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EMPLOYMENT TRIBUNALS

Claimant

Not Just Cleaning Limited

AND

Respondents

LCC Support Services Limited

Heard at: London Central

On:

20-21 September 2018

Before: Employment Judge A Isaacson

Representation

For the Claimant: Mr C Ludlow, of Counsel

For the Respondent: Mr G Ridgeway, Consultant

JUDGMENT

The claim is struck out on the basis that it was presented out of time and it was reasonably practicable to present the claim in time.

REASONS

Evidence before the Tribunal

1. The Tribunal was presented with a joint bundle of documents. The Tribunal had a written statement and heard evidence from Miss Angela Roke, the Claimant's HR Director and from Ms Maya West, who was formally the Respondent's Head of Resources. Both witnesses came across as refreshingly honest and frank. Both representatives gave oral submissions. Counsel for the Claimant also produced a written submission, provided an extract from HIREL Issue 255 paragraphs 176-178 and a copy of the case **Ms S Paul & others v (1) PFGPS Limited t/a Clapham SPMS (2) The Awareness Centre Limited (3) Streatham Neighbourhood Talking Therapies Limited Case number 2300375/2013 & others ("Paul & others")**. The Respondent's representative also handed up a copy of **Shields Automotive Limited v Shields and another UK EAT S/0059/12/BI**. Claimant's Counsel also produced for the Tribunal a chronology, a list of relevant persons and handed up a schedule of costs.

Claim and Issues

2. The claim against the Respondent is for a failure to provide relevant employee liability information in respect of Mr Narvaez, in breach of regulation 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“The TUPE regs”), and for a remedy pursuant to regulation 12 of the TUPE regs.

3. The issues were identified before Judge Tayler at a preliminary hearing and were reclarified at the full hearing:

- (1) Was there a transfer? It was agreed between the parties that there was a TUPE transfer on 1 May 2016.
- (2) Was employee liability information exchanged in accordance with regulation 11 on the TUPE regs?
- (3) Was the information given in compliance with that regulation?
- (4) What remedy if any is Not Just Cleaning Limited (“NJC”) entitled to?
- (5) Did NJC fail to mitigate, regulation 12(6)?
- (6) Did NJC know about the issues with Mr Narvaez within three months of the transfer? It is admitted by NJC that the claim was presented out of time.
- (7) Was it reasonably practicable for NJC to have presented their claim in time and if not, was the claim presented within a reasonable period thereafter?

Applications

4. The respondent LCC Support Services Limited (“LCC”) made an application to strike out the claim on the ground that it was out of time at a preliminary hearing before Judge Tayler. Judge Tayler refused the application on the basis that it needed to be considered at a full hearing, after having heard all the evidence. The respondent’s strike out application for being out of time is before this Tribunal together with the claimant’s application for costs against the respondent.

The Law

5. Regulation 11 of the TUPE regs provides:

“11 notification of Employee Liability Information

(1) The transferor shall notify to the transferee the employee liability information of any person employed by him who is assigned to the organised grouping of resources or employees that is the subject of a relevant transfer –

(a) in writing; or

- (b) *by making it available to him in a readily accessible form.*
- (2) *In this regulation and in regulation 12 “employee liability information” means –*
- (a) *the identify and age of the employee;*
 - (b) *those particulars of employment that an employer is obliged to give to an employee pursuant to section 1 of the 1996 Act;*
 - (c) *information of any –*
 - (i) *disciplinary procedure taken against an employee;*
 - (ii) *grievance procedure taken by an employee,**within the previous two years, in circumstances where [a Code of Practice issued under Part IV of the Trade Union and Labour Relations Act 1992 which relates exclusively or primarily to the resolution of disputes applies];*
 - (d) *information of any court or tribunal case, claim or action –*
 - (i) *brought by an employee against the transferor, within the previous two years;*
 - (ii) *that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee’s employment with the transferor; and*
 - (e) *information of any collective agreement which will have effect after the transfer, in its application in relation to the employee, pursuant to regulation 5(a).*
- (3) *Employee Liability Information shall contain information as at a specified date not more than fourteen days before the date on which the information is notified to the transferee.*
- (4) *The duty to provide employee liability information in paragraph (1) shall include a duty to provide employee liability information of any person who would have been employed by the transferor and assigned to the organised grouping of resources or employees that is the subject of a relevant transfer immediately before the transfer if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.*
- (5) *Following notification of the employee liability information and in accordance with this regulation, the transferor shall notify the transferee in writing of any change in the employee liability information.*
- (6) *A notification under this regulation shall be given not less than [28 days] before the relevant transfer or, if special circumstances make this not reasonably practicable, as soon as reasonably practicable thereafter.*
- (7) *A notification under this regulation may be given –*
- (a) *in more than one instalment;*

(b) indirectly, through a third party.

12. Remedy for failure to notify employee liability information

- (1) On or after a relevant transfer, the transferee may present a complaint to an employment tribunal that the transferor has failed to comply with any provision of regulation 11.*
- (2) An employment tribunal shall not consider a complaint under this regulation unless it is presented: -*
 - (a) before the end of the period of three months beginning with the date of the relevant transfer;*
 - (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.*

[(2A) Regulation 16A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)].

- (3) Where an employment tribunal finds a complaint under paragraph (1) well-founded, the tribunal –*
 - (a) shall make a declaration to that effect; and*
 - (b) may make an award of compensation to be paid by the transferor to the transferee.*
- (4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances, subject to paragraph (5), having particular regard to –*
 - (a) any loss sustained by the transferee which is attributable to the matters complained of; and*
 - (b) the terms of any contract between the transferor and the transferee relating to the transfer under which the transferor may be liable to pay any sum to the transferee in respect of a failure to notify the transferee of employee liability information.*
- (5) Subject to paragraph (6), the amount of compensation awarded under paragraph (3) shall be not less than £500 per employee in respect of whom the transferor has failed to comply with a provision of regulation 11, unless the tribunal considers it just and equitable, in all the circumstances, to award a lesser sum.*
- (6) In ascertaining the loss referred to in paragraph (4)(a) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to any damages recoverable under the common law of England and Wales, Northern Ireland or Scotland, as applicable.*

(7) *[Section 18A to 18C] of the 1996 Tribunals Act (conciliation) shall apply to the right conferred by this regulation and to proceedings under this regulation as it applies to the rights conferred by that Act and the employment tribunal proceedings mentioned in that Act.*"

6. There is little case law on the amount of compensation that a Tribunal would consider just and equitable, and on the duty to mitigate set out in regulation 12(6). The award is to compensate and not to be punitive. The Tribunal is guided by the principles, in relation to the duty to mitigate, set out in the Court of Appeal decision of **Wilding v British Telecommunications Plc 2002 IRLR 524**:

- (1) It is the duty of an employee to act as a reasonable person unaffected by the prospect of compensation from his or her former employer.
- (2) The onus is on the employer to show that the employee has failed to mitigate his or her loss by unreasonably refusing the offer of re-employment.
- (3) The test of reasonableness is an objective one based on the totality of the evidence.
- (4) In applying the test, the Tribunal should take in to account the circumstances in which the offer was made and refused, the attitude of the employer, the way in which the employer was treated and all the surrounding circumstances, including the employee's state of mind.
- (5) The Tribunal must not be too stringent in its expectations of the injured party.

7. Rule 37 of the Employment Tribunals Rules of Procedure provides:

"37 Striking Out

(1) at any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds –

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;*
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;"*

8. Rule 76 of the Employment Tribunal Rules provides for a Tribunal to make a cost order

"(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; or

(b) any claim or response has no reasonable prospect of success ...”

9. When considering a cost application, the Tribunal must ask itself whether the parties conduct falls within rule 76(1), and if so, must then go on to ask whether it is appropriate to exercise its discretion in favour of awarding costs against that party. The Tribunal looks at all the factors to take in to account when assessing the appropriate level of costs. It involves balancing the amount of costs incurred and the unreasonableness of the conduct against the need for the injured party to be compensated.

10. Considering unreasonable conduct, the Tribunal needs to take account of the nature, gravity and effect of a party's unreasonable conduct. It must not lose sight of the totality of the circumstances. The Tribunal must ask itself whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case, and if so, to identify the conduct, what was unreasonable about it and what effect it had. Whether the parties acted unreasonably is a matter of fact for the Tribunal.

11. When considering a cost application on the grounds of no reasonable prospect of success, the Tribunal must consider whether a party has legal advice, and at what point a case could be seen to have been doomed to fail.

Findings of Fact

12. Mr Narvaez was first employed by LCC in January 2014. On 16 October 2015 he was invited to a disciplinary hearing for failing to follow company procedure regarding annual leave. The disciplinary hearing took place on 23 October 2015 and was adjourned and reconvened on 9 November 2015. Mr Narvaez was dismissed with immediate effect. The letter confirming his dismissal was sent to him on 17 November 2015.

13. On 3 December 2015 Mr Narvaez appealed against his dismissal and on 9 December he was invited to an appeal hearing. For various reasons Mr Narvaez was called to several appeal hearings which he did not attend but attended an appeal hearing on 15 March 2016 when he was reinstated with effect from 21 March 2016.

14. Prior to his appeal hearing Mr Narvaez, through his trade union representative, entered in to early conciliation with ACAS on 7 March 2016. On 8 March 2016 NJC emailed LCC attaching a copy of a due diligence information request sheet to be completed by LCC (page 188-225). This request for information prior to a TUPE transfer included a request for information regarding any employee claims and included a table to be completed setting out any disciplinary procedures taken against employees or any grievances or any court or tribunal claims within the last two years (page 222).

15. Following Mr Narvaez's reinstatement, LCC wrote to Mr Narvaez a letter, incorrectly dated 2 March 2016 (pages 234-235), which confirmed the decision to

reinstate him with effect from 21 March 2016. The letter went on to state: *“However your terms and conditions of employment from the date of dismissal to the date of reinstatement will not be given due to contributing factors mentioned above”*.

16. There was then further correspondence between Mr Narvaez’s trade union representative and Ms West regarding Mr Narvaez’s reinstatement and his pay for the period between his dismissal and reinstatement. Ms West confirmed in an email dated 16 March 2016 that Mr Narvaez would not be paid for this period.

17. Ms West explained to the Tribunal that the reason for the company’s stance regarding pay for the period between his dismissal and reinstatement was that she believed that Mr Narvaez had been working during that period and it was the company’s and her belief that any monies he had earned during his normal working hours in that period should be deducted from any salary owed to him for that period.

18. On 18 March 2016 Mr Narvaez’s trade union representative emailed Ms West warning them that unless the company changed their stance in relation to Mr Narvaez’s pay for the time of his dismissal to the date of his reinstatement he would be proceeding to a Tribunal for a claim for unlawful deduction of wages contrary to section 13 of the Employment Rights Act 1996 (“ERA”).

19. On 4 April 2016 NJC chased LCC for their employee liability information.

20. On 6 April Ms West sent to Miss Roke an email attaching a TUPE spreadsheet, reminding Miss Roke that NJC should not yet be speaking directly to staff and that any contact should be through LCC.

21. Ms West explained to the Tribunal that normally she would have produced two spreadsheets to provide TUPE employee liability information. First a shorter version of the spreadsheet would be sent to a manager to complete. Then HR would transfer the information from the smaller spreadsheet on to a larger spreadsheet which included all the information required under regulation 11, including details regarding grievance, disciplinary, maternity, long term sick etc. Ms West explained that she would then send the longer spreadsheet together with any zip files that contained the supporting information regarding any grievances and claims. However, she frankly admitted that in this case only the smaller spreadsheet completed by the manager was sent to NJC.

22. Ms West gave reasons to the Tribunal why the omission had happened. She explained that she was the only one in the HR team at that time for eighteen months dealing with between 1800 to 2000 employees. She had unfortunately fractured her ankle in October/November 2015 and was mainly working from home on a laptop until April 2016. She had been trying to chase the manager to complete his spreadsheet and was chasing the trade union regarding arrangements for Mr Narvaez’s return to work and trying to arrange Mr Narvaez’s appeal hearing.

23. This explanation was also set out by Ms West in a letter dated 14 November 2016 (page 341) sent to NJC’s solicitors. The letter confirmed that the proforma

was not sent to NJC and admits it was an oversight on her part. Ms West confirmed to the Tribunal that no information regarding Mr Narvaez's disciplinary hearing nor his appeal nor his early conciliation with ACAS or his threat of an unlawful deduction from wages claim was included in the TUPE information sent by LCC to NJC. The Tribunal finds that LCC breached regulation 11 of the TUPE regs by failing to provide this information to NJC.

24. ACAS issued an early conciliation certificate on 21 April 2016 confirming that early conciliation notification was received on 7 March 2016. The wording of the certificate included confirmation that the perspective claimant had complied with the requirement under ETA 1996 section 18A to contact ACAS before instituting proceedings in the Employment Tribunal.

25. On 1 May 2016 Mr Narvaez's employment was TUPE transferred from LCC to NJC along with the other employees of LCC.

26. On 10 May 2016 Mr Narvaez's trade union representative had a conversation with Mary Janssen, who was a Human Resources Advisor at NJC and an assistant to Miss Roke, regarding Mr Narvaez's terms and conditions of employment and a potential unlawful deduction from wages claim. Miss Janssen hand wrote on a copy of this email exchange that Mr Narvaez had unauthorised holiday and that he had been dismissed and reinstated. Miss Roke was unaware of this correspondence at the time. The Tribunal finds that from this time NJC were on notice of a potential claim by Mr Narvaez and it is unfortunate that Ms Janssen did not pass this information on to Ms Roke. Mr Narvaez's employment had transferred to NJC and therefore they could have spoken directly to Mr Narvaez, or his union, to obtain details regarding his potential claim.

27. On 15 June 2016 Mr Narvaez presented a claim to the Employment Tribunal against NJC complaining that a failure to pay his wages for the period between his dismissal and reinstatement constituted an unauthorised deduction from wages and also claiming holiday pay.

28. His claim form was initially rejected by Regional Employment Judge Potter under rule 12 of the ET Rules because the name of the Respondent on the ACAS certificate and ET1 did not match. The Tribunal later reconsidered the decision to reject his claim and confirmed that his claim had been accepted on 28 October 2016.

29. In the meantime Mr Narvaez appealed to the EAT. On 11 August 2016 the EAT sent a letter to NJC informing them that a Notice of Appeal had been received attaching the grounds of Appeal which stated that Mr Narvaez had presented a claim for wages against NJC. The letter from the EAT to NJC stated "**You do not need to take any action at present.**" Miss Roke told the Tribunal that on receipt of the letter she did forward it on to her solicitors but felt that at that stage there was no need to take further action.

30. The Tribunal notes the evidence of Miss Roke that at this stage she did not have any details of Mr Narvaez's claim. However, NJC were on notice from 10 May 2016 of his potential claim when Ms Janssen spoke to the trade union

representative and could have taken steps to clarify his claim. NJC were aware he had been dismissed and reinstated for unauthorised holiday.

31. The Tribunal acknowledges the submission from NJC's Counsel that it would have been premature and possibly a waste of time and money to have taken steps to present a claim against LCC for breach of regulation 11 of the TUPE regs as it was not clear at this stage whether Mr Narvaez claim would materialise. However, by 10 May 2016 NJC were on notice that Mr Narvaez had a potential dispute and details of that dispute had not been included in the TUPE information sent to them before the transfer on 1 May 2016. Ms Janssen should have notified Ms West in May regarding Mr Narvaez's potential claim.

32. The Tribunal finds that NJC were on notice of Mr Narvaez's potential claims by 10 May 2016 and had legal representation. Although the letter from the EAT dated 11 August 2016 said they didn't need to take any further steps at this stage, this note was in relation to the appeal. If NJC had passed all the information on to their solicitors that they had been told by Mr Narvaez's trade union representative when they received the letter from the EAT, then NJC's solicitors should have been aware of the strict three months' time limit for bringing a claim under regulation 11 and could have protected NJC's position by presenting a claim at that time.

33. On 6 September 2016 the EAT wrote to NJC notifying them that they had been identified as a respondent to the Appeal and the Appeal would now be progressed to the next stage. Counsel for NJC argued that they still did not know the details of Mr Narvaez's claim and therefore it would have been premature to have presented a claim against LCC at this stage. However, the Tribunal finds that as from 10 May NJC were on notice of Mr Narvaez's potential claims for holiday pay and pay for the period between his dismissal and reinstatement. They could have taken reasonable steps to clarify with Mr Narvaez, his trade union representative or with LCC what his grievance was. The Tribunal also takes in to account the fact that NJC had instructed solicitors at this stage who could have advised NJC of the need to present a claim within a three months period. Therefore, the Tribunal finds that from the date the letters of 11 August 2016 and the 6 September 2016 were received, it was reasonably practicable for NJC to present a claim against LCC for failing to comply with regulation 11 of the TUPE regs.

34. On 28 October 2016 the Tribunal wrote to NJC sending them notice of Mr Narvaez's claim. This letter would have been received around 29 October 2016 and NJC argued that it was only from this point on that they were on notice of Mr Narvaez's claim as they then had particulars of his claim. Miss Roke forwarded on the information to her solicitors.

35. On 4 November 2016 NJC presented a claim to the Tribunal alleging that LCC had failed to comply with its obligations pursuant to regulation 11 of TUPE regs, and in particular had failed to provide information in relation to Mr Narvaez. On the same date a letter was sent by NJC's solicitors to LCC alleging that LCC had failed in its obligations pursuant to regulation 11 of the TUPE regs, stating that they would be making a request for compensation under regulation 12 of the TUPE regs and would include in the claim for compensation any amount NJC

was required to pay to Mr Narvaez in relation to his claims together with any legal fees incurred in relation to those matters.

36. On 17 March 2017, at a case management preliminary hearing, Mr Narvaez withdrew his claim for holiday pay but continued with his claim for unlawful deduction from wages.

37. On 28 September 2017 a full hearing was converted to a preliminary hearing on the basis that NJC were not able to give a full defence against Mr Narvaez's claim without first hearing LCC's defence.

38. At that hearing Counsel for NJC pointed out that there was no defence to a claim for an unauthorised deduction from wages claim for the period between Mr Narvaez's dismissal and reinstatement in respect of the hours per week he was contracted to undertake. LCC attempted to defend Mr Narvaez's unauthorised deductions claim on the basis that Mr Narvaez's had undertaken work during the period and that his earnings from this period from other work should be taken in to account.

39. However NJC's Counsel was correct when he pointed out that if an unauthorised deduction has been made by an employer, the employer cannot reduce that deduction by counter claiming or taking in to account payments made by a third party- section 25 of the Employment Rights Act 1996 ("ERA").

40. By the end of the hearing on 28 September 2017 LCC had agreed to pay to Mr Narvaez the sum of £7,000.

41. In a letter to LCC NJC's solicitors stated that as a result of LCC's failure to comply with regulation 11 of the TUPE regs, and in particular its failure to provide any information regarding Mr Narvaez's dismissal and reinstatement and the potential claims arising from these issues, NJC had sustained significant losses in respect of legal fees in defending itself against Mr Narvaez's claim and in having to pursue its claim against LCC for breach of the regulations. NJC argued that LCC had continued to defend the claim regardless of its lack of defence until the hearing on 28 September 2017, increasing NJC's costs and pointing out that it was open to LCC to settle the claims much earlier. The letter goes on to confirm that they would be making a cost application if their legal costs were not deemed to be part of the compensation pursuant to regulation 12 of the TUPE regs.

42. LCC's representative responded to NJC representatives on 23 February 2018. Mr Ridgeway, on behalf of LCC, pointed out that NJC's representatives were trying to get LCC to settle Mr Narvaez's claim for around £16,000-£18,000 rather than the £7,000 that Mr Narvaez accepted. Mr Ridgeway suggested that this was unreasonable behaviour by NJC. Mr Ridgeway pointed out that from disclosure it appeared that NJC were aware of Mr Narvaez's claims just ten days after the transfer and therefore it appeared that it was reasonably practicable for NJC to present their claim within time. Mr Ridgeway went on to argue that NJC failed to mitigate their loss by failing to simply pick up the phone. If they had done so he argued that a lot of the litigation could have been avoided. In conclusion Mr Ridgeway argued that it was necessary for LCC to defend the case on the

basis that NJC had submitted their claim out of time and that NJC had been unreasonable in its suggestions for settlement in relation to the amount of compensation which should be paid. He referred to the conduct of the case being unreasonable and unnecessarily aggressive with bullying tactics.

Time Issue

43. It was agreed between the parties that there was a TUPE transfer of Mr Narvaez and other employees from LCC to NJC on 1 May 2016. It is accepted by LCC before the Tribunal that LCC failed to comply with the employee liability information required under regulation 11 of the TUPE regs. Miss West admitted that the only information provided was that set out at page 269 contained on the small spreadsheet and that she failed to send the larger spreadsheet which would have included information regarding Mr Narvaez's disciplinary hearing, reinstatement and communication between the trade union regarding his potential unauthorised deduction from wages claim. Therefore, the Tribunal finds that the respondent failed to provide the claimant with the notification of employee liability information set out in regulation 11.

44. NJC accept that their claim is out of time but argue that it was not reasonably practicable to present their claim in time and that as soon as they had full details of the claim they presented the claim within a reasonable period thereafter.

45. NJC were made aware by Mr Narvaez's trade union on 10 May 2016 that Mr Narvaez had been dismissed and reinstated and was alleging that he was owed two weeks holiday and that he had not been paid for the period between dismissal and reinstatement. Mr Narvaez's claim could have been clarified by picking up the phone to him, his trade union representative or LCC. Although it may have been premature to have presented a claim against LCC for breaching regulation 11 of the TUPE regs at this stage, as it still wasn't clear if a Tribunal claim would in fact materialise, it would have been sensible to present a claim to protect NJC's position. They were on notice of Mr Narvaez's potential claim and were aware that LCC had failed to comply with regulation 11.

46. However, shortly after receiving the letters of the 11 August 2016 and certainly by receipt of the 6 September 2016 letter it was reasonably practicable for NJC to present a claim under regulation 11 of the TUPE regs as Mr Narvaez had presented a claim, NJC had legal representation and NJC were already on notice about Mr Narvaez's dispute since 10 May 2016.

47. Therefore, the Tribunal finds that NJC's claim is out of time as it was not presented within three months from the date of the transfer, and any extended period due to ACAS early conciliation. It was reasonably practicable for NJC to present their claim within three months beginning with the date of the relevant transfer and certainly within a reasonable period after the 6 September 2016. The claim form was only presented on 4 November 2016, nearly two months later. Therefore, NJC's claim is struck out on the basis it is out of time, it was reasonably practicable to present the claim in time and it was then not presented within a reasonable period thereafter.

48. This decision has been made based on all the facts. Had the claimant not been represented then the decision may well have been different. It was unfortunate that Ms Roke was not told by Ms Janssen about the conversation and email exchange she had had with the trade union representative on 10 May 2016.

Costs

49. The Tribunal finds that it was reasonable for NJC to argue that it was not reasonably practicable to present a claim before 4 November 2016. It is only after hearing all the facts, including the fact that Ms Roke didn't know about the trade union communication on 10 May at the time and that NJC sent the EAT correspondence to their solicitors at the time that the Tribunal is able to reach its conclusion. Therefore, if LCC's representative had made an application for costs it would not have been successful.

50. NJC's application for costs is unsuccessful. It was reasonable of LCC to defend their claim on the basis that the claim was out of time. Although they may have been able to settle Mr Narvaez's claim earlier there is insufficient evidence before the Tribunal to conclude that the respondent acted in any way unreasonably. Although LCC should have been advised that they could not counterclaim against Mr Narvaez's unlawful deduction from wages claim, LCC did settle the same day this was pointed out to them by NJC's counsel.

Conclusion

51. The claimant's claim fails on the basis it was presented out of time and it was reasonably practicable to present it in time. Therefore, the Tribunal does not have jurisdiction to hear the claim and it is dismissed. The claimant's application for costs fails.

52. In the alternative, if the Tribunal was wrong about it being reasonably practicable to present the claim in time the Tribunal would only have awarded the claimant with compensation of £500 on the basis that the award is compensatory and not punitive and Parliament has provided guidance on the amount of compensation to be awarded in Regulation 12(5). The Tribunal also agrees with Employment Judge Pritchard in the **Paul & others** case when he found that the Employment Tribunal Rules of Procedure set out an exclusive set of rules strictly regulating circumstances in which costs can be awarded. If costs were to be awarded as a loss under Regulation 12, that would circumvent the rules in cases like this which cannot have been the intention of Parliament when enacting Regulation 12.

Employment Judge A Isaacson
Dated: 18 October 2018

Judgment and Reasons sent to the parties on:

18 October 2018

For the Tribunal Office