



EMPLOYMENT TRIBUNALS

Claimant: Mr J Oppon

Respondent: Winlight Recruitment Ltd

Heard at: London Central

On: 17 May 2022

Before: Tribunal Judge J E Plowright acting as an Employment Judge

Appearances

For the Claimant: Mr P Apraku, Senior Legal Consultant

For the Respondent: Ms M Pimenta, Solicitor

RESERVED JUDGMENT (ON AN OPEN PRELIMINARY HEARING)

The Judgment of the Tribunal is that:

1. The application by the claimant to amend the claim to include claims for arrears of pay, holiday pay, unpaid commission, race discrimination and sexual harassment is refused.
2. The claim for unfair dismissal was not brought within the three month time limit in accordance with section 111(2)(a) of the Employment Rights Act 1996. It was reasonably practicable for the claimant to bring the claim within that time limit and as a result the claim for unfair dismissal is out of time and is dismissed.

REASONS

Claims and Issues

1. The claimant worked as a senior recruitment consultant for the respondent, Winlight Recruitment Limited, a recruitment agency based in London, from 09 July 2018 until 13 May 2021, when he resigned from the company.
2. On 24 September 2021 the claimant started early conciliation proceedings with ACAS and received the certificate concluding that process on 27 September 2021.
3. On 07 October 2021 the claimant submitted a Claim Form to the Employment Tribunal complaining that he had been unfairly dismissed. At section 8.2 of the Claim Form he stated the following:

The Claimant was compelled to resign from working for the Respondent due to racial and sexual abuses of the junior employees and other appalling treatments which were ignored by the Respondent. Full particulars of claim will be filed and served in the event that the Respondent denied these allegations

4. On 02 December 2021, the respondent submitted the ET3 form disputing the claim and asserting that the claim had been brought out of time.
5. On 23 March 2022, Employment Judge Adkin wrote to the parties as follows:
 1. *The Respondent's contention that the claim has been brought out of time will be considered at a hearing on 17th May 2022, in place of the full merits hearing. Case management will thereafter be dealt with.*
 2. *The claim form refers to "racial and sexual abuses". If the claimant is seeking to rely on these as part of his claim, he must by 12th April 2022 provide full details to the Tribunal and the Respondent and explain whether this was treatment that he suffered or treatment that other colleagues experienced*
6. On 12 April 2022, the claimant provided further particulars of claim explaining that the "racial and sexual abuses" he referred to were suffered by two of his former colleagues. He also stated that he is a black African and that an Asian colleague received higher wages than him even though they were all on the same rank with the same job descriptions.
7. On 12 April 2022, the claimant also provided an Agenda for Case Management. At 2.1 of the Agenda for Case Management the following additional claims that had not been previously pleaded were recorded:
 - Arears of Pay
 - Holiday Pay
 - Non-payment of commission
 - Race Discrimination
 - Sexual Harassment

8. The respondent subsequently supplied their Agenda for Case Management noting that the claimant had not pleaded the above claims and had not sought permission to include these claims by way of an amendment to the claim.
9. The matter was listed for a public preliminary hearing before me on 17 May 2022.
10. The issues in the case are as follows:
 - 10.1 Whether the claim for unfair dismissal was brought within the time limit set out at section 111(2)(a) of the Employment Rights Act 1996;
 - 10.2 If not, was it reasonably practicable for the claimant to bring those complaints within the time limit?
 - 10.3 If not, did the claimant bring the claims within such further period as the Tribunal considers reasonable?
 - 10.4 Should permission be granted for the claim to be amended to include claims for:
 - Arrears of Pay
 - Holiday Pay
 - Non-payment of commission
 - Race Discrimination
 - Sexual Harassment

Procedure, documents and evidence heard

11. In terms of documentation, I had before me a 172 page bundle and a skeleton argument on behalf of the respondent company. There was no witness statement from the claimant but I heard oral evidence from the claimant and oral arguments from both representatives.

The Facts

12. The claimant worked as a senior recruitment consultant for the respondent, Winlight Recruitment Limited, which is a recruitment agency, based in London from 09 July 2018 until 13 May 2021, when he resigned from the company.
13. On 13 May 2021, the claimant was given a letter from the respondent confirming his resignation. In that letter, the claimant's attention was drawn to post-termination restrictive covenant clauses that were contained within his contract of employment. On the same date, 13 May 2021, he also had an exit interview.
14. After resigning from the respondent company, the claimant immediately started a new job at Prospero Health and Social Care, and remained in employment with them until July/August 2021. In his new job, he worked five days per week, Monday to Friday, 8:30am to 5:30pm. The claimant was also involved in setting up a company on or about 19 May 2021.

15. On 04 June 2021, the respondent company sent a letter to the claimant alleging that he has breached the post-termination restrictive covenant clauses contained within his contract. The respondent indicated that it would take legal action unless the claimant agreed to various undertakings and they advised the claimant to seek legal advice.
16. On 15 June 2021, the claimant signed a document agreeing to the various undertakings proposed by the respondent company.
17. On 22 July 2021, the respondent's solicitors wrote to Anthony Gold LLP, in response to a letter from Anthony Gold LLP dated 01 July 2021, making reference to the claimant as the client of Anthony Gold LLP.
18. In oral evidence, the claimant stated that Anthony Gold LLP were the solicitors of his most recent employer but he nevertheless accepted that he had spoken to them in relation to the potential legal action the respondent was threatening to bring against him in July 2021.
19. The letter of 22 July 2021 from the respondent's solicitor makes it clear that the claimant had given detailed instructions to Anthony Gold LLP about an ongoing dispute between him and the respondent.
20. When the claimant's employment with Prospero Health and Social Care came to an end in July/August 2021, he signed on at the job centre and had an appointment with a job centre adviser.
21. The claimant accepted in oral evidence that he has had consistent access to the internet since his resignation from the respondent company.
22. On 24 September 2021, with the assistance of his current solicitors, the claimant started early conciliation proceedings with ACAS and received the certificate concluding that process on 27 September 2021.
23. On 07 October 2021, again with the assistance of his current solicitors, the claimant submitted a Claim Form to the Employment Tribunal complaining that he had been unfairly dismissed. At section 8.2 of the Claim Form he stated the following:

The Claimant was compelled to resign from working for the Respondent due to racial and sexual abuses of the junior employees and other appalling treatments which were ignored by the Respondent. Full particulars of claim will be filed and served in the event that the Respondent denied these allegations
24. On 02 December 2021, the respondent submitted the ET3 form disputing the claim and asserting that the claim had been brought out of time.
25. On 23 March 2022, Employment Judge Adkin wrote to the parties as follows:
 2. *The Respondent's contention that the claim has been brought out of time will be considered at a hearing on 17th May 2022, in place of the full merits hearing. Case management will thereafter be dealt with.*

2. *The claim form refers to “racial and sexual abuses”. If the claimant is seeking to rely on these as part of his claim, he must by 12th April 2022 provide full details to the Tribunal and the Respondent and explain whether this was treatment that he suffered or treatment that other colleagues experienced*
26. On 12 April 2022, the claimant provided further particulars of claim explaining that the “racial and sexual abuses” he referred to were suffered by two of his former colleagues.
27. In respect of one colleague he stated that she had suffered sexual abuse at work. He stated that an employee of the respondent “*who was in a managerial position of the Respondent’s company made certain offensive comments in the presence of other staff...she was a “sexy lady”, nice breast, “I will follow you to your house” etc.*”
28. In respect of another colleague who is an Asian female, he stated that she suffered racial and religious abuse. He said that she was “*mocked when she was fasting on 15 April 2021 during the Ramadan*” and told that “*even footballers fast but could still run and fast*”.
29. The claimant also stated that he was a black African and an Asian colleague received higher wages than him even though they were all on the same rank with the same job descriptions.
30. On 12 April 2022, the claimant provided an Agenda for Case Management where the following were recorded as claimed at 2.1 of the Agenda for Case Management Form:
- Areas of Pay
 - Holiday Pay
 - Non-payment of commission
 - Race Discrimination
 - Sexual Harassment
31. At 6.4 of the Agenda for Case Management Form, the following was stated:
- “The claimant could not lodge his claim on time due to health reasons and other factors associated with COVID 19”*
32. The claimant provided a medical certificate dated 05 May 2022 which stated the following:
- “Mr Oppon reports that he hasn’t been working since July 2021 due to symptoms of work related stress and depression. He spoke to a GP in August 2021 where medication was discussed and issued, but he isn’t currently taking this.*
- Mr Oppon has been receiving counselling on a regular basis. He feels he is ready to return to work and would like your support in doing this. I have suggested he should receive a review from the occupational health team to support him in his return to work.”*

The Law

Unfair Dismissal

33. Section 94 of the Employment Rights Act 1996 provides that an employee has a right not to be unfairly dismissed by his employer.

34. Section 111 of the Employment Rights Act 1996 provides that the Tribunal should not consider a complaint of unfair dismissal unless it is presented to the Tribunal:

“(a) before the end of the period of three months beginning with the effective date of termination; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.”

Unauthorised Deductions

35. A complaint of unauthorised deduction from wages is made under section 13 of the Employment Rights Act 1996.

36. Section 23 of the Employment Rights Act 1996 provides that in such cases an Employment Tribunal will not consider a complaint unless it is presented before the end of the period of three months beginning with:

“(a) In the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made...

(iii) where a complaint is brought under this section in respect of (a) a series of deductions or payments...the references in subsection (2) of the deduction or payment are to the last deduction or payment in the series.”

37. Subsection (4) provides that where a Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of three months, the Tribunal may consider the claim if it is presented in such further period as the Tribunal considers reasonable.

38. Something is “reasonably practicable” if it is “reasonably feasible” (see **Palmer v Southend-on-Sea Borough Council** [1984] ICR 372). Ignorance of one’s rights can make it not reasonably practicable to present a claim within time as long as that ignorance is itself reasonable. An employee aware of the right to bring a claim can reasonably be expected to make enquiries about time limits (see **Trevelyan (Birmingham) Ltd v Norton** [1991] ICR 488). The determination of what is reasonably practicable is a question of fact for the tribunal (see **Miller v Community Links Trust Ltd** UK EAT /0486/07).

39. The claimant’s representative drew my attention to **Walls Meat Co Ltd v Khan** [1979] ICR 52 where Brandon LJ stated the following:

The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical, for instance the illness of the complainant or a postal strike; or the impediment may be mental, namely, the state of mind of the complainant in the form of ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such inquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him.

...

With regard to ignorance operating as a similar impediment, I should have thought that, if in any particular case an employee was reasonably ignorant of either (a) his right to make a complaint of unfair dismissal at all, or (b) how to make it, or (c) that it was necessary for him to make it within a period of three months from the date of dismissal, an industrial tribunal could and should be satisfied that it was not reasonably practicable for his complaint to be presented within the period concerned.

For this purpose I do not see any difference, provided always that the ignorance in each case is reasonable, between ignorance of (a) the existence of the right, or (b) the proper way to exercise it, or (c) the proper time within which to exercise it. In particular, so far as (c), the proper time within which to exercise the right, is concerned, I do not see how it can justly be said to be reasonably practicable for a person to comply with a time limit of which he is reasonably ignorant.”

Discrimination

40. Section 123(1) of the Equality Act 2010 provides as follows:

“Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of-

- (a) the period of 3 months starting with the date of the act to which these proceedings relate, or*
- (b) such other period as the tribunal thinks just and equitable.”*

Amendment

41. In **Selkent Bus Company Ltd v Moore** [1996] IRLR 661, it was stated that in considering an amendment application, all the circumstances should be taken into account and that injustice and hardship should be balanced. An exhaustive list of the relevant circumstances was impossible but of relevance was certainly the nature of the amendment, the applicability of time limits and the timing and manner of the application.

42. The Presidential Guidance Note number 1 is to similar effect adding that the Tribunal ought to draw a distinction between amendments adding or substituting a new claim arising out of the same facts and those that add an entirely new claim unconnected with the original claim. Pursuing different heads of claim even arising out of broadly similar facts may not be relabelling where it involves different tests or factual enquiry: **Reuters Ltd v Mr Cole** [2018] UK EAT/0258/17/16 02 (paragraph 28).
43. In **G Vaughan v Modality Partnership** [2020] UKEAT/0147/20 BA, the EAT considered further the test for an application to amend and reiterated that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. It was also stated at paragraph 21 of that judgment that parties should start by considering the practical consequences of allowing or refusing an amendment.

Conclusions

Was the claim for unfair dismissal brought within time?

44. The claimant resigned on 13 May 2021. Subject to the early conciliation process the claim ought to have been lodged by 12 August 2021. The claimant did not begin early conciliation until 24 September 2021 and the Claim Form was lodged on 07 October 2021. The claim was therefore out of time.

Was it reasonably practicable for the claim to be lodged within the original time limit

45. The claimant's case is that he suffered with mental health issues during his time working for the respondent. In oral evidence he claimed that he was not in the right state of mind to seek help and that he eventually sought help from his GP in August 2021. He stated that it was after he had spoken to his therapist and GP, he realised he could speak up. He said that he took advice from a few different bodies and it was only when he spoke to his solicitor that he became aware that he could bring an employment case. It was submitted on his behalf that his mental health issues coupled with the background of the pandemic meant that it was not reasonably practicable for the claimant to lodge his claim within the original time limit.
46. The claimant has provided a medical certificate dated 05 May 2022 which stated that he has not been working since July 2021 due to symptoms of work related stress and depression. He spoke to a GP in August 2021 where medication was discussed and issued, but he is not currently taking this. He also received counselling on a regular basis.
47. There is nothing in the medical certificate to suggest that the claimant had any issues prior to July 2021 and by that time the claimant had not been employed by the respondent company for approximately a month and a half.
48. The claimant had commenced work for another company as soon as he had resigned from the respondent company. He was working there five days a week, Monday to Friday, 8:30am to 5:30pm, up until the end of July/August 2021. The claimant was also involved in the setting up of a company on or about 19 May 2021. He has also been involved in a legal dispute with the respondent company

and on 15 June 2021 signed various undertakings in respect of his future conduct. He had also sought legal advice in relation to this dispute in July 2021. Even after his employment with his new employer ended, he was able to go through the process of signing on with the job centre.

49. On the evidence before me, in spite of any work placed stress and depression that he may have been suffering, I find that the claimant was able to carry on his daily activities without difficulty. The claimant was advised by the respondent to seek legal advice relating to the contractual dispute between him and the respondent company and he did sign various undertakings on 14 June 2021. He had sought legal advice relating to an ongoing dispute with the respondent and he could have sought immediate legal advice about bringing a claim before the employment tribunal had he have wanted to. The claimant did not suggest that he was ignorant of the time limits for bringing a claim and in any event, given that he worked as a recruitment consultant, he would have been aware that any rights he might have were governed by law and I find that he could have very easily have conducted research on the internet, had he have wished to bring a claim in the employment tribunal upon his resignation from the respondent company. The claimant acknowledges that he had access to the internet throughout the period following his resignation from the respondent company.
50. I find that in light of the claimant's activity after his resignation, any mental health issues that he did have were not such as to prevent him from conducting any research on the internet if he wanted to make a claim to the employment tribunal and/or to seek any legal advice about making a claim if he chose to.
51. Although the claimant claims that the circumstances of the pandemic added to the problem of lodging a claim within the original time limit, it is clear that the claimant was able to carry on with his day to day activities during the pandemic, including his role with his new employer and obtaining legal advice in relation to a separate dispute with the respondent. The tribunal was accepting online applications throughout the pandemic and the claimant has at all times had access to the internet.
52. In these circumstances I find that it was reasonably practicable for the claimant to bring his claim within the original time limit.
53. I therefore dismiss the claim for unfair dismissal.

Amendment of Claim

54. At the hearing before me, the claimant has sought to amend his claim to include claims for holiday pay, arrears of pay, holiday pay, unpaid commission, race discrimination and sexual harassment.
55. Applying the principles in In **Selkent Bus Company Ltd v Moore** [1996] IRLR 661, all the circumstances should be taken into account and injustice and hardship should be balanced.

Unauthorised Deductions

56. The claimant seeks to amend his claim to include unauthorised deductions in the form of arrears of pay, holiday pay and unpaid commission.

57. On the Claim Form, in section 8.1, the claimant ticked the box indicating that his claim was for unfair dismissal. The claimant acknowledged in evidence that he had the assistance of his current solicitors in completing the Claim Form and yet no other box was ticked.
58. The claims for unauthorised deduction of wages are not a mere relabelling of the claim but are completely new claims. No explanation has been provided as to why the claimant did not make claims for unauthorised deductions of wages when he lodged his Claim Form.
59. It was not until 12 April 2022, when the claimant submitted his Agenda for Case Management, that reference was made to claims for arrears of pay, holiday pay and unpaid commission. This was eleven months after the date of the claimant's resignation from the respondent company.
60. The respondent had prepared detailed Grounds of Resistance on the basis that the claimant's claim was for unfair dismissal but not in respect of claims for unauthorised deductions of wages because those had not been pleaded on the Claim Form. In considering the balance of injustice and hardship, I acknowledge that the refusal of the application to amend the claim will mean that the claimant cannot pursue these claims. However, I take into account the fact that the original claim was brought late, in circumstances where it would have been reasonably practicable to lodge the Claim Form in time and I bear in mind that the claimant has had lawyers involved since the start of the early conciliation process. The Claim Form did not include claims for unauthorised deductions of wages, even when it was lodged late. Furthermore, other than stating that the claimant is owed two week's pay of £2,240, holiday pay of £432 and non-payment of commission of £841 on the Agenda for Case Management form, the claimant has not stated why he believes that he is owed this money. Given the lateness of the claim, the lack of explanation for the lateness of the claim and the minimal detail provided by the claimant, I find that the injustice and hardship to the respondent in defending these additional claims outweighs the injustice and hardship to the claimant in not being able to pursue these claims and I refuse the application to amend the claim to include claims for unauthorised deduction of wages.

Race Discrimination and Sexual Harassment

61. Under section 123(1) of the Equality Act 2010, a claim must be brought within 3 months starting with the date of the act to which these proceedings relate, or such other period as the tribunal thinks just and equitable.
62. The Claim Form was lodged on 07 October 2021. At Section 8.1 of the Claim Form, when asked to indicate the type of claim he was making, the claimant ticked the box indicating that he was unfairly dismissed but did not tick the boxes indicating that he was discriminated against on the basis of race or sex.
63. However, at section 8.2 of the Claim Form, the claimant stated the following:

"The Claimant was compelled to resign from working for the Respondent due to racial and sexual abuses of the junior employees and other appalling treatments which were ignored by the Respondent. Full particulars of claim will be filed and served in the event that the Respondent denied these allegations"

64. As a consequence of this, Employment Judge Adkin directed the claimant to provide full details to the tribunal and the respondent and explain whether this was treatment that he suffered or treatment that other colleagues experienced.
65. In his further particulars of claim the claimant only refers to one date. He says that an Asian female was mocked when she was fasting on 15 April 2021. To give the claimant the benefit of the doubt, even if the most recent allegation of discrimination or sexual harassment occurred on the last date of his employment, namely 13 May 2021, the claims would have been brought out of time, given that the Claim Form was not lodged until 07 October 2021.
66. Furthermore, had the claimant wished to make claims for race discrimination and sexual harassment he could have done so when he lodged the Claim Form late but did not, in spite of having the assistance of lawyers.
67. In any event, when the claimant did provide further particulars of claim, it was clear from those further particulars of claim that the treatment that the claimant was referring to was not treatment that he suffered but treatment that he claims other colleagues experienced. Therefore, the claimant's claim for direct race discrimination (on the basis of the treatment of his colleagues) has no reasonable prospect of success.
68. I have considered whether the treatment referred to could amount to racial harassment of the claimant, as opposed to direct race discrimination, in terms of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, under section 26 of the Equality Act 2010.
69. However, firstly this is not asserted by the claimant, and secondly the claimant does not suggest that the treatment he refers to created an intimidating, hostile, degrading, humiliating or offensive environment for him, bearing in mind that he has had legal advice throughout these proceedings. In the Claim Form, he simply says that he was compelled to resign 'due to racial and sexual abuses of the junior employees'.
70. In the further particulars of claim, the following is stated:
- "The Claimant is black African and his colleague who is an Asian was receiving higher wages more than him even though they were all on the same rank with the same job descriptions."*
71. In spite of having lawyers involved, the claimant has provided no more than the barest of outlines of what that claim involves. He states that he and his colleague were on the same rank with the same job descriptions but gives no more detail than that and no indication of what the pay differentiation was. Although this could amount to direct race discrimination, there is little information provided with no explanation as to why so little information has been provided, bearing in mind that the claimant had lawyers involved since the start of these proceedings and also no explanation has been provided as to why this claim was not raised in the Claim Form.

72. The claimant also seeks to amend his claim to include a claim for sexual harassment. The claimant states that an employee “*who was in a managerial position of the Respondent’s company made certain offensive comments in the presence of other staff...she was a “sexy lady”, nice breast, “I will follow you to your house” etc.*” On the claimant’s own case, this is treatment that was not directed at the claimant but at another. I have considered whether this could amount to sexual harassment of the claimant in terms of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant under section 26 of the Equality Act 2010. However The claimant has provided no further detail about this and has not stated what impact this had upon him and his working environment, in spite of having had legal representation throughout these proceedings.
73. When considering the claimant’s application to amend the claim to include race discrimination and sexual harassment, I need to balance the injustice and hardship to the claimant against the injustice and hardship to the respondent. In terms of the claimant, the injustice and hardship is that he will not be able to pursue a claim for race discrimination or sexual harassment. However, these claims for race discrimination and sexual harassment are out of time, with no explanation having been provided as to why they were not pleaded in the Claim Form, which itself was out of time, taking into account the fact that the claimant has had legal advice throughout these proceedings. In addition, the claimant has not explained how the allegation of race discrimination is against him, other than to merely assert that he was paid less than a colleague with no further detail. Similarly, he has not explained how he has been impacted by the alleged sexual harassment of a female colleague. I therefore find that the claims for race discrimination and sexual harassment have little realistic prospect of success. In these circumstances, the injustice and hardship to the respondent having to plead a new case, in circumstances where the claims are considerably late and have little realistic prospect of success outweighs the injustice and hardship to the claimant in being unable to pursue claims for race discrimination and sexual harassment.

Costs

74. In the event that I dismissed the claim Ms Pimenta, on behalf of the respondent, made an application for costs pursuant to Rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
75. Rule 76 provides as follows:
- (1) A tribunal may make a costs order ... and shall consider whether to do so where it considers that – ... (b) any claim or response had no reasonable prospect of success;*
76. Issues relating to costs are within my discretion subject to that rule. My discretion is to be exercised justly and fairly.
77. I take as my starting point that in the ordinary course of events the expectation is that the losing party will not have to pay the costs of the successful party.
78. I need to consider whether the claimant’s claim did not have reasonable prospects of success. I do not address the merits of his claim in any way, shape or form

other than to observe that the claims he presented were claims known in law and he set out a factual basis (albeit brief) on which to advance those claims.

79. The application for costs is based on the fact that the claim was presented out of time and that it was inadequately pleaded . It is quite correct it was presented out of time and manifestly was so. It is also the case that only the barest of detail was provided on the Claim Form and in the further particulars of claim.
80. However, it is always open to a claimant to present a claim out of time and to seek to have time extended if that individual can demonstrate that it was not reasonably practicable to bring his claim within time. Furthermore, although only the barest of detail was provided on the Claim Form and in the further particulars of claim, that does not mean that the claim for unfair dismissal had no reasonable prospects of success.
81. In this case the claimant has advanced reasons that could potentially have excused the failure to present his claim in time and the mere fact that he has lost does not in my judgment mean that the claim was doomed to failure and had no reasonable prospect of success. Consequently I decline to make a costs order.

Date: 31/05/22

Tribunal Judge J E Plowright acting as an Employment Judge

Sent to the parties on:

31/05/2022.

For the Tribunal: