EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Ozkara	**- V -**	Park Chinois Ltd

Heard at: London Central

On: 31 October 2018 (in Chambers only)

Before: Employment Judge Baty
Mr M Simon
Mr B Tyson

Representation:

For the Claimant: No attendance or representation
For the Respondent: No attendance or representation

RESERVED JUDGMENT (2ND REMEDIES)

1. The respondent has satisfied the tribunal that it was not practicable for it to comply with the order for reinstatement made in respect of Mr Ozkara's successful unfair dismissal complaint. Therefore, no additional award of compensation is made pursuant to section 117(3)(b) Employment Rights Act 1996.

2. An award of compensation for unfair dismissal of £80,399, comprising a basic award of £1,437 and the maximum compensatory award of £78,962 is made, payable by the respondent to Mr Ozkara.

3. The respondent's request for reconsideration of paragraph 84 of the tribunal's reasons for the previous remedies judgment (sent to the parties on 11 July 2018) is refused.

REASONS

Background

1. At an earlier remedies hearing held before this tribunal on 3 and 4 July 2018, the tribunal made an order for reinstatement in relation to Mr Ozkara. The full terms of that order are set out in the judgment and reasons from that remedies hearing, which were sent to the parties on 11 July 2018. However, in summary, the tribunal ordered that Mr Ozkara should be reinstated by the respondent with effect from Monday, 9 July 2018, in the job that he had at the respondent immediately prior to his dismissal and that it should pay him the sum of £297,166.66 by way of arrears of pay between the date of his dismissal and the date the reinstatement order was to take effect. The respondent did not comply with that order and Mr Ozkara was not reinstated.

2. There was then a variety of correspondence between the parties and the tribunal. Initially the respondent sought a further hearing to determine what further judgments the tribunal might make as a result of the failure to comply with the order for reinstatement and, in particular, the issue of whether it was practicable to reinstate Mr Ozkara. However, in the end, both parties decided that these decisions should be taken by the tribunal on the papers without the need for a hearing at which the parties should attend.

3. The tribunal gave the parties until 3 October 2018 to provide any further written representations which they wanted to make and both parties duly did so.

4. In addition, the respondent also applied for reconsideration of the wording of one particular paragraph of the tribunal's reasons for the previous decisions on remedy (specifically paragraph 84 of those reasons). The claimant in correspondence opposed this. The judge informed the parties that he wanted first to check with the tribunal members (as to what their notes of the hearing which related to the paragraph in question said and what their recollection was) and that any decision on this application would be put off until such point as that was possible.

5. A day in chambers was therefore convened for the tribunal for 31 October 2018. That was the first opportunity the judge had to liaise with the members about their notes and their recollection of what was said at the remedies hearing. The tribunal therefore also at this point considered the reconsideration application under rule 72(1) of the Employment Tribunal Rules 2013.

The Issues

6. The issues to be determined by the tribunal on the papers were therefore as follows:

> 1. What awards should the tribunal make in relation to Mr Ozkara under section 117 of the Employment Rights Act 1996 ("ERA") and,

specifically, does the respondent satisfy the tribunal that it was not practicable to comply with the order for reinstatement; and

2. Should the tribunal grant the respondent's application for reconsideration?

7. There had been reference in the correspondence from the parties to the tribunal to potential costs applications from Mr Ozkara should a hearing be required at which the parties would have to attend. In the end, no such hearing was sought by the parties. Furthermore, no costs applications were forthcoming. This was not, therefore, an issue for the tribunal.

Evidence and submissions

8. In addition to the material from the previous hearings (including the witness statements and bundles prepared for those hearings and the judgments and reasons from them), the tribunal had before it the various correspondence sent to it by the parties between the previous remedies hearing and its meeting on 31 October 2018. This included: the respondent's application for reconsideration and the claimant's response to it; the respondent's written submissions dated 2 October 2018 and prepared by Mr Benjimin Burgher of Counsel; a sworn affidavit of Mr Siddharth Mehta (currently the chairman and majority shareholder of the respondent, who had been a named respondent in these proceedings) dated 3 October 2018 together with various attachments; and written submissions dated 3 October 2018 submitted by Mr Ozkara.

9. Whilst clearly neither party was present to be cross-examined, it was by the agreement of the parties that the matter should be considered on the papers only; there was, therefore, no suggestion that we should give any less weight to the evidence and submissions submitted to the tribunal by either party on the grounds that they were not present to be cross-examined.

The Law

Reinstatement/compensatory and additional awards

10. The following sections of the ERA are relevant to the issues before us.

113 The orders.

An order under this section may be—

(a) an order for reinstatement (in accordance with section 114), or

(b) an order for re-engagement (in accordance with section 115),

as the tribunal may decide.

114 Order for reinstatement.

(1) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed.

(2) On making an order for reinstatement the tribunal shall specify—

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement,

…

117 Enforcement of order and compensation.

(1) An employment tribunal shall make an award of compensation, to be paid by the employer to the employee, if—

(a) an order under section 113 is made and the complainant is reinstated or re-engaged, but

(b) the terms of the order are not fully complied with.

(2) Subject to section 124, the amount of the compensation shall be such as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(2A) There shall be deducted from any award under subsection (1) the amount of any award made under section 112(5) at the time of the order under section 113.

(3) Subject to subsections (1) and (2), if an order under section 113 is made but the complainant is not reinstated or re-engaged in accordance with the order, the tribunal shall make—

(a) an award of compensation for unfair dismissal (calculated in accordance with sections 118 to 126), and

(b) except where this paragraph does not apply, an additional award of compensation of an amount not less than twenty-six nor more than fifty-two weeks' pay,

to be paid by the employer to the employee.

(4) Subsection (3)(b) does not apply where—

(a) the employer satisfies the tribunal that it was not practicable to comply with the order,. . .

(7) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that fact into account in determining for the purposes of subsection (4)(a) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(8) Where in any case an employment tribunal finds that the complainant has unreasonably prevented an order under section 113 from being complied with, in making an award of compensation for unfair dismissal . . . it shall take that conduct into account as a failure on the part of the complainant to mitigate his loss.

124 Limit of compensatory award etc.

(1) The amount of—

(a) any compensation awarded to a person under section 117(1) and (2), or

(b) a compensatory award to a person calculated in accordance with section 123,

shall not exceed the amount specified in subsection (1ZA).

(1ZA) The amount specified in this subsection is the lower of—

(a) £78,962, and

(b) 52 multiplied by a week's pay of the person concerned.

(3) In the case of compensation awarded to a person under section 117(1) and (2), the limit imposed by this section may be exceeded to the extent necessary to enable the award fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

(4) Where—

(a) a compensatory award is an award under paragraph (a) of subsection (3) of section 117, and

(b) an additional award falls to be made under paragraph (b) of that subsection,

the limit imposed by this section on the compensatory award may be exceeded to the extent necessary to enable the aggregate of the compensatory and additional awards fully to reflect the amount specified as payable under section 114(2)(a) or section 115(2)(d).

11. The figure set out at section 124(1ZA)(a) above is the figure applicable at the time of Mr Ozkara's dismissal.

12. There are two stages at which a tribunal may have to assess the question of practicability. The first arises when the tribunal considers whether to make an order for reinstatement or re-engagement at the remedies hearing, having found the employer liable for unfair dismissal (this was done by this tribunal at the previous remedies hearing). The second arises later but only if the employer refuses to comply with the order for reinstatement or re-engagement. At the second stage, the onus is on the employer to show, on the balance of probabilities, that it was not practicable for it to comply with the order. The EAT ruled in Timex Corporation v Thomson 1981 IRLR are 522, EAT, that a lesser emphasis on practicability is required at the first stage, when the tribunal has only to take into account the consideration of practicability and does not need to make a final determination on the issue. This was endorsed by the Court of Appeal in Port of London Authority v Payne and others 1994 ICR 555, CA, where it stated that at the first stage, prior to making an order, the tribunal need only make a provisional determination or assessment on the evidence before it as to whether it is practicable for the employer to reinstate or re-engage the employee. It is only at the second stage, where the employer has not complied with the order

and seeks to show that it was not practicable to do so, that the tribunal must make a final determination on practicability.

13. According to the EAT in Rembiszewski v Atkins Ltd EAT 0402/11, the date at which the practicability of an order for re-engagement is to be considered is when such re-engagement would take effect. In practice, this will often mean the date of the remedies hearing. However, in that case, where further written evidence was submitted to the tribunal following the remedies hearing, the tribunal ought to have taken that evidence into account and made the assessment as at the date the last relevant submission was received, which was three months after the remedies hearing. It follows that this principle applies in relation to orders for reinstatement as well.

Reconsideration

14. The rules in relation to applications for reconsideration of judgments are set out at rules 70-73 of the Employment Tribunal Rules of Procedure 2013.

15. A tribunal may, either on its own initiative or on the application of the party, reconsider any judgment where it is necessary in the interests of justice to do so. On reconsideration, the decision may be confirmed, varied or revoked. If it is revoked it may be taken again.

16. Under Rule 72(1), an application for reconsideration is to be refused, without the need for a hearing, if an Employment Judge considers that there is no reasonable prospect of the original decision being varied or revoked. Otherwise the tribunal shall send a notice to the parties setting a time limit for any response to the application by the other parties and seeking the views of the parties on whether the application can be determined without a hearing. The notice may set out the judge's provisional views on the application.

Conclusions on the issues

17. Rather than setting out any facts we find and our conclusions in separate sections, the self-contained nature of the issues we have to determine makes it easier, for ease of reference, to set out any facts we find and conclusions together in relation to each issue.

Was it practicable to comply with the order for reinstatement?

18. Before turning to the various grounds which the respondent submits as to why it would not be practicable to have reinstated Mr Ozkara, we emphasise two particular points.

19. First, as set out in our summary of the law above, any decisions made as to the issue of practicability at the previous remedies hearing are, as a matter of law, a provisional determination or assessment; that means that, having considered the evidence provided for this hearing, we are not bound to follow our earlier assessment if we conclude otherwise at this hearing; it is our conclusions

at this hearing which represent our final determination on the issue of practicability.

20. Secondly, the absence of any evidence from Mr Mehta at that hearing was one of the reasons why we accepted some of the assertions which Mr Ozkara made at that hearing. We noted at paragraph 27 of our reasons that we had heard nothing from Mr Mehta, who did not attend the tribunal, and that there was no reason before us as to why he could not attend. However, having seen his sworn affidavit for this hearing, there were very good reasons why he did not attend. The respondent was only notified by the claimant that the claimant was seeking an order for reinstatement on 25 June 2018, roughly a week before the remedies hearing. The respondent sought an adjournment of that hearing, but this was refused by the tribunal. By the time he was aware of the fact that an order for reinstatement was being sought, Mr Mehta was on a planned family trip in Mykonos; furthermore, after that he had business commitments and was in India from 28 June 2018 for the next 14 days; he had a packed programme of meetings on the days of the remedies hearing itself. These were not commitments which he could cancel at such short notice in order to provide a statement or attend the hearing in London. There were therefore good reasons for his not attending at the previous remedies hearing.

21. Having said that, even if there had not been good reasons for Mr Mehta not attending the previous remedies hearing (and we found that there were good reasons), the legal provisions highlighted above mean that, if further evidence is produced at the stage of the second hearing considering practicability, the tribunal should take that into account anyway.

22. We turn now to the various grounds on which the respondent maintains that it was not practicable to have reinstated Mr Ozkara.

Lack of trust and confidence of Mr Mehta and the Board in Mr Ozkara

23. This was an issue which was raised at the previous remedies hearing.

24. At that hearing, we accepted, in the absence of any evidence from Mr Mehta to the contrary, Mr Ozkara's assertion that he still had an ongoing relationship with Mr Mehta (such that there was no issue of trust and confidence between them) and the examples he gave of evidence for this, including that Mr Mehta had recently had a new baby and that they had exchanged baby photos in this respect. However, any interaction in relation to this was not "recent". Mr Mehta has only one daughter, who was born in late 2016. The reference to exchanges about photos, it was pointed out by Mr Mehta in his affidavit, was to the what's app messages which were in the original trial bundle (to which our attention was not directed at the last hearing). In them, following the birth of his daughter, Mr Mehta sent a message to all of his mobile phone contacts announcing the birth and the list inadvertently included Mr Ozkara. The date of the message was 9 December 2016, his only daughter having been born on 7 December 2016. Mr Ozkara sent a message to Mr Mehta on 10 December 2016 in which he offered his congratulations and stated that he would like to see the baby. Mr Mehta did not reply to Mr Ozkara's message; he did not invite him to

see the baby nor did he meet with him or promise to do so at any point. On 31 December 2016, Mr Ozkara sent a message wishing Mr Mehta a happy New Year and Mr Mehta replied "same to you". He has had no communication with Mr Ozkara since then. These messages predated Mr Mehta's knowledge of Mr Ozkara's employment tribunal claim, which was submitted on 12 December 2016 to the tribunal, and the allegations of discrimination against Mr Mehta personally which it contained.

25. At the last hearing, we definitely had the impression that Mr Ozkara was arguing that there was an ongoing relationship with Mr Mehta and that the example regarding the birth of his daughter and exchange of photos was given in connection with that. We find, however, that any exchange was in fact only in December 2016, after Mr Ozkara's dismissal but before Mr Mehta was aware of his claim and the allegations made personally against Mr Mehta in it (and even then, there was not in fact an exchange but rather a request by Mr Ozkara that Mr Mehta did not respond to). This is not evidence of an ongoing relationship between them, despite Mr Ozkara's giving the impression that it was. In the light of that, we find that, on the balance of probabilities, Mr Mehta's evidence should be accepted, that there was no ongoing relationship between them and that he has not been in communication with Mr Ozkara since December 2016.

26. That in turn has implications for the effect on trust and confidence of the unsuccessful allegations of discrimination which Mr Ozkara brought against Mr Mehta personally. We were prepared, at the last hearing, to accept that these allegations did not preclude trust and confidence remaining if indeed Mr Mehta and Mr Ozkara had an ongoing relationship; however, in the absence of such a relationship, we accept that the fact that Mr Ozkara brought allegations of discrimination against Mr Mehta, which were not upheld by the tribunal, is highly likely to destroy any trust and confidence between them and did in fact do so.

27. Furthermore, Mr Mehta in his affidavit, and Mr Burgher in his submissions for the respondent, identified various passages from Mr Mehta's witness statement from the original liability hearing where he set out his view of Mr Ozkara, in particular paragraphs 32-34, 49.4, 54 and 57. We do not repeat the entirety of the contents of these passages here, which are extensive. However, in short, Mr Mehta was giving evidence that he found Mr Ozkara to be someone who lacked initiative, failed to take responsibility for matters which were within his remit to address and had a propensity to complain and blame others for his own ineffectiveness. In other words, they are evidence that Mr Mehta did not and does not have trust and confidence in Mr Ozkara.

28. Mr Mehta is the chairman and majority shareholder of the respondent. It matters if he does not have trust and confidence in an individual holding a senior position at the respondent. Furthermore, his view is, as he sets out his affidavit, shared by the Board. In the light of this evidence, we accept that Mr Mehta and the Board do not have trust and confidence in Mr Ozkara.

29. We accept that for this reason it would not be practicable to reinstate him as an employee.

Restructure

30. This ground was also addressed at the earlier remedies hearing. A restructuring at the respondent has taken place, and there is no longer any post of Restaurant Director (the post held by Mr Ozkara); however, there is in place a consultant Managing Director, Mr Puri (see paragraphs 21-24 of our reasons from the previous remedies hearing).

31. We accepted, in the light of answers given by Mr Ozkara at the previous remedies hearing in cross-examination, that the vast majority of the functions now being done by Mr Puri were controlled by Mr Ozkara prior to his dismissal, with some limited exceptions, for example HR and finance. However, in his affidavit, Mr Mehta states that this is not true and that, in his role as Restaurant Director, Mr Ozkara did not manage human resources, finance, kitchen, wine director, marketing, purchasing or entertainment. We do not find this surprising, as Mr Ozkara's role, from the way it was described at the liabilities hearing, appeared to be an operational one. Furthermore, particularly in light of the fact that we have on the balance of probabilities reason to doubt at least one assertion Mr Ozkara made at the last hearing (regarding the birth of Mr Mehta's daughter, as set out above), we accept on the balance of probabilities Mr Mehta's evidence over that of Mr Ozkara. We therefore find that the Managing Director role carried out by Mr Puri is a considerably more extensive role than the Restaurant Director role carried out by Mr Ozkara. He could not just "slot into" Mr Puri's Managing Director role. Furthermore, we accept the evidence of Mr Mehta that Mr Puri has extensive experience as a managing director and that Mr Ozkara would not have the skill set to do this job.

32. Mr Ozkara's original role does not therefore exist. It would not, therefore, be practicable for him to be reinstated into it.

33. Furthermore, for the reasons above, it would not be practicable to re-engage him as managing director in place of Mr Puri.

Cost savings

34. This ground was also raised at the previous remedies hearing.

35. There is no dispute that the respondent is loss-making and that a large number of staff are no longer employed by it, thereby saving costs. In his affidavit, Mr Mehta explained that, in order to cut costs, the Board decided that the appointment of a consultant managing director would be most advantageous in saving costs, rather than employing a managing director. Hiring an employee in this role would have meant additional expenses in respect of a salary package, PAYE, pension, medical insurance and so on. This appointment also enabled the top heavy restaurant structure to be removed, thereby saving costs. We have no reason to doubt this and accept this evidence.

36. At the previous hearing, we accepted that, as Mr Puri was paid at an annual rate of £180,000, whereas Mr Ozkara's rate of pay was £200,000, those rates were comparable; in other words if Mr Ozkara was reinstated and Mr Puri's

consultancy agreement terminated, there would not be a substantial difference in expenditure for the respondent (again based on our assumption at the last hearing that Mr Ozkara's and Mr Puri's roles had a substantial overlap in terms of duties, which we have not accepted at this hearing). However, Mr Mehta and Mr Burgher rightly point out that the cost discrepancy is in fact much greater when one takes into account the additional liabilities for employer's national insurance (£27,600) and pension contributions at 2% (£4000) associated with Mr Ozkara's employment role at the rate he was paid out, but that these are not costs incurred in relation to Mr Puri's consultancy. The discrepancy between the two is therefore actually over £50,000. This is a significant difference for a business which is loss-making and trying to save costs.

37. We therefore accept that, on the basis of costs as well, it was not practicable to have reinstated Mr Ozkara.

38. Therefore, on the basis of all three of the grounds set out above, we find that the respondent has satisfied us, on the balance of probabilities, that it was not practicable to comply with our order for reinstatement.

<u>What awards should therefore be made in relation to Mr Ozkara's successful unfair dismissal complaint?</u>

39. As it was not practicable to comply with the order, it follows that section 117(3)(b) ERA does not apply and no additional award should be or is made.

40. Furthermore, the fact that no additional award is made means that the provisions of section 124(4) ERA are not engaged and the cap on the unfair dismissal compensatory award under section 124 ERA is not disapplied; Mr Ozkara cannot therefore recover the £297,166.66 arrears of pay referred to in the order for reinstatement, which he seeks.

41. The maximum that can be awarded is the maximum compensatory award for unfair dismissal, subject to the cap of £78,962 which applied at the time of Mr Ozkara's dismissal.

42. In summary, therefore, in relation to Mr Ozkara's successful unfair dismissal complaint, an award of compensation for unfair dismissal is made of £80,399, comprising a basic award of £1,437 and the maximum compensatory award of £78,962.

<u>Reconsideration</u>

43. The claimant's application for reconsideration was made by letter of 24 July 2018 to the tribunal from Ms Hudson, of counsel, who had represented Mr Ozkara on the second day of the previous remedies hearing. It related to paragraph 84 of the tribunal's reasons from that hearing. This concerned what happened at the hearing after the tribunal has given its judgment indicating that it would make an order for reinstatement and then adjourned briefly to give the parties the opportunity, should they wish, to discuss and agree the precise terms

of such an order. Paragraph 84, and the two previous paragraphs, to put it in context, were as follows:

82. As noted, the tribunal delivered the above decision orally on the afternoon of the second day of the hearing. The judge then explained to the parties that, if it was possible, he would prefer that the parties could discuss and agree the precise terms of the reinstatement order in relation to Mr Ozkara; but that, failing that, the tribunal would impose its own terms of the order. The parties adjourned briefly to take instructions.

83. We refer back to section 114 of the ERA which we have quoted above, regarding the terms of the order. The key elements to decide are the date on which the order should take effect and, in summary, the amount of any "back pay" due to Mr Ozkara from the date of dismissal to the date of the order taking effect, taking into account any remuneration he has earned in the interim.

84. When the parties returned, Ms Banton indicated that Mr Ozkara could start work again the following Monday, 9 July 2018. The judge asked Ms Hudson whether this would be problematic for the respondent and if she had instructions as to a date when the order should commence. Ms Hudson stated that, as the respondent was not going to be complying with the order, it did not care about the date on which it should commence. On that basis, the tribunal decided that it should, as Mr Ozkara preferred, commence on 9 July 2018.

44. Ms Hudson's application for reconsideration objected to the wording of paragraph 84. She stated that:

"Upon the re-commencement of the hearing, we submitted that we were in the Tribunal's hands as to the commencement date. This was a perfectly sensible and accurate submission in circumstances where it was *possible* that First Respondent *might* not be able to comply with the reinstatement order.

We further informed the Tribunal that it was our *preliminary instruction* that the First Respondent was unlikely to be in a position to be able to reinstate the first claimant *on 9 July 2018*."

45. She went on to state that paragraph 84 mischaracterised this, in particular the references to the respondent "not going to comply" with the order and that "it did not care" about the date on which it should commence. She maintained that she did not submit the order would not be complied with and that the incorrect attribution of the phrase "did not care" to counsel/the respondent, apart from suggesting a flippant and irresponsible approach by counsel/the respondent, was simply wrong. She asked that the sentence be replaced by a sentence which reflected her/the respondent's submissions as set out above.

46. Ms Audrey Onwukwe, who at the time was representing Mr Ozkara, emailed the tribunal on 25 July 2018 opposing this application. Her email included the following:

"Further the Respondent's assertions as to Linda Hudson's representations at the remedy hearing are denied. Ms Linda Hudson made it clear to the Tribunal, following a short adjournment so that the parties may discuss the date of reinstatement, that the Respondent had no intention of complying with the order for reinstatement. During the adjournment the Respondent also refused to discuss the matter. Employment Judge Baty was so surprised by the Ms Hudson's replies to his questions that he urged her to advise the Respondent of the consequences of any failure to comply."

47. The judge's notes of the interchange, which are not verbatim, simply state:

"CR: he can start on Monday 9 July - he wants to start then.
RR: offers no view one way or another.
RR: client's preliminary instruction is we will not comply."

48. Mr Simon's notes of the interchange state:

"C can start this coming Monday 9th July
No view from R
RR says will not comply
J advise R of financial consequences"

49. Mr Tyson's notes were not accessible.

50. Notwithstanding the fact that Mr Simon does not use the word "preliminary" in his notes, the reference to it in the judge's notes is indicative that Ms Hudson did say that the respondent's preliminary instruction was that it would not comply with the order for reinstatement. However, the recollection of all three members of the tribunal is that the tone with which this message was communicated to us was one which shocked us; we had just made an order for reinstatement and, rather than counsel explaining to us politely why the respondent might not be able to comply with the order, the message that came across to us, notwithstanding the use of the word "preliminary", was that the respondent wasn't going to comply with the order and therefore it wasn't worth bothering giving any thought to a start date for Mr Ozkara's reinstatement (hence the respondent had not given any view on this despite the tribunal giving it the opportunity to consider this). Whether or not that was what Ms Hudson intended, that is how it came across; as expressed, there was a clear link between the fact that the respondent was not intending to comply with the order and the fact that it had therefore chosen not to give any opinion about when that order should commence. We were shocked by this and that is why, as reflected in Mr Simon's notes and in Ms Onwukwe's recollection in her email of 25 July 2018, the judge felt it necessary to ask Ms Hudson whether she had advised her client of the potential consequences of failure to comply with an order for reinstatement. With the exception of the word "preliminary", we do not recall the more nuanced account of the interchange which Ms Hudson, in the two paragraphs of the reconsideration application which we have quoted above, suggests took place.

51. In summary, therefore, the clear message which we received was that the respondent was not going to comply with the order (and it duly did not do so) and the tone of the response by Ms Hudson indicated that there wasn't any point in the respondent suggesting a date for the order to commence given that it wasn't going to comply with it anyway. Our wording in paragraph 84, whilst a paraphrase of the exchange, in our opinion accurately reflects its tone and the message conveyed to us. There is therefore no reason to change it. It is certainly not "necessary in the interests of justice" to do so. There is therefore no reasonable prospect of the paragraph being varied or revoked and the application for reconsideration is therefore refused.

52. It should also be pointed out that, whether or not the wording of paragraph 84 is changed as suggested by Ms Hudson, it makes no difference at all to the decisions on the issues taken by the tribunal at that hearing. Certainly the judge cannot recall having received an application for reconsideration previously which relates only to the phraseology of a single paragraph in a lengthy set of reasons as opposed to an application which actually relates to a decision taken by the tribunal.

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Employment Judge Baty

Dated:. 31 October 2018

Judgment and Reasons sent to the parties on:

1 November 2018

For the Tribunal Office