



EMPLOYMENT TRIBUNALS

Claimant

Miss D Gopalakrishnan

Respondents

v (1) Brook Street (UK) Ltd
(2) Government Legal Department

Heard at: London Central

On: 13 July 2017

Before: Employment Judge Wade

Members: Mr J F Noblemunn
Mr D Schofield

Representation:

Claimant: Mr Hopper (ELIPS Volunteer)
Second Respondent: Mr T Poole, Counsel

REASONS FOR THE COSTS ORDER

1. The Respondent made an application for costs. It's total costs in relation to this hearing are approximately £38,317.31. Under Rule 76, the Tribunal may make a costs order and shall consider whether to do so where it considers that a party has acted unreasonably, either in bringing the proceedings or in the way the proceedings have been conducted, or any claim or response had no reasonable prospect of success. Under Rule 84, we may take into account a Claimant's ability to pay, which is what we have done here.
2. We appreciate that the Claimant may have had a genuine belief that her claims were strong but we have to say that her belief was misplaced, at least in part, from the beginning. The unanimous conclusion of the Tribunal is that, looking at this matter objectively, the Claimant was unreasonable in bringing the claim and that it was very clear from a very early stage, for example, that the dismissal was not related to gender. We appreciate that the Respondent did not apply for a strike out at an early point, but it is the case that this is heavily discouraged by the Employment Appeal Tribunal. The Respondent could have applied for a deposit order and might have made some headway there, but there is always a balance to be struck between the cost and risk of interlocutory hearings and the desirability of moving to a final hearing.

3. The Respondent did not issue a warning that it might apply for costs and, because this application came as a surprise to the Claimant, we would seriously have considered adjourning the application today had that been what she wanted. With the support of Mr Hopper from ELIPS, both the Claimant and the Respondent both wanted to go ahead today. There is obviously no requirement in the legislation that a costs warning be issued before an application is made.
4. Having looked at the position, as I have said, we consider that many aspects of the claim were unreasonable from the start and the Claimant was certainly unreasonable in pursuing the claim from the point of exchange of witness statements. The witness statements were all cogent and consistent and provided a route map through the documentary evidence which was all strongly against her. So at that point she could see the full extent of the evidence against her and that by contrast she had little or no supportive evidence, including from her Union Representative whose statement did not assist.
5. In these circumstances, we are exercising our discretion to award costs and given our findings it would indeed be perverse not to award costs. We and we note that the costs from exchange of witness statements to the hearing were approximately £19,800.
6. We would award more, however, we have decided to take into account the Claimant's ability to pay. She is working full time in a Government job and she earns gross £26,000 a year. She has to commute from her home in Stoke Newington to Bromley to get to work and she is in a position where her monthly surplus of income over expenditure, taking into account basic expenditure only, is £230.00. She does not share her assets or her expenses with a partner, so these costs fall upon her alone. She has no debts and her current account has £1,347 in it. She has some ability to borrow because she has no debt, but we have no views about the extent of that ability.
7. In all the circumstances, given the Respondent's total costs of £38,300, but taking account also of the Claimant's ability to pay, we have decided that a fair figure is £5,000. That amounts to approximately £200 a month, or what appears to be the Claimant's surplus of income over expenditure for a period of approximately two years.

**EMPLOYMENT JUDGE WADE
27 JULY 2017**