EMPLOYMENT TRIBUNALS

Claimant: Miss A Abdi

Respondent: Dunton Environmental Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard on the papers at: Midlands West Employment Tribunal in Chambers

On: 7 & 29 May 2025

Before: Employment Judge Kelly (sitting alone)

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant is ordered to pay to the respondent the sum of £20,000.00 in respects of the costs of the respondent.

REASONS

1. Further to a judgment (Judgment) given orally at a final hearing on 24 February 2025 (February 2025 Hearing), the respondent made a costs application against the claimant on 12 March 2025. The respondent submitted an amended costs application on 21 March 2025, after written reasons, approved on 14 March 2025 (March Reasons), for the Judgment had been sent to the parties, which were requested by the claimant. This judgment should be read with the March Reasons.

2. The respondent asked the Tribunal to deal with the application on the basis of written representations. On 10 April 2025, the Tribunal asked the claimant to confirm whether or not she agreed to the application being considered on this basis without a hearing. The Tribunal also informed the claimant that she should provide arguments in relation to whether or not a costs order

against her should be made, and informed her that, if the Tribunal decided to make such an order, it may take into account her ability to pay, and so she should prepare written evidence on this. The Tribunal referred the claimant to the relevant Tribunal rules of procedure and Presidential Guidance on costs orders.

3. On 23 April 2025, the claimant confirmed that she did not wish to attend an oral hearing and was content for the matter to be dealt with by written representations.

4. The claimant made such written representations on 13 March and on 17 and 23 April 2025. We have taken them into account.

5. This judgement is therefore to make a decision on the respondent's costs application on the basis of written representations only.

6. The claimant has submitted that the costs application is premature given that she has appealed the Judgment and that, if her appeal is successful, a costs order now would be unjust.

7. We consider it appropriate to address the costs application now, in spite of the appeal. It is not usual for employment tribunals to put their proceedings on hold because an appeal has been lodged and there is no rule of procedure requiring us to do so. We do not consider that there are special grounds for now doing so. For example, this is not an instance where our decision would impact on the future course of the litigation.

8. The respondent's application was made pursuant to Rule 76 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013, Schedule 1. The Employment Tribunal Procedure Rules 2024 came into force on 6 January 2025 and replaced the 2013 Regulations and we will deal with the application by reference to the 2024 Rules.

Respondent's arguments

9. The application was for a costs order in the sum of £20,000, attaching a schedule showing costs incurred of £34,579.80 including VAT. It was made on the basis that the claimant had acted vexatiously and/or unreasonably in bringing the proceedings initially and in her conduct of the proceedings thereafter. In the alternative, the respondent contended that the bringing of the proceedings initially and her conduct of the proceedings thereafter had been misconceived.

10. The respondent wrote to the claimant on 2 May 2023 without prejudice save as to costs inviting the claimant to withdraw her claim and putting her on notice that she was at risk of a costs application. This was because:

    a. She appeared to be claiming arrears of pay on the basis that Lara Roe had agreed that she would be paid 6 months' full pay until February 2023. The respondent said its witnesses would give evidence that there was no such agreement and the claim was vexatious and without reasonable prospect of success.

b. The claim form also indicated another claim that her employment terms and conditions were unreasonable and prevented her being employed elsewhere. The Tribunal had no jurisdiction to hear such a claim and it was misconceived.

11. The letter advised the claimant to seek advice on the contents of the letter.

12. On 3 Dec 2024, the respondent wrote to the claimant without prejudice save as to costs. Its communication referred to the respondent having made an offer of £5000 to settle the claim, with the claimant counter offering £150,000. This was after, the Judge at a Preliminary Hearing, had informed the claimant that there was a cap of £25,000 on compensation for breach of contract claims. The respondent pointed out that the Tribunal did not have jurisdiction to consider her breach of contract claim because it was not submitted within three months of the date of termination of the employment contract. It repeated its substantive point that a claim that Lara Roe promised her 6 months pay would be contradicted by the respondent's witnesses and stated that, at the preliminary hearing, the Judge had commented that the idea of such a promise seemed odd, and that the claim was vexatious and had no reasonable prospect of success. The respondent warned the claimant that, if her claim was unsuccessful, the respondent would seek its costs. The respondent put forward a new offer of settlement of £7000 and advised the claimant to take advice on the letter. The claimant rejected the offer and counter proposed £73,200 and then £104,400. On 4 December 2024, the respondent again repeated its costs warning to the claimant.

13. The respondent argued that the claimant's conduct of proceedings was unreasonable (Unreasonable Conduct Argument) in that:

    a. She failed to deal with its request for her to properly particularise her claims from a request on 23 April 2023, resulting in substantial correspondence and a delay in the respondent being able to file an amended response. It was not until a strike out warning from the Tribunal on 12 December 2023 that the claimant provided the requested information. This resulted in increased costs for the respondent; and

    b. During the same period, the claimant changed the basis of her 'other claims' from one that the terms of her employment were unreasonable, to a claim for personal injury. Even though at a preliminary hearing on 9 October 2024 the Tribunal informed the claimant that it did not have jurisdiction to consider such a claim, the claimant did not withdraw it; and the Tribunal eventually issued a dismissal judgment on 24 December 2024, which all incurred additional costs for the respondent in pursuing this outcome.

14. The respondent also argued for a costs order more widely for vexatious and/or unreasonable conduct or that the claim was misconceived. It submitted that the claimant had acted vexatiously and/or unreasonably in bringing the proceedings initially and in her conduct of the proceedings thereafter. In the alternative, the bringing of the proceedings initially and her

conduct of the proceedings thereafter has been misconceived. The respondent relied on the following:

a. The Claimant's claim from the outset has been an allegation that the Respondent's Lara Roe agreed that the Claimant would be paid 6 months' full pay for the period between September 2022 until February 2023. The respondent had vehemently denied this to the claimant in the without prejudice save as to costs correspondence.

b. In addition, the claim form indicated that she was making another claim that her employment terms and conditions were unreasonable as they prevented her from employment with other potential organisations. The respondent had advised the claimant in correspondence that the Tribunal did not have jurisdiction to consider such a claim. The claimant changed the basis of this claim to one for personal injury and was informed by the Tribunal on 12 December 2023 that it did not have jurisdiction to consider such a claim,

c. However, the Claimant indicated at the start of the February 2025 Hearing that the claim she wished to pursue was based on her view that it had not been reasonable for the Respondent to include post termination restrictive covenants in her contract of employment and that she should be paid 12 months' pay as a result. Judge Kelly clearly explained to the Claimant that that was not the claim that the Claimant had articulated during the Preliminary Hearing on 14 October 2024 and included in the resulting Case Management Order and that, in any event, the Tribunal would not have jurisdiction to consider such a claim. The respondent had already made this point to the Claimant in its letter of 2 May 2023 and the claimant subsequently changed the basis of her claim to one of personal injury; the previous allegation was not raised again until the Final Hearing. Having considered Judge Kelly's explanation the Claimant said that she wasn't sure why she was having a Tribunal hearing. Judge Kelly explained that we were having a hearing because the Claimant had claimed in her claim form that she had been promised 6 months' pay by the Respondent and that it had not been paid. The Claimant confirmed that that was correct. However, during cross examination the Claimant indicated that she believed that her contract of employment provided for her to be entitled to be paid monies following the termination of her employment, which was not the case. It was therefore clear that, even at the Final Hearing, the Claimant's claim was misconceived and was being pursued unreasonably.

d. In the Hearing, the Claimant went on to explain to Judge Kelly that she was alleging that she had been promised 6 months' pay during a meeting between the Claimant and Lara Roe only, prior to the meeting that had taken place between the Claimant, Lare Roe and Chris Gellion following her resignation. However, the Claimant had made no reference to that meeting whatsoever in her witness statement. The Claimant would have been acutely aware of the importance of this meeting to her claim. Indeed, as she confirmed in her evidence at the

February 2025 Hearing, the Claimant had 13 years' experience of HR and was a member of CIPD, and she has had previous experience of Tribunal claims, including involvement in preparing witness statements. It is inconceivable that she would not have understood the importance of including evidence of such an important meeting in her witness evidence, had it in fact taken place.

15. The respondent relied on the following sections of the March Reasons:

    a. The Tribunal preferred the evidence of Ms Roe on the question of whether an additional meeting took place between Ms Roe and the Claimant alone, it found that the Claimant lacked all credibility in her claim that Ms Roe had advised her that she would receive 6 months' pay, and accordingly it found that the Respondent had not advised the Claimant that she would receive 6 months' pay, as she had claimed (paragraphs 45, 49 and 50).

    b. The Tribunal confirmed:

        i. *'We consider that the claimant's approach to her claim was entirely unreasonable. She brought her claim on the basis of an alleged oral advice that she would be paid 6 months money which she failed to support in her evidence and which we have found was not made to her. In the hearing, she then explained her claim on an entirely different basis as a claim for 12 months money based on allegedly being excluded from the labour market by post termination restrictive covenants. It was unreasonable for the claimant to have started her claim on the basis of an alleged oral information that she would be paid 6 months money when no such information was given to her, and it was unreasonable for her to pursue that claim when she was actually intent on bringing her claim on a different basis.'*

Claimant's arguments

16. The claimant submitted that the matter was brought in good faith and involved issues that were not frivolous, vexatious, or an abuse of process. As a self-represented party without access to legal advice, she acted to the best of her ability and with sincere belief in the merits of her application; and the litigation was reasonably pursued.

17. The claimant submitted that it is well established in case law that merely losing a claim does not automatically render it vexatious or unreasonable (McPherson v BNP Paribas [2004] ICR 1398). The burden of proof was on the Respondent to demonstrate that the Claimant's conduct warrants a costs order, which it had failed to do.

18. The claimant argued that her claim was grounded in her employment contract which contained a provision for 12 months money during garden leave. The claimant said she relied on witness statements from senior

employees who supported discussions regarding entitlement to garden leave pay and said that the respondent's witnesses dealt with these discussions.

19. The claimant said she provided particulars of her claim when requested.

20. The claimant said she rejected the respondent's settlement offers because she was seeking £60,000 as a contractual sum; and that the Tribunal cap of £25,000 did not preclude her negotiating a higher settlement. She said that rejecting a settlement offer is not evidence of vexatious conduct (Kovacs v Queen Mary University of London [2020] UKEAT/0187/19).

21. The claimant said that the respondent had defamed her in saying she was 'scamming' and its actions showed it had a personal animus towards her and its behaviour showed a deliberate attempt to damage the claimant's reputation and livelihood.

22. On the question of the amount of costs sought by the respondent, the claimant argued that:

    a. ... this costs application is commercially motivated and disproportionate for the following reasons:
        i. The Tribunal process is designed to be cost-effective, yet the Respondent has chosen to heavily litigate the case at significant expense.
        ii. Many of the costs incurred appear unnecessary, including excessive correspondence and legal strategizing that goes far beyond the defence of a straightforward contractual claim.
        iii. The Respondent's legal team has billed extensively for work that was not required to defend this case, particularly in a matter that could have been resolved far earlier through reasonable settlement discussions.

23. The claimant did not make any submissions in relation to her means to pay a costs award.

Further finding of facts necessary for this decision

24. The claimant's contract of employment contained a provision (clause 9.6) allowing the respondent to place the claimant on garden leave during her notice period only, during which period the respondent was obliged to pay salary and provide benefits.

25. We accept the information in Ms Roe's witness statement that, in a meeting with the claimant which she recalled took place early in August 2022, Mr Gellion agreed with the claimant that she be placed on garden leave for the remainder of her notice period. We accept this because this is consistent with the terms of the claimant's contract of employment and we have already preferred Ms Roe's evidence in the March Reasons (para 45).

26. There was no suggestion on the claim form or in the February 2025 Hearing that the respondent failed to pay the claimant for the duration of her notice period to 31 Aug 2022.

Relevant Law

27. The relevant law in relation to whether to make a costs awards is summarised in IDS Employment Law Handbooks Volume 10 Chapter 18 and we quote relevant parts from it below.

    a. *'Where the conduct of a party (or of his or her representative) is 'vexatious, abusive, disruptive or otherwise unreasonable', rule 74(2)(a) provides that the tribunal must consider whether to make a costs order or PTO. Therefore, it has a duty to consider making an order but has discretion as to whether or not to actually make the award.'*

    b. *'A litigant in person should be judged less harshly in terms of his or her conduct than a litigant who is professionally represented. According to the EAT in AQ Ltd v Holden 2012 IRLR 648, EAT, an employment tribunal cannot, and should not, judge a litigant in person by the standards of a professional representative. Justice requires that tribunals do not apply professional standards to lay people.'*

    c. *'Liddington v 2gether NHS Foundation Trust EAT 0002/16, where the employment judge made such an order against L on the basis of unreasonable conduct because, despite being given a number of opportunities to do so, she was unable to provide sufficient details of her complaints. The judge recognised that the standard of pleading expected of a lawyer did not apply to L as a lay person and so she could not be expected to provide a detailed legal pleading. However, she should have been able to articulate in lay terms what it was that was said or done, by whom and on what dates, and she had failed to do so.'*

    d. *'National Industrial Relations Court in ET Marler Ltd v Robertson 1974 ICR 72, NIRC. The Court stated that: 'If an employee brings a hopeless claim not with any expectation of recovering compensation but out of spite to harass his employers or for some other improper motive, he acts vexatiously.' So, it would appear that for conduct to be vexatious, there must be evidence of some spite or desire to harass the other side, or the existence of some other improper motive. Simply being 'misguided' is not sufficient to establish vexatious conduct — AQ Ltd v Holden 2012 IRLR 648, EAT However, the Court of Appeal in Scott v Russell 2013 EWCA Civ 1432, CA (a case concerning costs awarded by an employment tribunal), cited with approval the definition of 'vexatious' given by Lord Bingham in Attorney General v Barker 2000 1 FLR 759, QBD (Div Ct). According to His Lordship, 'the hallmark of a vexatious proceeding is… that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court, meaning by that a use of the court process*

for a purpose or in a way which is significantly different from the ordinary and proper use of the court process.'

e. *'A costs order or PTO may also be awarded against a party under rule 74(2)(a) where the party (or his or her representative) has acted unreasonably in bringing or conducting proceedings. 'Unreasonable' has its ordinary English meaning and is not to be interpreted as if it means something similar to 'vexatious'. A tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct —The tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.'*

f. *'In Daleside Nursing Home Ltd v Mathew EAT 0519/08 the Appeal Tribunal held that an employment tribunal had reached a perverse decision when concluding that the making of a false allegation, which lay at the heart of a race discrimination claim, did not constitute unreasonable action in bringing the claim.*

g. *'The fact that some claims are unmeritorious does not necessarily mean that a claimant will act unreasonably by pursuing these.*

h. *'In Kopel v Safeway Stores plc 2003 IRLR 753, EAT, however, the EAT held that the rule in Calderbank has no place in employment tribunal jurisdiction. In that case, a tribunal's decision to award costs of £5,000 against the claimant had been influenced by the fact that she had earlier rejected a settlement offer made 'without prejudice save as to costs' (known as a 'Calderbank offer') during the proceedings. On appeal, the EAT clarified that a tribunal claimant will not necessarily be liable for costs where he or she rejects a Calderbank offer and is eventually awarded less than that offer, or even nothing at all. However, a claimant's refusal of such an offer was a factor that a tribunal could take into account in deciding whether to award costs. In this particular case, not only had the employment tribunal found that the claimant had unreasonably rejected a generous offer but had also concluded that her claims were 'frankly ludicrous' and 'seriously misconceived', and that the documentary evidence did not support her case. In the circumstances, the tribunal had made no material error of law in finding that she had acted unreasonably in conducting proceedings.'*

i. *'Kopel was adopted by the EAT in Power v Panasonic (UK) Ltd EAT 0439/04. There, P's complaints of disability discrimination, unfair dismissal and breach of contract were upheld by an employment tribunal and she was awarded compensation of £5,855. Even so, P was ordered to pay £10,000 towards the respondent's costs on the basis that it had made an offer to settle for £10,000 before the tribunal hearing. On appeal, P argued that the tribunal had, contrary to the Kopel decision, looked at the offer of £10,000 in isolation as if applying the 'Calderbank' principle. The EAT, however, upheld the*

tribunal's award. It noted that the tribunal had found the schedule of loss put forward by P to be 'unrealistically optimistic', and her approach to negotiations to have been 'intransigent'. In the circumstances, it had been entitled to find that P had conducted the proceedings unreasonably and therefore to exercise its discretion to award costs against her.'

j. 'In Anderson v Cheltenham and Gloucester plc EAT 0221/13 the EAT reiterated that the Calderbank principle does not apply in full to employment tribunal litigation but that the failure to accept a prior offer may have a bearing on whether the claimant has conducted proceedings unreasonably or pursued a claim that has no reasonable prospect of success.'

28. Turning to Mcpherson, relied on by the claimant:

a. The key question in the case was whether the claimant conducted the proceedings unreasonably. The Court of Appeal identified that no papers before it revealed much about the conduct of the case in its first 11 months. This was relevant because the costs order made was in respect of all the Tribunal proceedings. The Court noted that tribunals do not normally make orders for costs against unsuccessful applicants and that the costs regime in ordinary litigation does not fit with the particular function and special procedures of employment tribunals. The first question for the tribunal is whether in all the circumstances, the claimant has conducted the proceedings unreasonably. This case related to the late withdrawal of the claim by the claimant and the Court stated that the crucial question was whether, in the circumstances of the case, the withdrawal of the claim was unreasonable.

b. The Court then went on to consider the exercise of discretion to ward costs. The Court decided that there is no requirement on a tribunal to limit the costs award to the costs attributable to the specific instances of unreasonable conduct. The tribunal must have regard to the nature, gravity and effect of the unreasonable conduct. The Court specifically referred to the case of Kovacs as not being authority for the proposition that the then rule 14(1) limits the tribunal's discretion to those costs attributable to the unreasonable conduct of the claimant. However, the Court found that there was an error of law by the Tribunal in ordering the claimant to pay the costs of all of the proceedings because there was no evidence of any unreasonable conduct by the claimant in the first 11 months of the action.

Conclusions

29. We accept the narrative of events as set out by the respondent in its application and repeated above.

30. We further refer to para 3 of the March Reasons which set out how the claimant had, on 4 Dec 2024, applied to the Tribunal to amend her claim to

one for 12 months' pay based on post termination restrictive covenants, that this application was refused and that we refused it again in the Hearing because it had already been considered and refused and the Tribunal did not have jurisdiction to consider such a claim.

31. We start by looking at the question of unreasonable conduct of the claimant.

32. We have already found that her conduct was unreasonable. As per para 52 of the March Reasons, we have found that the claimant's approach to her claim was entirely unreasonable: She brought her claim on the basis of an alleged oral advice that she would be paid 6 months money which she failed to support in her evidence and which we found was not made to her. In the hearing, she then explained her claim on an entirely different basis as a claim for 12 months money based on allegedly being excluded from the labour market by post termination restrictive covenants. It was unreasonable for the claimant to have started her claim on the basis of an alleged oral information that she would be paid 6 months money when no such information was given to her, and it was unreasonable for her to pursue that claim when she was actually intent on bringing her claim on a different basis.

33. The claimant had already been informed by the respondent that the Tribunal had no jurisdiction to hear a claim based on restrictive covenants; the claimant subsequently dropped this claim and tried to replace it with a personal injury claim which was discussed at the Preliminary Hearing; and then she raised it again in an application to the Tribunal in December 2024, which was rejected.

34. Moreover, with regard to the claim as referred to in the claim form that Ms Roe advised her that she would receive 6 months' pay to February 2023: We determined that the claimant lacked all credibility in relation to this claim. She failed to give any evidence to support the claim and, at the start of the hearing, she attempted to bring her claim on another basis altogether and, when this was refused, she appeared not to know what the basis of her claim was, asking why we were having the hearing.

35. We turn now to various arguments put forward by the claimant in defending the costs application:

36. (1) She said that her claim was grounded in her employment contract which contained a provision for 12 months money during garden leave; and she relied on the respondent's witnesses whom she said supported discussions regarding entitlement to garden leave pay. This argument is entirely misconceived.

    a. Nowhere on her claim form or during the February 2025 Hearing did the claimant rely on being entitled to money for 12 months contractual garden leave.

    b. Moreover, there was no contractual provision for the claimant to be entitled to payment for 12 months garden leave:

i. When she resigned, the claimant was still in her contractual probationary period and the minimum required notice to terminate employment by either party was one week. (See March Reasons para 28).

ii. The claimant's contract of employment contained a provision (clause 9.6) allowing the respondent to place the claimant on garden leave during her notice period only, during which period the respondent was obliged to pay salary and provide benefits.

iii. The claimant resigned on 29 Jul 2022 with effect on 31 Aug 2022. (March Reasons para 28).

iv. After this, in a meeting with Ms Roe and Mr Gellion, the claimant was placed on garden leave for the remainder of her notice period.

c. The claimant was therefore entitled to payment from the date of a meeting after 29 Jul 2022 until 31 August 2022, not 12 months' money. There was no suggestion on the claim form or in February 2015 Hearing that the respondent failed to pay the claimant for the duration of her notice period to 31 Aug 2022.

37. (2) She said that the respondent had defamed her in saying she was 'scamming' and its actions showed it had a personal animus towards her and its behaviour showed a deliberate attempt to damage the claimant's reputation and livelihood: Given our finding that the claimant lacked all credibility in her claim regarding Ms Roe, we do not agree that its suggestion that her claim was a 'scam' derived from personal animus and an attempt to damage the claimant's reputation and livelihood. In any event, we do not see this as relevant to the question of whether a costs award should be made against the claimant because of her unreasonable conduct.

38. We have in mind the guidance in AQ Ltd that an employment tribunal cannot, and should not, judge a litigant in person by the standards of a professional representative. We note, however, that Liddington concluded that the claimant should have been able to articulate in lay terms what it was that was said or done, by whom and on what dates. We consider that it can be reasonably expected that:

a. The claimant would not in her claim form rely on an alleged statement by Ms Roe that 'I would receive 6 months full pay (until Feb 2023)', which we have found lacked all credibility. This was a false allegation, which lay at the heart of the claim;

b. The claimant would not, after relying on this argument in her claim form, and after having made an unsuccessful application to amend her claim on 4 Dec 2024, which was repeated again and refused at the February 2025 Hearing, ask why we were having the hearing, and despite having then agreed to proceed on the basis as pleaded in the claim form, in the hearing, state her claim as being on an entirely

different basis, that is that she was entitled to 12 months money on the basis of being subject to restrictive covenants for 12 months.

39. We consider that the claimant acted unreasonably in relation to the above matters not only by the standards of a typical unrepresented claimant, but in particular, by the standards of an HR professional who, on her evidence, had worked in HR for 13 years, was a member of the CIPD, and had experience, in working for employers, of preparing for Employment Tribunal claims, including assisting with the preparation of witness statements.

40. We turn now to the question of the claimant failing to accept offers of settlement from the respondent made without prejudice save as to costs. As per Kopel, a claimant will not necessarily be liable for costs where he or she rejects a Calderbank offer and is eventually awarded less than that offer, or even nothing at all. However, a claimant's refusal of such an offer is a factor that a tribunal can take into account in deciding whether to award costs.

41. The respondent made settlement offers of £5000 and £7000. The claimant's response was to counter propose variously settlements of £150,000, £73,200 and £104,400. The claimant said she rejected the respondent's settlement offers because she was seeking £60,000 as a contractual sum; and that the Tribunal cap of £25,000 did not preclude her negotiating a higher settlement. Whichever of these sums the claimant was seeking, it was vastly in excess of the cap on breach of contract awards to which the Tribunal is subject. This was in spite of the Employment Judge, at a Preliminary Hearing, having informed the claimant that there was a cap of £25,000 on compensation for breach of contract claims. The claimant's settlement expectations were clearly, therefore, unreasonable. Given that the claimant had written to the respondent on 13 Feb 2023 saying she was due £12,130 (March Reasons para 38), the offers made by the respondent were worthy of serious consideration and the counterproposals unreasonably bore no relation to the sum which the contemporaneous evidence shows the claimant believed she was due.

42. Taking this into account, we consider that it is appropriate to exercise our discretion to award to the respondent costs against the claimant in relation to the unreasonable conduct of the claimant as set out in para 38 above and para 52 of the March Reasons. We would have made this decision on the basis of the said unreasonable conduct alone, but the claimant's failure to engage reasonably with settlement negotiations adds weight to the decision.

43. Briefly, to deal with the respondent's other arguments for costs on the basis of vexatious conduct and the claim having no reasonable prospect of success (misconceived).

    a. We do not consider that the respondent has shown spite or other improper motive on the part of the claimant to found a finding of vexatious conduct.

    b. We consider that the claim had no reasonable prospect of success from its commencement when the claimant based her claim on an

allegation that Ms Roe advised her she would be given 6 months pay. This is because the claimant would have known that her allegation held no substance. Further, as to the other argument in the claim form that the terms and conditions were unreasonable as they prevented her from employment with other potential organisations, she was put on notice by the respondent on 2 May 2023 that that the Tribunal had no jurisdiction to consider such a claim, which she apparently took on board because she then changed her argument to one of personal injury. She therefore knew from 2 May 2023 that this other argument had no reasonable prospect of success. If we had not decided to award costs by reason of unreasonable conduct, we would have exercised our discretion to do so on the basis that the claim had no reasonable prospect of success.

44. Given that the unreasonable conduct identified began with the contents of the claim form and continued to the final hearing, we do not consider it necessary to consider the Unreasonable Conduct Argument which covers part of this period.

Amount of award

45. Given that the unreasonable conduct identified began with the contents of the claim form and continued to the final hearing, we consider that it is appropriate for the respondent in principle to be awarded its costs in relation to the whole of the proceedings.

46. The respondent produced a schedule of the legal fees incurred in defending the claim from 31 Mar 2023 to 24 Feb 2025 (the date of the final hearing) amounting to £28,816.50 excluding VAT. The respondent has not provided any information as to whether it is registered for VAT and, in the absence, we will assume that it is. Therefore, it would be able to reclaim the VAT and it is appropriate to work from the net of VAT figure.

47. According to the schedule, most of the work was undertaken by a partner at the hourly rate of £355, including attending the preliminary hearing for the respondent at a charge of £284. This element of the fees amounts to 24,491.50. A trainee attended the final hearing for which a charge of £825 was made, and counsel's fees for the final hearing were £3,500.

48. We are inclined to agree with the claimant that the sum of £28,816.50 for legal fees for a one day breach of contract claim where compensation is capped at £25,000 is disproportionately high.

49. We calculate that the element of the fees unrelated to the final hearing day (24,491.50) represents 70 hours work at the partner rate charged of £355. If we were to limit the number of partner hours to 20 and assume the rest of the hours should have been undertaken by a junior solicitor at the lower rate of £200 per hour, this would limit this element of the fees to the following sum:

    a. 20 hours @ £355 = £7100

    b. 50 hours @ £200 = £10,000

c. Total: £17,100

50. If we add onto this the final hearing fees of £4325, we get a total of £21,425.

51. However, the respondent has limited the costs claim to £20,000, less than this figure. We do not consider this an unreasonable sum for the defence of a claim involving a preliminary hearing as well as one day hearing, costs warning letters and attempts at reaching settlement, applications to the Tribunal, preparation of two witness statements, dealing with the claimant's attempts to change the basis of her claim and instructing counsel.

52. Therefore, we will order the claimant to pay £20,000.00 in respect of the respondent's costs.

Employment Judge Kelly

Approved on 29 May 2025