Case No: 3314001/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Miss O A Ajiga	**v**	(1) The Chimneys Ltd (2) Elysium Health Care (3) Tafara Care Services Ltd

Heard at: Cambridge On: 30 October – 2 November 2023

Before: Employment Judge L Brown

Members: Mr Allan and Ms Allen

Appearances
For the Claimant: In person
For the Respondents: (1) Mr Lawrence - Counsel
(2) Mr Lawrence - Counsel
(3) Mr Busumani (in person)

RESERVED COSTS JUDGMENT

1. The Claimant is ordered to make a payment of £9,240.00 including vat to the First and Second Respondent in respect of the First and Second Respondent's application for costs on the 2 November 2023 ("Joint Costs Application").

REASONS

Introduction

1. By a Joint Costs Application, the First and Second Respondent applied for costs of £9240.00 against the Claimant based on her conduct of the proceedings prior to, and during the hearing.

2. The final hearing of this matter took place over four days between 30 October and 2 November 2023. The Tribunal had to reserve its decision on liability and did not have time to deal with the cost's application. By a reserved decision sent to the parties on 14 December 2024 the Tribunal dismissed the Claimant's claims ("the liability decision").

3. The present decision on costs is to be read in conjunction with our liability decision, as that liability decision had set out her unreasonable behavior in detail.

4. Following the hearing we invited the Claimant to make further submissions on her means prior to this cost's decision being promulgated. The Claimant had not addressed us at all on that issue during the hearing and we wanted to give her a further opportunity to do so.

5. In reply on the 17 January 2024 the Clamant sent in her submissions headed *'Appeal against Employment Tribunal Cost Order,'* and *'Appeal against Employment Tribunal Final Judgement,'* but nowhere in the lengthy document did the Claimant address the issue of her income and instead she simply made further wide-ranging allegations of bias against me as the Judge of this Tribunal.

6. She also sent a recording of a conversation between herself and someone from the Third Respondent which related to the request by her for further work with them, but this was not relevant to the issue of the Joint Costs Application.

Procedure

7. On 17 January 2022, the Claimant failed to attend an in person Preliminary Hearing which was listed to deal with a Strike Out application and/or a Deposit Order application and to deal with any amendments. It was therefore relisted.

8. On the 1 June 2022, a telephone Case Management Hearing took place before Employment Judge Gumbiti-Zimuto. The Claimant was ordered to provide Further Information about her claims by 24 June 2022.

9. She was also warned that other claims may be struck out due to Judge Gumbiti-Zimuto's view that the claims lacked any reasonable prospect of success on jurisdictional grounds. They were a claim for negligence against the First Respondent, and a claim for misrepresentation against the Third Respondent.

10. A Preliminary Hearing took place on 15 February 2023 before Employment Judge Mason via CVP. The Claimant's claims for victimisation and discrimination as an agency worker were then struck out.

11. The Claimant withdrew her claims for negligence and misrepresentation on the grounds of lack of jurisdiction at the hearing before Judge Mason.

12. The Claimant was allowed to amend her claim to add a claim of discrimination on the grounds of religious and philosophical belief and was also allowed to add a reference to an alleged attempted second sexual assault by Amir Asil on 16 March 2021.

13. The Second Respondent's applied to strike out the religious discrimination claim that had been permitted by way of amendment at the hearing, but that application failed.

14. It was also said that the Claimant was applying to further amend the grounds of her claim and that the statutory provisions she relied on were provisions in the EqA 2010 relating to direct sex discrimination, harassment related to sex, sexual harassment and direct religious discrimination.

15. It was ordered that if the Claimant wished to pursue this application to amend, she must provide certain information to the Tribunal, with a copy sent to the Respondents, by 8 March 2023.

16. During that hearing Judge Mason made various observations about the Claimant as follows: -

*(25) Whilst reviewing these orders and the extent of compliance, the Claimant said the Judge's written orders and case summary are wrong and do not reflect what the Judge agreed to at the hearing. She said the Judge was a liar and a racist and described his orders as "p*ss and poppycock" as he had clearly given her leave to amend her claim at the hearing. However, it is apparent from his written orders that he did not give leave to amend, only ordered her to confirm whether she was making an application and, if so, to provide further information of her proposed amendments. On receipt of the written orders, she did not apply for reconsideration or appeal.*

(26) I am satisfied that the Claimant has now indicated she is applying to amend the grounds of her claim and that the statutory provisions she relies on (or alleges have been breached) are provisions in the Equality Act 2010 relating to direct sex discrimination, harassment related to sex, sexual harassment and direct religious discrimination.

(27) The Claimant insists that she has already provided this information, However, several attempts to ascertain at the hearing when and how this information has been provided were unsuccessful. I have therefore ordered the Claimant to provide this information by 8 March 2023 (see Order 17 above). If as she says she has already provided this information, she can cut and paste into a new document. If she provides this information, the Tribunal will then consider and determine her application to amend having taken into account any representations by the Respondents. For the avoidance of doubt, this particular application to amend has not yet been determined.

(31) Finally, during the hearing the Claimant frequently spoke at length and extremely fast despite being asked on a number of occasions to slow down. In her own words, she was "screaming" at the top of her voice. Her degree of agitation was such that I drew the hearing to a close at 2.20pm as it was no longer possible to make any progress. This was regrettable as we were unable to finalise the issues or resolve the third application to amend and this may result in a further preliminary hearing.

17. The parties were ordered to endeavour to agree a List of Issues by the 22 March 2023.

18. On 16 March 2023, the Claimant then provided Further Information in relation to her application to further amend her Particulars of Claim eight days later than ordered. She also served her Schedule of Loss.

19. The First and Second Respondents endeavoured to agree a List of Issues but this did not result in an agreed List of Issues, and their draft of the 8 March 2023 **[p.134]** was never agreed to by the Claimant, and the Claimant simply served her own List of Issues on the 22 March 2023 **[p 130].**

20. On 26 May 2023, a Third Preliminary Hearing took place in person before Employment Judge Anderson. It was recorded that the Claimant sought to bring a claim of discrimination on the grounds of race and to extend her claims of discrimination on the grounds of religion. It was recorded the facts relied upon had been raised in various documents filed by the Claimant since the claim was filed on 28 July 2021 but were not raised in the ET1 form **[p. 245].**

21. In particular, the Claimant sought to amend her claim to include an allegation that she was treated less favourably in the allocation of shifts and observations on the grounds of race. She also alleged that she and other agency staff were made to do cleaning tasks and that this was less favourable treatment on the grounds of race and religion.

22. The Claimant's application to amend her claim as detailed in the Further Information filed by the Claimant on 16 March 2023 was refused.

23. In the Case Management Order Judge Anderson recorded the following about the Claimant: -

49. The Claimant was disrespectful in manner towards the tribunal and to Ms Meenan throughout the hearing. She was also rude, in my view, to the interpreter when he tried to assist her. She rebuffed, rudely, attempts by Ms Meenan to assist her as she had not been able to access the electronic documents on her laptop. She accused her of being condescending. Ms Meenan was not in my view being condescending. The Claimant accused Ms Meenan of lying in the hearing. Ms Meenan listened to the Claimant's points and if she agreed with them, she brought that to my attention and admitted she had made a mistake. The Claimant referred to Ms Meenan as Caucasian, in what was appeared to be an accusation of racism. She made frequent comments throughout the hearing about the Respondents and the tribunal being biased and prejudiced. She said that she knew before I gave my decision, that I would not decide in her favor in relation to her amendment application. When I told the Claimant not to be rude to the interpreter, she said that I was trying to make her look bad and was doing that on purpose in order to upset her. She said that I was biased against Africans.

50. At the end of the hearing Ms Meenan said that she wanted it to be recorded that she intended to take instructions on making a costs application due to the Claimant's unreasonable and vexatious conduct.

24. The Claimant, by the time of the hearing, had not filed a witness statement of any substance. Instead, her witness statement simply referred to documents in the bundle. This was surprising given the multiplicity of

documents filed by the Claimant when attempting to broaden her claim repeatedly in the run up to the hearing.

Day 1 of the Hearing

25. Unusually, the hearing was disrupted to an extreme level due to the unreasonable behaviour of the Claimant throughout the hearing, the details of which are set out in detail in the liability decision. I therefore repeat those details in summary form only in this Judgment and the Claimants unreasonable behaviour consisted of the following: -

25.1 Arguing without any reason about who should give evidence first.

25.2 Unreasonably demanding to know how exactly how long the First and Second Respondent's cross-examination would take.

25.3 Unreasonably demanding details of the Brief sent to the Representative appointed by the First and Second Respondent, Mr Lawrence, Counsel appearing on their behalf, and needlessly complaining about their change of Counsel.

25.4 Despite it being explained in the chat box that the hearing would start fifteen minutes later than planned after a break, unreasonably complaining about this.

25.5 On various occasions when I advised the Claimant, we could not hear her on the CVP screen she replied, 'I don't believe you,' and in effect accused me of lying.

25.6 When being asked why she was giving evidence from outside on the street under a tree she replied with words to the effect that it was making her *"emotionally destructed, and I could be tapdancing in your court room - we must proceed".*

25.7 When problems continued with us not being able to hear the Claimant or due to her connection dropping in and out, she typed in the chat box as follows: -

"I don't know what the Judge said before now, what is R responding to - this is racism in the fact of the Court – I need to give my evidence - my data and network is intact – I can hear you all – how come you cannot hear me – how come you cannot read my chats".

25.8 Shouting over me and arguing throughout the four-day hearing.

25.9 Complaining about not being allowed to give evidence in chief by making an oral statement to the court, and arguing unreasonably about my direction that the ET1 would stand as her witness statement in the absence of a witness statement from her.

25.10 Making sarcastic remarks' when I told her she couldn't give evidence standing under a tree such as,' *"I am not standing Judge, I am sitting".*

25.11 When cross-examining witnesses shouting over their replies and refusing to allow them to answer.

25.12 Constantly equivocating about whether she needed an interpreter or not.

25.13 Arguing about my directions about the interposition of witnesses due to their availability.

25.14 Repeatedly shouting out 'Jesus Christ' or 'Jesus' despite my clear order to her not to blaspheme in my court.

25.15 When I ordered her to *"stop shouting over the witness, desist from doing that",* the Claimant showed contempt for this Tribunal by persisting in doing so.

25.16 Deliberately not repeating the words of the oath according to the exact wording, showing deliberate contempt to this Tribunal.

25.17 Sending numerous emails of complaint to the Tribunal throughout the hearing which included the following quote which was a clear reference to myself as the Judge:

"a corrupt doctor can still save lives. But a corrupt Judge is more useless than a wizened limb or tasteless salt. He is useless to himself and the society".

25.18 Stating that *"jungle justice is prevailing"* and referring to this Tribunal as a *'Jungle Court.'*

25.19 Ringing the Tribunal making an allegation of racism as recorded on the Tribunal system as follows: -

30/10/23 CLMT was ticket out of the hearing, rang to make a complaint that the judge is racist, advised to put the phone down and re-join the hearing. KC

25.20 As pointed out by Counsel accusing all Judges who had conducted preliminary hearings of being racist. He reminded the Tribunal that she had also called Judge Mason a *"racist"* and referred us to page 256 of the bundle. He pointed out that at no point had the Claimant withdrawn her accusations against the Employment Tribunal that it was racist and that she said it in her email to the Tribunal this morning. He remarked that the email about corrupt Judges was obviously directed at me as the Judge. As Counsel very astutely remarked:

"This is a Claimant who will not be spoken to by anybody and has to be in complete control of any interaction and in order to achieve that goal she will shout over the person she is speaking to and who is trying to reply to her and this behaviour has been endemic in every interaction with witnesses in this Tribunal and she seems to take pleasure in showing contempt for the rules of this Court and this Tribunal and she showed that contempt to this Tribunal, to myself, Counsel and to the witness that gave evidence".

26. On the fourth day of the hearing, we heard oral submissions from all parties.

27. The First and Second Respondents then applied for costs in the sum of £9,240.00 and in doing so referred in detail to her unreasonable conduct of the proceedings and her outrageous conduct towards other Judges and myself. They said as follows: -

    27.1 Regarding making costs award there are two stages, firstly are the grounds made out? Should we make such costs award, and he said obviously grounds had been made out on grounds of the Claimant's conduct, and that we had heard his submissions as to her claims and the lack of any reasonable prospects of success.

    27.2 In terms of the discretion to award costs he said a Tribunal would only see cases like this at most once in a year. He said the Tribunal would not be accustomed to seeing Claimants who behaved like this. He said the First and Second Respondents should not have had to spend money and time, and what a waste of time and energy this had been, especially for their witnesses, such as Ms Willamott who was still here, and had been waiting three days to give her evidence. He said she had been apprehensive due to the Claimants cross examination style. He also said that Mr Masillo and Mr Khan had to take annual leave to be here yesterday, and that it had been an anxious and humiliating experience that the Claimant had put them through.

    27.3 He asked us to imagine what it had been like to be Mr Khan from events complained of when he first learned of her complaints against him in early March 2021, all the way up to today. He said that these are allegations that were so unreasonable and vexatious and were not the sort of life challenge that people should be expected to endure from time to time, that they are horrible things, and can bring years of distress to people even to the flinty and resolute individuals in this case.

    27.4 He concluded by saying that we may consider the Claimant's ability to pay but the law does not require us to do so. He said it may affect the exercise of discretion on grounds of unreasonable conduct but that we are not required to link it the costs incurred.

28. The Third Respondent said due to not wishing to spend any more time on this claim, and due to having no expectation of recovering any costs against the Claimant they did not apply for costs against the Claimant.

29. The Claimant did not address us on the issue of the cost's application against her, apart from saying 'I need to pay my bills,' nor did she make any submissions about her income.

The law

30. Rule 75 ET Rules provides:

> *(1) A costs order is an order that a party ('the paying party') make a payment to—*
>
> *(a) another party ('the receiving party') in respect of the costs that the receiving party has incurred while legally*

represented or while represented by a lay representative.

31. The power to make a costs order is in Rule 76 which provides:

> *(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;*

32. Rule 84 ET Rules provides:

> *"In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay".*

33. In *Gee –v- Shell UK Limited [2003] IRLR82* Sedley LJ said:

> *"It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to ordinary people without the need of lawyers and that in sharp distinction for ordinary litigation in the United Kingdom losing does not ordinarily mean paying the other side's costs".*

34. Costs orders are the exception rather than the rule in employment tribunal proceedings, but that does not mean that the facts of the case must be exceptional (*Power v Panasonic (UK) Ltd* UKEAT/0439/04).

35. Such awards can be made against unrepresented litigants, including where there is no deposit order in place or costs warning (*Vaughan v London Borough of Lewisham* UKEAT/0533/120).

36. In terms of abusive, disruptive or unreasonable conduct, "unreasonableness" bears its ordinary meaning and should not be taken to be equivalent of "vexatious" (*National Oilwell Varco UK Ltd v Van de Ruit* UKEAT/0006/14).

37. In *Millan v Capsticks Solicitors LLP & Others* UKEAT/0093/14/RN the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3-stage exercise, which in essence is as follows:

37.1 Has the putative paying party behaved in the manner proscribed by the rules?

37.2 If so, it must then exercise its discretion as to whether it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).

37.3 If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may consider the paying party's ability to pay).

38. The tribunal does not need to identify a direct causal link between the unreasonable conduct and the costs claimed (*MacPherson v BNP Paribas (London Branch*) (No 1) [2004] ICR 1398).

39. In *AQ Ltd v Holden* [2012] IRLR 648 HHJ Richardson said:

"… [32] The threshold tests in r 40(3) are the same whether a litigant is or is not professionally represented. The application of those tests should, however, consider whether a litigant is professionally represented. A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. … Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As Mr Davies submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests in r 40(3). Further, even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.

[33] This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity…"

40. The Tribunal has a discretion, not an obligation, to consider means to pay. This was considered in the case of *Jilling –v- Birmingham Solihull Mental Health NHS Trust* EAT 0584/06. It was established in that case that if we decide not to take into account the party's means to pay, we should explain why, and if we decide to do so, we should set out our findings about the ability to pay, what impact that has had on our decision whether to award costs and if so, what impact means had on our decision as to how much those costs should be.

41. In *Yerrakalva v Barnsley Metropolitan Borough Council* [2012] ICR 420 (paragraphs 39 – 41) it was emphasised that the tribunal has a broad discretion, and it should avoid adopting an over-analytical approach, for instance by dissecting the case in detail or attempting to compartmentalise the relevant conduct under separate headings such as "nature", "gravity" and "effect". The words of the rule should be followed, and the tribunal should:

"Look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had".

42. The Court of Appeal in *Yerrakalva* made it clear that although causation was undoubtedly a relevant factor, it was not necessary for the tribunal to determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. Furthermore, the circumstances do not need to be separated into sections, each of which in turn forms the subject of individual analysis, risking the court losing sight of the totality of the relevant circumstances.

Conclusions

43. There are three stages in determining whether or not to award costs under Rule 76 ET Rules; first, whether the party has reached the threshold of establishing that a party had acted vexatiously, abusively or disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; and that a claim had no reasonable prospects of success. Second, if the threshold has been reached, the tribunal will go on to consider whether it is appropriate to make an order for costs. Finally, if it is appropriate to make an order for costs, the tribunal will go on to consider the amount of such order.

Threshold - Are There Grounds for Making a Costs Order?

(1) Conduct – Rule 76.1(a)

44. It is incumbent on the Tribunal to satisfy itself that the conditions in Rule 76(1) apply before any order can be considered.

45. We note that the Claimant was a litigant in person while the First and Second Respondents were professionally represented. We do not judge her against the same standards as we would a professional representative. We recognise that litigants in person can lack objectivity in relation to their own claims, and it is often not easy for them to feel a sense of trust towards a former employer or their professional representative during a legal dispute.

46. However, the Claimant's conduct meant that the tribunal had to conduct three preliminary hearings due to her refusal to engage with the Respondents in any meaningful way about agreeing a List of Issues, and due to her repeated attempts to widen her claim though various amendment applications, only one of which was granted. We note one application to amend was granted but it should not have required three preliminary hearings to identify all the issues and deal with preliminary

matters, and we are in no doubt this Claimant wasted a lot of Tribunal time in an unjustified manner. In any event in the hearing by Judge Mason he had to bring the hearing to a close , midway through her hearing, due to her agitation and what he described as screaming, as set out above, and which he said *'was regrettable as we were unable to finalise the issues or resolve the third application to amend and this may result in a further preliminary hearing.'*

47. During the hearing she refused to follow my direction and showed utter contempt to the Tribunal throughout the four-day hearing, by continually arguing with me and shouting over witnesses when they tried to give answers to her questions. Counsel for the Respondents described her behavior to this Tribunal as 'outrageous.' We find that she lengthened the hearing by at least one day due to her unreasonable conduct of the proceedings. This put the First and Second Respondents to extra costs.

48. In the circumstances, the tribunal finds that the First and Second Respondents have established that the Claimant's conduct was unreasonable as defined in Rule 76 (1)(a) of the Employment Tribunal Rules of Procedure in respect of the Joint Costs Application, and that this threshold was met in terms of the test which was whether the Claimant 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, and we concluded that the threshold test was met.

(2) No Reasonable Prospects of Success – Rule 76.1(b)

49. We also considered whether the claims had no reasonable prospect of success at any stage from the outset to the final hearing.

50. We had regard to the following about the claims brought by the Claimant: -

    a. This was a case where it was simply the Claimant's word against the witnesses for the Respondents.

    b. Overall, we did not find the Claimant a credible witness in any way whatsoever. She was inconsistent throughout her evidence. One example of her inconsistency was when she asserted that the Third Respondent paid her in cash and then she later denied saying this in her submissions.

    c. The allegation that on 5 March 2021, Amir Assal of the Chimneys Ltd/Alysium Health Care Ltd (R1/2) revealed the Claimant's identity to a female third party amounted to, at most, an 'inkling', and it can be put no higher than that, in that she alleged that Amir Assal, (Mr Amir Khan), was talking about her to a female third party, and in particular the allegation is that he "revealed the Claimant's identity to a female Third party and disparaged the Claimant's personality to other HCA workers at the Respondents". We found that this was an allegation which was utterly without merit, or substance.

d. The allegation that Mr Khan then tried to assault the Claimant a second time, following a U-turn in her direction as he approached the staff room was described by Counsel for the First and Second Respondent as “surreal”. Yet again this was an allegation that was utterly without merit, or substance, as we found Mr Khan simply changed direction and walked towards her, and we agreed that this allegation was ‘surreal.’.

e. The account of the unlocking of the toilet door also lacked any credibility. Statements by the Claimant, such as Mr Lewis Masilo must have known she was in there, as they had passed on the stairs shortly before, showed, in the view of this Tribunal, that there were never any reasonable grounds for the Claimant believing he had deliberately opened the toilet door knowing she was in there with the intent of sexually harassing her. As Counsel for the Respondents said she had clearly never once entertained the idea that this incident was due to Mr Masilo simply not realising anyone was in the toilet.

f. For the allegation that the treatment by the Respondents related to her religious belief there was not one shred of evidence for this allegation and no coherent evidence was ever given about this to this Tribunal.

51. We therefore find that under Rule 76.1(b) her claims had no reasonable prospects of success from the outset, and that the threshold was also reached for making a costs order under this limb.

Should a Costs Order Be Made?

52. We consider a number of factors in deciding whether to exercise our discretion to make an order for costs. Although there are grounds for making an order against the Claimant, the decision to do so is still at the Tribunal’s discretion. As stated above, it remains the case that costs orders in the Employment Tribunal are the exception rather than the rule, and there are three factors we should consider. Firstly, the Claimant is a litigant in person conducting her case against a professionally represented party, secondly we should consider whether to take into account her financial means, and finally we should consider the nature of the allegations made.

53. As to the first factor Tribunals are prepared to give unrepresented parties more latitude in the way they conduct litigation. However, the Claimant’s conduct of litigation, has fallen drastically short of an average litigant in person. As Counsel for the Respondents himself said this sort of conduct by the Claimant is the type of conduct Tribunals may only see once a year.

54. She had been told in clear terms what had been expected by this Tribunal during the hearing about her behavior, and that she was to stop shouting over myself as the Judge, and over the witnesses while she cross examined them, and not to blaspheme in court, but she took seeming pleasure in ignoring such warnings.

55. As for the second factor the Respondents said we were not obliged to take account of the Claimants ability to pay but this Tribunal decided to allow the Claimant one further opportunity to make representations about this

following the hearing in any event. Despite the Claimant being invited to make submissions about the cost's application against her after the hearing concluded she simply submitted a lengthy document accusing this Tribunal of bias and said nothing about her ability to pay. In the circumstances, we do not have regard to the Claimant's ability to pay any costs order as she has failed to submit anything about this.

56. Thirdly and looking at the whole picture, as *Yerrakalva* suggests we do, and the claims brought, we find that the Claimant acted unreasonably, in a nutshell, by attempting to repeatedly widen her claims, by refusing to agree a List of Issues with the First and Second Respondents, and by wasting court time and wasting the Respondents costs throughout, by reason of her unreasonable conduct as detailed above at both preliminary hearings and particularly at the final hearing. She also brought claims that had no reasonable prospects of success from the outset.

57. Drawing all these factors together, we were of the view that this was one of those rare cases where it was appropriate to make a costs order against the Claimant.

The amount of the order for costs

58. Given that costs are compensatory, and we remind ourselves that despite the Claimants unreasonable behavior they are not punitive, it is necessary to examine what loss has been caused to the receiving party. In this regard the Court of Appeal in *Yerrakalva,* held that costs should be limited to those 'reasonably and necessarily incurred'. Furthermore, the amount of loss will not necessarily be determinative, since a tribunal may consider other factors, such as the means and the conduct of the parties.

59. The First and Second Respondent claim the sum of £9240.00 including VAT. These were their total costs in the defence of this claim. For three preliminary hearings, followed by a four-day final hearing, we find that these costs were reasonably and necessarily incurred, and were proportionate.

60. As we have set out above, the core unreasonableness of the Claimant in bringing these proceedings, and her conduct throughout, started at the outset of this claim until its conclusion. *MacPherson* makes clear that we do not have to identify a direct causal link between the unreasonable conduct and specific costs being claimed.

61. Applying *Yerrakalva* and looking at the totality of the Claimants conduct of the proceedings from the outset, and the fact that the claims had no reasonable prospects of success we award the total costs claimed of £9240.00.

Case No: 3314001/2021

Employment Judge L Brown

26 March 2024_____

RESERVED JUDGMENT & REASONS SENT TO
THE PARTIES ON
3 April 2024
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FOR EMPLOYMENT TRIBUNALS