EMPLOYMENT TRIBUNALS

Claimant: **Mr J Ellis**

Respondent: **GB&I Limited**

Heard at: **London South (Croydon)** **On: 3/10/2024 (then on the papers)**

Before: **Employment Judge Wright**
Ms J Cook
Mr T Harrington-Roberts

Representation:
Claimant: **Mr J Frater - consultant**

Respondent: **Mr N Smith - counsel**

COSTS JUDGMENT

It is the unanimous Judgment of the Tribunal that the respondent's application under Rule 76 (1)(a) and (b) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, schedule 1 is successful.

The claimant is to pay the sum of £18,199.00 to the respondent.

REASONS

1. At the outset of this Judgment, the Tribunal repeats its previous statement that nothing in this Judgment undermines the seriousness of the claimant's ill

health and his more recent diagnosis. The Tribunal notes and echo's the respondent's sentiment and sincerely hope his health will recover.

2. The liability hearing took place over four days, although it was listed for five days. The claimant was unavailable between 11am and 2pm on the fifth day due to a medical appointment and due to those timings, this resulted in the fifth day of the hearing being ineffective. On the morning of the fourth day, oral Judgment was delivered. After a short adjournment to take instructions and discussions about the practicalities of proceeding, the Tribunal heard the respondent's costs application.

3. The Tribunal had made the finding that although the main thrust of the claimant's claim was for unlawful disability discrimination contrary to the Equality Act 2010 (EQA); what the claim was really about was money. The respondent had paid sums of money which were found to be monthly payments and expenses as a loan on account of profits. The claimant had received the sum of £436,911 from the respondent and its predecessor between 1/1/2016 and 11/9/2018. The respondent had never made a profit and it had survived due to some income and loans.

4. At the time the claimant's terminated his engagement, the respondent stated that he owed his creditors a total of £104,480 on 27/9/2018 (page 289).

5. The claimant had other debts, including owing HMRC circa £65,000.

6. Ideally, the Tribunal would have preferred to adjourn the costs application to the fifth day of the hearing. That would allow the parties time to have a discussion about costs and for the claimant to collect his thoughts and to address his ability to pay any costs which were awarded. Due to the claimant's medical appointment, this was not possible.

7. After discussions, the Tribunal decided that the proportionate way to proceed, which was in accordance with the overriding objective; was to hear the application, to give directions and to reserve its decision.

8. The respondent provided a costs warning letter dated 6/9/2024 and a breakdown of its costs sought. The respondent limited its costs to the period 6/9/2024 and the final hearing.

9. The respondent's application was made under Rule 78 (1)(a) and (b).

10. The costs warning letter relied upon the claims having no reasonable prospects of success; whereas Mr Smith's oral application relied more upon the conduct of the proceedings and/or vexatiousness.

11. The overlap between unreasonable conduct and the claim having no reasonable prospects of success is acknowledged.

12. In view of the fact the Tribunal was not able to determine the costs application during the currency of the hearing, it made an Order for Directions on the 9/10/2024.

13. It directed the claimant to provide confirmation of his medical appointment on the 4/10/2024. On the 17/10/2024 the claimant's representative wrote and explained that there was no letter confirming the appointment as it had been arranged urgently. On the 1/11/2024 the representative sent to the Tribunal a 'letter from the GP noting his cancer treatment appointment' A letter dated 22/10/2024 was provided. That letter did not confirm the appointment on the 4/10/2024 and it referred to the claimant having been assessed by an Oncologist on the 12/9/2024 with a recurrence of his cancer and him having started on ongoing treatment and that he is being reviewed monthly.

14. The Tribunal also received an email from the claimant's wife on the 28/10/2024. That email was not copied to the respondent. Furthermore, the claimant's representative wrote to the Tribunal on the 1/11/2024 and enclosed recent correspondence the claimant had received. It appeared therefore that Mr Frater remained on the record as the claimant's representative.

The Law

15. The material provisions of the ET Rules 2013 governing costs applications are excerpted below:

> Rule 74. Definitions
>
> (1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing). […]
>
> Rule 75. Costs orders and preparation time orders
>
> (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.
>
> Rule 76. Where a costs order or preparation time order may or shall be made

(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; or
>
> (b) any claim or response had no reasonable prospect of success.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

Rule 77. Procedure

A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.

Rule 78. The amount of a costs order

(1) A costs order may—

> (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
>
> (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying
> the same principles; […]

(3) For the avoidance of doubt, the amount of a costs order under sub-paragraphs (b) to (e) of paragraph (1) may exceed £20,000.

Rule 84. Ability to pay

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.

16. When determining an application for costs, the ET should apply a three-stage approach:

    16.1. Is the relevant jurisdictional threshold in rule 76 met?

    16.2. If so, should the ET exercise its discretion in favour of making a costs order?

    16.3. If so, what sum of costs should the ET order?

17. For the purposes of rule 76(1)(a) the word “unreasonable” is to be given its ordinary English meaning and is not to be interpreted as meaning something similar to vexatious (Dyer v Secretary of State for Employment UKEAT/0183/83).

18. The Tribunal should consider the nature, gravity and effect of the unreasonable etc conduct, but it is appropriate to avoid a formulaic approach and have regard to the totality of the relevant conduct. As Mummery LJ explained in Yerrakalva v Barnsley MBC [2012] ICR 420, CA at §41:

> The vital point in exercising the discretion to order costs is to 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 […]

19. It should, however, be noted that the Tribunal is not confined to making an award limited to those costs caused by the unreasonable conduct. As Mummery LJ confirmed in McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA:

> 39. Miss McCafferty submitted that her client's liability for the costs was limited, as a matter of the construction of rule 14, by a requirement that the costs in issue were "attributable to" specific instances of unreasonable conduct by him. She argued that the tribunal had misconstrued the rule and wrongly ordered payment of all the costs, irrespective of whether they were "attributable to" the unreasonable conduct in question or not. The costs awarded should be caused by, or at least be proportionate to, the particular conduct which has been identified as unreasonable.
>
> 40. In my judgment, rule 14(1) does not impose any such causal requirement in the exercise of the discretion. The principle of relevance means that the tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion, but that is not the same as requiring BNP Paribas to prove that specific unreasonable conduct by the applicant caused particular costs to be incurred. As Mr Tatton-Brown pointed out, there is a significant contrast between the language of rule 14(1), which deals with costs

> generally, and the language of rule 14(4), which deals with an order in respect of the costs incurred "as a result of the postponement or adjournment". Further, the passages in the cases relied on by Miss McCafferty (Kovacs v Queen Mary and Westfield College [2002] ICR 919, para 35, Lodwick v Southwark London Borough Council [2004] ICR 884, paras 23-27, and Health Development Agency v Parish [2004] IRLR 550, paras 26-27) are not authority for the proposition that rule 14(1) limits the tribunal's discretion to those costs that are caused by or attributable to the unreasonable conduct of the applicant.
>
> 41. In a related submission Miss McCafferty argued that the discretion could not be properly exercised to punish the applicant for unreasonable conduct. That is undoubtedly correct, if it means that the indemnity principle must apply to the award of costs. It is not, however, punitive and impermissible for a tribunal to order costs without confining them to the costs attributable to the unreasonable conduct. As I have explained, the unreasonable conduct is a precondition of the existence of the power to order costs and it is also a relevant factor to be taken into account in deciding whether to make an order for costs and the form of the order.

20. Mummery LJ did not resile from these observations in his later judgment in Yerrakalva, though he did emphasise in Yerrakalva that whilst the Tribunal is not limited to awarding those costs incurred by the receiving party as a result of the paying party's unreasonable conduct, the "effect" of the unreasonable conduct will often be a relevant factor in the Tribunal's exercise of its discretion.

21. In circumstances where the Tribunal finds that the jurisdictional threshold in rule 76 is met, the Tribunal retains a broad discretion as to whether to make a costs order and the amount of any costs awarded. Whilst there is no closed list of factors relevant to the exercise of the Tribunal's discretion, the following factors are often relevant:

    21.1. Costs orders are intended to be compensatory, not punitive (Lodwick v Southwark LBC [2004] ICR 884, CA). Therefore, the extent of any causal link between the unreasonable etc conduct and the costs incurred will normally be a relevant discretionary factor (Yerrakalva), albeit there is no requirement to establish a causal link between the unreasonable conduct and the costs incurred before an order can be made (McPherson).

    21.2. The paying party's ability to pay is a factor which the Tribunal is entitled, but not obligated, to consider (see rule 84). Where regard is had to the paying party's ability to pay, that factor should be balanced against the need to compensate the receiving party who has unreasonably been put to expense (Howman v Queen Elizabeth Hospital Kings Lynn UKEAT/0509/12).

21.3. Any assessment or consideration of means need not be limited to the paying party's means as at the date the order is made. It is sufficient that there is a "realistic prospect that [they] might at some point in the future be able to afford to pay" (Vaughan v London Borough of Lewisham [2013] IRLR 713, EAT).

21.4. Where the Tribunal does decide to take the paying party's means into account, it must do so on the basis of sufficient evidence (for example by the paying party completing a county court form EX140) (Oni v NHS Leicester City UKEAT/0144/12).

21.5. There is no requirement to limit costs to the amount the paying party can afford (Arrowsmith v Nottingham Trent University [2012] ICR 159, EAT).

21.6. The Tribunal may have regard to the means of a party's spouse or other immediate family members (Abaya v Leeds Teaching Hospitals NHS Trust UKEAT/0258/16).

21.7. Whether a party is legally represented may be a relevant factor. An unrepresented litigant may be afforded more latitude than a party who has the benefit of professional legal advice and representation (AQ Ltd v Holden [2012] IRLR 648, EAT).

22. In Radia v Jefferies International Ltd UKEAT/0007/18/JOJ the EAT said:

> '61. It is well-established that the first question for a Tribunal considering a costs application is whether the costs threshold is crossed, in the sense that at least one of Rule 76(1)(a) or (b) is made out. If so, it does not automatically follow that a costs order will be made. Rather, this means that the Tribunal may make a costs order, and shall consider whether to do so. That is the second stage, and it involves the exercise by the Tribunal of a judicial discretion. If it decides in principle to make a costs order, the Tribunal must consider the amount in accordance with Rule 78. Rule 84 provides that, in deciding both whether to make a costs order, and if so, in what amount, the Tribunal may have regard to ability to pay.
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> 62. At the first stage, accordingly, it is sufficient if either Rule 76(1)(a) (through at least one sub-route) or Rule 76(1)(b) is found to be fulfilled. There is an element of potential overlap between (a) and (b). The Tribunal may consider, in a given case, under (a), that a complainant acted unreasonably, in bringing, or continuing the proceedings, because they had no reasonable prospect of success, and that was something which they knew; but it may also conclude that the case crosses the threshold under (b) simply because the claims, in fact, in the Tribunal's view,

had no reasonable prospect of success, even though the complainant did not realise it at the time. The test is an objective one, and therefore turns not on whether they thought they had a good case, but whether they actually did.

63. In this regard, the remarks in earlier authorities, about the meaning of "misconceived" in Rule 40(3) in the 2004 Rules of Procedure, are equally applicable to this replacement threshold test in the 2013 Rules. See in particular Vaughan v London Borough of Lewisham [2013] IRLR 713 at paragraphs 8 and 14(6). However, in such a case, what the party actually thought or knew, or could reasonably be expected to have appreciated, about the prospects of success, may, and usually will, be highly relevant at the second stage, of exercise of the discretion.

64. This means that, in practice, where costs are sought both through the Rule 76(1)(a) and the Rule 76(1)(b) route, and the conduct said to be unreasonable under (a) is the bringing, or continuation, of claims which had no reasonable prospect of success, the key issues for overall consideration by the Tribunal will, in either case, likely be the same (though there may be other considerations, of course, in particular at the second stage). Did the complaints, in fact, have no reasonable prospect of success? If so, did the complainant in fact know or appreciate that? If not, ought they, reasonably, to have known or appreciated that?

Findings of fact

23. The history of the claim and the explanation for the delay in the final hearing taking place are set out in the liability Judgment.

24. The respondent submitted and the Tribunal accepted that the claimant could not pursue his unauthorised deduction from wages claim under s.13 Employment Rights Act 1996 (ERA) as the payments which were made to him by the respondent, did not fall within the definition of Wages in s.27 ERA and indeed were expressly excluded under s.27(2)(a) ERA. Furthermore, as the claimant had been found to be a worker by EJ Millns on 29/6/2024 (page 103), he could not pursue his claim of a failure to provide written particulars of employment.

25. The claimant relied upon four allegations of harassment. He was diagnosed with cancer in May 2018 and he was therefore disabled at the relevant time and that was his protected characteristic.

26. The Tribunal found that the allegations were inadequately framed in that they were not dated and they did not state who the harasser was. They were:

Did the company or any of its employees engage in unwanted conduct as follows:

2.1 from about March 2018, during weekly conference calls, require a breakdown of all his costs and expenses [39]

2.2 requiring him to "beg and plead" for his salary and/or expenses to be paid [66]

2.3 in August 2018 saying that he was in the gutter and bankrupt [67]

2.4 informing clients that he had left due to ill health.

27. The claimant led little evidence-in-chief in respect of the allegations and his chronology differed from that of his representative's skeleton argument.

28. On the claimant's own account of the allegations of harassment, 2.1 pre-dated his diagnosis of cancer in May 2018. The Tribunal found that the claimant did not 'beg and plead' for payments; but that it was the claimant who pestered the respondent for loans and payments.

29. The Tribunal robustly rejected the allegation that (it turned out) Mr Wong had referred to him being in the gutter. It found that bankrupt was an accurate description of the claimant, but found on the balance of probabilities, Mr Wong did not use that term. At best, that allegation was going to depend upon whose version of events the Tribunal preferred as there was no documentary evidence of it. Furthermore, it was objectively correct to describe the claimant as bankrupt and to do so would not amount to harassment related to the claimant's cancer (per s.26 EQA).

30. This was also against an evidenced background of Mr Wong: relating his father's similar cancer diagnosis and experience to the claimant in order to reassure him; offering him free accommodation while the claimant was in Wales having treatment; and; offering an extremely generous 'rescue' package (which it was found he and Mr Hughes would have funded personally) for the claimant once the extent of his debts became apparent.

31. The final allegation was at least on the face of it, causally linked to the claimant's cancer. Again, there was no documentary evidence of it and the Tribunal preferred the respondent's explanation that some clients (by that stage there was a limited number) were told the claimant had left. There was

no reference made by the respondent to the claimant's health, to those clients.

32. In respect of the discrimination arising from disability (allegations 2.1, 2.2 and 2.3), the unfavourable treatment was 'stalling on his salary, which forced him to consider sleeping in his car whilst undergoing cancer treatment and to cancel his health insurance policy (allegation 3.1).

33. The Tribunal found there was no stalling on the claimant's monthly payment and up until the 6/8/2018 when the claimant's treatment commenced, all payments had been paid (page 291). The Tribunal found the notion of the claimant considering sleeping in his car when Mr Wong on the 3/8/2018 offered him free accommodation was nonsense (page 237). Finally, there was simply no evidence that the claimant had cancelled his health insurance policy and EJ Millns had made a finding that the policy was maintained by Blue Ocean (page 87).

34. The Tribunal found the unfavourable treatment was simply not made out.

35. The respondent sent a focused costs warning letter to the claimant on the 6/9/2024. It is worth setting out the letter in full:

> *'We refer to the upcoming Final Hearing in the above case in respect of your client's remaining claims for unlawful deductions from wages, discrimination arising out of disability and disability-related harassment.*
>
> *In a sensible attempt to streamline or settle this claim, our client would like to resolve the claim for unlawful deduction from wages in respect of your client's monthly remuneration of £8,450. Although we have still not received an updated schedule of loss from you, we calculate that the amount of that sum which was unpaid for August 2018 was £4,950, and for the first 11 days of September 2018 (i.e. up to the date of your client's resignation from his engagement) was £3,055; the unpaid amount therefore totals £8,005.*
>
> *In respect of your client's claim for expenses, rent and school fees, our client does not believe there is merit to this claim for multiple reasons; not least, that they are excluded from the definition of wages by section 27(2) of the Employment Rights Act 1996, but also because your client has failed to disclose evidence that any such amounts were owing to him. In respect of your client's claims for discrimination, as you are aware, our client strongly believes that these claims also have no reasonable prospects of success. The only evidence existing regarding GB+I's treatment of your client in relation to his cancer treatment shows that GB+I gave your client nothing but support regarding this. The dispute*

regarding your client's costs, expenses and financial situation clearly did not arise out his disability, but out of the disclosures which he made to our client during 2018 about his debts and also out of the financial burden to GB+I of continuing to engage your client in circumstances where its income had dried up due to the financial situation in the UAE. There is no evidence in the hearing bundle that could suggest any causal link between your client's cancer and the claims he has made. Our client therefore believes that proceeding to the Final Hearing in respect of his remaining claims will achieve nothing but to waste time and costs for both parties.

For the reasons set out above our client would like to make your client the following alternative offers of settlement, on a no admission of liability basis and subject to COT3 wording:

1. Accept the offer of £8,005 in full and final settlement of all claims and sensibly conclude these proceedings for a sum which represents the value of the only claim which has reasonable prospects of success, without incurring the costs of preparing for and attending the Final Hearing.

2. Accept the offer of £8,005 in settlement of the claim for unlawful deduction from wages, and continue with the discrimination claims and claim for expenses/living costs. If your client chooses this option, however, please be aware that if your client loses those claims for the reasons set out in this letter, then our client reserves the right to make a costs application against him under rule 76(1)(b) of the Employment Tribunal Rules of Procedure on the basis that it has now been made clear to him on multiple occasions that those claims have no reasonable prospects of success.

Due to the proximity of the Final Hearing and the fact that our counsel's brief fee will shortly be incurred if the claim is not settled, we would be grateful if you would respond to this offer by no later than close of business on Wednesday 11 September 2024.

We look forward to hearing from you as soon as possible.'

36. The Tribunal reminds itself that the claimant was legally represented by his current representative since at least the preliminary hearing on the 12/4/2019. He also had the benefit of legal advice prior to his resignation.

37. The respondent's settlement offer of the 6/9/2024 was reasonable. It in fact offered the claimant two options and both options included the provision of a payment of over £8,000 to the claimant. The second option exceptionally allowed the claimant to take the £8,000 to withdraw the unauthorised

deduction from wages claim and still to pursue the discrimination and money claims.

38. The costs warning letter also to some extent, 'mirrored' the findings and conclusions which the Tribunal reached. The respondent quite rightly pointed out, as the Tribunal found, that the allegations of discrimination made, lacked a causal link to the protected characteristic of disability.

39. What this proposal offered to the claimant was certainty and it removed any risk to him in pursuing the claims; at least in respect of the first option. It also obviously avoided the need for any further preparation between the 6/9/2024 and the 30/9/2024, in addition to the need for attendance at and participation in the final hearing. It removed the risk of a costs application if the claimant took up the first option and the second option allowed him to continue to litigate the claims which were not settled; with the costs risk if he was unsuccessful.

40. If the claimant took the first option, although his complaints would not be tested and determined by the Tribunal, this was more of a disadvantage for the respondent than the claimant. The claimant had not effectively made any causative link between the allegations and the protected characteristic of disability. The allegations although vague, were especially offensive and upsetting for Mr Hughes and in particular Mr Wong. They were the antithesis of the compassion the claimant had been shown. It was arguably more of a disadvantage for the respondent not to have the complaints aired, determined and for its individuals to be exonerated; than it was for the claimant to simply walk away.

41. A refusal of an offer of settlement is a factor which the Tribunal can take into account (Kopel v Safeway Stores plc 2003 IRLR 753). The Tribunal has found the settlement offer to be reasonable and unusual in that it gave the claimant two settlement options.

42. The Tribunal therefore finds that the conduct of continuing with the claim, was unreasonable from the point the settlement offer/costs warning was made.

43. It was unreasonable to continue with allegations which in the main, were on the claimant's own chronology of events, out of time. Or alternatively, had no reasonable prospect of success as they pre-dated the claimant's cancer diagnosis. Furthermore, it was unreasonable to maintain allegations which had either no causal link to the claimant's cancer or of which there was no evidence (when if the claimant's case was correct, that evidence could have been obtained). The effect of the claimant's unreasonable conduct was to force the respondent to defend unmeritorious allegations; which ultimately, the Tribunal determined were not well-founded. There is also the impact the

claims had upon the individuals at the respondent and in particular Mr Hughes and Mr Wong; to be facing these allegations for such a long period of time.

44. Accordingly, the Tribunal found that it was appropriate to exercise its discretion and to make a costs award in favour of the respondent.

45. The Tribunal then turned to the sum which should be awarded. The Tribunal has already made findings about the claimant's disastrous finances. The claimant provided a witness statement dated 1/11/2024 when he said that he does not have enough income to cover his living costs in the UK, he is not able to save and he is not able to pay off any of his considerable debts. He confirmed his debts in the UK are in the region of £500,000 and his debts in Dubai remain.

46. The claimant did not give any evidence about any assets which he has. The claimant throughout these proceedings has used two correspondence addresses; one in West Sussex and one in Brighton. The Brighton property was referred to in correspondence with the respondent when the claimant said for example on the 5/9/2018 'I will live in Brighton and cover my own hotel costs in Cardiff' (page 254). The claimant used the Brighton address when he presented his claim on 3/12/2018.

47. The Tribunal is cautious when a claimant is impecunious, to use that factor to decline to make a costs award. The rationale for that is, particularly in this case where the claimant has been living beyond his means since at least 2016 and in all likelihood prior to that; that his financial mismanagement should not protect him from a costs order. Otherwise, a prudent claimant, who has savings and assets, is more likely to be ordered to pay costs, as they have the means to do so. In any event, Rule 84 (ability to pay), clearly allows for this as it provides that the Tribunal 'may have regard' to the paying party's (in this case the claimant's) ability to pay any costs ordered.

48. In the claimant's correspondence, there is reference to him being covered by the Debt Respite Scheme Regulations 2020 (referred to as the Mental Health Breathing Space). As the Tribunal understands this and despite the assertions made upon the claimant's behalf; those Regulations do not prevent a costs order being made. They do however impact upon those costs, if not paid, being enforced. That is a matter for the respondent and not this Tribunal. The respondent made a similar point in its submission of the 5/12/2024.

49. In respect of Counsel's fees, the Tribunal finds them to be reasonable. The Tribunal does take issue with section 5 (work done in relation to documents/ preparation) in the costs schedule. There does not appear to be any justification for claiming for work done after the 12/9/2024 in respect of the preliminary hearing, preparing an interlocutory bundles and pleadings and in

respect of disclosure/the hearing bundle. Reviewing however the respondent's time-recording, the Tribunal is satisfied the work done does relate only to preparation for the hearing (pages 9 and 10 of the mini bundle).

50. The costs allowed are:

50.1.	Counsel's fees of	£12,000 plus
50.2.	Solicitor's costs of	£ 6,199
50.3.	Total	£18,199

51. The Tribunal reminds itself that costs are compensatory and are not punitive. A costs Order of £18,199, which may not immediately be paid, and which does not cover the entirety of the fees incurred, is a reasonable sum be paid to the respondent. It is accepted that it does not fully compensate the respondent for its legal costs.

52. For those reasons, the Tribunal finds the costs threshold is met, it was persuaded to exercise its discretion in favour of the respondent and taking into account the claimant's ability to pay, it was prepared to Order him to pay to the respondent the sum of £18,199 (no vat has been claimed).

9/12/2024

Employment Judge Wright