EMPLOYMENT TRIBUNALS

Claimant: Mr K D Raza

Respondent: Triguard Limited

Heard at: Liverpool (by video with claimant by telephone)

On: 11 October 2024

Before: Employment Judge (sitting alone)

REPRESENTATION:

Claimant: in person

Respondent: Mr S Walsh (Director)

RESERVED JUDGMENT ON PREPARTION TIME ORDER

1. The application for a preparation time order is successful. The claimant is ordered to pay to the respondent the sum of £212.50.

REASONS

Background

1. By a Judgment sent to the parties on 11 June 2024 the claim was dismissed on withdrawal by the claimant.

2. On 27 May 2024, the respondent, who was not represented in the proceedings, made an application for a preparation time order following a request by the claimant to postpone a preliminary hearing. Its grounds were that the claimant had acted vexatiously and unreasonably in the bringing and conduct of these proceedings. That application was renewed by email of 13 June 2024 which contained submissions, evidence and a costs calculation in support of the

application. The amount claimed is £212.50. The claimant objected to the application and requested a hearing. That hearing took place on 11 October and the decision was reserved.

Findings of Fact

3. By a claim form dated 1 November 2022 and subsequently filed particulars, the claimant brought complaints of race discrimination and unlawful deductions from pay, holiday pay and disability discrimination.

4. A response was filed on 12 December defending the claims. The respondent denied that the claimant was ever its worker or employee. It had not at that stage seen the particulars of claim.

5. A preliminary hearing for case management purposes was listed for 23 March 2023. The claimant did not attend. He had written to the Tribunal to explain he had a family bereavement, that he was unwell and that it was Ramadan. He asked for postponement, but that request had not reached the Employment Judge. Mr R Stephens the respondent's Managing Director attended. Employment Judge Johnson recorded the following summary of the case:

6. "(10) The claimant presented a claim form to the Tribunal on 1 November 2022 following a period of early conciliation from 22 July 2022 until 1 September 2022. He identified a complaint of race discrimination and other payments, which appear to relate to unpaid wages, unpaid holiday pay entitlement and notice pay.

   (11) He says he was employed by the respondent as a security officer from 17 February 2022 to 2 May 2022 and was deliberately denied hours of work by the respondent because of his race. A separate grounds of complaint document was sent to the Tribunal but did not accompany the claim form and was not discovered by the Tribunal until December 2022. Employment Judge Holmes ordered that this document be sent to the respondent on 15 December 2022. There is a vague reference to a possible disability discrimination complaint, although this was not indicated in the claim form.

   (12) The respondent sent a response on 12 December 2022 replying to the original claim form and resisting the claim. They explained that the claimant was never an employee or worker of the company.

   (13) Mr Stephens provided further information to me this afternoon and explained that the claimant had a full-time job elsewhere as an employee of a security company called Admiral. The respondent is a security company which provided security and out of hours support to housing schemes and charities which were involved with supported living and refugees. They engage SIA regulated security officers as independent 'sole trader' contractors who register with a third party payroll company to ensure HMRC IR35 regulations concerning the payment of tax and national insurance are met.

(14) He says the claimant was at all times engaged as a contract worker and was never employed by the respondent. Mr Stephens described the respondent engaging 100s of operatives to work shifts. They were offered [work] when available and hours would usually be renewed to those contract workers once placed.
He said that when he began his work with the respondent, the claimant bid for more hours than he could actually work and would then refuse to work many of them.

(15) Mr Stephens said a problem arose when the claimant's immigration documents lapsed and by law, the respondent could not offer any more hours until they received evidence of his permission to work being renewed by the Home Office. He said that this was delayed because the claimant only provided evidence of his renewal application and not the actual confirmation of renewal. Any refusal of hours during this period was caused by a legal requirement and not as a result of discrimination.

(16) Finally, he added that two of the contract workers he had engaged and who knew the claimant warned that he was known to have brought claims against other employers and providers of work complaining of discrimination. I did not wish to name those individuals at this stage, but have ordered that Mr Stephens obtain witness evidence from these two contract workers concerning this allegation as it may be material to any consideration given to strike out the claim.

(17) It would appear that the claimant has a number of problems with his claim although I accept he was not present at the preliminary hearing today. Nonetheless, I do think it is appropriate to issue a strike out warning in relation to the wages related claims as he does not appear to be an employee or worker of the respondent. He may have a claim for race discrimination as a contract worker, but has provided insufficient particulars and it appears that any refusal to offer work by the respondent arose from legal requirements relating to immigration issues rather than because of his race. Mr Stephens explained that in Yorkshire, the majority of those working for the respondent are non white with many of the Islamic faith."

7. A strike out warning was issued, and the claimant responded, objecting to the strike out and explaining that he had contacted the Tribunal to say he was unable to attend at the preliminary hearing due to a bereavement and religious commitments. Those reasons were accepted, and a further preliminary hearing was listed for 27 July 2023.

8. The claimant and Mr Stephens attended the relisted hearing before Employment Judge Grundy. Having heard from the claimant and respondent, Judge Grundy listed a final hearing for 4 5 and 6 November 2024 and a public preliminary hearing on 14 November 2023 to consider a number of issues. These were: whether the Tribunal had jurisdiction to hear some of the claims as they appeared to be presented out of time; whether the claimant had the necessary employment status to bring claims of discrimination and unlawful deductions from pay; whether the claims should be struck out or a deposit order

made as they had no or little reasonable prospects of success, and/or that the claimant was pursing them vexatiously and whether the claim might be amended to include the disability discrimination claim based upon the claimant's dust allergy.

9. Within her note of the hearing, she made the following comments:

"(19) Having heard the claimant and the respondent (Mr Stephens) today I decided the best way to proceed was to list a CVP hearing for a day with further information from the parties in consideration of the 4/5 issues above and for the Judge to make rulings in respect of the same taken in the order it appeared most appropriate to the Judge and thereafter to case manage those matters which were to proceed if any given the respondent seeks strike out. The claimant was not withdrawing his claim (s).

Complaints and Issues

(21) The claimant says he was an employee of the respondent and says he was not offered shifts on the grounds of his race and was not communicated with by the respondent properly. He is of the Pakistani race. He compares himself to a white male security officer. The primary case would have to be further case managed at the conclusion of the open CVP preliminary hearing but as the case is listed in November 2024 there is time for further orders to be made and complied with.

(22) The claimant submitted that the failure to include a tick in the disability box in his claim form (not included as a complaint being brought in section 8.1 of the claim form) was a mistake and there is a claim for disability discrimination, the claimant relies on a "physical impairment" – namely "hidradenitis suppurativa"- which he describes as a dust allergy.

(23) The respondent say he did not advise of this on the health pre work checks. The tribunal referred the claimant to the definition of disability in section 6 of the Equality Act 2010 as below and required the claimant to set out the amendment sought by 20 October 2023 to include what claim he makes by reason of alleged disability discrimination.

(24) The respondent says it made reasonable adjustments whether or not s6 was satisfied as the claimant was not sent to shifts where small light cleaning was required, and this was a reason the claimant was offered less shift opportunity as well as the issue of his immigration status.

Time Limits

(26) As identified by the Judge on 23 March time limits may be an issue in relation to the allegations of discrimination. The claimant asserted the last time he worked for the respondent was "at the beginning of May".

10. The respondent was ordered to obtain statements from those persons whom it said had knowledge of the claimant bringing proceedings on previous occasions unreasonably. Case management orders were made to prepare for the preliminary hearing. Both parties were ordered to liaise to agree a bundle of documents by 22 September 2023 and exchange witness statements by 20 October 2023. The respondent was to file these by 10 November 2023.

11. The respondent complied with the Tribunal's orders. It prepared a bundle of documents which it sought to agree with the claimant. That included a statement from a contractor Mr Chopra and a reference to a conversation with two other operatives in which the claimant appeared to have admitted that he was "trying his luck" in the claim against the respondent. The statement signed by Mr Chopra stated as follows:

> "I am Sanjeev Chopra I am writing this email to my managers about Khalil Raza, one of our Our Care Warden. When he had his first induction with me Royal sovereign the first thing he asked me is there any place where I can sleep through the night in my shift and then I got surprised then I told him this is a nice company nice sites and nice clients and good money why do you want to sleep then and then he had another shift with me at Mill Haven he started to use his laptops and I told him laptops are not allowed on site he said it's okay then he started talking to me I normally do community work like if any of our people got issues with the company I see the companies and take the money from them negotiate the price we scare them to go to court.
>
> And we take the money and he also started to talk about religions and politics and I told him I don't talk about religions that is all personal matters he then told me this is how I make my money. I am with Triguard for time pass and try my luck on the company."

12. It also included all evidence that the respondent sought to rely upon in defence of the claim. That evidence is detailed, and I have had access to for the purposes of this preparation time order application. The respondent noted that it had received no evidence from the claimant.

13. The claimant did not comply with the Tribunal's orders. He did not produce a statement nor cooperate with the respondent in preparing a bundle for use at the hearing.

14. On 22 September 2023 the claimant applied for a postponement of the preliminary hearing and requested a stay of the proceedings as he said he was suffering from "stress and disorder". He said he could not comply with the directions. He accused the respondent of lying.

15. The postponement was refused, but the claimant was given the opportunity to renew his application if it could be supported by a letter from his GP. That evidence was received which confirmed that the claimant had several medical conditions and that he was having a significant amount of stress and anxiety which was impacting him on a day-to-day basis. These were being exacerbated

by the Tribunal proceedings. Further medical evidence from his GP confirmed that he was too ill to participate in the hearing and he requested a postponement of 4 to 6 months. The claimant health had also been impacted by his sister's death in 2023 as a result of which he had undertaken responsibility for his nephew who is now 18. His wife had also been unwell.

16. The hearing was postponed and relisted for 31 May 2024.

17. In evidence to this Tribunal the claimant confirmed that during this period between September 2023 and December 2023, he had been working for APL. This was not brought to the attention of the Judge making the decision to postpone the hearing.

18. During these proceedings until 10 April 2024, the claimant engaged with ACAS and put to the respondent proposals to settle his claim. The respondent refused to settle. The claimant advised that he intended to bring alternative proceedings in the county court if matters could not be settled.

19. On 26 May 2024, five days before the hearing, the claimant applied for a further postponement. He reported that he had suffered two accidents and a further condition had been diagnosed and that he was too unwell to attend.

20. His email was unclear as to him intentions regarding the claim. In that regard he stated:

> "I further go on to explain that I have been advised that the Employment Tribunal does not have jurisdiction to hear all my claims. As a result, I need to use a different court for my legal proceedings. This additional information provides context for my request to withdraw the case and hints at potential complications or challenges I am facing in pursuing my claims through the legal system"

21. A second email of 28 May seemed to indicate that he would like the Tribunal to make accommodations so that he could participate, and that his health had prevented him from preparing but then focuses on his application to withdraw his claim without being liable for any costs in order that he can pursue it in elsewhere. The email included the following paragraph:

> "I am here to request the employment tribunal to accept my application for withdrawal. This request indicates the claimant's desire to remove himself from proceedings that may not give full results that the claimant seek. It is essential for the tribunal to respect the claimant's decision and ensure that they are not penalised for seeking justice elsewhere. Further this correspondence emphasises the claimant's request for withdrawal without any costs. This is a reasonable request considering the circumstances as explained above. The tribunal should not impose financial burdens on the claimant for seeking a fair and just resolution to the dispute. This request underscores the claimant's commitment to pursuing justice through

> alternative means. The tribunal should not restrict the claimant's access to other avenues for seeking resolution and accountability."

22. No details were provided at that time or since as to the nature of these alternative proceedings, why they were necessary and why they could not be pursued in the Employment Tribunal.

23. Further the email noted that in respect of a postponement, the hearing had been listed for a Friday and he had Friday prayers.

24. The respondent wrote to the Tribunal on 27 May 2024 requesting that the hearing proceed, complaining about the delays which were causing it further work and cost, and that the claimant had to date provided no evidence to support his claims which it considered were vexatious. It made an application for a deposit order and suggested that the claimant was seeking to "blackmail" them.

25. On 30 May 2024 Judge Eeley ordered that the claimant attend the hearing in order to clarify what was his position in relation to the claims before the Tribunal. That hearing was listed before me by video. An email was received before the hearing from the claimant confirming that he was withdrawing his claim. It included medical evidence in the form of GP fit notes confirming he was unfit for work by reason of back and leg pain following a fall and RTA. The email included the following:

> "I want to make it clear that I have made the decision to withdraw the case for reasons that have already been communicated. However if the employment tribunal requires additional evidence, I am more than willing to provide it.
> I have also copied the respondent into this email to ensure transparency and fairness in this process.
> I urge you to give due consideration to the medical evidence enclosed, as it clearly demonstrates the impact of my medical condition on my ability to participate in the hearing. I hope that this information will help in reaching a fair and just resolution to this matter. Thank you for your attention to this important issue."

26. The claimant also attended the hearing and confirmed that was his position. He was aware prior to doing so that the respondent was seeking payment for the time it had spent preparing for the various stages of these proceedings.

27. I made orders that the respondent set out the grounds upon which it made its application and the amount claimed and that the claimant could provide his response. I confirmed that the application would be dealt with on the papers, unless the claimant asked for a hearing. I included extracts of the Employment Tribunal Rules of Procedure 2013, specifically Rules 75, 76, 79 and 84.

28. The claims were dismissed on withdrawal by the claimant. A Judgment was issued dated 31 May 2024.

29. The respondent submitted its application dated 13 June with accompanying documents. The basis of the application was stated to be as follows:

    a. "The Claimant has failed to provide any evidence to substantiate their claims, despite repeated requests and the passage of considerable time – 2 years.
    b. We have a witness statement and other evidence (attached) indicating that the Claimant has a history of bringing claims against employers in an attempt to extort money. While we understand the Claimant is not on the serial litigators list, we are aware of at least one other claim against another company for the same allegations, and we believe there are more. We urge the Tribunal to consider this pattern of behaviour, even if the Claimant is not formally listed.
    c. The Claimant has repeatedly sought to delay proceedings and has failed to comply with Tribunal directions, including the submission of their evidence bundle which they never provided. This conduct has unnecessarily prolonged the case, and while we have not sought legal representation, we have nonetheless been forced to invest valuable time and resources into defending ourselves against these vexatious allegations. As a small business dedicated to supporting vulnerable individuals through our work with charities and supported housing organisations across the UK, our time is precious. Every minute spent dealing with this claim is a minute not spent providing crucial support to individuals facing homelessness, abuse, trafficking, and other difficult circumstances.
    d. Following the initial hearing, Judge Johnson determined that the claim had no reasonable prospect of success.
    e. During the second hearing, the Claimant was unable to articulate the basis of their claims, despite repeated prompting from the Judge."

30. The claimant submitted his comments in response by way of emails dated 18 June 2024 with attached documents including his bank statements.

31. Much of the documentation submitted related to the history of his engagement by the respondent which he had complied in September 2023, but also included emails with the respondents at the time and visa and shift information. He also sent the bank statements for an RBS Bank account in his name.

32. On 20 June 2024 the respondent provided a copy of a previous claim the claimant had brought against Service House Limited T/a Admiral Security Services which was withdrawn in similar circumstances on 24 February 2024 which the respondent said demonstrated that the claimant had acted vexatiously in bringing proceedings. It asked that the matter be investigated. This was responded to by the claimant by email the same day. The respondent provided further observations and documents by email dated 27 June 2024 which it says demonstrated that the claimant's evidence in respect of a number of matters was unreliable. A further response from the claimant was received on 5 July.

33. I considered that in this correspondence was a request for the application to be considered at a hearing and a notice listing the hearing for 11 October 2024 before me was sent to the parties.

34. On 31 August the respondent advised the Tribunal that a dismissal on withdrawal judgment had been published against a third company, APL Security. It says that this supported its view that the claimant was pursuing these proceedings vexatiously.

35. A further email was sent by the claimant on 3 October 2024 in response.

36. Throughout these proceedings the claimant's correspondence has been detailed and articulate, though in parts unnecessarily critical and offensive towards the respondent.

37. At the hearing before me, the claimant and respondent made submissions and the claimant gave evidence about his means. It was agreed that I would reserve the judgment.

38. During his evidence, the claimant confirmed that he had previously brought claims in the Employment Tribunal against:

    a. Cerber Security in 2005 in which he was successful,
    b. Kings Security in 2018 whom he worked form for 9 years. This claim had been settled.
    c. Admiral Security whom he worked for between 9 July 2021 and 20 April 2023. This claim had been struck out on 6 August 2024.
    d. APL whom he worked for between September 2023 and December 2023. This claim was withdrawn on 1 June 2024.
    e. Aclaim whom he worked with for one month in July 2023. This claim was also withdrawn on 1 June 2024.

39. Since the hearing the claimant has send further lengthy and detailed correspondence dated 11 October and 24 November. This makes complaints about the Tribunal, the Judge and indicates why he will not provide any further evidence of his finances.

Claimant's means

40. The claimant gave evidence as to his means. He provided bank statements for an RBS account in his name showing his income and outgoings. He told the Tribunal that he had not worked since 16 January 2024, but the bank statements show wages being paid to him by APL in April 2024, though some payments were recorded as sick pay. He says that his sick pay ended in August 2024. His visa does not permit him to claim benefits and his wife does not work. His wife receives benefits in the form of universal credit, as she cares for her mother. He has no savings, and he resides in a house which is in his 18-year-old nephew's name. He says he has no assets of any value. His bank statements showed regular payments from a Barclay's bank account. The

claimant confirmed that account was in his name, which is reflected on the entries on the statement. He says that he is supported by his family and that account is used for that purpose but would not provide any detail. Following the hearing, I gave him the opportunity to provide evidence in the form of statements from the Barclays account of the amounts he held in that account, but he refused to do so.

41. In summary, the claimant says he has no income and relies upon assistance from his family and his wife's benefits.

42. It is unclear what amounts are in is Barclays Bank Account and their origin.

The Law

43. The power to make a preparation time order is contained in the 2013 Employment Tribunals Rules of Procedure (now the 2024 Rules of Procedure 2024). For the purposes of this judgment, I am referring to the 2013 Rules, but there is no discernable difference between the two in respect of the matters I must consider other than the numbers of the particular rules.

44. A preparation time order is defined in Rule 75(2) as:

"A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative. Preparation time means the time spent by the receiving party (including employees or advisers) in working on the case, except any time spent at any final hearing"

45. Rule 76(1) says, so far as is relevant:

"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) ……

46. Rule 79 sets out the amount of a Preparation Time Order. It states so far as is relevant:

"(1) The Tribunal must decide the number of hours in respect of which a preparation time order should be made, on the basis of—

(a) information provided by the receiving party on the preparation time spent, and

(b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required. (2) The hourly rate is £44 and increases on 6 April each year by £1.

(3) The amount of a preparation time order must be calculated by multiplying the number of hours assessed under paragraph (1) by the rate under paragraph (2) which is applicable to the year beginning 6 April in which the preparation time was spent."

47. The relevant rate for the time spent is £25.

48. Rule 84 concerns ability to pay and reads as follows:

> **"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."**

49. Rule 76(1) imposes a three-stage test:

    a. whether the claimant's conduct falls within rule 76(1)(a)?
    b. If so whether it is appropriate to exercise its discretion in favour of making an order?
    c. If so what amount should be awarded?

50. The award of costs is the exception rather than the rule in Employment Tribunal proceedings **Gee v Shell UK Limited [2003] IRLR 82**.

51. In exercising its discretion at stage two, factors which the Tribunal may (or may decide not) take into account include the principle that costs are compensatory not punitive, the claimant' s ability to pay, any costs warnings, whether the party has taken legal advice, whether the party is represented, any rejection of a settlement offer, and whether the nature of the evidence changed such that the merits of the case were not apparent until later in the proceedings.

52. If there has been unreasonable conduct, there is no requirement for the Tribunal to identify a precise causal link between that unreasonable conduct and any specific items of costs which have been incurred: **McPherson v BNP Paribas (London Branch) [2004] ICR 1398**. However, there is still the need for some degree of causation to be taken into account as the Court of Appeal pointed out in **Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78:**"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."

53. It is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented. According to the **EAT in AQ Ltd v Holden 2012 IRLR 648, EAT**, an employment 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 well be embroiled in legal proceedings for the only time in their life. Lay people are likely to lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser. The EAT stressed that tribunals must bear this in mind when assessing the threshold tests in the then equivalent to rule 76(1) of the Tribunal

Rules 2013. It went on to state that, even if the threshold tests for an order for costs are met, the tribunal still has discretion whether to make an order. That discretion should be exercised having regard to all the circumstances. In this respect, it was not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice. This was 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.

54. The term 'vexatious' was defined by the National Industrial Relations Court in ET **Marler Ltd v Robertson 1974 ICR 72, NIRC**. The Court stated that: 'If an employee brings a hopeless claim not with any expectation of recovering compensation but out of spite to harass his employers or for some other improper motive, he acts vexatiously.' Simply being 'misguided' is not sufficient to establish vexatious conduct — **AQ Ltd v Holden 2012 IRLR 648, EAT.**

55. However, the Court of Appeal in **Scott v Russell 2013 EWCA Civ 1432, CA**, cited with approval the definition of 'vexatious' given by Lord Bingham in **Attorney General v Barker 2000 1 FLR 759, QBD (Div Ct).** According to His Lordship, 'the hallmark of a vexatious proceeding is… that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'.

56. 'Unreasonable' has its ordinary English meaning and is not to be interpreted as if it means something similar to 'vexatious' — **Dyer v Secretary of State for Employment EAT 183/83.** It will often be the case, however, that a tribunal will find a party's conduct to be both vexatious and unreasonable.

57. In determining whether to make an order under this ground, a tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct — **McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA** The Court of Appeal in **Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA**. that it was important not to lose sight of the totality of the circumstances. The vital point in exercising the discretion to order costs (or a PTO) is to look at the whole picture. The tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

58. Reasonableness is a matter of fact for the employment tribunal, and it will be difficult to argue that it has made an error of law unless it can be shown that it has neglected relevant considerations or taken into account irrelevant ones.

59. A persistent failure to provide information may be held to be unreasonable. In **Kaur v John L Brierley Ltd EAT 783/00**, for example, K and her advisers

persistently failed to identify the unlawful deduction they were alleging had been made from her wages. This was despite repeated and reasonable requests from the employer's solicitors. Although she was not able to provide any explanation for this failure, K pursued the proceedings, causing the employer to incur additional and wholly unnecessary costs. When the final hearing was imminent, K withdrew. The employment tribunal hearing the employer's application for costs ordered K to pay costs to be assessed in the county court. This decision was upheld by the EAT.

60. It may be that a party's conduct, taken as a whole, amounts to unreasonable conduct.

61. It is not unreasonable conduct per se for a claimant to withdraw a claim before it proceeds to a final hearing — **McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA.** As the Court of Appeal in McPherson observed, it would be unfortunate if claimants were deterred from dropping claims by the prospect of an order for costs on withdrawal in circumstances where such an order might well not be made against them if they fought on to a full hearing and failed. It further commented that withdrawal could lead to a saving of costs and that tribunals should not adopt a practice on costs that would deter claimants from making 'sensible litigation decisions'. On the other hand, the Court was also clear that tribunals should not follow a practice on costs that might encourage speculative claims, allowing claimants to start cases and to pursue them down to the last week or two before the hearing in the hope of receiving an offer to settle, and then, failing an offer, dropping the case without any risk of a costs sanction. The critical question in this regard was whether the claimant withdrawing the claim has conducted the proceedings unreasonably, not whether the withdrawal of the claim is in itself unreasonable.

Conclusions

62. Rule 76(1) requires that I consider three questions in turn in order to decide whether to order that the claimant make a payment to the claimant in respect of its preparation time. These are:
    a. whether the claimant's conduct falls within rule 76(1)(a)?
    b. If so whether it is appropriate to exercise its discretion in favour of making an order?
    c. If so what amount should be awarded?

<u>The claimant's conduct</u>

63. The first question I must consider is whether as the respondent alleges, the claimant in either bringing his claim against the respondent or in the way in which he conducted the proceedings acted vexatiously or unreasonably?

64. I deal initially with the bringing of the proceedings. The claimant when bringing these proceedings filed a detailed complaint within his particulars. Unfortunately, these particulars were not originally served upon the respondent and as such at that stage it did not have notice of the basis of the claim.

65. Those particulars detail the claimant's allegations that having agreed to work with the respondent and planned such that he could also continue a security role with another company, he was not provided with the shifts he believed he would receive. Those particulars detail that he felt very aggrieved and upset by the situation, including that he did not understand or consider that he would be self-employed and that he was not being provided with the shifts that he understood he would get. Although he noted that one of the reasons that the respondent said it could not give him shifts was that it needed evidence of his immigration status, he contended that the information which he provided was sufficient and in line with Home Office requirements. He also set out that there were difficulties with the App used for the allocation shifts. He contended that white employees were provided with shifts and that he was of the view that his race, as a Pakistani was the reason for his treatment. He sought payment of arrears of pay which he believed he was owed. The particulars also set out the outline of a disability discrimination claim, which was never clearly particularised but related to his requirement to work in dusty environments when he had asked not to be put in that position.

66. I have given consideration to whether as contended by the respondent, the claimant in bringing these proceedings was acting vexatiously. They say that the claimant admitted to two colleagues, including Mr Chophra, that he made money by scaring businesses into paying money or he would take them to court and further that he would "try his luck" with the respondent. Further that the claimant had brought proceedings against the last three business he worked with, Admiral Security, APL and Aclaim all of which had either been withdrawn or struck out. It says that the claimant's reason for bringing this claim was not because he believed he had been subjected to discrimination, or owed money but rather to extort money from them.

67. In evidence before me, the claimant confirmed that he had also brought proceedings in the Employment Tribunal against the two other previous business he had worked for. He had been successful in one of those claims and the claim against the other had been settled.

68. I have considerable concern that the claimant has issued claims against all of the businesses he has worked for. I do not know the basis of the complaints against each of those business, but having reviewed the judgment of Employment Judge Davies in the claim against Admiral which was struck out on 26 February 2024, it is also a claim of direct race discrimination and disability discrimination. I have not heard evidence from Mr Chopra or the other employee of the respondent, but I also have concerns that there is a pattern of behaviour from the claimant which may support the respondent's view.

69. This application I am considering is in respect of the time spent preparing for these proceedings. In considering the claimant's reasons for bringing his claim, I have considered whether he did so to extort money from the respondent. In doing so I have had regard to the definition of vexatious given by LJ Bingham in **Attorney General v Barker 2000 1 FLR 759, QBD (Div Ct)** which reminds me that I must also look at the effect of such conduct. He said: 'the hallmark of

a vexatious proceeding is… that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'.

70. It cannot be said that the claimant's claim has no or little basis in law. I consider that his particulars of claim identify allegations which it was not unreasonable for the claimant to pursue, at least initially and until he had the respondent's response. In coming to that view, I have had the opportunity to consider the claimant's email exchanges with the respondent at the time which support how aggrieved he felt and the reasons he felt that way, and his clarification of his immigration status. I have taken into account that the claimant is a litigant in person and as such is likely to have a lack of objectivity and although as he explained, he has the assistance of his wife who has a legal qualification, he has set out in a detailed manner, the treatment he says he has received when working for the respondent and why he believed it was discriminatory. It may well be misguided and there would certainly be hurdles which he would have needed to overcome to succeed in his complaints, including jurisdictional issues in respect of his status and potentially time limits, but at the time he submitted it, I consider that the respondent has not shown that he was acting either vexatiously or unreasonably in bringing these proceedings, but rather because he felt he had been the subject of unfair and discriminatory treatment.

71. I turn now to whether the claimant acted vexatiously or unreasonable in way he conducted the proceedings. In this regard again I have taken into account that the claimant is a litigant in person.

72. The respondent says that the claimant has failed to provide any evidence to substantiate his claims, despite repeated requests and the passage of some two years and further that he has repeatedly sought to delay proceedings and has failed to comply with Tribunal orders, including the submission of his evidence bundle which was never provided. They say that this conduct has unnecessarily prolonged the case, they have been forced to invest valuable time and resources into defending themselves which has had a significant impact on their ability to run their business and their work supporting vulnerable individuals through their work with charities and supported housing organisations across the UK. They also rely upon the claimant's withdrawal of these proceedings for the reason, at least it appears in part, because he believes that his claim is better brought in another court.

73. In determining whether to make an order under this ground, I must take into account the 'nature, gravity and effect' of a party's unreasonable conduct **(McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA).**

74. The claimant has done almost nothing to pursue the claim he presented in November 2022. He did not attend the preliminary hearing on 23 March 2023. Though had requested a postponement but had not received a response. A

preliminary hearing took place on 27 July 2023 which the claimant attended. Case management orders were made for the preparation of a bundle and witness statements for a public preliminary hearing at which one of the issues was whether his claims had any reasonable prospect of success. The claimant failed to cooperate with the respondent, despite reminders and no bundle or witness statement was produced.

75. There is no doubt that the claimant had health conditions from September 2023 until early 2024. His GP confirmed that was the position and at his request, the public preliminary hearing listed for November 2023 was adjourned for 6 months.

76. In February 2024 the claimant had two accidents which prevented him from working, but he was able to liaise with ACAS to make proposals to the respondent. The content of Employment Judge Davies judgment in the claim against Admiral was brought to my attention by the respondent, particularly paragraphs 6, 20 and 21, This found that during the period November 2023 to February 2024, a period when the claimant says he was too ill to participate in these proceedings, he was writing detailed and articulate letters to the Tribunal and to his GP. It also noted a paragraph 29.11 that despite telling the Tribunal that he was "mostly bedbound" he was evidently out of the house as he had been involved in a road traffic accident.

77. The claimant took no steps to comply with the orders of Employment Judge Grundy in respect of the relisted public preliminary hearing nor liaise with the respondent and on 26 May 2024 sought a postponement of the hearing listed for 31 May because of ill health. He also requested to withdraw his case, but his correspondence and intentions were unclear. His reason for withdrawing his case was stated to be that he had been advised that the Tribunal did not have jurisdiction to hear all of his claims and he intended to use a different court for his legal proceedings.

78. The application to postpone was not granted and the claimant and the respondent attended the hearing on 31 May. The claimant withdrew his claim.

79. When considering whether there has been unreasonable behaviour, I must consider the whole conduct of the proceedings rather than individual aspects of it. I consider that the delays in the case have in part been caused by the claimant's ill health, but I am not satisfied that this prevented him from engaging with the respondent and the Tribunal. He has failed to comply with Tribunal orders requiring him to provide evidence which supports the original contention that he made, even though it seems he had collated some of that evidence by September 2023. He failed to communicate with the respondent to prepare for the public preliminary hearing and only 5 days before applied for a postponement and was unclear about his intentions to withdraw his claim.

80. Even taking into account that the claimant was a litigant in person and had been signed off as unable to work because of accidents earlier in the year, a claimant who brings a complaint to the Tribunal has an obligation to pursue it and to do so in a reasonable manner. In this case it is the respondent which is also

unrepresented which has had to do all of the running. Its particular concern was that a race discrimination claim had been brought against it in circumstances where because of the nature of their business contracts, providing security services for vulnerable people who face homelessness, abuse, trafficking, and other difficult circumstances, any finding of discrimination would have a significant impact. That issue has been outstanding since 2022. Also of relevance is the reason that the claimant decided to withdraw his claim. Although the claimant raised his health as impacting his conduct of the proceedings, his reason for withdrawing his claim was that he had changed his mind and intended bringing his claims in a different forum. He provided no detail about this, such as which claims he still intended to pursue or where, nor evidence that he had done so. Although it would not necessarily be unreasonable conduct to withdraw a claim, taking the claimants' conduct of the proceedings as a whole, I find that the respondent has shown that the claimant was unreasonable.

Discretion

81. The next question that I must consider is whether I should exercise my discretion and make an order for the respondent's time in preparing this case. I may have regard to the claimant's ability to pay when exercising my discretion and can take into account that the claimant refused to make full disclosure of his means.

82. In this case I consider it is appropriate to exercise my discretion and make an award. Costs are normally the exception and should compensate those applying rather than punish the claimant. I note that the claimant has made several Tribunal claims and his involvement in previous proceedings should have informed him of the procedure and the importance of complying with Tribunal orders and cooperating with other parties. His correspondence with the Tribunal and the respondent has been detailed and articulate, and although he is a litigant in person, assisted by his wife, I consider he was well able to conduct these proceedings in a reasonable fashion and was aware of the implications of bringing proceedings both for him and for the respondent and the time and effort that would be involved. I have considered when exercising my discretion, the difficulties which the claimant has had with ill health and other personal pressures.

Amount

83. The respondent seeks a minimal award of £212.50. This is based upon an hourly rate of £25. It says that Mr Walsh and Mr Stephens spent 8.5 hours in attending preliminary hearings, collating evidence and responding to emails with the Tribunal and claimant. I consider that upon reviewing their schedule the time spent was necessary and reasonable.

84. Some evidence was given by the claimant of his means. Based upon the evidence the claimant was willing to provide, it appears that he has little disposable income. However, he has failed to provide a full explanation for his

income other than some of it came from other family members. He had a second bank account but would not disclose his statements. That is a matter for him. Although it is clear he is of limited means, and at the time of the hearing was still signed off from work, having not made full disclosure of his finances, I consider that it is appropriate to make a preparation time order in favour of the respondent in the relatively modest sum of £212.50.

85. I appreciate the importance of this judgment to both parties and apologise for the delay in producing it. This has been for the reasons notified previously.

Employment Judge Benson
17 January 2025

Judgment sent to the parties on:
20 January 2025

……
For the Tribunal

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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/

NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990 ARTICLE 12

Case number: **2408676/2022**

Name of case: **Mr K D Raza** v **Triguard Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 20 January 2025

the calculation day in this case is: 21 January 2025

the stipulated rate of interest is: **8% per annum**.

Paul Guilfoyle
For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:
   www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

   If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.

3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.

4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.

5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.

6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.

7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.

8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.

9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.