

# THE EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**Respondent**

Ms B Bassis

**AND**

NHS Blood and Transplant

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT:** London Central

**ON:** 13 November 2024

**EMPLOYMENT JUDGE:** Mr N Deol (Sitting alone)

### Appearances

**For the Claimant:** Mr N Toms (Counsel)

**For the Respondent:** L.A. Amartei (Counsel)

## JUDGMENT

1. The Claimant's cost application succeeds. The Respondent must pay the Claimant's costs of £8012.40 within 28 days of this Judgment.
2. The Claimant's application for clarification of the Judgment is rejected.

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**EMPLOYMENT JUDGE DEOL**

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON**

**30 March 2025**

.....  
**JUDGMENT SENT TO THE PARTIES ON**

**11 April 2025**

.....  
**AND ENTERED IN THE REGISTER**

.....  
**FOR THE TRIBUNAL OFFICE**

# THE EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**Respondent**

Ms B Bassis

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NHS Blood and Transplant

**Date of Hearing:** 13 November 2023

## REASONS OF THE EMPLOYMENT TRIBUNAL

### Background

1. The full merits hearing in this case took place before this Tribunal between 6 and 9 November 2023 to determine the Claimant's complaint of unfair dismissal. The Tribunal's judgment, upholding the Claimant's complaint, was given orally on 20 November 2023 with written reasons sent to the parties on 11 April 2024. (the "Judgment")
2. The Tribunal awarded the Claimant £2,569.50 as a Basic Award and £93,878.00 as a Compensatory Award.
3. On 23 November 2023 the Claimant wrote to the Tribunal requesting that it apportion the Compensatory Award based on her salary loss of £215,486.45 and pension loss of £58,465.60. It was accepted by both parties at this hearing that this request was for clarification rather than an application for a review or reconsideration of the decision.
4. This was followed on 30 December 2023 by an application from the Claimant for costs (limited to £8012.40) on the basis that Respondent had acted unreasonably in defending these proceedings and/or in the way that the proceedings had been conducted.
5. On 12 January 2024 the Respondent replied to the Claimant's costs application saying that it did not contest this application and agreed to make a payment of £8012.40 to the Claimant.
6. This concession was withdrawn by further correspondence on 5 March 2024. In the same correspondence the Respondent set out its objections to the Claimant's application for costs.
7. A preliminary hearing was listed for 5 July 2024 to consider the Claimant's application for costs and clarification of the Judgment. This was adjourned to 13 November 2024, following a request for postponement.
8. A further request for a postponement of this hearing was made by the Respondent, which was rejected by the Tribunal on 31 July 2024. An application for a review of that

decision was made in writing, although this request was not pursued at the outset of this hearing as both parties were prepared to address the issues.

The issues

9. The two issues to be addressed at this hearing are based on the Claimant's application that:
  - (i) the Tribunal should "clarify" the Judgment of 20 November 2023 to apportion the compensatory award made by the Tribunal based on the Claimant's salary loss of £215,486.45 and pension loss of £58,465.60.
  - (ii) the Tribunal should award costs in favour of the Claimant.

The clarification issue

10. The Tribunal's Judgment of 20 November 2023, sent to the parties on 4 December 2023 was that:
  1. The Claimant's claim of unfair dismissal is well founded.
  2. The Claimant is awarded a basic award of £2,569.50 and a compensatory award of £93,878.
11. These awards were made based on agreed schedule of loss presented to the Tribunal at the original hearing.
12. The Claimant seeks clarification that the compensatory award made by the Tribunal should be apportioned based on the Claimant's claim salary loss of £215,486.45 and pension loss of £58,465.60.
13. The Claimant has clarified at this hearing that this is not a request for a reconsideration but a request for clarification of that Judgment. As a result, the Respondent's arguments about whether a request for reconsideration can be made in these circumstances and the process by which such a request should be made (under Rule 71 and 72 of the Employment Tribunal Rules of Procedure) fall away.
14. The Respondent submits that outside of an application to reconsider a decision a Tribunal has no power to make the change sought by the Claimant. It also objects to the Claimant's request on principle; that she is effectively seeking to reopen an issue that was not raised at the previous hearing, and that the interests of the Respondent and the public in the finality of litigation outweigh the Claimant's interests.
15. The Claimant indicated that she made this application because she intends to pursue a breach of contract claim in a different forum. The Respondent argues that she would be precluded from pursuing such a claim given the terms of the original Judgment.
16. This is not, and has not been, an issue for this Tribunal to determine. The specific factual and legal issues relating to the Claimant's claim for unfair dismissal are clearly set out in the Judgment and written reasons and the compensation awarded relate solely to these issues.
17. The Respondent's submissions are accepted, and on that basis the Tribunal rejects the Claimant's request for clarification. The Claimant is not precluded from pursuing a legal claim in another Court, but it is for that Court to hear arguments from both sides and determine whether it is prepared to entertain that claim or not.

The costs issues

18. The Claimant's cost application is pursued under Section 76(1) of the Employment Tribunal Rules of Procedure 2023 which provides that:

"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.... "

19. The basis of the Claimant's cost application is that the Respondent had acted unreasonably in the bringing of the proceedings and/or the way in which the proceedings had been conducted on the following grounds:

- (i) made no counteroffer to the Claimant's attempt to settle proceedings for £40,000 on 22 September 2023.
- (ii) continued to defend the proceedings even though, as the Tribunal found, there was no basis for My Wyman to conclude the Claimant was not a fit and proper person given the absence of any investigation and in circumstances were even after 15 months they had still not investigated any allegations against the Claimant and where Mt Wyman's conclusions about her contained no hint of objectivity.
- (iii) attacking the Claimants character at the Employment Tribunal hearing in ways that went well beyond the original criticisms levelled in 2022.
- (iv) leaving the Claimant in an impossible position whereby even at the Employment Tribunal hearing she was trying to defend herself against non-specific general allegations, details of which the Respondent was not sure of itself.
- (v) exaggerating the allegations against the Claimant as the proceedings progressed.
- (vi) relying on further alleged evidence against the Claimant at the hearing which was not considered or investigated at the time and which remained general and non-specific.

20. Following the exchange of witness statements, and several weeks before the original hearing, the Claimant's representative wrote to the Respondent on the 22 September 2023 in the following terms in response to the Respondent's proposal for a "drop hands" settlement.

*"Having considered the three statements disclosed by the Respondent, we are at a loss to see how anyone could have come to the conclusion that the Claimant was not a fit and proper person. The statements are largely hearsay evidence and with anonymous comments. They are vague with very little detail with no particulars, dates etc. in relation to the allegations against the Claimant. At least some of the comments in the Appendix to Ms Campbell's statement appear to concern matters that were previously investigated by the Respondent and not upheld with no action being taken. We do not know whether the matters concerned occurred more recently or at the start of the Claimant's employment.*

*We cannot see how having an expectation that senior managers would be prepared for meetings represents any form of bullying”.*

In response to the suggestion from the Respondent’s witness (Peter Wyman’s) that the Claimant would have “‘lashed out’ had she been allowed to continue working, the Claimant’s representative said the following:

*“There is no basis for this conclusion or evidence supporting that she would have done this. Mr Wyman refers to the Claimant asking individuals when they came out of the CQC interviews as to how it had gone. What he fails to mention is that the Respondent’s Quality Director had arranged for all interviewees to sit in a room on the day of the interviews and that there was a natural curiosity when they returned to understand what was being asked. The Claimant was not the only person to ask how it had gone. There was no ‘lashing out’ by her of any sort. Further, Mr Wyman fails to mention that he himself was present in the room for much of the day and raised no concerns about the Claimant’s conduct. Nor did anyone else. Even if there was evidence she might have ‘lashed out’, no thought appears to have been given to the option of suspending the Claimant while a thorough investigation was carried out.*

*In the circumstances, having considered all the evidence, we are of the opinion that the Respondent will lose. However, in an attempt to keep the costs to a minimum, the Claimant would be prepared to accept a settlement now in the sum of £40,000 subject to terms”.*

21. In response to a chaser from the Claimant on 2 October 2023, the Respondent replied on 3 October 2023 as follows:

*“The Respondent is considering your correspondence of 22 September 2023. However, as you and your client will know, even if the Respondent wished to pursue a settlement it would first have to obtain approval from the Department of Health and Social Care and HM Treasury. That process would take some time and perhaps would not be concluded before the hearing date of 6 November. I shall, of course, confirm the Respondent’s position once it confirms its instructions to me”.*

22. The Respondent acknowledges that it had not responded to the Claimant’s offer to settle for £40,000. It relies on the argument that it was bound by HM Treasury Guidance on Public Sector Exit Payments and that any settlement was subject to an approval process. The Respondent did not adduce any evidence as to whether a request to settle via that approval process had been made or was pending. It was not aware at this hearing whether such a request had been made.

21. In the absence of any such evidence, the Tribunal does not accept the Respondent’s position that it could not respond to the Claimant’s offer because it did not have approval from HM Treasury.

22. The HM Treasury Guidance states that:

3.8 *“HM Treasury approval must be sought in good time to allow reasonable consideration of the case and negotiations mandates to settle must be sought in advance.*

- 3.9 *Departments should allow for a minimum of 20 working days for HM Treasury to assess and scrutinise individual cases. Where urgent approval is required, Departments should engage early with the relevant spending team*
23. There were 30 working days between the date of the original offer and the hearing date. There were 25 works days between the follow up email from the Claimant on 2 October 2023. Based on the content of the HM Treasury Guidance, there was sufficient time for the Respondent to seek approval if it wished to do so.
24. The argument that approval for settlement was by way of exception and rarely given in Employment Tribunal proceedings does not justify the Respondent's lack of response in this case.
25. The Treasury Guidance at 3.29 recognises that *"the Government's default approach is not to settle, and HM Treasury will closely scrutinise any such cases to ensure Special Severance Payments are only made in exceptional circumstances and represent value for money for the Government as a whole"*.
26. The same guidance recognises that Special Severance Payments in settlement agreements will be considered if attempts to settle dispute(s) without Special Severance Payments have been made; and either
- (i) Legal advice has been sought and clearly recommends settling the claim; or
  - (ii) Where legal advice is finely balanced, there is a clearly evidenced value for money case not to adopt the Government's default approach and settling is clearly the best course of action.
27. In the absence of any evidence from the Respondent as to whether such approval was sought it would be unfair to allow the Respondent to rely simply on the existence of the guidance to deflect an otherwise legitimate costs application from the Claimant.
28. As a matter of policy, a Respondent should not be able to avoid a costs application simply because authority is required from another source or entity, when there is no evidence that that authority has been sought.
29. Turning to the other aspects of the Claimant's costs application:
- (i) there are clear parallels between the content of the costs warning and the findings of the Tribunal as regards the quality of the Respondent's evidence, for instance that there was no basis for My Wyman to conclude the Claimant was not a fit and proper person given the absence of any investigation at the time of her dismissal or at the time of the hearing.
  - (ii) the Respondent's unreasonable conduct at the hearing is evident from the Tribunal's conclusions, that it sought to attack the Claimant's character without any evidence to support such an approach, with new and exaggerated points.
30. The points made in the Claimant's offer to settle on 22 September 2023 regarding the weaknesses of the Respondent's case are very similar to the Tribunal's conclusions

and the offer to settle is well below the amount eventually awarded in these proceedings. The Respondent's failure to engage with the Claimant's offer leaves it exposed to the costs warning from the Claimant.

31. The Respondent argues that it should not be penalised for defending proceedings (and not settling the claim) where the evidence had yet to be tested and where it could not predict how the Tribunal would treat such evidence. It argues that it was entitled to level the allegations of misconduct against the Claimant in these proceedings not least as it was pursuing the argument that the Claimant would have been dismissed in any event.
32. There is no obligation for the Respondent to settle a claim that it has been pursued against it, but where it does not and that offer to settle comes with a cost warning it takes the risk of that warning coming to life. It does not follow that the failure to beat an offer to settle exposes the losing party to costs particularly where that party is not the instigator of the claim, but this an important factor to consider in conjunction with the content of that costs warning. This however is not a case of a party simply failing to beat an offer, but one of a continued and unreasonable attack on the Claimant's character. That attack was unreasonable as much of it was not supported by any evidence.
33. It is open for the Respondent to argue that the employee would have been dismissed in any event, but there must be some evidence to base that challenge upon. There was no such credible evidence in this case. For instance, the Tribunal found in its original decision that it had:

*"serious doubts as to whether the Respondent had a genuine belief in its purported reason for the Claimant's dismissal. At the point of dismissal there existed little in the way of objective evidence that supported this conclusion. At the point of this hearing the Respondent remained unable to articulate the specific allegations against the Claimant that had underpinned its decision to dismiss and there was little in the way of objective evidence to support their conclusions".*

*"The fact that the Respondent has been able to expand upon allegations against the Claimant via witness statements produced for these proceedings does not detract from the fact that at the time of the decision to dismiss the Claimant it had not properly investigated the matter and had very little information that supported its conclusions".*

*"Turning to the issue of whether the Claimant would have been dismissed in any event or whether she had contributed to her own dismissal. The Respondent's attack on the Claimant's character increased through these proceedings to a level that went beyond the original criticism that it levelled against her in 2022. If this were to be a credible strategy it should have been accompanied by a fuller investigation/enquiry carried out after the Claimant's dismissal so that there were substantive issues to respond to in these proceedings. As it stood the Claimant was left in the unenviable position of having to defend herself against non-specific and generalised accusations that the Respondent was not sure of itself and that was not supported by objective evidence".*

34. The Tribunal has considered all of these matters in exercising a discretion as to whether to award costs in favour of the Claimant and has concluded that it was reasonable to do so on the basis that the Respondent had acted unreasonably in the way in which the proceedings had been conducted and in failing to consider and

respond to the Claimant's reasonable offer to settle in September 2023. All of the Claimant's arguments summarised at paragraph 19 of this Judgment in support of this cost application are accepted as valid examples of the Respondent's unreasonable conduct in these proceedings.

35. The amount of costs claimed are £8012.40 which the Claimant has capped for the purposes of this application. In considering the amount of costs to award the Tribunal should consider the Respondent's ability to pay.
36. The Respondent produced no evidence on its ability to pay. The sum claimed by the Claimant is a modest amount given the length and complexity of the case and is entirely reasonable. In addition, when the costs application was first made, the Respondent had consented to the same, suggesting that there were no issues regarding its ability to pay.
37. The Tribunal awards these costs (£8012.40) in full.

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**EMPLOYMENT JUDGE DEOL**

**REASONS SIGNED BY EMPLOYMENT JUDGE ON  
30 March 2025**

**REASONS SENT TO THE PARTIES ON**

11 April 2025

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**AND ENTERED IN THE REGISTER**

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