



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss Z Devonshire

**Respondent:** Autogreen Ltd

**HEARD AT:** HUNTINGDON ET **ON:** 11<sup>th</sup> May 2017

**BEFORE:** Employment Judge Ord

## REPRESENTATION

**For the Claimant:** }  
} No attendance by either party.  
**For the Respondent:** }

## COSTS JUDGMENT

1. No order is made on the Respondent's application for costs, and the application is dismissed.

## REASONS

1. The Claimant instituted proceedings against the Respondent on 13<sup>th</sup> September 2016 claiming unfair dismissal from her post as a Sales Administrator.
2. The Respondent replied by way of response in form ET3 on 31<sup>st</sup> October 2016 saying that the claim was resisted. The Respondent stated that the Claimant was dismissed for a potentially fair reason

(conduct) and her dismissal was fair in the circumstances of the case. The Claimant had not being willing to accept the identity of any person offered by the Respondent who could conduct the Claimant's appeal against dismissal (including external appointees) and the Claimant's appeal against dismissal did not therefore proceed.

3. At the same time as the claim was issued the Tribunal issued directions for the parties to comply with to bring the matter to a final hearing. The Claimant was to set out what remedy she was seeking by 1<sup>st</sup> November 2016. The parties were to exchange lists of documents by the 15<sup>th</sup> November, and by 29<sup>th</sup> November the Respondent was to prepare a bundle of documents for use at the hearing. Witness statements were to be exchanged on 13<sup>th</sup> December.
4. On 2<sup>nd</sup> November 2016 the Respondent advised the Tribunal that the Claimant had not provided a Schedule of Loss or Statement of Remedy.
5. On 14<sup>th</sup> November 2016 the Respondent confirmed that it had sent its list of documents to the Claimant, and had not received a list of documents from the Claimant and had still not received any notice of the Remedy which she sought.
6. The Respondent also identified a preliminary point for determination. The Claimant's employment ended on 13<sup>th</sup> April 2016. She commenced early conciliation on the 13<sup>th</sup> July 2016. The early conciliation certificate was

issued on the 9<sup>th</sup> August and a claim was not presented to the Employment Tribunal until 13<sup>th</sup> September. The Respondent therefore considers that the Claimant's claim was presented out of time and (subject to the Claimant being able to establish to the Tribunal satisfaction that it was not reasonably practicable for her to bring her claim in time) should be struck out.

7. On 16<sup>th</sup> November 2016 Employment Judge Adamson ordered that the hearing of the matter fixed for 25<sup>th</sup> January 2017 be postponed and the hearing was converted to a preliminary hearing to determine whether the claim was brought in time, and if not to identify the issues and give further case management orders as may be required including re-listing the final hearing of the case.
8. The Respondent contacted the Tribunal on 21<sup>st</sup> November 2016 to say that the Claimant had neither provided a statement of the remedy she was seeking nor a list of documents.
9. By letter from the Tribunal of 5<sup>th</sup> December 2016 the Claimant was to comment in the Respondent's letter by return. The Claimant did not do so.
10. On 13<sup>th</sup> January 2017 the Claimant was advised that the Tribunal was considering striking out the claim because of her failure to comply with the directions dated 4<sup>th</sup> October 2016 and because the claim had not been actively pursued.

11. On 10<sup>th</sup> January 2017 the Claimant wrote to the Tribunal, she was having personal difficulties and saying that she had neither the strength nor the funds to carry on with the case.
12. On 18<sup>th</sup> January 2017 the Tribunal issued a Judgment striking out the Claimants case.
13. On 2<sup>nd</sup> February 2017 the Respondent made an application for costs (a wasted costs order) on the basis that the Claimant's conduct of the case was unreasonable. The Claimant was given the opportunity to comment on the application. Her response was that she could not understand the position because she was the "victim", and could not understand why she should pay a wasted costs order when the individual within the Respondent's company had as "his day to day job within the business ...[a responsibility] to sort out all problems of all areas" and stating that she was unable to meet a payment other than by four weekly payments.
14. The Respondents claim for costs consists of:-
  - (1) 8 hours work charged at £37.00 per hour described as "combined of loss of productivity and wages".
  - (2) £6.45 for disclosure of documents by special delivery.

- (3) 2 further hours of time at £37.00 per hour correspondence with the Tribunal regarding Claimants lack of progress with the claim.
15. On 13<sup>th</sup> April 2017 the Respondents submitted written submissions. The Respondent indicated that it would not be attending the final Tribunal hearing. The Claimant was to be absent on holiday at the time fixed for the hearing of the application for costs and therefore it was postponed and re-listed to today.
16. Following a further exchange of correspondence both parties agreed to the matter considered by me on paper. On 8<sup>th</sup> May 2017 the Claimant provided further written submissions.
17. Under Rule 76 of the Employment Tribunals Rules of Procedure 2013 the Tribunal may make a costs order of preparation time order and shall consider whether to do so where it considers that a party or that party's representative has acted vexaciously, abusively, disruptively or otherwise unreasonably in that the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted. The Tribunal may also make such an order where a party has been in breach of any order or practice direction.
18. Under Rule 75(2) a preparation time order is in order that a party make a payment to the receiving party in respect of that party's preparation time while not legally represented. Preparation time means time spent by the

receiving party (including by any employees or advisors) in working on the case except for time spent at any final hearing.

## CONCLUSIONS

19. The Claimant has clearly been in breach of the orders of the Tribunal and Rule 76(2) refers. Accordingly the Tribunal is required to consider whether or not to make a preparation time order.
  
20. In the case of *AQ Ltd v Holden* [2012] IRLR 648 the Employment Appeal Tribunal confirmed that an Employment Tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Justice requires the Tribunals do not apply professional standards to the lay people who may well be embroiled in legal proceedings for the only time in their life. They went on further to say that even if the threshold tests were in order for costs are met the Tribunal still has discretion whether or not to make an order which should be exercised having regard to all the circumstances and it is not irrelevant that a person may have brought proceedings with little or no access to specialist help or advice, but this is not to say that lay people are immune from orders from costs. Some litigants in person are found to have behaved vexaciously or unreasonably even when proper allowances are made for their inexperience and lack of objectivity.

21. In this case the Claimant instituted proceedings and then effectively took no further steps. The Claimant has advised the Tribunal that during this period she has had personal difficulties in particular in relation to the illness of one of her parents and that she lacks both strength or funds to carry on with the case.
22. The Claimant was in breach of the orders of the Tribunal, but at the point when this was brought to her attention and the possibility of the case being struck out was identified she immediately indicated that she did not wish to proceed with the case. I'm conscious that the Claimant acts as a litigant in person and has other personal difficulties which she has brought to the attention of the Tribunal.
23. In those circumstances I am not minded to exercise my discretion in favour of the Respondent and require the Claimant to pay costs. I am conscious of the words of the Employment Tribunal in AQ Ltd as set out above and must give some latitude to the litigant in person in relation to her failure to comply with orders. I also take into account her prompt decision not to pursue the case when the prospect of strike out was brought before her.
24. In all the circumstances of the case, whilst I am obliged as a result of the Claimant's failure to comply with Orders of the Tribunal to consider the making of a wasted costs order, in the circumstances of this case I exercise my discretion not to do so.

25. Accordingly I make no order.

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Employment Judge Ord, Huntingdon.  
Date: 23 May 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS