasonable belief by the worker that the information tends to show of the failures mentioned;

    34.4. that the worker must have a reasonable belief that the disclosure is made in the public interest.

35. It is not possible in this case to determine three of the above on a preliminary basis, but it is possible to clearly identify that none of "*Queries 1 to 14*" were in fact disclosures of information. Accordingly, a claim for a protected disclosure cannot succeed.

36. The Claimant set out his "*Queries 1 to 14*" in paragraph 8.1 to 8.1 and 91. To 9.7 of his document entitled "My Comments". They were put together in a convoluted way, under attempts abbreviated headings, but essentially, they were are as follows:

    36.1. Query 1 – queries raised by the Claimant as to whether certain documents should be interpreted by lawyers instead of accountants;

    36.2. Query 2 – what approach should be adopted in finding control/ownership information of companies that were being researched;

36.3. Query 3 – whether corporate ownership only is relevant or whether practical control is relevant, and how should steps be taken to identify that;

36.4. Query 4 – whether issues relating to an alleged loan recycling scheme are relevant in some material way;

36.5. Query 5 – whether steps taken to amend a list of parties relevant to underlying issues in the claim was relevant in some way;

36.6. Query 6 – how might steps have been taken by parties in the underlying matter to misappropriate monies;

36.7. Query 7 – why were persons in the underlying matter simultaneously using several agreements in respect of the same relationships;

36.8. Query 8 – whether documents should be provided to the reviewing team members in PDF or Word format (one being easier to amend that the other);

36.9. Query 9 – how should documents be classified (or "coded"), as part of the structure of documents inheriting classifications by reference to other documents or on their own account;

36.10. Query 10 – whether only six parties in the underlying matter should be considered or whether a larger number should be considered;

36.11. Query 11 – whether the credit history of specific persons was relevant, as opposed solely to looking at credit relationships with banking entities;

36.12. Query 12 – the relativity case management system is said to have flagged entries which were useless or distracting, and a query was made as to how to use the system more effectively;

36.13. Query 13 – this query relates to a refusal by the supervising individual to permit individual reviewers to use their own customisations to the Relativity case management software; and

36.14. Query 14 – this relates to a difference of view between the Claimant and those supervising him as to whether there should be a page-by-page review of documents or there should be keyword searches utilised.

37. Ultimately, however, in none of these issues was there a disclosure of information. As I noted above, the Claimant only formed the view that the Respondent was said to not understand the case it was advising on following his dismissal. The Claimant's own case was that he was effectively making enquiries, from which he would later conclude that he may be able to make a protected disclosure. He had, he has previously confirmed, no basis to believe that he was able to make a disclosure – another essential requirement for making a protected disclosure.

38. The Claimant was, in essence, obtaining evidence and making enquiries that would give him the information he needed to make a disclosure in due course. Gathering evidence and making enquiries which could have turned into a disclosure, but gathering evidence is different to making a disclosure of information (*Aspinall v MSI Mech Forge Ltd EAT/891/01*, and *Bolton School v Evans [2006] EWCA (iv) 1653*).

39. I am satisfied therefore that even had the Claimant not have made the concession he did at the April 2023 hearing, that the disclosure of information did not take place until after his dismissal, that the "*Queries 1 to 14*" do not amount to a disclosure of information and, even if I am wrong about that, that none of them relate to any of the categories of failure set out in s.43B(1)(a) to (f).

Other issues

40. It seems that the Claimant intended not to appear at this Reconsideration Hearing, having submitted papers before the hearing indicating that he would prefer his case to be considered based on written material only. He said he had said everything he needed to say in writing and that he would not be appearing in person. However, he appears to have changed his mind at the last minute and did indeed appear.

41. The Claimant took issue, in that paperwork, with Kate Holden lodging papers at the Tribunal. Those papers were a skeleton argument, various authorities and the previous bundle, and a new bundle comprising the new papers. The Claimant was unhappy about the short period of time to read these papers, but fundamentally, they were all papers he had seen before, except of course, for the skeleton argument and the various authorities. It is quite common practice for authorities and skeletons to be lodged just before the hearing. No criticism can properly be made of the Respondent in this regard.

Costs

42. The Claimant argued that I should not have imposed a costs order on the basis of unreasonable conduct because some of the email "attacks" on Mr Bowyer, a solicitor of the Respondent, were personal attacks and not in the course of these proceedings. It is the Respondent's position that as the Claimant argues these attacks were made outside of these proceedings, I cannot reconsider this issue and that it is solely for the EAT. I disagree.

43. The entitlement to reconsider arises in respects of "*judgments*" under Rule 70 of the Rules. Rule 70 states:

"A Tribunal may, either on its own initiative (which may reflect a request from the Employment Appeal Tribunal) or on the application of a party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision ("the original decision") may be confirmed, varied or revoked. If it is revoked it may be taken again."

44. A judgment is defined by Rule 1(3)(b) of the Rules:

"a "judgment", being a decision, made at any stage of the proceedings (but not including a decision under rule 13 or 19), which finally determines—

(i)a claim, or part of a claim, as regards liability, remedy or costs (including preparation time and wasted costs); or

(ii)any issue which is capable of finally disposing of any claim, or part of a claim, even if it does not necessarily do so (for example, an issue whether a claim should be struck out or a jurisdictional issue).”

45. As a decision on costs is caught within the definition of “*judgment*”, it is something that I can reconsider.

46. Further, it seems to me that if I have wrongly applied the basis upon which a costs order should be made, or taken into account factors that I ought not to have taken into account, then it would be in the interests of justice to reconsider that decision.

47. Ultimately, however, I do not accept the Claimant’s position that these are private attacks and unrelated to these proceedings. They were made after the commencement of, and during the course of, these proceedings. I am quite satisfied that in reality, the attacks on Mr Bowyer are connected entirely to these proceedings and the issues raised within them. When assessing whether a party has engaged in unreasonable conduct, this does not mean that the enquiry is limited solely to acts in the face of the Tribunal, or indeed, correspondence with the Tribunal service. It involved the conduct between the parties too.

48. A further application has been made by the Respondent in relation to costs on the basis of the Claimant’s unreasonable conduct. Whilst I heard submissions from both parties in relation to this at the Reconsideration Hearing, I reserved my decision in that respect until the written reasons were finalised.

49. The Tribunal has the power to make a costs order under Rule 76 of the Rules in limited circumstances. It states:

“(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that:
(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted;
(b) any claim or response had no reasonable prospect of success ...”

50. If an order is to be made under the banner of unreasonableness, the Tribunal must consider the ‘*nature, gravity and effect*’ of a party’s unreasonable conduct. Whether there has been unreasonable conduct is a matter of fact for the tribunal.

51. I am satisfied that the costs order made against the Respondent was one I was entitled, and right, to make. I do not accept any suggestion that these were private attacks on Mr Bowyer that should be divorced from the conduct of these proceedings. The reality is that they would not have been made but for the issues referred to in these proceedings and indeed, they relate to the issues in these proceedings. They are attacks upon those representing a party to the proceedings and should not be divorced arbitrarily from them.

52. I remain critical of the substantial volume of documentation provided by the Respondent, which, being a lawyer from a different jurisdiction, and undoubtedly an intelligent individual, he ought to have been more constrained his approach to extracting relevant material and being concise in what he was alleging. He must have appreciated that the Respondent, and indeed, the tribunal, would have to spend considerable time wading through the significant number of documents provided. It had taken the Tribunal a significant period of time to review the materials provided, and indeed, it would have no doubt taken the Respondent significantly longer due to the need to investigate what was said and respond accordingly.

53. In reconsidering the issue of costs, I am satisfied that such an order is further justified on the basis that this was an unmeritorious claim that never had any reasonable prospects of success.

54. In his case management order of 14 July 2023, EJ Broughton stated:

"8. … When we were attempting to establish the disclosed relied on, the claimant confirmed the following:

a. He has only come to the belief that the respondent had breached some legal obligation(s) in relation to the case he was working on after extensive investigations in the 2.5 months after his contract was terminated.

b. He raised this with the respondent on 2 November 2020 and so, if this was a protected disclosed, it could not have been the reason for the earlier termination of his contract.

c. In the short period that the claimant did work for the respondent, he said he had raised a number of queries about the process being followed and had made suggestions for improvements. He said the details were in his claim form.

d. He said that, whilst still working for the respondent he:

i. had no idea that they were, on his subsequent stated belief, doing anything wrong;

ii. made no allegations of wrongdoing;

iii. disclosed no information that would tend to show such alleged wrongdoing.

e. Contrary to 8(d)(i) the claimant did, at one stage, suggest that he couldn't make any allegations of wrongdoing or disclose information pertaining to the same, because the feared he would be dismissed.

9. In any event, the claimant again confirmed that, whilst engaged, he didn't know there was any alleged wrongdoing. As a result, he didn't, at that time, believe that there was such wrongdoing. As a result, he didn't at that time, believe that there was such wrongdoing and he couldn't have disclosed it to the respondent, not did he suggest that he did.

10. In those circumstances it appeared that the claimant was acknowledging that a number of the key requirements for a protected disclosure (under section 43B Employment Rights Act 1996) could not be met such that his claim could not succeed.

11. The respondent has already made clear that they intend to apply to strike out the claim and apply for costs but this hearing wasn't listed to consider that."

55. Indeed, if the weaknesses in the Claimant's case were not apparent at the start, they would have been from 14 July 2021. It is after this time, from August 2021, that the attacks cited in my earlier decision were made on Mr Bowyer. The appropriate step for the Claimant to have taken was to withdraw the claim and not persist in a hopeless cause. Yet, despite that, the claim had to be addressed by the Strike Out Application and, now, falls to be considered yet again, as a result of the Reconsideration Application.

56. It is clear that inappropriate allegations continue to be made by the Claimant. Indeed, this time, the tribunal is the subject it seems of an alleged collusion with the Respondent. In this Reconsideration Request, the Claimant says:

"(49) .... I noticed one interesting feature about Employment Judge Broughton and Employment Judge Kelly that they used to help the Respondent in the present case.

(50) There were two hearings...and they both did not offer me an interpreter, although they knew that English was not my native language ...

(51) Both took advantage:
- of my problems with listening comprehension and spoken English, as well as of my answers, which because of these problems could not be stated by me intelligibly and briefly;
- of the fact that it is forbidden in ET to record who said what during the hearings
...

(55) Both judges do not take into account anything I wrote to the ET (as well as not a single written evidence submitted by me to the ET: they do not notice then)... It seems that Sherlock Holmes is just a foolish child against them.

(56) That is, I have been writing for two years about one thing, and in their hearing for an hour with a little conversation with them, I testify, for no apparent reason, against myself. Obviously, this does not happen, namely, one of us is lying about what I stated in the hearing... Therefore, these two judges are playing tricks with justice.

(57) Well, I'm not really surprised, since the saying 'a raven does not peck out an eye of another raven' works worldwide. These two Judges and the Respondent are colleagues in trade, whereas the Claimant in this case for these three is nobody from nowhere.

(58) However, the fact that this was done repeatedly indicated a systemic problem in the administration of justice in this ET. I think that the topic is worthy of public discussion, since it is likely that the same unfair approach is applied in other cases."

57. Towards the end of his grounds, the Claimant appears to make a veiled threat to the Respondent's Mr Bowyer:

"Again, Mr Bowyer is not even able to realise that because of his lies in the ET the £2bn clam ... has already been destroyed... Tomorrow HL will loose (sic) the case for sure, day after tomorrow the case decision will be published and known in the whole Ukraine (sic) in all CIS countries with their best regards to Hogal Lovells and Mr Bowyer. Again, I will appeal to the EAT and further on also, till all my evidence is weighed and lies of Mr Bowyer exposed. In the

meantime, good luck, my dear Mr Bowyer, you are the winner taking all and very soon you will take on board even more."

58. In a letter to the Tribunal dated 27 October 2027, the Claimant stated, amongst other things, including his apparent intention not to attend at the hearing for which a translator has been directed to be provided:

"... the ET judge did not allow me 'to call [my] evidence and present [my case] and to ensure 'that any witnesses [I] wish to call can take part in the hearing. Accordingly, apart from what I have earlier submitted to the Tribunal in written (sic), nothing else can happen during the scheduled reconsideration hearing. Consequently,

(a) My participation in the hearing of the case is useless and

(b) It looks that the ET judge does not want to find out anything relevant in this case, that is, the ET judge does not want to decide the case fairly.

It seems that during the scheduled hearing the EJ judge wants to find a different pretext for refusing my claim, i.e. the one that will prevent the EAT from recognizing the ET judge as the inventor of a weird tale that I filed a claim that I was fired for protected disclosure ... then I wrote about it to the ET judge throughout the 3 years of the ET trial, but at the hearings out of thin air I admitted that I done the disclosure after I was fired. That is, the ET judge's story is about me being so mental that I do not understand that in this order of things that there is no causal connection between disclosure and dismissal and, as the result, there can be no claim on my part. With great respect, but such 'reconsideration' does not look relevant to rendering justice."

59. The Claimant's conduct in these proceedings has been, and continued to be, unreasonable. It would seem that even the Tribunal's impartiality is called into question, without any proper basis for doing so, and the attacks on Mr Bowyer continue.

60. Despite seeking a reconsideration, raising issues about a language difficulties, which are then addressed by a further hearing with an interpreter present, the Claimant then declined in correspondence to attend, and raises issues about the impartiality of the Tribunal through some colourful metaphor concerning ravens and expressly stating that the Tribunal does not want to deal with the case fairly. Suggestions of the Tribunal Judges "*inventing*" a "*weird tale*" or a "*story*" are unreasonable and inappropriate.

61. I am further of the view that the issues in relation to language difficulties were wrongly and unreasonably advanced by the Claimant in this case.

62. I take the view that the Respondent's approach is one designed to cause maximum disruption to the Respondent, perhaps in the hope of securing a settlement outside of these proceedings, or perhaps as some form of revenge for his dismissal. Either way, I am more than satisfied that his approach has been and continues to be unreasonable in these proceedings. I agree that the Respondent should have a further costs award in its favour.

63. In an email to the Claimant of 26 October 2023, the Respondent indicated its intention to apply for a further costs order. It pointed out that Counsel's fee for the hearing was £2,500, and that over 10 hours had been spent on dealing with the Reconsideration Request by the Respondent, for which it sought £1,140 per hour.

64. I have already made clear my view that to seek £1,140 per hour for the Respondent's time is unrealistic. It may well be that Mr Bowyer, whom I understand to have been principally dealing with this matter can charge such rates to his clients, and that his time may well have been diverted to this matter instead of rendering such charges, these are levels of costs which are unrealistic to recover on the basis of claims between parties to Employment Tribunal proceedings.

65. I am content to allow Counsel's fee of £2,500, because I have no doubt at all, that counsel has deserved that fee. There would have been considerable documents to review, and considerable time spent preparing for the hearing of the Reconsideration Request. As to the Respondent's fees, I am prepared to allow a figure of £1,500, meaning, that I order a further sum of £4,000 be paid by the Claimant to the Respondent in relation to the reconsideration aspect of matters.

66. This further costs order of £4,000 must be paid within 14 days of receiving these written reasons, whereas the former sum of £4,000, should have been paid within 14 days of my decision of 11 April 2023.

Employment Judge Kelly

4th December 2023