



EMPLOYMENT TRIBUNALS

Claimant: Mr N Rennison

Respondent: Leeds Bradford International Airport Limited

Before: Employment Judge Cox

Members: Ms L Fawcett
Mr K Lannaman

Deliberations in chambers on 19 April 2017

JUDGMENT

1. The Claimant's application dated 6 January 2017 for reconsideration of the Costs Order included in the Judgment sent to the parties on 7 December 2016 is granted.
2. On reconsideration, the Costs Order is confirmed.

REASONS

1. On 6 January 2017 the Claimant applied under Rule 71 of the Tribunal's Rules of Procedure for the Tribunal to reconsider its Order, sent to the parties on 7 December 2016, that the Claimant should pay the Respondent £15,000 towards its costs in defending this claim.
2. The Tribunal has power to reconsider a Judgment, including a Costs Order, "if it is necessary in the interests of justice to do so." Both parties confirmed that they wished the application to be decided without a hearing and submitted written representations.
3. The Claimant's application for reconsideration related to the Tribunal's conclusion that his evidence on his means was unreliable. The Tribunal decided to exercise its discretion under Rule 84 to take the Claimant's means into account when deciding whether to make a Costs Order and if so in what amount. Because the Tribunal found the Claimant's evidence on his means unreliable, it decided not to decline to make an order or limit its amount because of his means. In support of its conclusion that the Claimant's evidence was unreliable, the Tribunal noted that the Claimant had not explained in evidence what had happened to the six months' pay in lieu of notice that the Respondent had paid him, nor had he mentioned what final payment he had received under the Respondent's bonus scheme, nor had he mentioned a car allowance to which he was entitled in his

new employment. The Tribunal accepts that it should not have used the seeming omissions in relation to the bonus and car allowance as a basis for concluding that the Claimant's evidence on his means was unreliable without first giving him an opportunity to respond. The Tribunal accepts the Claimant's evidence, submitted with his written representations, that he did not in fact receive a final bonus payment and that his car allowance was included in the figure he gave in evidence for his income from his new job. In relation to the payment in lieu of notice, the Claimant did have the opportunity to explain what happened to that money, but did not do so. The Tribunal nevertheless accepted at the Hearing that, whatever happened to that sum, he had no savings by the date of the Hearing.

4. In the light of the Tribunal's acceptance that it did not have an entirely sound basis for its conclusion that the Claimant's evidence on his means was not reliable, the Tribunal decided that it would be in the interests of justice to reconsider its decision, and to do so on the basis that the evidence given by the Claimant at the Hearing was reliable rather than unreliable.
5. The Claimant's evidence at the Hearing was that on 7 March 2016, seven weeks after the termination of his employment with the Respondent, he had begun a new job. In August he was promoted. By the date of the Hearing he was being paid a salary of £45,000 and an annual car allowance of £4,000. His net monthly income was £2,990. He had credit card debts totalling £9,000, involving a minimum monthly repayment of £210. His other monthly outgoings included rent of £895, car lease payments of £700 for his car and £100 for his partner's car, £700 for household bills and £120 in petrol for his commute to work. He was supporting his partner financially because she was currently unemployed, but she was actively seeking new employment.
6. In the light of this evidence, the Tribunal accepted that, at the date of the Hearing, the Claimant had little disposable income. However, the Claimant's salary in his new job, although lower than the sum he had been paid when employed by the Respondent, was still not insubstantial. Further, his partner was likely to secure new employment. Overall, the Tribunal was satisfied that there was a realistic prospect that the Claimant's financial situation would improve such that he would be in a position to make a payment towards the Respondent's costs, and in the sum specified in the original Order. As the Employment Appeal Tribunal confirmed in Vaughan v London Borough of Lewisham and others EAT 0533/12, the fact that the Tribunal decided to have regard to the Claimant's means "did not require it to make a firm finding as the maximum that it believed [the Claimant] could pay, either forthwith or within some specified timescale, and to limit the award to that amount". On that basis, and taking the Claimant's evidence on his means fully into account, the Tribunal decided to confirm the original Order.
7. In his written representations and a witness statement he submitted with those representations, the Claimant sought to widen the basis of his application for reconsideration. In its deliberations on the application, the Tribunal decided for the sake of completeness to address these additional arguments even though it was not necessary for it to do so, given that they were not the basis of the application, no leave had been given to the Claimant to amend his application to include them and the Respondent had not had the opportunity to address them.
 - a. The Tribunal made the Costs Order under Rule 76(1)(c), on the basis that the claim had no reasonable prospect of success. The Claimant alleged that the Tribunal was wrong to reach that conclusion. The Tribunal's reason for concluding that the claim had no reasonable prospect of success is set out in paragraph 41 of its reasons: in summary, the

Claimant had no evidence that any financial incentive that Mrs Burrows might have had to reduce membership of the Respondent's final salary pension scheme led to the decisions to dismiss him or reject his appeal, which were taken by two different senior managers. (This was also the basis on which the deposit order was made.) The Tribunal accepted that in bringing his claim the Claimant honestly believed, and appeared still to believe at the time of his reconsideration application,, that he was dismissed because he was a final salary pension scheme member, and therefore costly to employ. That did not mean, however, that his claim had any reasonable prospect of success, objectively assessed, when there was no evidential basis for it.

- b. In an annexe to his witness statement, the Claimant sought to present further detailed evidence on his means, saying that he had not been given time to provide this at the Hearing. The Tribunal did not accept that that was the case. The Respondent's costs application was made at around 2.40pm on the final day of the Hearing and the hearing of the application concluded at around 5pm. The Claimant was legally represented. If he felt he had insufficient time to respond to the application he could have asked for the application to be adjourned and dealt with on a later date. He did not do so. The Tribunal also considered that the Claimant had had ample time to prepare himself to give evidence about his means: it was always likely that the Respondent would apply for a costs order if his claim did not succeed, given that a deposit order had already been made and the Respondent had sent him a letter warning that it would be applying for an order for costs. In summary, the Tribunal was not satisfied that it would be in the interests of justice to reconsider its decision on the basis that the Claimant had insufficient time to present evidence on his means. The Tribunal was satisfied that it was appropriate and necessary for it to base its decision on the evidence presented to it at the Hearing.
- c. The Claimant argued that the quantum of the Costs Order was excessive because the Tribunal accepted that the Respondent had incurred costs of £34,000 without any evidence, had accepted that the Respondent was justified in having a solicitor as well as a barrister in attendance at the Hearing and had concluded that a two-day hearing would have sufficed to determine the claim if the age discrimination element had not been pursued. The Respondent did not submit a formal costs schedule but it did provide a detailed time report showing the time its legal representative had spent on defending the claim, which the Tribunal considered to be sufficient evidence of the costs it had incurred. The Tribunal's explanation of how it identified the extra cost involved in the age discrimination element of the claim is set out at paragraphs 46 and 47 of its Reasons. It accepted that the attendance of a solicitor as well as a barrister at the Hearing was reasonable in the light of the fact that the Claimant was claiming £214,000 in compensation for the age discrimination element of his claim. The Tribunal can identify no reason why it would be necessary in the interests of justice to depart from those findings.

Employment Judge Cox

Date: 26 April 2017