



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr G Peel

**Respondent:** Tarmac Trading Limited

**HEARD AT:** NORWICH ET **ON:** 26<sup>th</sup> May 2017

**BEFORE:** Employment Judge Postle

## **REPRESENTATION**

**For the Claimant:** In person

**For the Respondent:** Mrs E Batten (Solicitor)

## RESPONDENT'S APPLICATION FOR COSTS

### JUDGMENT

1. The Claimant is ordered to pay a contribution towards the Respondent's costs in the total sum of £2,250.

### REASONS

1. This is a costs hearing following the Preliminary Hearing Judgement on the 26<sup>th</sup> May 2017.

2. At that hearing following the Tribunal's Judgment that the Claimant's claims had no reasonable prospect of success the Respondent's Solicitor Mrs Batten made an Application for Costs at the end of the hearing. However, Mrs Batten had no schedule of the costs claimed available to the Tribunal or for the Claimant to consider which was unfortunate. It is of course incumbent upon the parties' representatives if they intend to make an Application for Costs they should have a detailed schedule of those costs available at that hearing for the Judge and proposed paying party to consider.
3. Employment Judge Postle therefore suggested that, they could either be dealt with at the hearing on the 26<sup>th</sup> September 2017 in which the Claimant's claims for unpaid expenses in respect of June, July and August 2016 are to be determined or if both parties consent Employment Judge Postle would deal with the application on the papers provided a detailed schedule of costs is submitted.
4. Following the hearing in May on the 2<sup>nd</sup> June 2017 the Respondent's Solicitors made their further application by letter backed up with a time breakdown of their costs. It provided details of three lawyers involved in the case, and the amount of time each had spent. Unfortunately it did not give details of the relative status of each lawyer or their experience. The total claim amounted £10,132.40. The hourly rates for the lawyers were not provided either. The Tribunal were left calculating the hourly rate from the time spent each lawyer was involved against the amount claimed. It has to be said that for a claim of costs of some £10,000 plus the schedule provided was far from helpful and scant with the information provided.
5. The Respondent's made their submission in writing setting out the law and brief submissions as to why an order for costs should be made.
6. The Claimant was of course given an opportunity to respond and at the same time provide details of his means, which he duly did effectively in three separate letters all dated the 27<sup>th</sup> June 2017, and providing a schedule of his monthly income after tax and his monthly outgoings. No supporting documents were provided in respect of his monthly income or his outgoings. The Claimant also requested that detail of his means remain to use his words "legally privileged" between the Claimant and the Tribunal believing that the Respondent's were not entitled to that information. Clearly the Respondents are entitled to information as to the Claimant's means in any application for costs, had the matter been dealt with at a hearing the Claimant would have gone back into the witness box to provide full details of his income and outgoings.
7. The upshot is the Claimant asserts he has a residual income of approximately £220 per month after payment of rent, Council Tax, electricity, gas, insurance for cars, fuel for cars, car tax, food, home insurance, telephone & broadband, car repairs and water bills.

8. The power to award costs is given to Tribunals in the Employment Tribunals Rules of Procedure and Regulations 2013 particularly Rule 76 which states:-

*“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 vexaciously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way the proceedings (or part) have been conducted; or*
- (b) Any claim or response had no reasonable prospect of success; or*
- (c) ... “*

9. Rule 77 makes it clear that no such order may be made unless the paying party has had a reasonable opportunity to make representations either in writing or as the Tribunal may order in response to the application. The Claimant made it clear in his correspondence to the Tribunal that he consented to the Cost Application being dealt with on the papers rather than a hearing.
10. Rule 78 makes it clear that a Costs Order may be made ordering a paying party to pay the receiving party a specified amount not exceeding £20,000.
11. Rule 84 – in deciding whether to make a Costs Order and if so what amount the Tribunal may have regard to the paying party’s ability to pay. The emphasis being may.
12. The basis of the Respondent’s application is that because the Claimant assaulted another employee during a work function on the 13<sup>th</sup> July and that being an undisputed fact and accepted by the Claimant, and by virtue of him pleading guilty to a criminal assault charge the claim had no reasonable prospect of success and/or his actions in pursuing these claims were unreasonable. Particularly the Claimant having admitted his conduct, resigned before any disciplinary hearing was convened. Furthermore the Claimant’s discrimination claim centred on the fact that he was a travelling showman and that was a protected ethnic origin. The Claimant asserting that he had been treated less favourably because of this alleged travelling showman background. However the Claimant had made no mention of this previously, nor was it mentioned in his resignation letter. The Claimant did accept at the Preliminary Hearing that this claim was tenuous.
13. The Claimant objection to the Costs Application set out in one of his letters of the 27<sup>th</sup> June 2017 to the Tribunal, on the basis the Respondent’s had never attempted to resolve the matter through any channel nor have they attempted to mediate. Furthermore, should any Costs Order be made then the Tribunal should reduce the costs on the basis that the Respondent failed to use there own in house advisor and outsourced the

case at enormous cost. Furthermore, the Respondent's considerable costs were added to by their travel time from Leicester to Norwich.

#### TRIBUNAL'S CONCLUSION

14. The power to award costs is a two stage process, firstly I have to satisfy myself that matters have arisen under Rule 76 which give rise to me considering exercising my discretion to make a costs award. If so, should I exercise that discretion given the facts of this case it is clearly an appropriate case to do so.
15. Having considered the facts of this case particularly the fact that the Claimant assaulted another employee at a work function, admitted that behaviour, assaulted Police Officers when they came to try and arrest him at the work function, pleaded guilty at a Magistrates Court to assault and resigned before any disciplinary hearing, and then to claim unfair dismissal or some form of discrimination is clearly doomed to fail. It clearly had no reasonable prospect of success, and it was unreasonable to pursue such a claim.
16. However, I am somewhat amazed that the Respondent having failed to produce any schedule in support of their Costs Application at the hearing, and now having produced a scant schedule listing costs of some £10,000 where so far all the Solicitors have had to do is, file a response which would have been fairly straightforward in the circumstance and on the facts. Then prepare for the Preliminary Hearing on their application to have the claim struck out. That should not have engaged the Solicitors in too many hours of taking instructions, preparation and drafting.
17. Clearly, also given the facts of this case local Counsel could have been used which would have reduced the costs considerably. I am extremely concerned that it was necessary for three lawyers to be involved, none of their status or experience is set out and nor is their hourly rate. It should not have been left for the Tribunal to calculate their hourly rate from the rather brief description of the work carried out. Firms of Solicitors should realise that preparing for these cases is not a learning curve, to expend some £10,000 on what was a relatively straightforward case is in my view bordering on unreasonable it is certainly surprising and looking at the schedule I cannot see how the sum of £10,000 is in anyway justified.
18. I repeat this was a simple and straightforward case as advanced by the Respondent's themselves at the Preliminary Hearing and should have justified no more than at best £2,000 plus local agents fee for attending the Preliminary Hearing rather than the cost of travelling from Leicester to Norwich.

19. In those circumstances I order the Claimant to only make a contribution of £2,250 towards what I consider the Respondent's costs to be extraordinary. In doing so I have had regard to the Claimant's means and I am satisfied he has the wherewithal to discharge those over a period of months rather than in one lump sum.

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Employment Judge Postle, Norwich.  
Date: 31 August 2017

JUDGMENT SENT TO THE PARTIES ON

.....31/08/17.....

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FOR THE SECRETARY TO THE TRIBUNALS