



EMPLOYMENT TRIBUNALS

Claimant: Ms Atia Bhatti

Respondents V9 Beauty Limited

Heard at: Cardiff

On: 13 February 2017

Before: Employment Judge P Cadney

Members:

Representation:

Claimant: No Appearance

Respondent: Ms A Dhaliwal

COSTS JUDGMENT

The Judgment of the Tribunal is that: -

i) The claimant is ordered to pay the respondents costs in the sum of £3313.00

REASONS

1. This case comes before the Tribunal on the Respondents application for costs arising out of a hearing on the 18 July 2016 at which the claimant's claim of unfair dismissal was dismissed; and subsequent decision to dismissing her remaining claims for failure to comply with a direction to supply a Schedule of Loss setting out the basis for those claims.
2. The basis for the Tribunals power to award costs in these circumstances is set out in Rule 76 which states (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.

3. In this case the unreasonable behaviour relied upon is the Claimant having brought a claim which, for the reasons set out in the previous Judgment, depended entirely upon her having been employed immediately prior to the transfer to the Respondent. The dispute as is set out in the Judgment is that – that was factually untrue, it being alleged that the Claimant had moved to Manchester and she had not been employed immediately prior to the transfer. It follows, the Respondent submits, that as I accepted the Respondents evidence that the Claimant had indeed moved to Manchester so she could not have been mistaken and that the whole case was founded on an untruth. The question of lies and false evidence has been considered in a number of cases including *Daleside Nursing Home Ltd v Matthew* in which the EAT was at pains to point out that this decision did not create a general principle that a finding of lying automatically would result in an order for costs, and in the subsequent case of *HCA International Ltd v May Beehmul* the EAT added “a lie on its own would not necessarily be sufficient for an award of costs. It will always be necessary for the Tribunal to examine the context and look at the nature and gravity and the effect of the lie in determining the unreasonableness of the alleged conduct. In this case I am entirely satisfied that the whole case was based upon a deliberate untruth on the part of the Claimant, without which the case could not have been pursued at all and that therefore in this case the threshold for an award of costs has been reached.
4. The Respondent seeks its costs in the total sum of £7,808.00. Those costs break down into a number of different categories. There are expenses sustained by Ms Amrit Dhaliwal which are hotel costs on 22 February 2016 of £84 and petrol to attend the hearing on that day; hotel costs for the 18 July of £99 and petrol again of £40 and ad hoc costs including food. All those expenses are in my judgment reasonable properly recoverable. The next category is the fees of counsel Mr Owen Rees-James of £540 for each of the hearings on 22 February and the 19 July 2016 each of which are eminently reasonable. In addition there are costs of legal advice from Emplex Solicitors which total £1,470.00 (of which £245.00 is VAT and is irrecoverable) leaving the balance of £1,225.00. All of those costs and expenses are in my view reasonably incurred and are in principle recoverable against the claimant.
5. That leaves claims in respect of the costs of an HR Consultant Mrs B Lally who has submitted fee notes for a total of £4,930.00. The fee notes set out Ms. Lally’s hourly rate of £42.50 and she has worked for 116 hours on this case. In the Schedule the first charge of £3,995.00 is described as

fees for preparation of the Bundle and the documentation. Given that the Bundle in this case consisted of 93 pages of which the first 36 were the pleadings and Case Management Orders that appears to be an extraordinary amount of time. Looked at overall at 116 hours Ms Lally appears to have spent something approaching 3 weeks work on this case which to my mind is simply not justified. In addition Ms Lally is not legally qualified and accordingly there is a limit of £34 per hour which is permissible under the costs regime to be charged. In my judgment the appropriate and reasonable amount which is recoverable against the claimant is 20 hours at £34 per hour (£680 in total)

6. That gives a total of £3,313.00 which in my Judgment is the appropriate sum for any award of costs which in principle in my judgment the Claimant should pay to the Respondent.
7. I am entitled under the Rules to take into account the Claimant's means. However the Claimant has not attended today's hearing, but has submitted a letter in which she contends that she is a single mother of four who has no income. However she has not attended to allow that to be tested. I have no evidence in support of that and in light of the fact that I rejected the evidence she gave on oath in the first hearing it does not appear to me that I could properly rely on that in the absence of her having attended. On the basis that she has not attended to contest any application for costs it follows that in this case in my judgment it is not appropriate for me to take into account her means and accordingly the Claimant will be ordered to pay the Respondents costs of £3,313.00

Employment Judge P Cadney
Dated: 17 February 2017

JUDGMENT SENT TO THE PARTIES ON
24 February 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS
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NOTE:

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.