



EMPLOYMENT TRIBUNALS

Claimant: Mr M Maqbool

Respondent: R T Elliott Limited

HELD AT: Leeds

ON: 15 February 2017

BEFORE: Employment Judge Jones

JUDGMENT ON COSTS

1. The respondent acted unreasonably in disputing the claimant's employment status and in disputing a significant meeting took place between the claimant and two directors of the respondent.
2. It is just and equitable to make a Costs Order for the reasonably incurred and proportionate costs relating to the Preliminary Hearing, assessed in the sum of £3,000 inclusive of value added tax and in respect of the Liability Hearing, being 75% of the costs being £8,100 (75% x £10,800) inclusive of value added tax.
3. The respondent shall pay to the claimant the said sum of £11,100 in relation to such costs.
4. Further the respondent shall pay to the claimant the Tribunal fees for bringing the claim of £1,200.

REASONS

1. On 10th November 2016 the claimant made an application for costs against the respondent and a wasted costs order against the respondent's representative. The claimant contended the respondent had been unreasonable in disputing his employment status which had led to an unnecessary Preliminary Hearing and that the respondent had been unreasonable in the conduct of the proceedings in that it denied any meeting had taken place after the claimant's dismissal between the claimant and two of the respondent's directors. It is said such an approach was unreasonable and disruptive.

2. In addition a claim for wasted costs was made but this was subsequently not pursued following the Remedy Hearing.
3. Both parties agreed that the Employment Tribunal Judge could determine this application upon the written representations which had been submitted.
4. The claimant's representatives have submitted a schedule setting out the total costs including the Tribunal fees of £26,587.20. That includes disbursements paid to Counsel at the Preliminary Hearing, the Liability Hearing and the Remedy Hearing. There is no detailed breakdown which identifies the attribution of the work undertaken by the solicitor to any particular aspect of the case save that it is reasonable to assume by reference to the dates on which the respective hearings took place that certain sums were largely connected to particular hearings.
5. The relevant provisions are contained in Rules 74, 75, 76 and 78 of the Employment Tribunal rules.
6. By Rule 76 the Tribunal may make a Costs Order ... and shall consider whether to do so, where it considers that: (a) a party has actually vexatiously, abusively, disruptively or otherwise unreasonably in the bringing of proceedings (or part) or the way that procedures (or part) have been conducted or (b) any claim has no reasonable prospect of success.
7. In response to the applications the respondent's representative has said that it was not unreasonable for the respondent to dispute employment status given that the claimant had been paid gross, as if self-employed and was accountable for his taxes and that he had been treated differently to other members of staff by the previous owner of the business. Mr Verrecchia submits that no criticism was raised by Employment Judge Bright of the respondent in contending that the claimant was not employed by it. In respect of the allegation that proceedings were unreasonably conducted in respect of the denial of a meeting which had taken place he accepts that the Tribunal would have a discretionary power to award but says that the case had many factual and legal issues which would have necessitated a liability hearing regardless of that credibility issue.
8. I am satisfied that there was unreasonable conduct on the part of the respondent in two respects; in disputing that the claimant was an employee and in denying that a meeting took place.
9. The directors who gave evidence to the Tribunal at the Liability Hearing was that the claimant was an employee. Mr Ahmed's witness statement recorded that he and his co-director told the claimant that he would be accepted as an employee on the 11th October 2015. That witness statement was not provided for the Preliminary Hearing. In the light of the witness statement which was provided by Mr Sheikh for the Preliminary Hearing which disputed employee status, and is quoted in part in the application of the claimant, I am satisfied that a disingenuous approach was taken by the respondent to the issue of employee status. Whilst it is correct that the claimant paid tax as a self-employed person it is overwhelmingly clear that it was not the understanding of either of the directors who gave evidence to the Liability Hearing

that the claimant had been self-employed after the ownership of the business had transferred.

10. Having found that to be unreasonable conduct in defending the case I am satisfied it is just and equitable to award costs in respect of the Preliminary Hearing. It should not have been necessary and involved putting the claimant to expense in establishing what should not have been disputed.

11. The costs of counsel for that hearing were £1,250 plus VAT (£1,500). There is no breakdown of the solicitor's fees which were attributable to the preparation for that hearing. However I am satisfied that the sums which could reasonably be incurred and charged for the preparation of the case for and attendance at the hearing and which were proportionate would be the same sum as was paid to Counsel, namely £1,500 including value added tax. I am satisfied therefore that the claimant should recover these costs.

12. In respect of the denial that the meeting took place, this went beyond what one can normally expect within contested proceedings in the Employment Tribunal in which costs do not normally follow the event. It does not follow that because a party has lied that they have conducted themselves unreasonably however the circumstances of this meeting as set out in the Tribunal's earlier reasons was particularly significant and serious. It impacted not only upon the claimant's claim that he had been subjected to detriment after the termination of his employment, which included the withdrawal of an offer of re-employment but also impacted upon the credibility of the witnesses in respect of other issues in the case. The denial that such a meeting took place was brazen and the evidence which supported the claimant circumstantially was compelling. It was unreasonable to pursue a defence on the basis of such a denial. I am satisfied that had a significant impact on the length and complexity of the hearing.

13. Having found such conduct to have been unreasonable I am satisfied it is just and equitable for the respondent to pay the majority of the costs which the claimant incurred for the liability hearing. For the directors to have conceded they had met the claimant in these circumstances and said what they had to him would have had a seriously undermining effect upon the credibility of those witnesses. Their tarnished credibility would have created significant difficulties to the respondent in advancing the case they had upon the other factual disputes between the parties. That is doubtless why the meeting was flatly denied.

14. I am satisfied that Counsel's fees of £4,500 plus VAT for the liability hearing were reasonably incurred and proportionate. I would consider similar costs were reasonable for the solicitor and from their detailed Schedule of Costs I am satisfied that in excess of that sum was incurred for the preparation of the case in respect of the Liability Hearing. I have therefore assessed the costs for the Liability Hearing at £9,000 plus value added tax being a total of £10,800. Given the significance of the unreasonable conduct and its impact upon the Liability Hearing I am satisfied that an appropriate sum for the respondent to pay the claimant is 75% of those costs I have assessed. That amounts to £8,100.

15. No argument has been advised as to why the respondent should not pay the Tribunal fees. The claimant had no alternative than to bring this case to the Tribunal to secure his legal rights. Having done so successfully it is only fair that the respondent should defray that expense.

Employment Judge Jones

Sent on: 17 February 2017