EMPLOYMENT TRIBUNALS

BETWEEN

Miss G France

Claimant

and

Quality Solicitors A-Z Law (1)
Mr M Khan (2)
Mr K Krishnarajah (3)

Respondents

JUDGMENT

The claimant's application for a reconsideration of the Order on Detailed Costs Assessment dated 24 March 2017, sent to the parties on 20 April 2017, is refused.

REASONS

1. The claimant's application is made on the basis that documentary evidence of the respondents' alleged misconduct, vexatious, unreasonable and unlawful conduct was not considered at the detailed costs assessment hearing on 23 March 2017 *"or ever in the course of these costs proceedings".*

2. As far as events prior to the hearing on 23 March 2017 are concerned, any alleged flaw in the decision to award costs following the hearing on 15 March 2016 is properly dealt with by seeking a reconsideration of that decision. A reconsideration was sought and refused by Employment Judge Martin. That refusal is now the subject of an appeal.

3. This Judgment therefore deals only with any alleged flaw in respect of the hearing on 23 March 2017.

4. On 21 April 2016 case management orders were sent to the parties in respect of the assessment. This provided for the respondent to file at the

Tribunal by 9.30 am on the first day of the assessment its bill of costs together with specific supporting documents including any points of dispute by the claimant.

5. On 16 March 2017, the claimant wrote to the Tribunal advising, inter alia, that she intended to rely on a bundle of documents should the assessment go ahead (an application for a stay was pending). On 21 March the respondent wrote to the Tribunal, copied to the claimant, noting that intention of the claimant and clarifying that the only documents ordered to be lodged were as above i.e. nothing from the claimant, and reminding the claimant that no documents from her were required or permitted. The respondent also requested that that letter be put before the Judge so that should any documents be lodged by the claimant they would not be considered.

6. The claimant submits that on 21 March 2017 she sent by special delivery to the Tribunal her sworn affidavit and supporting exhibits. She says however that Royal Mail attempted to deliver the documents before 9am on 22 March and could not obtain entry. That they left a card to arrange for redelivery, were not contacted and therefore delivery was not effected and consequently I did not have them before me when I conducted the detailed assessment. No evidence has been produced in respect of that alleged attempt at delivery.

7. In any event, and more significantly, the claimant was represented by a consultant, Mr Ogilvy, at that assessment and her two sons were also in attendance. One of those sons, Mr France, also directly addressed me when he felt an important point needed to be made.

8. At no point in the submissions by either Mr Ogilvy or Mr France was any reference made to the fact that an affidavit had been prepared and sent to the Tribunal. Even if the claimant says that on 23 March it was not known that the documents had not been delivered on 22 March, I find it remarkable that in the course of submissions by Mr Ogilvy – which at times directly referred to his argument about misconduct on the part of the respondents – he did not refer to the fact that an affidavit and supporting evidence had been submitted and ask me to refer to it. This was despite his almost parting comment requesting me to *"deal with conduct"* in my written reasons to which I replied *"I will assess the bill in accordance with the CPR".* My approach to that was as set out in the written reasons at paragraph 31.

9. Furthermore, as the case management orders had made clear and as repeated in the respondent's correspondence, it was not appropriate for the claimant to be submitting further evidence of this nature at this stage. The decision to award costs had been made and my task was to assess the amount. As I confirmed to Mr Ogilvy I would take conduct into account where it was relevant to that exercise. He made no submissions that persuaded me it was so relevant. Instead the focus of his submissions was that he required disclosure of the respondents' solicitor's retainer or client care agreement. It was when I refused to require that that Mr Ogilvy, and Messrs France, withdrew from the hearing.

10. Taking all these matters into account, I conclude first that the claimant had the opportunity to seek to put the evidence which she now wishes me to refer to before me at the assessment but did not do so. Indeed, it was not even mentioned. Second, even if it had been, it would not have been relevant to the exercise I was conducting. Accordingly there is no reasonable prospect of the original decision being varied or revoked and the application for a reconsideration is refused.

Employment Judge Andrews
11 May 2017