



Case Number: 2300412/2017

## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr R Stone

and

**Respondent**  
Canterbury Christ Church  
University

**Held in Chambers on 12 July 2017**

**Employment Judge Wallis**

## JUDGMENT

The Respondent's costs application is dismissed.

## REASONS

### Background

1. At the end of the preliminary hearing held on 8 May 2017 the Respondent applied for costs. They produced written submissions. It was agreed that the Claimant would have 21 days to respond in writing, and then the application would be dealt with on the papers, in other words, without a hearing. By letter of 11 May 2017, the Tribunal office reiterated this arrangement.
2. The Claimant's response to the Respondent's costs application was expected by 26 May 2017.
3. At the end of that preliminary hearing, having given full oral reasons for the decision, it was explained to the parties that they could ask for written reasons either at that point or within 14 days of receiving the Judgment. Neither party requested written reasons.
4. By an email of 9 May 2017 the Claimant requested written reasons. These were prepared on 25 May and sent to the parties on 30 May 2017.

5. Meanwhile, the Claimant wrote to the Tribunal enquiring about an extension of time to provide his response to the costs application.
6. By letter of 30 May 2017 (drafted by the Judge on 25 May 2017) the Tribunal office confirmed that time for the Claimant to respond to the Respondent's application had been extended to 9 June 2017. The letter reiterated the agreement to consider the application in chambers (without a hearing) and said that this would take place in July.
7. The Claimant's submissions and accompanying documents were sent to the Tribunal office under cover of an email of 26 May 2017.

#### The costs application

8. I have considered the details of the application and the response. The application is made on the grounds that the claim had no reasonable prospect of success; or in the alternative that it had been unreasonable to pursue it.
9. I noted that the claims had been presented outside the time limits and that having heard evidence from the Claimant at the preliminary hearing I had decided that there were no grounds for extending time, as set out in detail in the written reasons sent at the request of the Claimant following the previous preliminary hearing, and not repeated here.

#### The law

10. I considered the relevant law, as follows:
11. Rule 76(1) of the 2013 Rules provides that a Tribunal shall consider making a costs order against a paying party where, in the opinion of the Tribunal, the paying party has in bringing or conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the claim or response had no reasonable prospect of success.
12. Rule 78 sets out the provisions in respect of the amount of a costs order that may be made. There is a limit on the specific sum of £20,000. Alternatively, the parties may agree on a sum to be paid by the paying party or the Tribunal may order the whole or a specified part of the costs be determined by way of detailed assessment, either by the county court or an Employment Judge.
13. Rule 84 provides that the Tribunal may have regard to the paying party's ability to pay when considering whether it shall make a costs order or how much that order should be.

#### Consideration & conclusions

14. The first ground was that the claims had no reasonable prospect of success. I considered that it was difficult to say whether the claims themselves had any prospect of success in terms of the substantive merits, having heard no

evidence at the preliminary stage. However, they had no reasonable prospect of success on the grounds that they were presented outside the time limit. It was however necessary to hear some evidence to consider whether there were grounds to extend the time limit, before making a final decision about that.

15. In respect of the second ground, I concluded that it was not unreasonable to pursue the claims to a preliminary hearing so that evidence could be considered about whether there were grounds for extending the time limit.
16. On balance, I concluded that this was not a case where it would be appropriate to make a costs order.
17. Although there was no reasonable prospect of success because of the application of the time limit and the lack of evidence on which to base an extension of time, and accordingly grounds for making an order, in deciding whether to exercise my discretion to award costs, I noted that it remains relatively rare to award costs in the Employment Tribunals.
18. I noted that the EAT judgment in HMRC v Serra Garau 0348/16 was promulgated after the Claimant presented his claim form, although it is right to record that the Respondent's solicitors sent a copy to the Claimant and carefully explained the implications of that decision to him.
19. I have taken into account that the Claimant was unrepresented at the time he presented his claim form and remained unrepresented at the preliminary hearing. In comparison, the Respondent is a large institution with specialist representation.
20. Having weighed up all of these factors, I concluded that the costs application should be dismissed.

Employment Judge Wallis  
12 July 2017