



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Joseph Ogundemuren**

**v**

**Clarion Housing Group Ltd**

**Heard at:** Watford

**On:** 21 October 2024, and on 29 November 2024 (in chambers)

**Before:** Employment Judge Bedeau

**Members:** Mr D Sutton  
Mr D Wharton

## **Appearances**

**For the Claimant:** Ms S Stanley, counsel

**For the Respondent:** Mr H Dhorajiwala, counsel

## **RESERVED JUDGMENT ON COSTS**

The unanimous judgment of the tribunal is that there will be no award of costs.

## **REASONS**

1. Following the conclusion of the liability hearing held on 5 to 7 June 2023, the tribunal promulgated the judgment on 5 September 2023. We held that the claim of detriment on grounds of trade union membership and/or activities, s.146 Trade union and Labour relations (Consolidations) Act 1992, was not well-founded and was dismissed. The claims of harassment and victimisation were dismissed upon withdrawal by the claimant.
2. Both the respondent and the claimant have applied for costs to be awarded against the other.

## **The issues**

3. In relation to the parties' costs applications, the issues are: whether they have established that the other had acted unreasonably in the way

proceedings have been conducted, rule 76(1)(a) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013; whether the claim of unauthorised deductions from wages, had no reasonable prospect of success, rule 76(1)(a); whether the claimant in bringing or in the conduct of proceedings, had acted vexatiously in pursuing the unauthorised deductions from wages claim; and whether the tribunal should take a party's ability to pay into account when considering whether to award costs?, rule 84.

### **Findings of fact**

4. The tribunal did not hear oral evidence as the parties relied on their respective bundle of documents. Helpfully, the facts are uncontroversial.
5. At the commencement of the liability hearing, Ms Stanley, counsel on behalf of the claimant, told the tribunal that the claimant's solicitors, on 26 May 2023, emailed the tribunal copying the respondent's legal representatives, stating that the claimant had decided to withdraw his unauthorised deductions from wages claim but reserving the right to pursue such a claim in the County Court. Ms Stanley clarified that the only claim before the tribunal was detriment because of trade union membership and/or activities.
6. In an email letter dated 3 October 2023, the respondent's legal representatives applied for costs incurred by the respondent in having to defend the unauthorised deductions from wages claim. In their application, they set out the history in relation to the s.13 claim. The claim form was presented on 3 July 2021, in which the detriment for a union reason as well as race, disability discrimination, victimisation, harassment, breach of contract and unauthorised deductions from wages, were the claims the claimant was pursuing. In a letter dated 7 October 2021, he withdrew the race and disability discrimination claims. (pages 21-24 in the claimant's bundle)
7. On 9 February 2022, the respondent's representatives sent a "without prejudice save as to costs" letter to the claimant's representatives. In their letter, in respect of trade union detriment, they stated that the reasons for the early termination of the secondment were genuine objective concerns about the claimant's poor performance, and his inappropriate behaviour. He continued to be employed by the respondent and had recently secured a more senior post earning a higher salary following a restructure. Those facts, they asserted, did not support any allegations that he had suffered a detriment.
8. In relation to the unauthorised deductions from wages claim, as the claimant's case was based on the respondent's pension contributions towards his pension fund being 12%, this should have been 14%, they asserted that he failed to properly particularise that claim. No specific sum had been identified and that the claim did not have any merit. It, therefore, had no reasonable prospect of success. They issued a costs warning, stating the following:

"If the claimant continues to pursue his claim, Clarion will consider making an application for costs against him at the appropriate time. The tribunal has the

power to award costs. Clarion takes a robust approach to claiming costs and has previously applied for and been awarded costs against unsuccessful claimants.

Clarion's legal costs in defending this claim so far have been £5,000 plus VAT and disbursements, and from now until we reach the conclusion of the hearing next year Clarion may incur further costs of up to £50,000 plus VAT and disbursements.

We believe costs may well be awarded against the claimant due to the fact that we have advised you of the weaknesses in the claimant's case and that pursuing the claim is unreasonable.

As you may be aware, Clarion is a not-for-profit registered provider of social housing, and accordingly is bound by the Value for Money Government Standard, including ensuring that its funds are primarily spent for the benefit of its residents, customers and service users, and for the delivery of social housing..."

9. They invited the claimant to withdraw his claims by 4pm, 16 February 2022. Should he comply, they would not pursue costs against him. The offer would be withdrawn automatically if they did not receive a response from him by the given deadline (pages 52 to 54 of the claimant's bundle).
10. The claimant did not withdraw his unauthorised deductions from wages claim by the given deadline. The parties, thereafter, prepared and dealt with disclosure and the respondent prepared a bundle of documents.
11. In the respondent's representatives' further correspondence dated 8 July 2022, to the claimant's representatives, they wrote another "without prejudice save as to costs" letter. They asserted that the pension contributions forming part of the unauthorised deductions from wages claim, had no merit as the sum the claimant was seeking did not meet the definition of wages in s.27 Employment Rights Act 1996. The tribunal, therefore, did not have jurisdiction to award the sum claimed. The letter further stated that the respondent's legal costs in defending the claim, at that time, exceeded £20,000, plus VAT and disbursements, with a further £30,000 estimated up to the hearing in the following year. The claimant was again invited to withdraw his claims by 4pm, 15 July 2022 (56 to 58).
12. On 3 March 2023, they sent a third "without prejudice save as to costs" letter. In it they again stated that the unauthorised deductions from wages claim had no reasonable prospect of succeeding and it was misconceived. They repeated the lack of merits in the detriment claim as there were genuine performance concerns about the claimant. They stated that the respondent had incurred £30,000 plus VAT in legal fees and would incur at least a further £5,000 plus VAT in counsel's fees and disbursements before the conclusion of the final hearing in June 2023. The respondent intended to pursue a costs application should it successfully defend the claims against it. The claimant was invited to withdraw his claims by 4pm, Friday 10 March 2023. Should he comply, the respondent would not pursue costs against him. The claimant did not withdraw his unauthorised deduction from wages claim. (3-4).

13. The parties prepared their final written statements for the liability hearing. On behalf of the respondent there was a witness statement from Mr Jak Pugh, Head of Estates and Services, in relation to trade union detriment, and one from Mr Paul Davey, Head of Reward, in response to the unauthorised deductions from wages claim. Witness statements were exchanged on 26 April 2023. In the claimant's witness statement there was no reference to the pension element in his unauthorised deductions from wages claim.
14. On 23 May 2023, the respondent's representatives issued their fourth and final "without prejudice save as to costs" letter. They reiterated the respondent's position that the claimant's unauthorised deductions from wages claim was wholly misconceived and that the tribunal did not have jurisdiction to hear it. In their letter they cited, for the first time, the Employment Appeal Tribunal judgment in the case of Somerset County Council v Chambers, EAT 0417/12. In that case the EAT held that pension contributions do not constitute wages properly payable for the purposes of s.13 Employment Rights Act 1996. The respondent intended to ask the tribunal to strike out the claim as it did not have jurisdiction to hear and determine it. The claimant was invited to disclose any case law he was seeking to rely on that was contrary to the Somerset judgment
15. In the letter they write:-

"We continue to act for the respondent, Clarion Housing Group Limited (Clarion).

We refer to our previous "without prejudice save as to costs" letters dated 3 February 2022, 8 July 2022, and 3 March 2023. We do not wish to repeat the contents of these letters but to confirm following exchange of witness statements our view of the merits of both of the claimant's claims is unchanged. We have instructed counsel in respect of the final hearing listed for 5 to 7 June 2023.

We have previously highlighted Clarion's position on the claimant's unlawful deduction from wages claim. Our view is that it is wholly misconceived; the employment tribunal does not have jurisdiction to hear the claimant's unlawful deduction from wages claim and Clarion intends to ask the tribunal to strike the claim out on this basis. There is clear precedent, namely the Employment Appeal Tribunal's decision in Somerset County Council v Chambers EAT 0417/12 (Somerset), setting out the position that employer pension contributions do **not** constitute wages properly payable for the purposes of section 13 of the Employment Rights Act 1996. If the claimant is relying on case law that is contrary to Somerset, please make that known to us. Otherwise, Clarion intends to ask the tribunal to determine this point at the start of the hearing as a preliminary matter, as it is a waste of time for the tribunal to hear evidence on unlawful deduction from wages claim if the tribunal does not have the jurisdiction to hear this claim.

We invite the claimant to withdraw the unlawful deduction from wages claim on this basis by 1pm, Friday 26 May 2023. If the claimant does not do so and continues to pursue this claim which we see has no reasonable prospect of success, we consider this to be unreasonable and Clarion reserves the right to pursue a costs application against the claimant in respect of the costs of preparing

this correspondence, making an application to strike the claim out and any associated costs dealing with this issue.

Please note that Clarion's position in relation to a costs application against the claimant more generally is reserved and unaffected by the contents of this letter. We have previously provided comments about the merits of the claimant's trade union detriment claim. We do not believe the tribunal will find that the claimant's secondment was terminated due to his trade union status or activity. There is clear evidence of various performance issues that caused Clarion to terminate his secondment. We have already made you aware that Clarion has so far incurred over £35,000 plus VAT in legal fees and will incur at least a further £5,000 plus VAT, counsel's fees and disbursements before the conclusion of the final hearing in June, not including additional legal fees incurred in pursuing strike out of the unlawful deduction from wages claim as set out above. Clarion intends to pursue a costs application should it successfully defend the claimant's claims at the final hearing." (5 to 6)

16. There then followed a series of emails between the representatives on 23, 24 and 26 May 2023. In the claimant's representative's email dated 23 May 2023, at 12.50, they wrote, amongst other things, the following:-

"As you shall note, the claimant has not made any reference to the claim for unlawful deduction from wages in respect of his pension contributions as he does not seek to pursue this claim.

Instructed counsel shall inform the tribunal of this at the beginning of the final hearing on 5 June 2023." (7)

17. The response was on the following day, the respondent's representatives wrote, at 12.11, stating:

"We are unclear what is meant by the claimant not making reference to the unlawful deductions from wages claim. It is part of the list of issues agreed following the preliminary hearing. Although you say the claimant does not intend to pursue this claim, he has not to our knowledge withdrawn this claim which if he no longer intends to pursue it, we consider to be unreasonable. As you are aware, the respondent has produced a witness statement to deal with this claim and has incurred costs in doing so.

Further, it is not reasonable for the claimant to wait until the start of the hearing to withdraw this claim. The respondent is preparing for the hearing on the basis that its second witness will be needed to attend, and that the unlawful deduction from wages claim is part of the issues, again which will incur costs. We expect the claimant to withdraw the claim by emailing the tribunal on an open basis (and copying us in) as a matter of urgency." (8)

18. The claimant's solicitors responded at 12.30 on the same day, complaining about the costs warning letters received. They then wrote:

"We consider it unreasonable to repeatedly send costs warning letters when it has been noted that costs shall be sought in respect of the totality of the claimant's claim which has subsequently had claims withdrawn.

The claimant has made the respondent aware that he is not proceeding with a claim for unlawful deduction from wages.” (10)

19. There was a reply from the respondent’s representatives at 12.53 in which they wrote:

“Please could you confirm how or when the respondent was made aware that the claimant was not pursuing his unlawful deduction of wages claim in respect of employer pension contributions? We are aware the claimant was originally seeking unpaid expenses as part of this claim and that aspect was withdrawn, and this did not form part of the final agreed list of issues. However, the claim for UDW for employer pension contributions is in the final agreed list of issues. To our knowledge the respondent has only just been made aware that the claimant was not pursuing an unlawful deductions from wages claim re: employer pension contributions via your correspondence below, which is on a without prejudice save as to costs basis.

We are not aware of any open correspondence from the claimant to either the tribunal or us in which he has withdrawn this claim. If you have a copy of any such correspondence, please urgently share a copy with us. Otherwise as stated, it would be reasonable for the claimant to urgently withdraw this claim by writing directly to the tribunal, copying us in.” (12)

20. The claimant’s representative replied at 1 o’clock on the same day stating:-

“This email thread has made it explicitly clear now that the claimant is not proceeding with the claim for unlawful deduction of wages.

The respondent has seen it fit to send a fourth costs warning letter in respect of the matter which it would be reasonable to simply send an email to clarify the position.

The respondent is now stating that it would be reasonable to urgently send an email to the tribunal confirming that the claim is being withdrawn, the respondent has been notified in this thread of emails that the claimant is not pursuing this claim.” (13)

21. There was a follow up email five minutes later from the claimant’s representatives in which they wrote:-

“We write further to recent without prejudice communications with the respondent (this is not to be treated as without prejudice) and confirm that the claimant shall not be proceeding with this claim for unlawful deduction of wages in the above matter.”

22. The response to this was on the same day at 21.13, from the respondent’s representatives:

“We note the contents of the email below, namely that the claimant intends to no longer proceed with this claim for an unlawful deduction of wages.

We have not seen any confirmation of this nature to the tribunal and request that the withdrawal is emailed directly to the tribunal as soon as possible this week to

avoid the need for the respondent to write to the tribunal and seek the strike out of this claim. We look forward to being copied into that correspondence.” (15)

23. On 26 May 2023, at 14.46, the claimant’s representatives emailed the tribunal, copying the respondent’s representatives. In it they stated the following:-

“We write on behalf of the claimant in the above matter, and in advance of the final hearing in this matter listed to commence on 5 June 223, and confirm the following:-

The claimant has instructed that he wishes to withdraw his claim for unlawful deduction of pay only, but he does not wish that this claim be dismissed by the employment tribunal as he reserves the right to bring the same claim in the County Court and does not wish to be precluded or prejudice from doing so based on the dismissal of that particular claim.

The claimant shall now proceed with his claim for trade union detriment only.

The respondent has already been made aware that the claimant is no longer pursuing his unlawful deduction of wages claim in the employment tribunal and have been copied to this email.” (16)

24. In the respondent’s application for costs it is stated that it was not aware of the unauthorised deduction from wages claim having been formally dismissed by the tribunal in a separate dismissal judgment but referred to paragraph 5 in the tribunal’s liability judgment.

The claimant’s application for costs

25. On 9 October 2024, the claimant’s representatives wrote to the tribunal applying for their client’s costs to be paid by the respondent. They stated that the respondent had brought and pursued a costs application which had no reasonable prospect of success. It was unreasonable for it to have brought the costs application in the first place, and if the costs application was pursued it would be unreasonable. The claimant had made an open offer on a commercial basis of £1,000 and was trying to avoid incurring counsel’s fees of £1,600 plus VAT. Failure to accept the open offer of £1,000, the claimant would submit that in such circumstances, a refusal would be unreasonable conduct. They applied for their application for costs to be considered at the same time as the respondent’s application, at the hearing on 21 October 2024. (61 to 62)
26. A more detailed and developed argument was presented by the claimant’s representatives on 9 October 2024 to the respondent’s legal representatives which was attached to the email to the tribunal referred to above. They repeated that they did not consider that the respondent’s application for costs had any reasonable prospect of success. The unauthorised deduction from wages claim had been withdrawn by the claimant prior to the liability hearing. The respondent’s representative wrote to the claimant’s representatives on 23 May 2023, without prejudice, putting the deadline 1pm, Friday 26 May 2023 for the claimant to withdraw his unauthorised

deductions from wages claim. They stated that should the claimant refuse to do so and continues to pursue that claim it would be unreasonable conduct and that the respondent reserved the right to pursue a costs application against him. The claimant's representatives stressed, from the email thread on 23 and 24 May 2023, already referred to above, that the claimant had stated that he was not pursuing his unauthorised deductions from wages claim against the respondent. This was confirmed in email to the respondent's representatives on 26 May 2023 at 14.46. The claimant's representatives did not accept that the claimant's conduct in bringing the unauthorised deductions from wages claim and in failing to withdraw his wages claim earlier than he did, reached the threshold for a successful application for costs. He withdrew his claim in order to narrow the issues between the parties in line with the overriding objective. They invited the respondent's representatives to consider what would have happened if the claimant had pursued his wages claim to the final hearing and he had lost that claim. It would have given rise to a successful costs application.

27. The claimant's representatives further submitted that there was no realistic prospect of the respondent succeeding in its costs application in circumstances in which the wages claim was withdrawn materially in line with the deadline set by the respondent in the letter of 23 May 2023, and it mentioned, for the first time, the case of Somerset relied on by the respondent. The tribunal would not make a costs order in respect of the claimant's failure to withdraw his wages claim prior to 23 May 2023 when the correspondence on 23 May 2023 setting the 1pm deadline on 26 May, resulted in a withdrawal. The tribunal would be mindful of the need to encourage fair and sensible litigation practices. It was not realistic for the respondent to seek its costs based on the fact that the withdrawal was after the 1pm deadline. The respondent's representatives also knew, prior to the 1pm deadline, that the claimant was not pursuing his unauthorised deduction from wages claim.
28. They also challenged the claim for costs in defending the unauthorised deductions of wages claim of £12,672 plus VAT, as being wholly unreasonable and that the schedule of costs was inadequate for the purposes of any sort of assessment. No costs bundle had been prepared eight weeks prior to the hearing as ordered by the tribunal, nor was there a witness statement in support of the assessment of costs, again as ordered by the tribunal. The claimant had not served a witness statement because his union, Unison, will pay any costs ordered by the tribunal. They repeated that their offer of £1,000 was still available and made purely on a commercial basis. If it was refused, they would draw the correspondence to the tribunal's attention. (63 to 66)

### **Submissions**

29. Both Mr Dhorajiwala, counsel on behalf of the respondent, and Ms Stanley, counsel on behalf of the claimant, prepared detailed written submissions and spoke to those when they addressed us. We do not propose to repeat their submissions herein having regard to Rule 62(5) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended.



## The law

30. Rule 76 of the Employment Tribunal Rules states:-

“76.—(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.

31. The test set out in rule 76(1) should be objectively looked at by the tribunal, Radia v Jeffries International Ltd [2020] IRLR 44 31, judgment of His Honour Judge Auerbach.

32. In relation to no reasonable prospect of success, and unreasonable conduct, HHJ Auerbach held in Radia:

“(62) ... 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.”

33. The Judge went on to consider the unreasonable conduct in continuing with an unmeritorious claim and stated:

(64). This means that, in practice, where costs are sought both through the Rule 76(1)(a) under Rule 76(1)(b) route, and the conduct said to be unreasonable (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?”

34. The tribunal in exercising its discretion whether to award costs 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.”, Mummery LJ, Yerrakalva v Barnsley Metropolitan Borough Council and another [2012] ICR 420, paragraphs 40-41.

35. Vexatious conduct was clarified by the Court of Appeal in the case of Scott v Russell [2013] EWCA Civ 1432, as the claim having little or no basis in law but, whatever the intention of the proceedings may be, the effect is to subject the respondent to inconvenience, harassment and expense out of all

proportion to any gain likely to accrue. It involves an abuse of the process of the court.

36. The tribunal has a discretion whether to award costs and may take into account legal advice and representation; late withdrawal; ability to pay, plus any matter it considers relevant.
37. In addition to the above cases, we have taken into account the following cases: Lodwick v Southwark London Borough Council [2004] EWCA Civ 306; McPherson v BNP Paribas (London Branch) [2004] EWCA Civ 569; Anderson v Cheltenham & Gloucester Plc UK EAT/0221/13/BA; AQ Ltd v Holden [2012] IRLR 648, judgment of the Employment Appeal Tribunal, His Honour Judge Richardson; Khan v Heywood and Middleton Primary Care Trust [2006] ICR 543 EAT; ET Marler Ltd v Robertson [1974] National Industrial relations Court 72; and Somerset County Council v Chambers UK EAT/0417/12/KN judgment of the EAT.

## Conclusion

### The respondent's costs application

38. We did not hear any oral evidence but were referred to the documentary evidence in the case. We first consider whether the unauthorised deduction from wages claim had no reasonable prospect of success. It is clear to us having read the case of Somerset, unreported in 2013, pension contributions do not constitute wages as defined in s.27 Employment Rights Act 1996. The claimant's legal representatives are a reputable firm of solicitors. Had reasonable attempts been made at or around the time of the claim form in July 2021, the Somerset case would have been discovered. Indeed, prior to the Somerset case being referred to by the respondent's solicitors in May 2023, the respondent's position had always been that the unauthorised deductions from wages claim had no reasonable prospect of success. We have come to the conclusion that this claim had no reasonable prospect of succeeding as the Somerset case was decided before presentation of the claim form and had not been overruled.
39. In bringing these proceedings and up to 26 May 2023, had the claimant acted unreasonably? Following Radia, we have come to the conclusion that he did. Although the claimant's legal representatives did not know prior to the Somerset case being disclosed to them about that judgment, upon a reasonable enquiry the case would have been discovered. The fact that the respondent's representatives were saying that the unauthorised deductions from wages claim had no reasonable prospect of success, that ought to have caused the claimant's legal representatives to engage in a legal inquiry into that claim. Notwithstanding several costs warning letters, the claimant pursued the case until 26 May 2023. During that time, the respondent had incurred legal costs. We have taken this into account in considering the nature, gravity and effect of the conduct of the claimant and his representatives, Yerrakalva.

40. We further conclude that the effect on the respondent in the claimant continuing to pursue an unmeritorious claim, was that it incurred costs in defending it. Such conduct was vexatious, Scott v Russell.
41. In this case ability to pay is not a consideration as the claimant has stated that his union, Unison, will cover any costs.
42. In relation to the exercise of our discretion, we do have regard to the judgment of Mummery LJ, in the case of McPherson v BNP Paribas. “The crucial question is whether, in all the circumstances of the case, the claimant withdrawing the claim has conducted the proceedings unreasonably? Is not whether the withdrawal of the claim is in itself unreasonable”.
43. We accept that the claimant withdrew his claim in order to narrow the issues between the parties in line with the overriding objective. The claim was withdrawn following consideration of the Somerset case and following the invitation from the respondent’s representatives in their email of 23 May 2023. It was withdrawn 1 hour 46 minutes after the deadline. The respondent’s representatives had previously invited the claimant to withdraw the unauthorised deduction from wages claim and should he do so, they would not proceed against him for costs defending it. We conclude that the email letter of 23 May 2023, inviting the claimant to do the same, was on the basis that should the claim be withdrawn, they would not pursue him for costs in defending it. We take that view in light of previous correspondence and also in light of the wording in the letter. The final paragraph of which the respondent’s representatives wrote that they reserve the right to pursue costs in respect of the detriment claim.
44. The penultimate paragraph in the letter states:-

“We invite the claimant to withdraw the unlawful deduction of wages claim on this basis by 1pm on Friday 26 May 2023. If the claimant does not do so and continues to pursue this claim which we say has no reasonable prospect of success, we consider this to be unreasonable and Clarion reserves the right to pursue a costs application against the claimant in respect of the costs of preparing this correspondence, making an application to strike out the claim and any associated costs dealing with this issue.”
45. Having withdrawn the claim, the issues were then narrowed down saving cost and time on the part of both parties. Considering the whole of the claimant’s conduct, we have come to the conclusion that costs in favour of the respondent should not be awarded. The application is, therefore, refused.

The claimant’s costs application

46. In relation to the claimant’s application for costs, we have come to the conclusion that it was reasonable for the respondent to have pursued an application for costs against the claimant as the withdrawal was 1 hour 46 minutes past the deadline. The claimant had been warned previously on three occasions that if he failed to withdraw the unauthorised deduction from wages claim by a certain deadline, the respondent would pursue an

application for costs against him in defending it. Those deadlines passed without any withdrawal. Although the deadline of 1pm on 26 May 2023 had passed by 1 hour 46 minutes when the claim was withdrawn, the respondent was nevertheless entitled to argue that there had been a failure to comply with the deadline although it has been unsuccessful in its costs application. It cannot be said that in pursuing costs was unreasonable conduct. Accordingly, we make no award of costs in favour of the claimant.

Approved by:

Employment Judge Bedeau

13 January 2025

Date: .....

Sent to the parties on: 17 January 2025

For the Tribunal Office

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>