EMPLOYMENT TRIBUNALS

Claimant: Ms C Musa

Respondent: Renato Fantoni (as personal representative of the estate of the late Renzo Fantoni) R1
Lucian Fantoni R2
Renato Fantoni R3
Daniel Fantoni R4

COSTS JUDGMENT

Having considered the Respondents' application dated 21 November 2023, and the Claimant's responses, and neither party having sought a hearing, the following judgment is made.

(1) The Claimant is ordered to pay the Respondent the sum of £6,806.79 for costs.

(2) The payment mentioned in the previous paragraph must be made no later than in accordance with the following schedule:
   (i) The Claimant is ordered make a payment of £2,810.79 on or before 31 May 2024.
   (ii) The Claimant is ordered make 12 further payments of £333 each.
   (iii) She must make one such payment per calendar month, before the last day of that month.
   (iv) The first such payment must be made on or before 30 June 2024.

(3) The Claimant is free to pay the whole amount immediately, or pay faster than the schedule mentioned in the previous paragraph, should she wish to do so.

REASONS

Introduction

1. I conducted a public preliminary hearing on 4 September 2023. Details of what happened on that occasion are known to the parties and are described in the case

management summary / orders document produced after that hearing, and also in the "written reasons for case management order" document.

2. In short, the hearing which had been due to last three days (4 to 6 September 2023) was postponed to another date, following my decision to allow the Claimant's amendment to the claim, which (in my judgment) significantly altered the preliminary issue that had been due to be dealt with in that hearing.

3. The Respondents' intention to make an application for costs was made clear during the hearing. By letter dated 21 November 2023, they made the application formally in writing. The application seeks an order against the Claimant (only) and there is no wasted costs application made against the Claimant's legal representatives.

4. By letter dated 20 December 2023, sent on my instructions, the Tribunal ordered the Claimant to comment on the application by 27 December 2023, and to say whether she requested a hearing. The Claimant responded the same day (at 22:30) to forward some correspondence which she had sent previously, but which I had not seen by the time (on 4 December 2023) I made the orders that were sent to the parties on 20 December. There were some items, relevant to other aspects of the litigation, which have been addressed separately. As relevant to the costs application, the Claimant re-sent her email of 5 December 2023 (10.29pm) which had attached her letter of 4 December 2023. None of the Claimant's emails of 20 December or 5 December, or the attachment dated 4 December 2023, requested a hearing.

5. The Respondent's application had made clear that it preferred the matter to be dealt with on the papers.

6. Since I had dealt with the hearing on 4 September 2023, I am well-placed to evaluate the respective arguments (including factual assertions about that hearing) and make the decision.

7. On my instructions, a letter dated 6 March 2024 asked the Claimant to answer some questions and to comment on her ability to pay.

The Answers to my 6 March questions

8. The Claimant's income for 2023 was £50,371.73.

9. She identified significant outgoings of £35,300.86 for that year, and gave a breakdown. Included in that was £18,745 for legal fees, which are for this dispute. So, the figure was £16,555.86 without those.

10. She identified other outgoings of £11,916.31 without a breakdown. "Professional fees" was included in that, and I will assume that those are for the Claimant's own

profession and are not legal fees spent on this dispute. She also includes "donations and contributions" without stating an amount or an explanation.

11. I note the entirety of the Claimant's 21 March 2024, including what she says about a snapshot of her savings and debts and why she says that she believes that she effectively has no savings whatsoever taking account of upcoming legal fees.

The Law

12. In the Employment Tribunals Rules of Procedure, the section "Costs Orders, Preparation Time Orders And Wasted Costs Orders" is Rules 74 to 84.

13. When an application for costs is made, or when the Tribunal is considering the matter of its own initiative, there are potentially the following stages to the decision.

13.1 Has one (or more) of the criteria (for costs to potentially be awarded) as set out in the rules been met.

13.1.1 If not, there can be no order for costs.

13.1.2 If so, which rule or rules contain the criteria which have been satisfied (and why)?

13.2 Is the rule one which requires the Tribunal to consider making an award, or is it one which says the Tribunal "may" consider making an award.

13.3 Either way, if the criteria for a costs order are met, that means that the Tribunal has discretion to make an award, not that it is obliged to. So what are the relevant factors in this case, and, taking into account all of the relevant factors (and ignoring anything which is irrelevant), should an award be made.

13.4 If an award is to be made, what is the amount of the award? (And what is the time for payment, etc).

14. Rule 84 states:

> **84. Ability to pay**
>
> In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

15. As per the rule, "ability to pay" is something that "may" be taken into account at each of the last two stages of the decision-making. That is: should an award be made at all; if so, what is the size of the award (and the timetable for payment). A tribunal is not obliged to take "ability to pay" into account, but should specify whether it has done so or not (and, if not, why not). Generally speaking, where a party wants the Tribunal to decide that they do not have the ability to pay, then the

onus is on them to (i) raise the point and (ii) provide evidence to back up the argument. That being said, in accordance with the Tribunal's duty of fairness, and in accordance with Rule 2, it may be appropriate for the Tribunal to seek to ensure that a party (especially a litigant in person) understands that the onus is on them (at least, in cases where the order might be a large one): Oni v NHS Leicester City UKEAT/0133/14.

16. Rule 76, insofar as is relevant, states:

> **76.— When a costs order or a preparation time order may or shall be made**
>
> (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—
>
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted;
>
> (b) any claim or response had no reasonable prospect of success
>
> (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.
>
> (2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

17. So one set of criteria for a costs order to be made are those set out in Rule 76(2). The tribunal is not obliged to consider making an award in such circumstances, but it may make an order. These criteria cover breaches of orders or practice direction, and they also cover postponement/adjournment where the application was made more than 7 days before the hearing was due to start.

18. If the criteria set out in Rule 76(1) are met, the Tribunal must actively consider whether or not to make an award (though it is not obliged to decide to make the award). The three subparagraphs are each independent. It is sufficient that any one of (a), or (b) or (c) is met.

19. Where the argument is that the party has acted "vexatiously, abusively, disruptively or otherwise unreasonably" then the only conduct that is taken into account is that which is (either the bringing of the proceedings or) the way that the litigation has been conducted. This ground can potentially be established even where the paying party has been successful in the litigation. The precise details of the conduct in question will be relevant both the (a) whether the criteria in Rule 76(1)(a) are met and/or (b) whether, in all the circumstances, the Tribunal should exercise its discretion to make a costs order.

20. If the criteria to potentially make a cost order are met, then the factors which are potentially relevant to the decision about whether to make such an order (and, if

so, how much the award should be) include, but are not limited to, the following. However, the Tribunal's primary duty is to follow the wording of the rules, and to make specific decisions on the merits of the case in front of it.

20.1 Costs are the exception rather than the rule. A party seeking costs will fail if they do not demonstrate that the criteria for *potentially* making such an order (in the Tribunal rules) have been met. However, the mere fact alone that the criteria have been met does not establish that the general rule is to make a costs order in such circumstances.

20.2 Costs, if awarded, must be compensatory, not punitive. If the argument that there has been unreasonable conduct is made then the whole picture of what happened in the case is potentially relevant. However, it is necessary to identify the specific conduct, and decide what, specifically, was unreasonable about it and analyse what effects it had. Some causal link between the conduct and the costs sought by the other party is required. Yerrakalva v Barnsley [2011] EWCA Civ 1255.

20.3 Was the party warned that an application for costs might be made, and, if so, when, and in what terms.

20.3.1 The lack of such advance warning does not prevent an application being made (or the Tribunal granting it). Rule 77 gives a party up to 28 days after the date on which the judgment finally determining the proceedings was sent to the parties. Furthermore, while the rule give the other party the right to a reasonable opportunity to make representations in response to the application, it does not impose a requirement that they were warned before the application was made.

20.3.2 However, the issue of whether a party (especially a litigant in person) was aware of the possibility of having to pay costs is likely to be relevant. This can be demonstrated by something other than a costs warning from the opposing party: for example, comments made at a preliminary hearing; the fact that they had been involved an earlier case in which there was a costs application; the fact that they themselves had expressed an intention to seek costs from the other side.

20.3.3 If a warning has been made, its precise terms will be relevant. A simple boiler plate threat to apply for costs, which appears to a knee jerk response that the party (or its representative) always sends out is likely to be far less persuasive than a considered attempt to address the arguments raised by the other party, and explain why they have no prospect of success, or to explain why the particular conduct has been unreasonable, and what the rules or case management orders (specifically) require instead.

20.3.4 The timing of the warning will be relevant, as will the issue of whether the warning was updated and repeated at relevant stages.

20.3.5 The fact that a costs warning was made, even one which is clear and detailed and well-timed, and which identifies the precise basis on which the application was later made, does not guarantee that an order will be made.

20.4 What advice did the party have? Who from? When? It can be a double-edged sword that a party has taken legal advice. On the one hand, they might seek to argue that since a lawyer advised them that the claim had merit, it was not unreasonable to pursue it. On the other hand, the opposing party might seek to argue that (even if the paying party was a litigant in person at the Final Hearing) the fact that they had legal advice available shows that they ought to understood the claim was hopeless, and/or that their conduct was inappropriate, and/or that a settlement offer that had been made was a good one. To rely on the former argument, the paying party might have to waive privilege over the advice in question. However, there is no obligation to do so to defend itself against the latter inference; where privilege is not waived, the Tribunal will not make assumptions that the party specifically received advice that they were acting unreasonably, but the fact that advice was available to them is likely to undermine an argument that, as a litigant in person, they could not reasonably have been expected to anticipate the arguments being raised by the costs application.

Analysis and Conclusions

21. It is a fact that the intended 3 day preliminary hearing was postponed.

22. It was not postponed on the application of the Claimant. The Claimant's preference was to continue with the hearing. However, the Claimant made clear – through counsel - that if the choice was between withdrawing the amendment application (and proceeding with the hearing) or else potentially having the amendment application granted, but with postponement, she preferred the latter.

23. The hearing was postponed on the application of the Respondents. However, the Respondents made clear that their preference was to continue with the hearing. What they asked me to do was to refuse the amendment application on the basis that, if I granted it, a postponement would be necessary. So their first preference was no amendment and no postponement; however, if I decided against them on the amendment application, they argued postponement was needed.

24. In my written reasons for granting the amendment, I commented on Ladbrokes and Traynor at paragraph 17 in the legal section. I addressed it in paragraphs 60 to 62 (in particular) of the analysis.

25. At paragraph 65 and 66, I commented on the potential costs implications.

26. The Claimant was represented by counsel at the hearing. The possibility that there would be a postponement if I granted the amendment application was front and centre of the discussions. I specifically asked for confirmation from the Claimant, through counsel, that she understood the risk of a costs award being made if I granted the amendment application (and postponed the hearing). The answer given is alluded to at paragraph 66 of the reasons.

27. As stated more fully in the case management summary and orders document, and the written reasons for case management decision document, both sent to parties on 25 October 2023:

    27.1 The application for amendment was made at the hearing, and not flagged up in advance. (See paragraphs 45, 48 and 49 of written reasons regarding amendment).

    27.2 The application was on the basis that her solicitors chose the date of 5 September 2018 as alleged start date of employment in ET1.

    27.3 A previous preliminary hearing had taken place, and not only did the Claimant not make an application to amend then, the list of issues was drawn up on the basis of the 5 September start date. (See paragraphs 31 to 38 in particular, and the comments made throughout the written reasons regarding amendment),

28. At the time of the September hearing, it was clear that the Respondents' would make a costs application. It was not yet clear whether that would be for an award of costs payable by the Claimant, or for a wasted costs order, or both. The Respondents have applied only for costs against the Claimant.

29. As is clear from the correspondence from both sides, the Claimant is no longer represented by Lester Dominic Solicitors, and the Respondents have been notified of that, as has the Tribunal. The Claimant states that she dis-instructed them on 6 October. The specific date and reasons do not matter, save that it was after the September hearing, and that I note that Lester Dominic Solicitors have seen the documents sent on 25 October 2023, because they received them from the Tribunal and forwarded them to the Claimant.

30. The Claimant's objections to the costs order includes that "there is no material change to my claim other than the period of employment" and quotes from my reasons in support of that position. However, that is not the issue. As stated in those reasons, while it was my decision that the amendment application should be granted, the parties had prepared for the September 2023 hearing on the basis of the Claimant's existing claim form and the list of issues created at a previous hearing. Parties had not carried out disclosure, bundle preparation or witness

statements on the basis of: (i) a start date of continuous employment much earlier than September 2018; (ii) employment status as "employee" earlier than September 2018; (iii) no breaks in employment between the alleged earlier start date, and the effective date of termination alleged in the claim form.

31. The same applies to the argument that there had been some earlier documents/correspondence which alleged a July 2001 start date. I addressed that in my written reasons. There had indeed been such correspondence, but the Respondents' had prepared for the September 2023 hearing on the basis that that was NOT an argument that was being pursued, and the Claimant did not notify the Respondents of the proposed change of position (and the attempt to formally allege a 2001 start date) until the September 2023 hearing was underway.

32. Likewise, the Claimant makes comments about the strength of her case in relation to a 2001 start date. For the reasons mentioned in the previous two paragraphs, the likelihood of her being able to persuade the Tribunal to decide that she was an employee (with no breaks in continuity) from 2001 is a separate issue to whether I should award costs on the basis of the timing of the application to amend the claim. The Respondent's submission is that the lateness meant that the Respondents had incurred legal costs preparing for a hearing on the basis of the issue previously identified, and on preparing for a hearing which had to be postponed.

33. At paragraph 4 of her 14 March letter, the Claimant alleges late disclosure of a particular item by the Respondent. I will treat that as a potential suggestion that the late disclosure of this item is relevant because it potentially caused a change in her stance about start date of employment, and thus led to the amendment application. [Although, in fairness to both sides, in context it seems to be part of an argument that both sides had prepared for the September hearing on the basis that they expected the hearing to address employment status from 2001 onwards; that is an argument that was made in September 2023, and which I rejected then.]

34. In paragraphs 6 and 7 of that 14 March 2024 letter, she argues that she was misled by her solicitors and/or by the barrister for the first August 2022 preliminary hearing. She argues that, as far as she is concerned, her claim was always on the basis of employment from 2001 onwards. However, she has not supplied any evidence of any legal representative stating to her that the claim had been presented on the basis of (or amended to) a start date in 2001.

34.1 By the time of the August 2022 preliminary hearing, if the Claimant had wanted there to be an argument that employment was continuous from 2001 onwards, an amendment application would have had to be made. In other words, the application that was eventually made to me on 4 September 2023 would have had to be made in August 2022, and either dealt with on the day, or dealt with in accordance with whatever orders EJ Hanning made for the application's future progression.

34.2 I am confident that, if Ms Ibrahim had received instructions (either at a conference with the Claimant, or via the Claimant's solicitors, or at all) that the Claimant wished to allege employment from 2001 onwards, she would have raised that at the hearing in August. She might, of course, have sought to argue that it was a clarification of the claim, rather than an amendment request. However, either way, she would not have agreed to the preliminary issue being drafted the way it was without asking for 2001 to be mentioned instead of 2018.

34.3 Those orders were sent to the Claimant's then solicitors on 21 August 2022. The solicitors did not contact the Tribunal to say the orders were incorrect. I have no evidence that they contacted Ms Ibrahim to say that the Claimant was arguing for a 2001 start date, either before the hearing or after they received these orders.

34.4 The argument made to me in September 2023 was that the Claimant's then solicitors had apparently decided to argue for a September 2018 start date based on their opinion about whether the Claimant had the right to work in the UK prior to that date. I have not been shown copies of any written advice to the Claimant on the start date point, or any correspondence from her to her solicitors querying it.

35. In paragraph 9 of the 14 March letter, the Claimant refers to a conference with Mr Godfrey, the (different) barrister who was to represent her at the September hearing. She says this was late August, but without giving a date. She says that the start date issue was discussed, and professes not to understand the discussions between her solicitors and Mr Godfrey about it.

36. She refers to agreeing with Mr Godfrey on 4 September that the amendment application would be made (her position being that she had always wanted the claim to argue for employment from 2001 onwards).

37. In paragraph 10, she alleges that the Respondents or their solicitors are somehow responsible for (what she claims was) her own solicitors' stance.

37.1 She says that her own solicitors were angry with Mr Godfrey and complained about him. In terms of the latter point, I will take the Claimant at her word that they complained about Mr Godfrey.

37.2 However, that fact provides no evidence that the solicitors had previously failed to follow the Claimant's express instructions (about alleged start date).

37.3 Even more so, that fact provides no evidence that the Respondent was somehow responsible for her own solicitors alleged failure to follow her instructions.

38. I am satisfied that neither the Respondents nor their representatives are in any way responsible for the facts (recited in the written reasons for the amendment) about the timing of the application to amend (or the fact that the original claim form alleged a 2018 start date).

38.1 The allegation of undue influence being brought to bear on the Claimant's solicitors is inherently implausible and made without any supporting evidence.

38.2 The problem with any argument about "late" disclosure of documents related to periods of time prior to 2018 is that had the original claim (and as clarified at the August 2022 hearing) specifically alleged employment from 2001 to 2018 then all documents relevant to (alleged) employment status in that period would have been relevant. While I assume (for present purposes) that the Claimant is correct that a particular document was disclosed late, on her case, it was only a document which confirmed (alleged) facts that the Claimant was already fully aware of. I have never been presented with an argument that the Claimant or her solicitors did not think they could prove employment from 2001 onwards, and so chose, for tactical reasons, to stick to a period which they thought they had proof for.

38.3 The Claimant's current argument is that she always wanted to claim for 2001 onwards, and her solicitors failed to carry out her instructions (and, by implication, failed to inform her properly of the date that had been pleaded).

38.4 The argument at the September hearing was that nothing of significance happened on 5 September 2018 (no new contract or evidence) other than that being the date that the Claimant became (in her solicitors' opinion) lawfully entitled to work in UK. [I am not saying that her solicitors' opinion that she could not lawfully work prior to then is correct; simply stating that that was the reason given in September 2023 for why September 2018 had been chosen as the alleged start date].

39. I do take account of the sums which the Claimant states that she has paid to her own lawyers to reach the stage that we are at now.

40. However, I am not proposing, of my own initiative, to consider a wasted costs order against Lester Dominic Solicitors, either in favour of the Respondents or in favour of the Claimant, or both.

41. My decision is that the conditions in Rule 76(1)(a) are met. I do not consider that the Claimant's actions or her representatives' actions have been vexatious or abusive. However, they have been "disruptive" and/or "otherwise unreasonable".

42. The application to amend the claim (and therefore the preliminary issue) was made: firstly, more than a year after the August 2022 hearing listed the September

2023 hearing and defined the preliminary issue; secondly, actually on the intended Day 1 of 3, and after all the preparation had been done.

43. I do not ignore that the Claimant says it was her solicitors' fault, and not hers. However, the criteria in the Rule can be satisfied by EITHER the party's conduct of the litigation OR the representative's. It does not have to be both (and does not have to be the party, specifically). Certainly the issue of whose fault it was can be relevant to the exercise of discretion, but my finding is that the conduct was unreasonable.

44. As mentioned in the reasons for granting the amendment, the Claimant and her solicitors did know that the Respondent would be incurring significant expenditure in preparing for the September hearing, including travel from Italy in one case.

45. I am also satisfied that the Claimant and her solicitors either did know, or ought to have known, that witness statements and bundle preparation would have to be redone if the preliminary issue was changed from being employed from 2018 to June 2021 rather than employment status from 2001 to June 2021. At the September 2023 hearing, I considered, and rejected, the submission that employment status could be decided in the abstract, without dates of employment being dealt with at the same time.

45.1 On the facts of this case – following the amendment application being granted - nothing was alleged to have changed (in terms of contractual status) on 5 September 2018. The argument being presented was that the Claimant had become an employee in 2001, and had remained one ever since; the issues of employment status and dates of employment could not be separated out on these particular facts (and arguments from the Claimant).

45.2 Put another way, it would be wholly irrelevant if the Claimant had become an employee in 2001 if that contract had ended in 2002 (or even a few years later than that), if the Claimant had been arguing that an employment contract commenced from September 2018. However, she wanted to rely on what had happened in 2001 (and ever since) in support of an argument that she continued to be an employee, both immediately before and immediately after 5 September 2018, and continued to be an employee until June 2021.

45.3 The Respondents were facing an entirely different argument to having to defend an allegation that, on or around 5 September 2018, an agreement had been reached.

46. The Claimant and her solicitors knew, or should have known, that preparations seeking to refute an argument that employment that employment started in September 2018 would be wasted if the new argument was that it started in 2001, and continued ever since, was the one that they had to prepare for. Thus the later they left it (certainly after August 2022) to make the amendment application, the

more chance there would be that significant preparation time would have been wasted, and have to be re-done.

47. Similarly, it ought to have been obvious that making the amendment application on Day 1 of the hearing would mean a postponement if the application was granted. It should have been obvious to the Claimant and her representatives well in advance of the September hearing. In addition, they knew on the day that that was the Respondents' stance, and they knew, before my decision was final, that I was likely to postpone if I granted the application. The Claimant's decision was to press on with the application.

48. An award of costs in employment tribunal is the exception rather than the rule.

49. In this case, the Claimant's (and/or her solicitors') unreasonable conduct had put the Respondents to significant expense.

49.1 I have seen no evidence that Mr Godfrey acted unreasonably. If his instructions on Day 1, from the Claimant, were that she wished to argue for employment from 2001 onwards, he effectively had no choice but to make the application which he did make (including the argument that no postponement was required).

49.2 On 4 September 2023, all the decisions made on that day were made by the Claimant personally, and Mr Godfrey carried out those instructions in accordance with his professional obligations. I have discussed in more detail above that it is the Claimant's position that Mr Godfrey was simply putting things right, and Lester Dominic Solicitors should have argued for July 2001 from the outset and/or instructed Ms Ibrahim to make that argument in August 2022. Based on the existing documents that have been disclosed, the Claimant has not convinced me that she did make clear to Lester Dominic Solicitors that those were her instructions (and I would obviously wish to give Lester Dominic Solicitors the chance to comment before any wasted costs application was considered). However, the unreasonable conduct occurred either way, and the costs to the Respondents were caused either way.

50. I am satisfied that the Claimant does have the means to pay some award. If it is true that her solicitors failed to follow her express instructions, then she can follow it up with them as a separate matter. However, my decision is made on the assumption that the Claimant, not Lester Dominic Solicitors, will be making the payment. I am not making any assumption that she will recover it elsewhere.

51. In 2023, the Claimant's income exceeded her outgoings. Part of her outgoings were the £18,000 plus that she spent on legal fees for her own representatives. I am satisfied that she can meet an award of costs against her.

52. I take account of the fact that she does not have much cash in the bank.

53. In all the circumstances, I am satisfied that there should be an order that the Claimant pay some costs.

Amount

54. The Respondents' counsel's fees were £8,625 plus VAT, so £10,350. I have not been supplied with a detailed breakdown of how much was for the September hearing specifically. Using my discretion, and taking account of the fact that it was intended to be a 3 days hearing (albeit reduced to 1), I will order that the Claimant pay £3500 based on the counsel's costs thrown away because the September 2023 hearing could not proceed. The £3500 is inclusive of VAT.

55. Some of the work done by solicitors would have had to be done anyway, even if the Claimant] had argued from the outset (in the ET1) that employment commenced from 2001 (and was continuous). I do not consider that the charges up to the August 2022 hearing would be any different.

56. I note that the invoices supplied give aggregate sums for particular periods of time, without breaking down what work was done.

56.1 In terms of general advice, the costs of that are costs incurred by the fact that the claim was brought, not the unreasonable conduct of making the amendment application so late.

56.2 In terms of disclosure, some of the searches will have to be re-done. This has been made more difficult by the fact that R1 would have been alive to help had the amendment application been made earlier (at the August 2022 hearing, for example). I also think it likely, however, that the respondents – even though not under an obligation to disclose documents other than those relevant to the claim as pleaded, are likely to have searched for documents helpful to their own position from all dates.

56.3 The bundle will have to be re-done. Some of that work can still be the basis for the new bundle.

56.4 The witness statements will have to be re-done. Some of that work can still be the basis for the new statements.

57. The Respondents' solicitors costs as per the invoices are extremely high (around £40,000 plus interest). That is far in excess of what I consider reasonable for the costs of the work that was wasted for the September 2023 hearing, and having to re-do some work because of the late amendment of the claim (and preliminary issue).

58. Exercising my discretion, I will order the Claimant to pay £3000 for solicitors' costs. That figure includes VAT.

59. In accordance with Rule 75(1)(c), an award of costs can include the party's attendance at the hearing. R4 incurred costs of £306.79 and I award those.

60. **Thus the aggregate is £6,806.79**.

61. I am satisfied that the Claimant will be able to get together, or borrow, a sum of £2,810.79 fairly promptly, and I order that she make an initial payment of that by 31 May.

62. I do not think it would be just and equitable for her to have to pay the balance immediately. She should be allowed some time to earn the sums she will have to pay to the Respondent.

63. In the event that the Claimant is eventually successful in her claims, then the payment schedule might be revisited after any remedy decision. In any event, if there are changes in circumstances, the parties can, in the normal way, make an application for reconsideration of the judgment, and for a faster/slower payment schedule.

64. However, on the basis of current documents and information, my decision is that it is fair to both sides if I order the Claimant to pay £333 per month rather than a higher or lower amount. A lower sum would not be fair to the Respondents' who are already out of pocket for these sums. The amount which I have set takes account of the Claimant's limited savings (which will potentially be diminished further by the initial lump sum). I have not intended to set an amount which will be "easy" to find, but I have intended to set one she will be able to find, based on the information supplied, even if it requires some reorganisation of her finances, or reduction in expenditure on other items.

Employment Judge Quill

Date: 8 April 2024

JUDGMENT ON THE PAPERS (WITH REASONS) SENT TO THE PARTIES ON

09/04/2024

FOR EMPLOYMENT TRIBUNALS