EMPLOYMENT TRIBUNALS

Claimant: **Ms. K. Herbert**

Respondent: **Main Group Services Ltd**

JUDGMENT on COSTS

The Claimant's application for costs under rules 74(2)(a) and 74(2)(b) of The Employment Tribunal Procedure Rules 2024 succeeds.

The Respondent is ordered to pay the Claimant's legal costs in the sum of £14,087.50 (exclusive of vat).

REASONS

The Proceedings

1. In a claim form (ET1) presented on 17 August 2022, the Claimant brought complaints of unfair dismissal, breach of contract (failure to pay notice pay) and failure to pay holiday pay.
2. Following a one-day hearing on 29 March 2023, the complaints of unfair dismissal and breach of contract succeeded against the Respondent. It was also found that her written statement of particulars of employment did not fully comply with the statutory requirements. The complaint relating to holiday pay was dismissed.
3. A remedy hearing was listed for 27 October 2023. Following there being discussions between the parties and with the Tribunal, I was informed that the parties had reached a settlement. The hearing was therefore adjourned to allow the settlement to be implemented. The adjournment was on the basis that if neither party had made an application to the Tribunal to re-list the matter for hearing by 1 December 2023 at 4pm, then the case was to stand withdrawn by the Claimant as at that date. Judgment was issued in those terms.
4. The parties were not able to reach a binding settlement and so, on the 30 November 2023, the Claimant requested that the stay on proceedings be lifted and that an expedited remedy hearing be arranged.
5. A further remedy hearing took place on 27 June 2024. The Respondent did not attend that hearing. On 24 June 2024, an email was received from Digital Tax

Matters. Digital Tax Matters were not on the record as the Respondent's representatives.

> *"We act as accountants for the Repsondent [sic], and have been requested by them to write to you to confirm that the company had ceased trading on 30th November 2023 due to insolvency.*
>
> *Whilst placing the firm in Administration was considered, the inability to recover retentions, and debtors in such a situation led to the decision to cease trading, due to pressure from Creditors. Despite creditors chasing, none have to date, taken any action to wind up the company. HMRC was going to serve a petition in November 2023, but that has not materialised. The Claimant as former bookkeeper, would have been aware of the poor state of the company's financial position, so it may not come as a surprise to her.*
>
> *The company itself does not have funds to pay for its own winding up, without prejudicing creditors.*
>
> *Whilst the Company has an obligation to its former employee to deal with her claim, the matter clearly needs to be dealt with. The Solicitors, Tollers who were acting for the Respondent, no longer act. So as not to waste the Tribunal time, as the company is no longer trading, the remedy of re-engaging the Claimant is not relevant.*
>
> *Clearly if entitled, she would receive compensation, but the Company is not in a position to pay any award. On that basis the company is unable to object to any award in the knowledge it is insolvent.*
>
> *On the basis of the above, the company did not wish to object to any decision which may be reached by the Tribunal, and as not to waste time was not seeking to send a representative to the scheduled hearing."*

6. I was satisfied that the Respondent was aware of the hearing and had decided not to attend. I decided that it was in the interests of justice that the hearing proceed in the Respondent's absence. I awarded the Claimant compensation of £15,042.81.

7. Following Judgment on Remedy being issued on 20 September 2024, on the 18 October 2024 the Claimant made an application to the Tribunal for costs against the Respondent. The Respondent was copied into that correspondence. The application was referred to me for consideration on the 1 July 2025. Having sought clarification from HMCTS as to whether or not the Respondent had previously been directed to comment on the application, and establishing that it had not, I gave further directions on the 7 July 2025. Those directions were sent to the parties on the 9 July 2025.

8. In order to ensure that rule 75(2) of The Employment Tribunal Procedure Rules 2024 ("ETPR") had been complied with, I directed that if the Respondent wished to reply to the Claimant's costs application, or request an oral hearing, it was to do so within 14 days of the date of the letter. I directed that if there was no response from the Respondent within 14 days then the application for costs would be decided without further recourse to the Respondent on the basis of

the written submissions from the Claimant and documentary evidence before the Tribunal.

9. No response has been received from the Respondent either in respect of the substantive costs application or relating to its ability to pay any costs if an order is made. As a comprehensive written costs application has been made by the Claimant (a letter of seven pages with relevant evidence attached) and as the Respondent has failed to respond in any way to my directions, I considered that it was in accordance with the overriding objective of the ETPR to determine the application on the papers rather than directing that an oral hearing be held.

Claimant's application for Costs

10. The Claimant submits that she should be awarded costs on two bases. Firstly, because the Respondent's conduct has been vexatious, abusive and unreasonable in the manner in which the proceedings had been conducted.

11. Secondly, because the Respondent's defence of the complaints of unfair dismissal, wrongful dismissal and breach of section 1 of the Employment Rights Act 1996 had no reasonable prospects of success.

12. The Claimant submits that the Respondent's conduct amounts to vexatious, abusive and unreasonable conduct for the following reasons:

    12.1. On 29 December 2022, the Respondent's representative forwarded a draft bundle to the Claimant's representative which contained documentation from the Respondent which had not been previously disclosed. This included a document titled "Thomas Swannell's notes of the meeting", which appeared to be an attendance note prepared by the Respondent's Operations Manager of the meeting on 20 May 2022. The meeting notes supported the Respondent's version of events.

    12.2. The Meeting Notes had not been provided to the Claimant at any point prior to the preparation of the bundle. Given that the Respondent was asserting that the Claimant had been suspended (rather than dismissed as alleged by the Claimant) during the meeting on 20 May 2022 and it was commencing a disciplinary process into allegations of misconduct against the Claimant, it was highly irregular that the Meeting Notes did not form part of the disciplinary had they been in existence at that time.

    12.3. Consequently, the Claimant disputed the veracity of the meeting notes, requesting that the Respondent send a copy of the documentation in both pdf and word format. The Respondent asserted that it only had a copy of the notes in pdf format, a position which it reiterated during the final hearing on 29 March 2023.

    12.4. It was therefore the Claimant's position that the meeting notes had been prepared during the proceedings and were unreliable. This is supported by the findings in the reserved judgment as follows: "*No meta data has been provided to show when the document was created or printed off either in Word or PDF. There is no reference whatsoever to the document in the investigation or disciplinary proceedings. The claimant*

states that she had never seen the statement until it was disclosed during the course of these proceedings. I would have expected the document to have been disclosed during the course of disciplinary proceedings had it been in existence at that time. For those reasons I do not consider it to be a reliable document nor am I satisfied that it was created on the 20 May 2023" [Paragraph 57]…."*Further, I do not consider the statement of Thomas Swannell dated the 20 May 2023 to be a reliable document for reasons that I have provided above. This casts doubt on the reliability of his account of what occurred on that date*" [Paragraph 60].

12.5. Consequently, it is the Claimant's position that the Respondent retrospectively created the Meeting Notes as a means of falsely altering its position in order to mislead the Tribunal and is an abuse of the Tribunal's process.

12.6. The Claimant submits that the Respondent failure to engage with the Claimant's 'without prejudice save as to costs' correspondence ("WPSTC") amounts to vexatious, abusive and unreasonable conduct for the following reasons:

12.6.1. On 24 March 2023, the Claimant made a settlement offer of £15,000 which was communicated to the Respondent WPSTC. The WPSTC correspondence clearly sets out that if the settlement offer was not accepted, or if the Respondent unreasonably failed to engage with the WPSTC correspondence, the Claimant would pursue the Respondent for her legal costs. The Respondent's representative responded on 27 March 2023 to confirm that the offer was rejected and it was not interested in engaging in settlement discussions.

12.6.2. On 17 October 2023, prior to the first remedy hearing which was listed for 27 October 2023 (the "First Remedy Hearing"), the Claimant made a further settlement offer to the Respondent of £16,500 which was again communicated in WPSTC correspondence. It was reiterated to the Respondent that if the settlement offer was not accepted, or if it unreasonably failed to engage with the WPSTC correspondence, the Claimant would be making an application for costs against the Respondent. The Respondent rejected the offer on 20 October 2023.

12.6.3. The Claimant submits that the Respondent's approach has been to fail entirely, and unreasonably, to engage with the Claimant's reasoned WPSTC correspondence and offers of settlement. Instead the Respondent continued with the litigation despite the risks which were highlighted to it, putting the Claimant to significant cost and distress in the process.

12.7. The Claimant submits that it is also key that the Claimant was awarded compensation of £15,042.81 by the Tribunal, which is an amount in excess of the Claimant's settlement offer of 24 March 2023. The Claimant submits that it was unreasonable for the Respondent to have rejected the Claimant's settlement offers. Further, had the settlement offer of 24 March 2023 been accepted by the Respondent, it would have avoided a further 18 months of litigation.

12.8. The Claimant states that she attempted to confirm a binding settlement through ACAS but was unable to do so because, after settlement between the parties had been agreed at the first remedy hearing, the following occurred:

12.8.1. ACAS were unable to contact the Respondent to confirm binding settlement, despite repeated attempts.

12.8.2. The Respondent dis-instructed their solicitors.

12.8.3. The Respondent's website was shut down.

12.8.4. The contact details for the Respondent's contact (Anna Swannell – Managing Director), no longer appeared to be active, with all emails bouncing back.

12.8.5. The Respondent was no longer based at the address contained on the Form ET3.

12.8.6. The directors of the Respondent appeared to be working under a new company, Main Scaffolding Services Limited, which was incorporated on 1 September 2023.

12.9. The Claimant submits that, in light of the above, it appeared that the Respondent was seeking to dissolve the company in order to avoid paying the agreed settlement sum, or any compensation at all, to the Claimant. The Claimant raised her concerns with the Tribunal and requested an expedited remedy hearing.

12.10. The Claimant states that she considered that the Respondent's email was further evidence that it was seeking to dissolve the company in order to avoid paying any compensation to the Claimant, particularly when taking into account with the following:

12.10.1. No evidence has been provided of the Respondent's alleged insolvency or any winding up action against it.

12.10.2. The Respondent had not mentioned at any point prior to, or during, the First Remedy Hearing that it was having financial difficulties or that it considered it would not be in a position to pay any compensation to the Claimant whether by way of settlement or at all.

12.10.3. The Respondent had been represented during the First Remedy Hearing by both a firm of solicitors and a barrister.

12.10.4. The Respondent's Managing Director, Anna Swannell, was also a director of a similarly named company "Main Group Scaffolding Services" which was incorporated in September 2023 and which was active at the time that the Respondent is alleged to have gone insolvent.

12.11. The Claimant submits that the Respondent's accounts from 31 December 2022 indicate that it had assets of over £800,000 at that time. She submits that whilst the accounts were filed in 2022, there has been no explanation or evidence provided to date as to the whereabouts of these assets or the current financial position of the Respondent.

12.12. The Claimant therefore submits that the Respondent has manufactured its insolvency in order to avoid paying compensation to the Claimant and that it knowingly agreed settlement terms which it had no intention of complying with. For that reason, the Claimant asserts that the settlement discussions between the parties from the first remedy hearing are not protected by without prejudice privilege, as: (1) it was not a genuine attempt to settle the dispute by the Respondent; and (2) there was a fraudulent misrepresentation by the Respondent as to its ability to pay the agreed settlement. The Claimant therefore seeks to rely on the Respondent's conduct in relation to the agreed settlement in support of this application. A copy of the agreement reached at the first remedy hearing, signed by counsel to both parties, was provided by the Claimant to the Tribunal.

12.13. The Claimant submits that the above incidents show that the Respondent's conduct throughout the proceedings has been vexatious, abusive and unreasonable and appears to have been undertaken with the purpose of prolonging matters without any intention of paying any compensation to the Claimant. The Respondent has failed to pay the compensation to the Claimant as ordered by the Tribunal.

13. The Claimant submits that the Respondent's response had no reasonable prospects of success for the following reasons:

13.1. There were numerous inconsistencies in the Respondent's account of the meeting of 20 May 2022, particularly whether or not the Claimant had been suspended and these were highlighted to the Respondent in the Claimant's WPSTC correspondence of 24 March 2023.

13.2. These inconsistencies were highlighted in the reserved judgment on liability as follows: "*Further the account given by Thomas Swannell at the meeting makes no reference to the claimant being suspended during that meeting. At paragraph 4 of his witness statement it says "I suggested we left the conversation there to allow her some time to calm down over the weekend". His statement at 350-351 says similar. Again there is no reference to the claimant being suspended. Anna Swannell says in her witness statement at paragraph 14 that Thomas Swannell became very uncomfortable, asked the claimant to leave the premises and told her that the matter would be dealt with on the Managing*

Director's return. It is therefore very surprising that the claimant was later sent a letter on the 1 June 2022 [74] which states that she was "verbally suspended from [her] employment pending investigation into the rude and objectionable behaviour and language that you exhibited during the conversation." This contradiction in the evidence casts further doubt over the reliability of what is said by the respondent's witnesses as to what occurred on the 20 May 2023" [paragraph 61 of the Judgment] [….] "*The inconsistency in the respondent's case regarding as to whether or not the claimant was suspended on 20 May 2023 is significant and undermines the reliability of the respondent's assertions*" [paragraph 122 of the Judgment].

13.3. It was the Claimant's position that the disciplinary process which was conducted against her following the meeting on 20 May 2022, was concocted in response to her allegation that she had been unfairly dismissed during the meeting and in order to, retrospectively, alter events so that was fairly dismissed. This was again highlighted to the Respondent in the WPSTC correspondence of 24 March 2023. This is supported by the judgment on liability which states "*I find that the subsequent investigation and disciplinary proceedings were contrived in order to seek to show that a fair procedure had been followed*" [paragraph 122 of the Judgment].

13.4. The Claimant highlighted the issues with the Respondent's reliance on the Meeting Notes.

13.5. The Claimant's correspondence to the Respondent sets out fully the deficiencies in the Respondent's defence to the claim, which, the Claimant asserts were similar to the conclusions reached by the Tribunal. The Claimant submits that it was evident that the Respondent must at least have known, or reasonably ought to have known, that its defence was unmeritorious.

14. In addition to what was said in the original costs application, the Claimant made further submissions in an email dated 7 May 2025 in reliance of the case of *1) Gold Panda Ltd 2) Pandeli Ltd v Ms H O'Keefe* [2025] EAT 47. In reliance upon that case, the Claimant submits that the Respondent's conduct in seeking to dissolve the company in order to avoid paying the Employment Tribunal award to the Claimant amounts to unreasonable conduct.

15. The Claimant seeks costs of £14,687.50 (exclusive of vat) for legal work undertaken by her solicitors and counsel which covers the period 24 March 2023 to 18 October 2024.

Procedure Rules

16. The relevant parts of the ETPR are as follows:

"When a costs order or a preparation time order may or must be made

74.—(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in

respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(2) The Tribunal must consider making a costs order or a preparation time order 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 of it, or the way that the proceedings, or part of it, have been conducted,

(b)any claim, response or reply had no reasonable prospect of success, or

(c)a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

Procedure

75.—(1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

The amount of a costs order

76.—(1) A costs order may order the paying party to pay—

(a)the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b)the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—

(i)in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998(33), or by the Tribunal applying the same principles; […]

(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

Ability to pay

82. In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have

regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay."

Relevant Law

17. Costs orders in the Employment Tribunals are the exception rather than the rule [*Yerrakalva v Barnsley Metropolitan Borough Council and anor* 2012 ICR 420, CA]. Costs are not routinely awarded to the losing party.

18. The purpose of an award of costs is to compensate the party in whose favour any order is made, rather than to punish the paying party.

19. Whether a party's conduct in bringing, defending or conducting a case, is unreasonable is a matter of fact.

20. The burden of proving that the costs jurisdiction is engaged (that is whether one or more of the rule 74 grounds is engaged) falls upon the party seeking the order. The Tribunal's power to award costs is discretionary. This means that even if one or more of the grounds at 74(2) and 74(3) ETPR are made out, the Tribunal is required to consider whether it is appropriate to exercise its discretion to make an order for costs having regard to all of the relevant factors.

21. In determining whether there is unreasonable conduct the Tribunal is required to take into account the "nature, gravity and effect" of the party's conduct. In assessing these factors, the Tribunal is required to look at the totality of the circumstances.

22. Costs should not automatically be awarded because a party has given false evidence knowingly (*Kapoor v Governing Body of Barnhill Community High School* EAT 0352/13).

23. In the case of *Gold Panda Ltd and anor v O'Keefe* 2025 EAT 47, one of the respondents applied for voluntary removal from the Register of Companies during the course of Tribunal proceedings. The other respondent had failed to object to a potential compulsory strike off from the register despite knowing that it was a respondent to the proceedings, failed to notify the claimant of the imminent strike off and failed to notify the claimant and the Tribunal of its imminent dissolution until after completion of evidence and submissions in the proceedings. The EAT upheld the Tribunal's Judgment that these actions amounted to unreasonable conduct of the proceedings on the part of the respondents. This was because it was conduct intended to influence the course or outcome of the Tribunal claim by making it impossible for the claimant to secure a judgment on the merits of her complaints. The EAT observed that it was legitimate for the Tribunal to examine the likely effect of the behaviour and the subjective intention behind it. Conduct by a respondent intended to influence the course or outcome of proceedings by making continuance of them impossible for a claimant could amount to unreasonable conduct.

24. At paragraph 21 to 24 of his Judgment, Lord Fairley said,

"21. In examining whether unreasonable conduct amounted to "the way that the proceedings (or part) have been conducted", the tribunal first required to define

the unreasonable conduct. It did so, and no criticism is made of its conclusions on that issue.

22. The next step, therefore, was to consider whether the unreasonable conduct was part of the conduct of the proceedings. In considering that issue it was legitimate for the tribunal to examine, as part of the whole circumstances, the likely effect of the conduct and the subjective intention behind it. A tribunal's assessment of intent will invariably depend upon the inferences it is prepared to draw about the state of mind of the party whose conduct is under consideration.

23. Without attempting an exhaustive definition of the circumstances in which acts or omissions by a respondent might amount to the conduct of tribunal proceedings, therefore, conduct by a respondent intended to influence the course or outcome of such proceedings by making continuance of them impossible for a claimant certainly could.

24. I do not accept the submission for the appellant that the tribunal's conclusions were limited to the issue of the enforceability of any financial award. On a fair reading of the tribunal's reasons, in particular at ET § 31, it concluded that the purpose of the conduct was to prevent all of the claimant's complaints against the appellants from proceeding any further. The purpose of the conduct went beyond the issue of enforceability of a financial award. The intention of the appellants was to bring the proceedings to an end by frustrating the claimant's ability to establish liability on the merits of her complaints. The tribunal properly concluded that such conduct was not extraneous to the proceedings."

25. The principles which apply to offers to settle that are not beaten (*Calderbank* offers) do not apply in the Employment Tribunal. However, the rejection of an offer of settlement is potentially a factor relevant to the Tribunal's exercise of discretion (*Kopel v Safeway Stores* [2003] IRLR 753).

26. It is not necessary to establish a direct causal link between particular examples of unreasonable conduct and the costs incurred. Once a finding of unreasonable conduct is made, the question of costs is then very much within the discretion of the Tribunal (*D'Silva v NATFHE (now known as University and College Union) and ors* EAT 0126/09).

27. Funding arrangements such as legal expenses insurance are not relevant to the Tribunal's discretion to award costs [*Mardner v Gardner and ors* EAT 0483/13].

28. The protection of the 'without prejudice' rule may be removed in cases where the rule would otherwise serve as a cloak for 'unambiguous impropriety'. A high threshold of seriousness must be reached before the abuse will warrant withholding 'without prejudice' protection.

My Conclusions

Have grounds for a Costs Order been made out?

29. The Claimant seeks to rely upon a document relating to settlement signed by counsel to both parties at the first remedy hearing on the 27 October 2023. I consider that the without prejudice doctrine applies to this document. I am not satisfied that the Claimant has demonstrated that the high threshold is met for

waiving privilege in respect of that document. Consequently, I have had no regard to what is said in the document concerned when reaching my conclusions. I am however aware that negotiations between the parties were taking place at that hearing and that a settlement had been reached, as is clear from my consequent Judgment following the first remedy hearing.

30. I am not able to award costs unless one or more of the criteria at rule 74 are engaged. I must first consider whether any of the relevant criteria are met. The Claimant asserts that rules 74(2)(a) and rule 74(2)(b) are engaged.

31. Dealing first with rule 74(2)(a), I have to consider if the Respondent's conduct during the course of the proceedings has been unreasonable. I find that it has. This is for the following reasons.

32. Firstly, I find that the Respondent's conduct as it relates to the Register of Companies amounts to unreasonable conduct of the proceedings and engages rule 74(2)(a). I find that it is likely that its conduct has been designed to frustrate the proceedings and the outcome of proceedings.

33. The following information regarding the Respondent can be gleaned from Companies House website:

https://find-and-update.company-information.service.gov.uk/company/09930652

33.1. The company status is active, with an active proposal to strike off. The nature of business is recorded as "43991 – Scaffold erection". The Respondent was previously called Main Scaffolding Services Limited from 29 December 2015 to 12 April 2018. The registered office address is 7 Duncan Close, Moulton Park Industrial Estate, Northampton, England, NN3 6WL.

33.2. Anna Maria Swannell was appointed a director on 7 November 2016. That appointment is continuing.

33.3. Accounts for year ended 31 December 2022 were filed on 27 April 2023.

33.4. By virtue of a termination of appointment filed on the 19 September 2023, Jacob Farrell Swannell ceased to be a director as of 31 August 2023.

33.5. A confirmation statement was due by 4 November 2023.

33.6. On the 9 January 2024, there was a notice for compulsory strike off. On 6 February 2024 compulsory strike of action was suspended. This was because an objection was filed with the Registrar.

33.7. The accounts for the year ended 31 December 2023 were due by 30 September 2024.

34. Jacob Farrell Swannell was appointed as a director of another company, Main Scaffolding Services Ltd, on 1 September 2023 and that appointment is continuing. Anna Maria Swannell was also appointed a director of Main Scaffolding Services Ltd, on 1 September 2023 and resigned on 31 August 2024. Main Scaffolding Services Ltd was incorporated on 1 September 2023. The nature of its business is "43991 – Scaffold erection". Upon incorporation, its

registered address was 7 Duncan Close Moulton Park Industrial Estate Northampton NN3 6WL England, which is the same address as the Respondent. On 31 October 2023 its registered office address was changed to 27 St. Cuthberts Street Bedford MK40 3JG. (https://find-and-update.company-information.service.gov.uk/company/15109105).

35. No corroborative evidence has been provided to support what is said in the email of 24 June 2024 from Digital Tax Matters. I find that the email in isolation is insufficient to demonstrate that the company was or is insolvent, or that HMRC intended to serve a petition in November 2023. Whilst there has been a notice for compulsory strike off, that appears to be as a consequence of the Respondent's failure to serve a confirmation statement. It does not demonstrate that the company is insolvent.

36. The Respondent was represented by counsel at the first remedy hearing on 27 October 2023. There was no mention whatsoever at that hearing of impending insolvency or that a decision to cease trading was imminent. Indeed, that hearing was adjourned on the basis that settlement had been reached.

37. Directly before and after the first remedy hearing there was a flurry of activity both in relation to the Respondent and Main Scaffolding Services Ltd. Main Scaffolding Services Ltd was incorporated on 1 September 2023. Jacob Farrell Swannell was appointed a director on the same date. On 19 September 2023 notice was filed which resulted in him ceasing to be a director of the Respondent. Anna Maria Swannell was also appointed a director of Main Scaffolding Services Ltd, on 1 September 2023. On 31 October 2023, the registered office of Main Scaffolding Services Ltd was changed so it is no longer the same registered office address as the Respondent.

38. It is notable that both the Respondent and Main Scaffolding Services Ltd are scaffolding businesses with the same directors as the Respondent (albeit Anna Maria Swannell subsequently resigned as a director) and that they were both had the same registered office address until 31 October 2023.

39. The Respondent has failed to provide any explanation whatsoever for its failure to file a confirmation statement with Companies House as required or its failure to any steps to prevent compulsory strike off action.

40. Whilst there had already been judgment on liability at the time that the above conduct occurred, the Tribunal had not by that point determined remedy.

41. Had the Claimant not filed an objection to the compulsory strike off notice then the Respondent company would have been dissolved thus preventing these proceedings from concluding. Taking into account all of the above, on the balance of probabilities, I find that the conduct by the Respondent in omitting to file a confirmation statement and the subsequent failure to take any steps to prevent compulsory strike off action was intended to influence the course and outcome of these proceedings. It amounted to unreasonable conduct of the proceedings and was designed to frustrate the outcome of proceedings by bringing them to a premature end before remedy had been dealt with.

42. Secondly, I find that the Respondent's conduct relating to the settlement negotiations at the first remedy hearing to be unreasonable conduct of the proceedings and so also engages rule 74(2)(a).

43. Given what has transpired in terms of the events I have identified at paragraphs 37 and 38 above, I have formed the view that it was unlikely the Respondent ever had any real intention of reaching a binding settlement at the first remedy hearing. I have formed the view that this was solely a delaying tactic. Had the Respondent not indicated that it intended to settle then judgment on remedy would have been given at that first remedy hearing, some 8 months earlier than eventually was the case. This resulted in additional costs being incurred by the Claimant unnecessarily, as well as wasting the Tribunal's time and resources, and causing significant delay.

44. In respect of the Claimant's submissions relating to the document entitled "Thomas Swannell's notes of the meeting", I find that threshold of unreasonable conduct has not been met. Whilst I found that the document was unreliable, that was a finding that I made on the balance of probabilities weighing the evidence before me. That is not enough to meet the threshold of unreasonable conduct without more. Rule 74(2)(a) is therefore not engaged on that basis.

45. I find that the Respondent's response to the complaints of unfair dismissal and wrongful dismissal had no reasonable prospects of success. There were very significant contradictions in the Respondent's evidence relating to what actually occurred at the meeting on the 20 May 2023 and as to whether or not the Claimant was suspended. I found that the subsequent investigation and disciplinary proceedings were contrived in order to seek to show that a fair procedure had been followed. This was something that the Respondent would have been aware of from the commencement of proceedings. This is therefore a case in which the Respondent, who was legally represented, must have known, or should have known, that its response was unmeritorious, given the central importance of what occurred at the meeting on the 20 May 2023, and any subsequent disciplinary proceedings, to prospects of success. Rule 74(2)(b) is therefore engaged on that basis.

Should the Tribunal exercise its discretion to make a Costs Order?

46. As I have found that rules 74(2)(a) and 74(2)(b) are engaged, I must go on to consider whether the Tribunal should exercise it discretion to make a Costs Order.

47. I have decided that the Tribunal should exercise its discretion to make a Costs Order in this case. In reaching that conclusion I have taken into account the following factors. I have borne in mind that costs orders are the exception rather than the rule and that they should be compensatory not punitive. I have considered all of those factors that I refer to above in relation to whether or not the criteria in rules 74(2)(a) and 74(2)(b) are met. I have taken into account that the Respondent was legally represented for much of the proceedings. I have taken into account that the Respondent's behaviour in these proceedings has undoubtedly significantly increased the costs incurred by the Claimant. This is

despite its response being unmeritorious in respect of the unfair dismissal and wrongful dismissal complaints.

48. I have also taken into account that the Claimant made two offers of settlement. The compensation awarded by the Tribunal exceeded the first offer that was made by the Claimant prior to the liability hearing. The Claimant fully laid out why it considered the Respondent's conduct was unreasonable and there were no reasonable prospects of success in its WPSTC letters of 24 March 2024 and explicitly stated that costs would be sought on that basis if the claim succeeded. This was summarily rejected by the Respondent in an email which stated "*My client is not willing to enter into negotiations to settle this case and does not accept the Claimant's offer of £15,000 in settlement prior to the hearing*". There was no attempt to engage with the issues raised by the Claimant in her detailed letter, which runs to three pages.

49. The second offer was made on the 17 October 2023 just prior to the first remedy hearing. The offer to settle exceeded the award finally achieved by a small proportion. Again, the offer was summarily rejected by the Respondent as follows "*We have taken our client's instructions and your client's offer of settlement is rejected for the reasons as previously set out*." No reasons were set out 'previously', despite what is said in the email.

50. I find that the Respondent's conduct was unreasonable in failing to engage with the Claimant's WPSTC and offers of settlement, which were fully reasoned and highlighted the weaknesses in the Respondent's case. This is especially so also taking into account the Respondent's conduct in agreeing to settle at the first remedy hearing and then failing to continue to engage with the Claimant to reach a binding settlement,

51. I have not been able to take into account the Respondent's means when considering whether the Tribunal should exercise its discretion as the Respondent has not made any submissions in relation to the costs application. It has not asked that I take into account its means when deciding that application. I have considered whether I should make further enquiries as to the Respondent's means prior to exercising my discretion. I decided that it was not in accordance with the overriding objective to do so given that the Respondent, who has been legally represented previously, has been given an opportunity to make submissions and request an oral hearing if it wished. Further, there has already been significant delay in this case and I consider that further delay was undesirable and not in the interests of justice.

What amount of Costs should be awarded?

52. The Claimant has been legally represented from the commencement of these proceedings. However, reasonably, she only seeks costs from the date that the first WPSTC letter was sent to the Respondent some seven months later. The Claimant has provided a detailed schedule of the costs incurred from 24 March 2023 to 18 October 2024. I have carefully considered the breakdown of those costs and whether those costs are reasonably incurred. I note that the Claimant appears to have the benefit of legal expenses insurance. However, that does not preclude her from recovering costs if the requirements of the ETPR are met.

53. The hourly rates charged by the Claimant's solicitors are within the specified hourly rates for the region concerned and counsel's fees are not excessive. The overall costs sought are significant given that the liability hearing only lasted for one day and as they amount to almost as much as the compensation that has been awarded. I have therefore considered whether the costs sought are proportionate in the circumstances. I have decided that they are proportionate given that the costs incurred will undoubtedly have been increased significantly by the Respondent's unreasonable conduct in these proceedings, causing the need for additional work and a second remedy hearing.

54. The Claimant's holiday pay complaint did not succeed. However, it formed a minor part of the claim overall, the main focus at the liability hearing (and in the documentary evidence relied upon) being on the unfair dismissal and wrongful dismissal complaints. It is not possible to identify what proportion of the Claimant's legal costs were incurred as a consequence of pursuing the holiday pay complaint. However, in the interests of fairness to the Respondent, I consider that there should be a reduction of £600 in the Claimant's overall costs to take into account the time likely to have been spent dealing with that aspect of the Claimant's case. This amounts to five chargeable hours at the principal fee-earner's hourly rate.

55. The Claimant is therefore awarded costs in the sum of £14,087.50 (exclusive of VAT).

Approved by
Employment Judge Boyes

Date: 28 August 2025

Judgment Sent to The Parties On
29 August 2025

FOR EMPLOYMENT TRIBUNALS