EMPLOYMENT TRIBUNALS

Claimant: Mr J Brown

Respondent: SSS Engineering Services Limited

Heard at: Cardiff by video **On:** 27 January 2025

Before: Employment Judge R Harfield

Representation
Claimant: Ms Lennon (the Claimant's daughter)
Respondent: Mr Katz (Senior Litigation Consultant)

RESERVED JUDGMENT – PREPARATION TIME ORDER

1. The Respondent acted abusively and disruptively in part of the way the proceedings have been conducted as set out below;

2. It is appropriate to make a preparation time order for that conduct identified below;

3. The Respondent (the paying party) must make a payment to the Claimant (the receiving party) in respect of the Claimant's preparation time in the specified amount of **£220.00.**

REASONS

Introduction

1. This is my decision on the Claimant's application for a Preparation Time Order. A hearing took place on 27 January 2025 to determine remedy for the Claimant's successful unfair dismissal claim and to then decide the Claimant's Preparation Time Order application. I heard the parties' submissions about the application but there was insufficient time to deliver an oral judgment. I therefore reserved my decision to be handed down in writing. (Earlier in the day I provided an oral judgment regarding remedy and there is a separate Judgment confirming the remedy outcome).

The Legal principles

2. I am referring to what is now the Employment Tribunal Procedure Rules 2024 and which Mr Katz referred to at the hearing. But there is in substance (rather than numbering) no significant difference to what was previously in the former 2013 Rules.

3. Under rule 74 the Tribunal must consider making a preparation time order [PTO] where it considers that a party (or representative) has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the way that the proceedings, or part of it, have been conducted.

4. Under rule 73 a preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative. Under rule 73(3) a costs order and a PTO may not both be made in favour of the same party in the same proceedings. Under rule 72 "preparation time" is time spent by the receiving party working on the case, except for any time spent at any final hearing.

5. Under rule 77 the Tribunal must decide the number of hours in respect of which a PTO should be made on the basis of:
(a) information provided by the receiving party on the preparation time spent, and
(b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.

6. The hourly rate applicable is £44 an hour under rule 77(2) (increasing on 6 April each year by £1). The amount must then be calculated by multiplying the number of hours by the rate under rule 77(2).

7. Under rule 81 in deciding whether to make a PTO and, if so, the amount, the Tribunal may have regard to the paying party's ability to pay.

8. In terms of relevant case law principles:

   8.1 Orders for costs or PTO do not follow the event and are far from the norm as the governing structure of the Employment Tribunals is that of a costs free user friendly jurisdiction: Gee v Shell Ltd [2003] IRLR 82 CA;

   8.2 There is a two stage process. First the Tribunal must consider whether the threshold has been crossed. Even then the Tribunal has a discretion whether to make an award or not. After those two stages the Tribunal decides the amount (where it may have regard to the ability to pay).

   8.3 The purpose of a PTO is purely compensatory: it is not designed to be punitive. That said, when making a PTO the Tribunal's discretion is not fettered by a precise requirement to link the award to specific costs/time incurred as a result of the conduct. But that also does not mean that questions of causation are to be disregarded. The Tribunal should look at the nature, gravity and effect of the conduct as being relevant factors. The point is to look at the whole of the picture of what happened in the case and ask whether there has been unreasonable conduct (or other qualifying conduct) in the conduct of the case

and, in doing so, to identify the conduct, what was unreasonable about it, and what effects it has: McPherson v PNB Paribas (London Branch) [2004] EWCA Civ 569; Barnsley v Metropolitan Borough Council v Yerrakalva [2011] EWCA Civ 1255.

8.4 A Tribunal should not judge a litigant in person by the same standards of a professional representative. A litigant in person is likely to lack the objectivity and knowledge of law and practice of a professional advisor: AQ Ltd v Holden [2012] IRLR 648.

The Claimant's application

9. The Claimant's application was initially set out in a letter of 18 July 2024 relating to:

9.1 A text message sent by Mr Pesticcio [SP] of the Respondent to the Claimant said to have been on 6 April 2024 said to be vexatious and abusive;
9.2 An email sent by SP to the Claimant and the Tribunal on 5 July 2024 said to be vexatious and abusive;
9.3 Alleged disruptive conduct of the proceedings in:
9.3.1 Not complying with orders;
9.3.2 Allegedly trying to get the trial delayed by saying he had been given two different dates;
9.3.3 When told the trial would not be delayed, threatening the Claimant with paying solicitors fees to try to intimidate the Claimant into withdrawing the case;
9.3.4 Requesting the claim be struck out on the basis of being out of time, when it was not;
9.3.5 SP's son on 5 July 2024 sending a bundle of documents for the trial when the Respondent had been told by EJ Moore that they did not have permission to admit documents or witness statements;
9.3.6 Again on 5 July 2024 saying that the Claimant would be paying the Respondent's costs and the wages of witnesses brought to court, and that they were going to see their solicitor, which it is said was to intimidate the Claimant and disrupt the proceedings.

10. The Claimant at that time was seeking the printing of 5 copies of the bundle at £113.75, travel costs to the library and post office for that task at £20 fuel costs, postage costs at £26.85. He said he was also seeking time he and his daughter spent researching online, documenting incidents and typing up statements at approximately 4 hours a week since the beginning of April compiling the evidence and because the Respondent had not supplied any documents. He claimed 60 hours each at £10 an hour totalling £1200 for himself and Ms Lennon.

11. In advance of the hearing the Claimant had also asked to add two additional documents to the PTO hearing file which Ms Lennon had emailed the Tribunal about on 2 December 2024. Ms Lennon said at the hearing said they also formed part of the PTO application. This is an email sent by SP to Mr Brown of 27 November 2024 and a text message on 28 November 2024. Mr Katz accepted he could fairly deal with those matters too at the hearing. Ms Lennon also identified at the hearing that she now realised she had not claimed the full hourly rate that could be

claimed for a PTO. Ms Lennon said the Claimant was seeking a further 10 hours in respect of these November 2024 communications.

12. At the remedy stage of the hearing I identified that an item claimed for solicitors costs in two meetings with Howells solicitors at £660.00 in September 2024 and December 2024 could not be recovered as a head of loss as it was a claim for legal costs. I identified that the Tribunal cannot make both a PTO and a costs order in the same proceedings. Mr Katz also fairly identified that he did not think a costs order was possible in any event because, under rule 73, it has to be costs incurred whilst represented by a legal representative (or paid lay representative) and the Claimant was seeking legal advice rather than being legally represented. Ms Lennon confirmed in those circumstances that the Claimant would simply pursue the PTO.

The history of the proceedings

13. As the case law makes clear it is important to set an application in the context of what has happened in the whole of the case. I therefore provide a brief summary.

14. The ET1 claim form was served on the Respondent on 26 March 2024. Standard directions were made including exchanging documents on 21 May, the Respondent preparing a bundle of agreed documents and sending a hard copy to the Claimant by 4 June, on 18 June exchange of witness statements, and for the Respondent to bring 2 spare copies of hearing file and witness statements to the hearing which was listed for 15 and 16 July.

15. The ET3 response form was filed on 24 April 2024 by the Respondent as an unrepresented litigant. When the ET3 was processed and sent out, a mistake made in the Tribunal's letter of 1 May where it said that the hearing remained listed for 15 and 16 August (when it should have said July). The letter said nothing about changing the dates of the standard directions.

16. On 23 May Ms Lennon reported that she had spoken to a member of administrative staff and had not received the Respondent's documents, but that the Claimant had done his part to comply. The email did not copy in the Respondent. On 24 May SP emailed the Tribunal to say he had been given a hearing date of 15 and 16 July with a date for submission of documents of 23 May but had also received a listing for 15 and 16 August. He asked which date to comply with. On 26 May the Claimant emailed the Tribunal, not copying in the Respondent, again saying he had not had the Respondent's documents and saying he did want to proceed in July as stated and did not know where SP had got his dates from. On 30 May SP emailed the Tribunal again, not copying in the Claimant, asking for clarification and saying they also had a hearing date of 15 and 16 August, but no deadline for submission of details and asking which date was correct. SP said and they were entitled to a new deadline of submission because the confusion would prejudice their defence.
17. The correspondence was reviewed by REJ Davies who confirmed in an email of 5 June 2024, that the date in the letter of 1 May was incorrect, the case remained listed on 15 and 16 July, and the case management order dates remained. The Respondent was to comment on the Claimant's emails about compliance with orders, and the parties were to confirm they had complied with all orders and were ready for hearing by 8 July.

18. The Claimant replied to say the Respondent had missed another deadline of 4 June to agree the bundle. The Respondent replied on 5 June to say the deadlines were missed because they had two different dates for the hearing, that they were now instructing lawyers to defend the case, and will submit documents asap along with an application for costs.

19. On 12 June the Claimant emailed the Tribunal and the Respondent to say he had spoken to a member of the administrative team by phone, who had advised him to go ahead and adhere to the orders so he was sending to the Respondent his witness statements before the 18 June deadline. The Claimant said he was still without any paperwork from the Respondent. Also on 12 June, in a separate email to the Tribunal and copied to the Respondent, the Claimant said that within minutes of sending his previous email he had received a text message from SP that was appended. The text message said: "*the lads said thanks for reporting SSS to the hse but it didn't work and didn't cost any of your friends and ex colleagues their jobs. What a sad old washed up and bitter old man U turned out to be,"* with an emoji of a snake.

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20. On 13 June the Respondent emailed to say they had instructed solicitors to defend the case and retrieve any associated costs from the Claimant and the solicitors would forward the documents in due course. He said again the delay had been caused by the court giving two different hearing dates. On 14 June the Respondent emailed to say their legal representatives had pointed out that the claim was brought more than 3 months of the effective date of termination and it meant that the claim should be struck out. On 19 June the Claimant emailed to say he had posted to the Tribunal his witness statement and documents and he had not received Respondent's witness statements or anything other than the ET3. He said he was still waiting for a response to the text message he had complained about. He sent a copy of his Acas certificate, which was relevant to time limits. The Respondent replied to say they had providing compelling evidence the claim was out of time and should be struck out.

21. A reply was sent by EJ Moore on 4 July 2024 to state that the Claimant's claim was presented in time when account was taken of early conciliation. She said the Respondent had not complied with any of the directions issued on 26 March 2024 and an incorrect date for the hearing was not relevant as the date the orders were due to be complied with was set out separately. EJ Moore said the Claimant's bundle and statements would stand as the bundle for the hearing and that the Respondent did not have permission to admit any documents or witness statements as they had not complied with the 26 March orders. EJ Moore referred to the text message of 5 April, and said that the Respondent should note that under what was then Rule 76 the Claimant could make an application for a PTO on the basis that the Respondent has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the way in which they are conducting the proceedings and this could apply both in relation to conduct with the intention of intimidating a party or failing to comply with orders.

22. On 4 July the Respondent said they wanted to appeal EJ Moore's ruling, that receiving the wrong information for the hearing date was relevant, and that they had been waiting for a reply as to which trial date was correct. SP also said they were waiting for the decision on time limits before they presented a bundle, and that the decision had arrived late which was prejudicing the case. He

denied acting vexatiously, abusively, unreasonably or intimidatingly. He said the text message related to the visit by the HSE which he said they had no doubt was instigated by the Claimant who had tried to damage the company and could have cost jobs. He said "*this is how nasty and underhand jeff brown is. So the text was not abusive, jeff brown is just playing the victim".* SP said he would be submitting a bundle the next day. The email was not copied to the Claimant.

23. On the evening of 4 July the Claimant sent an email, copied to the Respondent which asked to use the hearing loop at the final hearing and also asked for a separate waiting room so that he would not be sat in a waiting room with the Respondent. He asked if his daughter could accompany him as he was feeling anxious and nervous. The Respondent replied on the morning of 5 July saying: "*I too have a hearing impediment but I will wear my hearing aids. I think jeff brown is laying on the victim thing a bit thick. I would say after being a so called friend of him for 40 years, he is ashamed to face me in the same room after making this disgusting and false claim*."

24. On 5 July Joshua Pesticcio sent through the Respondent's bundle that he said they would be relying on in court. He said it detailed the costs of their witnesses they would be claiming for. He said there was a meeting with their lawyers at 9:30am on 8 July where they would be making a wasted cost order application against the Claimant.

25. On 8 July the Claimant made his application for a PTO. He also asked that the Respondent's documents be excluded as being in breach of EJ Moore's decision. He also clarified that the text he was complaining about was on 12 June and not 6 April.

26. On 9 July Peninsula came on the record as acting for the Respondent. On 12 July Mr Katz sent an email protesting as to the bar on the submission of documents or witness statements on the basis of the misunderstanding of the tribunal dates, and the raising of the jurisdictional matter. It was said the respondent had been unrepresented and also that there had been no unless order or similar warning in place. The Respondent's documents and statements were attached. There was some crossing over of correspondence. EJ Moore initially declined to vary her order as she said the Respondent had not applied to vary the dates and different court dates had no effect on the dates for complying with orders. EJ Moore said the Respondent would have to convince the judge hearing the case there had been a material change in circumstance. EJ Moore's later correspondence, when she had seen the Respondent's full application varied her order so that the Respondent could rely on the documents already disclosed to the Claimant and to admit their witness statements. EJ Moore said that the different advice on dates did not justify total non-compliance and the Respondent had indicated legal representatives would be going on record some weeks previously but did not take steps to comply with orders. She said it was, however, in the interests of justice to permit them to rely on documents already disclosed to the Claimant and their witness evidence. That was subject to the Claimant having sufficient time to consider the evidence and not being put to prejudice.

27. It was ultimately the situation that the Respondent was not permitted to rely on their documents because they had not been accessed by the Claimant who would have been prejudiced. But the Respondent's witnesses did give

evidence. After hearing evidence and submissions the Claimant was successful in a constructive unfair dismissal complaint.

28. On 2 December 2024, so between the liability hearing and this remedy hearing (notice of which had been sent out on 8 October 2024) the Claimant's representative emailed the tribunal to say SP had directly contacted the Claimant twice in a threatening manner. The first was an email dated 27 November 2024 to the Claimant saying: "*thank you for the bundle and the screen shot of your bank balance of £188,322.92 in your club platinum account. Now I know you always struggled with money so there is no way you have saved this amount. Last summer, there was a lottery ticket stolen from my office, and I believe you were involved with this theft and that is how you have this amount of money in your platinum account. Further to this I don't believe you acted alone. I have contacted Camelot regarding this stolen ticket and my view on what has happened, and they are investigating this theft. I would like to see your comments on this. If you don't respond to this email today, I will be putting this in the hands of the police*." SP then sent a text message saying: "*Brown I strongly advise you and you cohorts to get together and discuss how to resolve the theft of the money. If it is paid back to the right people what their share was this matter wont go any further. The alternative is you and your cohorts will go to jail. We will recover what we are owed through taking your houses and this will involve your daughter who will be thrown off the board of governors in disgrace. I will ensure there is full coverage of this in the media if you and your cohorts don't contact me by Monday I will go to the police and the press*".

29. Ms Lennon asked Mr Katz to tell his client to stop all direct contact with the Claimant and said that the Claimant would be contacting the police as they felt they were both being harassed and threatened. Ms Lennon asked for the communications to be added to the PTO bundle and said they were meeting with their solicitor to advise on how to proceed with the situation and would amend the schedule of loss to show these costs. Mr Katz responded on 3 December to say that the Respondent had filed a formal complaint with the police relating to the alleged stolen lottery ticket and that the police had opened an investigation. Mr Katz said whether it had any relevance could be discussed at the hearing. REJ Davies replied to say that no further action would be taken unless a specific application that relates to the employment tribunal proceedings were made.

30. SP then emailed the tribunal directly on 8 January saying: "*There has been evidence provided by mr brown – a bank balance of £188,332, which proves jeff brown and tracey lennon lied in court and in 3 witness statements. This makes a scandalous claim and as per the law, we request it is struck out entirely."* There was also an attachment to that email making various other comments and allegations. On 12 January Ms Lennon emailed saying she had not had a reply to her email of 2 December and that the Claimant's concerns have also been logged with the police. Mr Katz replied to say he did not understand what the Claimant was asking the Tribunal to do, and the matter could be discussed as part of the PTO application. On 14 January Mr Katz emailed Ms Lennon about the Claimant's bank balance stating that the Respondent believes it was necessary for the tribunal to know when money came to be in the Claimant's account because it was relevant to remedy. Ms Lennon questioned the relevance of the enquiry. Mr Katz explained the Claimant's assertions about his personal financial circumstances were in

dispute, and the date of receipt of the sum was therefore relevant to remedy. On 20 January I wrote to tell the Respondent that all correspondence needed to come through their representative and no action would be taken in respect of SP's correspondence, unless a specific application was made by Mr Katz. The Claimant was asked to comment on why the information requested by Mr Katz was not relevant, given the explanation proffered by Mr Katz. Ms Lennon then provided confirmation that the funds were received in August 2024 on the sale of a house but said they considered that the Respondent was only interested in finding the information out having accused the Claimant of stealing a lottery ticket.

31. On 22 January 2025 Ms Lennon emailed to say less than 24 hours after the information had been shared her conveyancing solicitor had been in touch saying SP had emailed them asking for Mr Brown's forwarding address and that it was further intimidation and harassment when the tribunal had said all correspondence should go through Mr Katz. Ms Lennon said they would be updating the police. SP has been seeking the Claimant's new address to pursue separate action.

Decision

32. I address first the complaints of alleged disruptive conduct of the litigation because those events were the first and it is important to view everything in its wider context. The point has been made, including by EJ Moore that any confusion caused by the Tribunal's error in the letter of 1 May with the final hearing date should not have affected the dates of the case management orders because they were individual orders with their own specified dates. But I do take into account that the Respondent was unrepresented and had emailed the Tribunal several times seeking clarification of the position. It is fairly common for litigants in person to get confused about case management orders or to have to be reminded of the importance of complying with them. In those circumstances I do not find that the original failure to provide documents was disruptive conduct or that the Respondent at that time was trying to get the hearing delayed. SP was asking about different dates the Tribunal had given.

33. However, on the 5 June the Respondent was told that the 15 and 16 July 2024 dates were the correct dates and that the case management order dates remained. In my judgement the Respondent at that time, even as a litigant in person, was under a duty to take steps to promptly catch up with compliance. There needed to be prompt action to complete disclosure of documents, bearing in mind that any confusion about dates would not have stopped the Respondent starting work on that activity in any event: it was always going to have to be done. There needed to be prompt action to then agree the hearing file with the Claimant. Preparation would then have been back on track for the exchange of witness statements which could have happened, on time, by 18 June 2024. The Respondent said on 4 June 2024 that they were instructing lawyers. Any professional lawyer would have reiterated the importance of getting the case back on track and indeed the email of 5 June said that documents would be provided "asap."

34. What reasonably should have happened did not happen. On 12 June when the Claimant reported to the Tribunal that he was still without any paperwork from the Respondent and was going to get on and comply with his own requirements to provide a witness statement, within minutes SP sent the text

message about the HSE and called the Claimant a sad old washed up and bitter old man with the snake emoji. (It was the 12 June and not 6 April as mistakenly put in the Claimant's PTO application). On 13 June the Respondent said again they had instructed solicitors but still took no steps to provide their documents or agree a hearing file, just saying they would follow in "due course." That was not reasonable because the Respondent, as I have already said, should reasonably have appreciated the importance of taking prompt remedial action. There was a threat of seeking costs from the Claimant. On 14 June there was then the assertion the claim should be struck out as being out of time. The Respondent then failed to provide their witness statements by the deadline of 18 June.

35. In my judgement, even as a litigant in person, the Respondent was at this point acting disruptively in not taking prompt steps to remedy the position in relation to documents and the hearing file and in not ensuring that witness statements were provided by the deadline. I do not accept that the assertion the claim was out of time and should be struck out was an explanation for not doing what should have been done. The position with documents and the hearing file should have been promptly remedied long before. Moreover, as Mr Katz accepted (Peninsula were not involved at this point in time) any competent legal professional would have realised the claim was in fact not out of time once Acas early conciliation was taken into account, and that in any event the out of time assertion was not a good reason not to be doing what the Respondent should have been doing to remedy their own default.

36. The Respondent was entitled to hold the belief that the Claimant's claim did not have merit – there were completing version of events that needed to be adjudicated upon. I also accept that litigants do fairly frequently threaten an opponent with a future costs application because they feel strongly and confident about their own position in the litigation. But set in the wider context of what was going on at the time, I do consider the Respondent was at this point acting disruptively when threatening the Claimant with a future costs application. The Respondent was, in effect, throwing things at the Claimant to disrupt the litigation or potentially to get the Claimant to stop, rather than knuckling down and doing what the Respondent should have been doing to get their own case ready for final hearing. In my judgement, that there was such disruptive conduct at the time is also demonstrated by SP (whilst appreciating that at the time he thought the Claimant had made the referral to the HSE), responding to the Claimant's email to the Tribunal about being without the Respondent's paperwork, by calling the Claimant a sad washed up and bitter old man. I also find that text message was abusive conduct of the litigation because, whilst it in part related to the HSE inspection, it was done (and its contents too), also related to the Claimant's ongoing Tribunal claim and the Claimant's protests about the Respondent not complying with case management orders. Raising the question of time limits as a simple action in itself was not disruptive conduct. But as I have said, trying to use it as a means not to comply with case management orders and disrupt the litigation was.

37. I turn next to the Respondent's email of 5 July 2024. The Respondent had only the day before been warned by EJ Moore about the risk of being seen to be acting vexatiously, abusively, disruptively, unreasonably, or in an intimidating manner. It was not a warning that the Respondent used to reflect on how they were approaching the litigation. Again I accept the Respondent was a litigant in person, and that they felt strongly about their defence of the litigation, that

they felt there was no valid basis for the Claimant's claim. I acknowledge that parties do fairly commonly feel that way. I also have not lost sight of the fact it is in the context of the Claimant and SP previously having been friends for some 40 years. But notwithstanding this, in my judgement, the Respondent should reasonably have taken the warning on board rather than rallying against it. The Claimant's email to the Tribunal of 4 July about the hearing loop, about separate waiting rooms, and about feeling nervous and anxious was innocuous and understandable, particularly in the context of, for example, the text message SP had sent on 12 June 2024. It did not justify the Respondent responding to say the Claimant was laying on the victim thing a bit thick, or that the Claimant was ashamed to face SP in the same room after making a disgusting and false claim. I am satisfied that the communication was abusive conduct of the proceedings.

39. I do not find that the Respondent on 5 July 2024 sending their bundle of documents to the Tribunal that they said they would be relying upon was disruptive conduct of the litigation. EJ Moore had directed that the Respondent did not have permission to admit documents. But the Respondent was entitled to make an application to have that looked at again (as they went on to do). If they wanted to obtain relief from sanction their best course of action would always have been to try to get the documents to the Tribunal and the Claimant as quickly as possible because it would minimise prejudice to the Claimant. The email could have acknowledged that they needed permission to rely on the documents and to make an application to do so rather than simply asserting they were the documents they would be relying upon. But bearing in mind the Respondent's status as a litigant in person I believe setting that as an expected standard of communication would be too high a standard to require.

40. In terms of the threat of wasted costs contained in the email of 5 July, I do consider that was overly aggressive and disruptive conduct of the litigation. At that time the Respondent had by EJ Moore, not by the Claimant, been debarred from relying on documents and witness statements due to their own default. They were in difficulty in the litigation at that point. It was disruptive and intimidatory to threaten the Claimant with wasted costs when they themselves were the ones who had found themselves in default and debarring order made against them.

41. Given the above conclusions I then have a discretion whether to make a PTO. In my judgement it is appropriate to do so. I acknowledge and take account of the fact that SP made an apology for his text message of 12 June. I also acknowledge that the Respondent has been penalised already by their inability to rely upon their own documents at the final hearing. But the disruptive and abusive conduct was not just the text message of 12 June and did not just relate to documents. The Respondent also failed to heed the warning of EJ Moore. It is not something that is remedied in costs or a PTO and a PTO is not there to be punitive. But in terms of the gravity and effect of the conduct it is nonetheless important to acknowledge that what was said to and about the Claimant was offensive and at times intimidatory when the Claimant was, like the Respondent, also a litigant in person trying his best to navigate the stress of the unknown world of employment tribunal litigation. The Respondent makes the point that the hearing was able to go ahead on its listed dates, which I acknowledge. But it must have been a very worrying time. Importantly, the Claimant and Ms Lennon were also, in my judgement, put to some additional

work in preparing the case which I consider, in the circumstances, does justify the making of a PTO.

42. The figures provided by the Claimant are very broadbrush and Mr Katz legitimately makes the point there is not the kind of breakdown of time spent that would have been helpful. But under the Rules I am also to undertake my own assessment of what I consider to be a reasonable and proportionate amount of time to be spent on preparatory work. There is work that the Claimant and Ms Lennon did that would always have to be done such as research, collating their documents, preparing witness statements and general correspondence. But the Respondent's conduct, in my judgement, led to the Claimant's phone call to the tribunal on 12 June and his email following that phone call. It also led to the Claimant's subsequent email of 12 June about the text message. It led to the Claimant's email of 19 June about witness statements, and again about the 12 June text message. The Respondent's conduct also led to the Claimant having to prepare his own hearing files for the hearing (which under the case management orders should have been done by the Respondent). That included getting the paperwork all in order, travel to the library to photocopy it and time spent at the library doing so. I accept that the Claimant and Ms Lennon would also have spent some time doing some online research about what to do in the circumstances they found themselves in. It was time spent working on the case/case preparatory work caused by the Respondent's conduct.

43. In my judgement a reasonable and proportionate amount of time spent on the preparatory work I have identified would be 5 hours inclusive. Ms Lennon used an incorrect hourly rate in her application and I am obliged under the Rules to apply the correct hourly rate of £44. I therefore award the sum of £220.00 (5 x £44). I do not consider that I can award the Claimant the actual costs of photocopying, postage or fuel because they do not fall within the definition of preparation time.

44. I turn to the communications of 27 November 2024. SP was referring to a screen shot of the Claimant's bank records from September 2023 and December 2023 that the Claimant had disclosed as part of remedy disclosure in advance of the remedy hearing, but which also displayed the Claimant's bank balance. From that SP asserted that the Claimant, together with others had allegedly stolen a (I presume winning) lottery ticket from him in the summer of 2024. In fact the Claimant's subsequent disclosure of documents shows the Claimant received funds in August 2024 for the sale of a house, and the Claimant said in evidence that he did not then complete the purchase of his new house until the Autumn of 2024, hence the money being in his account in the interim. Certainly, the sums in the completion statement and the Claimant's bank balance are similar and the completion letter from the solicitors confirms that it was the sale of a house as opposed to a simultaneous sale and purchase.

35. I accept, as Mr Katz says, that SP's allegation against the Claimant is not itself conduct of these employment tribunal proceedings. SP's threats of action against the Claimant and Ms Lennon including the police, jail, seizing houses, and getting Ms Lennon thrown off a board of governors are also not threats about the employment tribunal proceedings.

36. But what SP did do is take information given as disclosure in the employment tribunal proceedings to seemingly form his supposition of the allegation of theft

which he says he has taken to Camelot and the Police. As I observed at the hearing such action (as potentially would contacting Howells solicitors to try to obtain the Claimant's address based on the Howells' completion statement) potentially breached the principle in Employment Tribunal litigation (and civil litigation in general) that unless documents disclosed have become the matter of the public record (such as being referred to in open court) they are only to be used for the purpose of that litigation and not for other purposes. I cannot see they were matters of the public record at the time of SP's actions. So to that extent it relates to the conduct of the tribunal proceedings and SP made that link himself in his email of 27 November where he referred to the bundle and screenshot. It is also relevant to note, whilst it was not the specific communications on which Ms Lennon made the PTO application, that SP also used the same point to allege that the Claimant and Ms Lennon had lied to the tribunal and had made a scandalous claim that should be struck out (albeit not an application that Mr Katz made as representative and therefore not one I progressed).

37. I do also have the reservation that much of the preparation time that the Claimant seeks to recover in respect of the 27 November 2024 communications is not time spent working on the Tribunal case; for example contact with the Police, contact with Ms Lennon's headteacher and contact with a solicitor for legal advice in the wider sense.

38. I have ultimately decided that I cannot decide the PTO application relating to these two specific communications at this particular point in time. My concern is that to assess whether there was unreasonable conduct (or other qualifying conduct) of the litigation and, if so, whether I should exercise my discretion to make a PTO (which involves looking at such matters such as gravity and effect) is inextricably linked to SP's allegation about theft of the lottery ticket. Here I am told there remains an open police investigation and I do not consider I am in a position to adjudicate on that point (which of itself is so far from the actual tribunal proceedings) with those criminal investigations outstanding. I decline to make a PTO at this point in time. Any party (including the Claimant) is at liberty to apply for a reconsideration of that decision. The Rules provide for a 14 day period of time for a reconsideration application but it is possible to apply for an extension of time at the time of a reconsideration application if there is good reason for delay (for example because there are other external processes awaiting a conclusion) and the application is then made promptly. It is a matter for the parties to consider, in due course, whether they consider such an application worthwhile given my observations about the limited connection to the conduct of the employment tribunal claim itself and my observation that much of the work claimed seems to in fact fall outside of the definition of preparation time working on the employment tribunal case itself. This is a case in which the parties have lost a 40 year friendship. I do hope that in due course the dust will settle, there will be no need for further communication and they can then find some peace living their separate lives.

Employment Judge R Harfield

29 January 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

31 January 2025

Kacey O'Brien
FOR EMPLOYMENT TRIBUNALS

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/