EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Lewis	**v**	**Amicus Trust Ltd**

Heard at: Cambridge Employment Tribunal (via CVP)

On: 2 October and 3 November 2025

Before: Employment Judge King

Members: Ms M Harris
Ms K Omer

Appearances

For the Claimant: In person
For the Respondent: Mr Arnold (counsel)

JUDGMENT

1. The Respondent's application for a costs order made on 20th May 2025 succeeds. The Claimant is ordered to pay the Respondent **£34,925.86** in respect of the Respondent's costs.

REASONS

1. By application dated 20th May 2025 the Respondent made an application for a costs order against the Claimant following the Reserved Judgment sent to the parties 23rd April 2025. To understand the reasons in full, this Judgment should be read together with that Reserved Judgment in which the Tribunal dismissed the Claimant's claims in their entirety.

2. The Respondent made their application on three grounds on 20th May 2025 . Ground 1 that the Claimant has acted unreasonably in bringing of the proceedings (Rule 74(2)(a)), ground 2 that the Claimant has acted

unreasonably in conducting the proceedings (Rule 74(2)(a)), and/or Ground 3 that the Claimant's claim had no reasonable prospects of success (Rule 74(2)(b)).

3. The Respondent's amended written submission for costs expanded on the application in terms of the law and matters relied on for each of the three grounds which formed the costs application. The Claimant set out a number of written responses to the application. Firstly, the Claimant's response on 15th June 2025, then the further response points of dispute dated 18th June 2025. Then the objection to the Respondent's schedule of 4th July, 2025. There was the counter application for costs that the Claimant made on 5th July 2025 which was dismissed as it was not made within the time period required under Rule 75 but the contents were considered as part of the Claimant's opposition to the Respondent's application instead. Finally the claimant's written submissions on 4th August, 2025.

4. Both parties also had the opportunity of making submissions orally at the last hearing on 3rd October 2025 but there were three applications that were being dealt with the majority of the time taken up with the reconsideration application. There was also the anonymity application, but then we went on to consider the cost application. The decision on that was reserved until 3rd November 2025 as to whether the first stage of the legal test was met.

The Law

5. Schedule 1 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 contains the Employment Tribunal Rules of Procedure 2013 contains rules as to costs. The Employment Tribunal Procedure Rules 2024 Rules now apply and the correct rule is Rule 74 of the 2024 Rules.

6. Rule 74 states as follows:

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.

(4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(a) *the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and*

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

7. Rule 75 states that:

(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).

8. Rule 76 states:

(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, or by the Tribunal applying the same principles;

(ii)in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019, or by the Tribunal applying the same principles;

(c)another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;

(d)an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).

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

9. Rule 82 states:

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.

10. We remind ourselves that the issue of costs is a two stage test. Firstly, whether there has been relevant conduct that falls within either Rule 74(2)(a) unreasonable conduct or Rule 74(2)(b) whether the claim have no reasonable prospect success so the threshold has to be met. Secondly, we then need to consider whether it is appropriate to exercise that discretion, and we remind ourselves of the legal tests in this regard.

11. A summary of the relevant legal principles is helpfully set out at paragraphs 36 to 42 of the Respondent's amended written submissions on costs to which we have had regard. For completeness as written reasons were requested we have set out the principles below.

12. Unreasonable has its ordinary English meaning and is not to be interpreted as meaning something similar to vexatious – *Dyer v Secretary of State of Employment EAT183/83.*

13. Costs orders are the exception rather than the rule – *Yerrakalva v Barnsley Metropolitan Council [2012] ICR420, CA*. However, it is not the case that causation is irrelevant. The tribunal must look at the entire matter in all its circumstances –. Mummery LJ gave the following guidance on the correct approach:

"41. The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. The main thrust of the passages cited above from my judgment in McPherson's case was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the employment Tribunal had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. In rejecting that submission I had no intention of Case Number 2210617/2022 4 giving birth to erroneous notions, such as that causation was irrelevant or that the

circumstances had to be separated into sections and each section to be analysed separately so as to lose sight of the totality of the relevant circumstances".

14. To recover costs a party does not have to establish a direct casual link between the unreasonable conduct and the costs incurred. Once unreasonable conduct has been established the question of costs in in the discretion of the Tribunal – *McPherson v BMP Paribas (London Branch) [2004] ICR 1398 CA* and *D'Silva v NATFHE EAT 0126/09*. The Tribunal in accordance with the first case should take into account the "nature, gravity and effect" of a party's unreasonable conduct and each element should not be taken separately but looked at as a whole picture.

15. The purpose of an award of costs is to compensate the party in whose favour the order is made, not to punish the paying party – *Lodwick v Southwark London Borough Council [2004] ICR 884, CA.*

16. The Tribunal may have regard to the paying party's ability to pay (Rule 84). However it is not required to do so. If it does not, the reason should be given – *Jilley v Birmingham and Solihull Mental Health NHS Trust EAT 0584/06* and where a costs award may be substantial, the Tribunal must proceed with caution before disregarding the paying party's means in accordance with *Doyle v North West London Hospitals NHS Trust [2012] ICR D21 EAT*.

17. Assessing a person's ability to pay involves considering their whole means (including capital assets). The whole means of the equity in a house (capital) may be considered, even if not in an immediately accessible form – *Shields Automotive Ltd v Ronald Greig UKEATS/0024/10/BI.*

18. The Court recently gave guidance on the correct approach to costs in the case of *Willis v GWB Harthills LLP & others [2025] EAT 79*.

19. The Claimant provided a number of responses to those submissions on the application in general to which we have had regard as set out above. Most of the case law the Claimant referred to is set out above or was not relevant to the issues.

20. In addition, the Tribunal raised a case with the parties which was a recent authority of *Huntley v Siemens Healthcare Limited [2025] EAT 152*. This states as a principle that there is nothing in what was Rule 76(1)(b) then as the matter of principle to prevent an application for cost being made on the basis that from a particular point in time after the outset of the proceedings, a claim or response had no reasonable process success even if it had them before which also makes reference to the case of *Opalkova v Acquire Care Ltd (EA-2020-000345-RN)* which supports that conclusion.

Reasons

21. The decision on costs was reserved at the last hearing. We had already had submissions on it and therefore consider the first stage of the test based on the written and oral submissions made at the last hearing. The Claimant sent further submissions just before the adjourned decision today but we have not considered these for the first stage of the costs test as no party was offered opportunity to make yet further submissions. The Claimant had already done so 5 times in writing and then orally at the last hearing. We had a 933 page bundle before us for the hearing of all the applications containing the relevant applications, judgment, costs schedules and submissions.

22. We considered on the last occasion that there was insufficient time to deliver a decision on whether the grounds were made out or not and then go onto consider any costs award given the time taken with other applications. It would not be in furtherance of the overriding objective if we had decided that the Claimant should pay costs but not the amount as this would have left the Claimant with a significant sum sought hanging over him. Whilst equally it could have ended the hearing without the need for the adjourned hearing we simply had insufficient time to reach a decision which is why the hearing was adjourned and listed for the parties and Tribunal availability to 3rd November 2025.

23. **1st stage of the test; Ground One**: So we have looked at all three grounds that the Respondent brought the costs application on. We deal with grounds one and three together because although the test is slightly different, they arise out of the same matter, namely that either the bringing of the proceedings was unreasonable or that the claim had no reasonable process of success, so we considered grounds one and three together.

24. We do not feel on consideration that the threshold for cost is met in respect of Grounds one and three. We did have concerns about the process and we were critical of the Respondent in part in the judgment and in particular the way the matter was handled internally. Whilst the Claimant was an employee and concerning his dismissal, the Claimant's claim would need to have no reasonable prospects of success in order to satisfy ground three, which is quite a high threshold. The claim must be judged not with the benefit of hindsight, but at the time that the claims were brought. The Claimant did lose on every ground, but that does not mean that the bringing of the claim initially was unreasonable or that it had no reasonable prospects of success.

25. Costs do not follow the event in the Employment Tribunal and as we have referred to in the case law above, costs are the exception rather than the rule. Just because the Claimant did lose his claims, it does not make it unreasonable to have started the claim or that those claims have no reasonable prospects of success when they were brought.

26. As set out above the Tribunal referred the parties to the recent authority of *Huntley v Siemens Healthcare Limited*. It is therefore open to the Tribunal, to determine that at any point in the life of the claims after proceedings have commenced, they have no reasonable process success and to award costs from that point onwards. Whilst the application from the respondent is not made on this ground, we have considered that does not prohibit us from deciding that at some point in time the Claimant had no reasonable process success but we do not consider it appropriate in this case.

27. At the outset, the Claimant was a litigant in person. The Claimant describes himself in some of his responses to the cost application as a litigant in person, but this is not correct throughout. The Claimant did have a solicitor advising him albeit he was not physically represented at the hearing and we have made comments about that in the judgment. However, for all intensive purposes, he was represented because his solicitor did not come off the record and he certainly had legal advice from those representatives throughout. We did not know the nature of that advice, but the fact that they were on record as representing the claimant is relevant and he cannot be treated entirely as a litigant person throughout on that basis.

28. We do not award costs against the Claimant on Grounds one and three as we do not consider that the first stage of the test is met in this case.

29. **1st stage of the test - Ground Two:** the claimant acted unreasonably in conducting the proceedings under Rule 74(2)(a). Again, the same law set out above applies but we have looked at this matter in relation to a number of submissions made on behalf of the Respondent. We have looked at the Respondent's written submissions (as supplemented by the oral submissions) in areas where we concur or disagree with the Respondent in terms of the claimant's conduct and then whether in our view this means the first stage of the test is met such that the Claimant's conduct was unreasonable. Unreasonable has the ordinary meaning as set out in *Dyer*.

30. So dealing first with witness statements, this is at paragraph 14 of the respondent's amended submissions. This also refers to an extract of our judgment at paragraph 6 of our written reasons. The witness statement was 195 pages long and did not follow the required format. We have considered that the Claimant was at the time represented and not a litigant in person. We consider that not strictly following the rules of how the witness statement should be presented or indeed length does not necessarily lead to an adverse conclusion as to costs, it is a factor taken against the factual matrix set out below as to the reasons why, we do find that that was unreasonable.

31. Turning to the Claimant's conduct at the final hearing, paragraph 17 of the respondent's amended submissions make a number of points as to the Tribunal's observations in its judgment as to the Claimant's conduct at paragraphs 4, 15-19, 80, 127, 209 and 217 of our written reasons which we have had to consider as to unreasonable conduct and we have made a number of conclusions on these points as set out below.

32. The first relates to the protected disclosures themselves and that throughout the hearing from day one onwards, it was made clear to the Claimant that we would not be making findings on whether or not the protected disclosures were actually true i.e the substance of the protected disclosures themselves for example the alleged breaches of fire regulations themselves. Pretty much all of the protected disclosures were admitted by the Respondent as being protected disclosures but a large amounts of the bundle and evidence resulted in the Claimant seeking to effectively get the Tribunal to consider the substance of those protected disclosures and look at whether they were in fact true. The Claimant wanted the Tribunal to make findings on whether the fire regulations and health and safety laws had been breached by the Respondent and the Claimant kept bringing it back to that.

33. We had to remind the Claimant throughout that this was not the job of the Employment Tribunal to make findings on breaches of health and safety law but we would only be considering whether he as a matter of fact made the protected disclosure (largely admitted by the Respondent), whether in law what he said/wrote amounted to a protected disclosure (largely admitted by the Respondent) and then whether that was the reason for his treatment/dismissal depending on the detriment or legal test applicable to that claim. We noted these issues at paragraph 4 of our written reasons in the original judgment.

34. In fact, it concerns the Tribunal as set out in the last hearing for the reconsideration application that the Claimant continues to make these points in particular in relation to paragraph seven of his application for a

reconsideration dated 5th May 2025 that we did not make findings about the protected disclosures themselves. The Claimant at paragraph 7 of that application says that the Tribunal was "*silent on the laws regarding the unlawful disposal of commercial waste at local recycling centres*" (stet), that the "Tribunal failed to engage with health and safety duties under s7 of the Health and Safety at Work Act 1974" and that "no findings were made on the respondent's breach of duty of care". It is concerning that even now the Claimant does not understand despite having the benefit of legal advice and representation that it is not the role of the Tribunal to look at those specific laws and whether the Tribunal breached them. This was raised on day one but the Claimant simply failed to listen or understand that. This impacted on his approach to the whole case.

35. There were a number of times, where it was not relevant to the issues but the Claimant wanted to present evidence about boilers etc and another example was a witness called by the Claimant Mr. H who had no relevance to the issues in the actual case but to the health and safety case the Claimant wanted us to make findings on. That would never be the Tribunal's role and he had to be constantly reminded of this. Another example is that there was an application made by the Claimant concerning the Charity Commission documentation both towards the end of the final hearing and at the reconsideration hearing which again had no relevance to the issues. He wanted to see what the Respondent had said in their response and whether they had been truthful about the health and safety concerns. Again, of no relevance to the case before us.

36. We have taken into consideration the points that the respondent makes at paragraph 17, subparagraph 7.1 to 7.7 which were all quotes from our judgment of course to support that allegation that the Respondent makes that the Claimant's conduct during the final hearing was unreasonable. Dealing with the points the Respondent makes concerning paragraphs 15-19 of our written reasons at paragraph 17.3 of the Respondent's amended application for costs. Firstly, concerning the disclosure of emails, this was refused by another judge prior to the hearing before us and six months had

passed since that point since it was made. The application was remade at the beginning of the hearing and additional documentation was again requested at the end of the hearing. Again, the applications were remade at the same time as the application for a reconsideration hearing. The Claimant seems unable to move on from determinations on certain issues such as a protected disclosures that we would not make findings on and unable to accept a determination by more than one Judge on more than one occasions that we would not order disclosure of documents being a copy of his entire email database or other wide applications. The same lack of focus was apparent in the hearing in relation to the documents.

37. We take into account that the Claimant was representing himself at the final hearing in so far he did not have a legal representative with him, albeit his solicitor was still on the record and there were six bundles in this case. Large amounts of the documents related to matters which were not relevant to the issues in the case and it should have been necessary to have far fewer documents and less bundles given the limited issues. Many of the documents in those six lever arch files we did not have regard during the course of the hearing as we were not taken to the same by either party and despite having a 195 page witness statement of the Claimant he did not cross refer to pages in the bundle consistently but would cut and paste things into the statement that made it difficult to follow and risked it being taken out of context.

38. The Claimant made five separate responses to the cost application and sent in 17 emails on the reconsideration point over a three month period, three on the 19th of June and then one on the 20th and 21st of June. This is indicative of the Claimant's approach to the litigation and inevitably increased costs. This approach further supports the lack of focus on the issues in the case as many irrelevant cases and points are raised over and over again.

39. The Respondent's amended submissions at paragraph 22 on the without prejudice save as to cost offers are noted. In this case, the Respondent

offered a walkaway settlement and rejection of the offer itself is not cost worthy conduct. The Respondent at no stage made a monetary settlement offer to the Claimant even on a commercial basis but there is no evidence to suggest the Claimant would have taken this as he wanted his public hearing. Whilst we take the offers submissions into consideration, we do not make a separate finding in relation to the rejection of the offers as unreasonable conduct. It was not in our view unreasonable for the Claimant to reject a walkaway settlement.

40. There were however, some other matters which related to the conduct of the proceedings themselves that the Respondent relies on as set out in paragraph 19 of the Respondent's amended submissions again quoting paragraphs from our original judgment. Namely, paragraphs 60, 83-84, 85, 92, 99 overleaf and 213 overleaf. The Respondent makes other points in its amended submissions at paragraphs 44 about allegations raised and how this is unreasonable conduct which we have also considered. In our view there are particular matters concerning allegations which were made of a serious nature, which we do find as unreasonable conduct the allegation in relation to the planting of the beer cans which the Respondent relies on in paragraph 44 and 19 of its amended submissions.

41. There are some other allegations at paragraph 44.1 which we do concur with the respondent's concerns about the Claimant's conduct, namely at paragraph 44.1.1 and 44.1.2 and 44.1.3. There were a number of comments that were made during the case by the Claimant which simply did not reflect reality. For example, our judgment was misquoted on several occasions in the course of the reconsideration application and at the hearing saying that we found the Respondent's evidence to be dishonest, yet we did not make a finding to that regard. That we said that Jackie Park was “Wonder Woman”, which again was not a comment that we said but one which we attributed to Janet Prince.

42. The Claimant has made numerous allegations concerning Respondent’s counsel misleading the tribunal and they were all without merit and quite serious allegations. Some of the vague unfocused complaints that the

Claimant made and that documents were taken out of context. There were a number of contradictions in the evidence and we felt that the hearing took longer than it needed to take as a result of the Claimant's unreasonable conduct.

43. One example of this is something the Respondent raises in its amended submissions namely that some comments were made about Ronnie Neal which did not reflect reality. One direct contradiction referred to in our judgment is that the Claimant said he did not know why she was there indeed, that she would be there, which was not born out by the email evidence. There were unfocused allegations and new allegations raised during the course of the hearing. We have already commented above about the protected interest disclosures and the Claimant's inability to understand that the Tribunal's role was not to look at the substance of those protected interest disclosures i.e whether they were true but merely whether they were made and whether that resulted in the conduct that the Claimant alleged towards him.

44. We have also had regard to the Respondent's reference at paragraph 12 of its amended submissions that the Claimant made two attempts to strike out the Respondent's response before our time that were unsuccessful and on baseless grounds. These were not matters before this Employment Tribunal but nevertheless relate to the conduct of the Claimant during the proceedings. We consider that this was unreasonable conduct.

45. Taking all these matters in consideration, we do consider that there were elements as identified of the Claimant's conduct during this matter which met the threshold test and that the Claimant acted unreasonably in his conducting of the proceedings for the reasons stated and therefore we do consider that the threshold for costs in relation to unreasonable conduct is met. It is fair to say that there were criticism levelled towards the Respondent's conduct in particular one of the witnesses, Mr. Fleming and indeed some of the processes that were followed during the Claimant's employment which the Claimant has raised so we do want to address that point.

46. That is not the test in relation to the cost issue. The cost issue test is about the Claimant's conduct, not the balancing of that against any allegations or comments we may make against the Respondents as to decide whether the threshold test is met.

47. **2nd stage test - discretion.** We now go onto consider the second element of the test, whether to exercise our discretion in awarding costs. We take into account a number of things. Firstly, that the Claimant was at the hearing in person i.e. without his legal representative, although he was still on the record. We take into account that he has had the benefit of legal advice and assistance. For example, some of his submissions were in part drafted by his solicitor. We take into account the costs in this case are extraordinary and we take into account all of the matters referred to above in terms whether to exercise our discretion. The Claimant states that we should not penalise him as a whistleblower for acting in good faith and speaking out. That this is against public policy in essence and that it would deter others from speaking out. We do not accept that prevents us from making a costs order as the Claimant's unreasonable conduct is not to do with him having made protected disclosures (or having blown the whistle) it is his own unreasonable conduct in these proceedings. We have not found that the Claimant's claims had no reasonable prospects of success so distinguish this from claims were costs may be considered against an unrepresented Claimant who may face difficulties assessing prospects as this related to his unreasonable conduct and he was not unrepresented. We therefore conclude for all the reasons above that this is the type of case where the Claimant should be ordered to costs. We now turn our mind to the level of the costs award.

48. So costs in this case in our opinion, extraordinarily high. However, given the number of emails and documents submitted for example on the reconsideration application, would seem that this is not necessarily that they the costs claimed are totally unreasonable and we will need to look at the level of costs being claimed in this case. Again, it is apparent that it is the Claimant's conduct which increased costs. We have not seen the file

of the correspondence between the parties but the reconsideration behaviour is not unique. The Respondent's amended submissions set out for example that the Claimant followed a similar pattern with the initial claim. After filing a claim and the request for additional information he provided a 110 page response, a 10 page particulars of Claim, a further and better particulars of claim then 8 pages long and the list of issues in this case ended up being 19 pages long and the Claimant did have legal assistance with drafting and commenting on that list of issues. It is clear to us that the Claimant's conduct would have had a direct impact on the level of costs incurred by the Respondent.

49. **Level of costs award.** We move onto decide the level of the costs award. We do not feel the findings we have made today that the Respondent should be entitled to recover all of their costs for the whole period. The Respondent seeks £135,174.50 profit costs, £27,034.90 VAT thereon, counsel's fees of £34,850.26, VAT thereon of £6,970.06 and £640.94 other disbursements so a total of £204,670.66. We note the legal authorities in *McPherson* and *De Silva* that there does not need to be a direct casual link between the costs and the conduct, but we do not consider an appropriate case for all costs to be paid by the Claimant.

50. In particular, we have not found that the Claimant's bringing of the claim initially on grounds one and three asserted by the Respondent had met, but more that the Claimant's conduct during the course of the proceedings both at the final hearing in the runup to it was unreasonable. We found that in respect of that one ground the threshold test was met i.e. that ground two was made out.

51. There are two elements to costs that are claimed. One is in relation to what we call profit costs, which is the solicitor's fees in representing the Respondent. The second relates to disbursement which includes counsel's fees. In respect of the decision to exercise our discretion to make a cost order, there are a number of legal principles when to consider when we are looking at the amount to be awarded in exercising our

discretion. As stated, we do not need to have to find a precise causal link between the relevant conduct and the specific cost claimed.

52. We have considered the guidance from the Court of Appeal in Yerrakalva and in particular paragraph 41. The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. So whilst there does not need to be a precise causal link between the unreasonable conduct in question and the specific costs being claimed before we make a cost order this does not make causation entirely irrelevant. An employment tribunal is entitled to take a broad brush approach when making decisions on costs. However, given the level of cost claimed, the Respondent has asked the tribunal to conduct an in effect detailed assessment on the same principles as a County Court may do.

53. There is no limit as to the amount of costs that we can award. The sums sought far exceed the £20,000 but we can consider a higher amount by way of detailed assessment carried out by a county court in accordance with the Civil Procedure Rules (CPR) or by the Tribunal applying the same principles. We agree with the Respondent's submissions that we should conduct that assessment and not remit the matter to the County Court which would cause further delay and expense to both sides.

54. The Tribunal may take into account the Claimant's means when considering the amount of the award. The Claimant was invited to provide evidence of means in our earlier Order but declined to do so and stated that he is not relying on any evidence of means. We do not therefore have any evidence before us in respect of means. We have looked and considered the effect of the claimant's conduct as we found in terms of unreasonable conduct in the manner in which the proceedings were conducted.

55. It is important to set out, that we did not find that the threshold for grounds one and three was and it was only ground two that we are looking at. And as such we do not consider it appropriate that the Claimant be asked to pay the Respondent's costs in their totality just conducting detailed assessment on the sums sought. We did find that whilst the Claimant did lose on all grounds, we spent considerable time deliberating the facts and it is fair to say, and hopefully it is seen from the judgment that we did have concerns about the Respondent's conduct at various points and we have not found that the Claimant's claim had no reasonable prospects of success from the beginning or indeed that he was unreasonable to bring it at the beginning. Whilst he may not have legally succeeded in his claims, there were concerns that we had about the Respondent's treatment of the Claimant certainly in terms of the internal processes. So bearing that in mind and the fact that the tribunal spent three days deliberating what was a complex case that was not clear cut, it is clear to us that a hearing of this case was inevitable. Had the Claimant not conducted himself unreasonably in the manner already, there would have still been a hearing and that hearing would have still been a long hearing, albeit perhaps not as long as it was as a result of that conduct.

56. So, in terms of the costs that are claimed, we have to consider the effect of the Claimant's conduct. So whilst there does not need to be a direct causal link, we need to look at the consequences of the conduct that we found. We find that the hearing lasted a total of 13 days and that included the deliberation time, but obviously there was additional time in provided the judgment as a reserve judgment. However, the total hearing time was 13 days. We find that the Claimant's conduct in the manner that we found did largely relate to the conduct of the hearing itself or the witness statement and documentation. And there are a couple of particular points to note about that. One is that the conduct during the hearing made the hearing longer but it would not necessarily have added to the Respondent's costs in other regards. And secondly in terms of the witness statement, the witness statement exchange was mutual, so the Respondent would still have had to prepare witness statements and still would have had to call

witnesses to deal with the issues even if the Claimant's witness statement had been more reasonable.

57. So we find obviously under ground two only not grounds one and three that the hearing was made longer by three days which was outside the estimate of the original listing. So in that regard, we have looked at counsel's fees. First of all, in terms of the disbursements, the Respondents provided a costs schedule and whilst counsel would have still had to appear and conduct a hearing, we have looked at counsel's fees for what would've been the additional three days of hearing time as a result of the conduct identified and therefore we award in essence the three days that are claimed as a separate distinct item on that list of schedule. This is in respect of the refresher fees etc for counsel on the 18th and 19th November 2024 which total £4,497.52. The Respondent is not registered for VAT so we award the gross amount, not the net amount. Also the nest line on that schedule of costs which is the 16th December 2024 refresher, which includes counsel's expenses £2,168.34, which makes £6,665.86.

58. In respect of the disbursements claimed, we do not award any costs for witness expenses as we find that the witnesses would have attended anyway. So the amount in respect of disbursements awarded to be paid by the Claimant to the Respondent is counsel's fees and disbursements only at £6,665.86.

59. We then consider what effect the Claimant's unreasonable conduct had on the solicitor's costs that were claimed. We find that it would have increased the preparation time in terms of the bundle and disclosure. However, statements would have been mutual exchange so the witness statement did not make the Respondent's statements longer. We are now looking at the profit costs and this is where we need to consider the detailed assessment principles so we need to look at the sums claimed in more detail.

60. We look at page 319 of the hearing bundle provided for the hearing on these applications and the itemised breakdown of the profit costs by task

and fee earner and we have carefully considered the statement of costs. We find that six fee earners working on this matter was not reasonable and whilst we do not have the solicitor's files before us we consider that there would have been some duplication between them when they took over on various tasks. We have seen a detailed breakdown of each entry which we have considered when reaching our decision. We have therefore looked at the time of Andrea Thomas and Rhiannon Jones in particular and disregarded the time spent by the those who took a more minor role. We consider that the two fee earner's named hourly rates are reasonable and within the County Court guideline rates for solicitors of that experience and that this was reasonable given the complexities of the case.

61. In this case, we have to consider what effect the Claimant's conduct had on costs and we find that it would have increased emails and the preparation time, but they would still have had to prepare witness statements and prepare the case. In terms of the heads of time claimed by Andrea Thomas in the costs schedule. Due diligence is an internal matter and not something the Claimant should be concerned with so we do not make any costs award for that item. There is time claimed for supervision and research as heads of claim in the costs schedule which in our view are also not allowable in this type of case.

62. In terms of the claim for attendance at the hearing and travel, we have not awarded that for solicitors profit costs. We do not consider it necessary for a solicitor to sit behind experience counsel in this matter. The solicitor's clients were present to give instructions and counsel did a diligent job of representing the Respondent without the solicitor's input. We therefore do not award anything extra for solicitor sitting behind counsel.

63. We move on to consider the costs claimed for attendance on witnesses/client, emails, perusal, preparation and telephone attendances. We consider the effect that the Claimant's unreasonable conduct had on these matters, and we take the view that it would have increased costs by approximately 20% given the voluminous number of emails that the Claimant sent to the tribunal and the Respondent and indeed additional

time dealing with a long witness statement and taking instructions on what was a number of documents that were sent. So we have looked at this from Andrea Jones's perspective in relation to emails as 135.6 hours were claimed and we believe that we could allocate 20% of this to the claimant's unreasonable conduct i.e 27 hours. And in relation to per usual and preparation, this would have resulted in an additional time for the reasons we have already stated. So we allow 20% of the total time for those heads, 196 hours, which makes 39 hours and also 20% extra telephone time because the instructing solicitors would have needed to take instructions and liaise with counsel on relation to various matters. So 20% of that is 4.5 hours.

64. We award 70.5 hours and we do not find that Ms. Thomas's hourly rate is not unreasonable. So award this at the hourly rate claimed that would be £17,655 plus VAT which comes to £21,186. Turning now to the second fee earner claimed Rhiannon Jones, we have already dealt with research, her role related to documents and bundles and 118 hours is claimed. In this regard we only award costs for the document element of her costs schedule. We find that the bundle as a result of the voluminous nature of the correspondence, the cutting and pasting of documents would have required an additional 30% in terms of input of time. So we award £5,100 plus VAT, which is £6,120.

65. The Respondent also filed a schedule concerning supplementary costs after the Judgment was delivered and a large amount of this would relate to the respondent's application for costs, which we are dealing with as their application. There was however the voluminous nature of the correspondence for the reconsideration application for which we have made specific findings as to reasonableness. As before we do not need to find a direct causal link, but bearing in mind the effect of that conduct, we award 2.5 hours of Andrea Thomas's time and one hour of Rhiannon Jones' time in relation to that, which inclusive of that at their respective hourly rate rate equals £954.

66. So, the total costs in terms of the profit costs of the respondent that solicitor's cost inclusive of VAT is £28,260 pounds. And in addition to that, we've got the disbursements referred to above in respective counsel's fees of £6,665.86. This gives a total costs order of £34,925.86. This is in addition to any other cost orders that have been made in this case by other Judges and the respondent has confirmed that the sums claimed in terms of profit costs do not include the time spent in which a costs order has already been made.

67. The Claimant do therefore pay the Respondent's costs of £34,925.86 for all the reasons stated.

Approved by:

Employment Judge King

Date: 31.12.25

Sent to the parties on:
2 January 2026

For the Tribunal: