



## EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**  
Mr L Purdey

and

**Respondent**  
Spelthorne Borough Council

### JUDGMENT ON APPLICATION FOR COSTS

1. A Costs Order is made in favour of the Respondent in the sum of £1,900. The Claimant is ordered to pay this sum to the Respondent.
2. Reasons for this judgment are attached.

### REASONS

#### BACKGROUND

- 1 A 1 day full merits hearing was held at Reading Employment Tribunals on 20 May 2016. The Claimant's complaint of Unfair Dismissal failed and was dismissed. Reasons for the judgment were given orally at the hearing and written reasons were also sent to the parties on 15 July 2016.
- 2 At the end of the hearing the Respondent made an application for a costs order. The Respondent was ordered to put the application in writing and the Claimant was ordered to provide a written response and details of his ability to pay such an order.
- 3 The Respondent's written application was dated 1 June 2016 and the Claimant's written response was dated 2 June 2016. Both parties agreed that the application and the response may be considered by the Tribunal without the need for a hearing.
- 4 It appears that due to an administrative error the Tribunal file was not referred to the Employment Judge until a reminder was sent by the Respondent on 15 May 2017. The file was then referred on 19 June 2017.
- 5 References to rules below are to rules under Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

## RELEVANT LAW

- 6 *Rule 75(1) - A costs order is an order that a party (the paying party) make a payment to - another party (the receiving party) in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative; ....*
- 7 *Rule 76(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; or*
  - (b) *any claim or response had no reasonable prospect of success.*
- 8 The Tribunal rules impose a two stage test. First the Tribunal must ask whether a party's conduct falls within rule 76(1)(a) or (b). If so, the Tribunal must then go on to ask whether it is appropriate to exercise the discretion in favour of awarding costs against that party.
- 9 Gee v Shell UK Limited [2003] IRLR 82. The Court of Appeal confirmed that it is a fundamental principle that costs are the exception rather than the rule and that costs do not follow the event in Employment Tribunals.
- 10 McPherson v BNP Paribas [2004] ICR 1398. In determining whether to make an order under the ground of unreasonable conduct, a Tribunal should take into account the "*nature, gravity and effect*" of a party's unreasonable conduct.
- 11 Barnsley Metropolitan Borough Council v Yerrakalva [2012] ICR 420. The vital point in exercising the discretion to order costs is to look at the whole picture. The Tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case, and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

## RESPONDENT'S APPLICATION

- 12 The Respondent claimed that its legal costs amounted to £11,465.72 and a detailed schedule of legal costs incurred was attached.
- 13 It was claimed that the Claimant had conducted the proceedings unreasonably by refusing reasonable offers of settlement as follows:
- 14 14 March 2016 - £3,000;
- 15 16 March 2016 - £5,000;
- 16 25 April 2016 - £10,585;

- 17 17 May 2016 - £4,500.
- 18 The Respondent said that 3 of the 4 offers exceeded the likely value of the claim taken at its highest and that one of the offers matched the suggested settlement figure proposed in the Claimant's ET1. The Claimant had stated in paragraph 9.2 of the ET1 claim form that he would accept the sum of £10,585 in settlement.
- 19 On 11 May 2016 the Respondent sent a costs warning to the Claimant which included the following:

*... We understand from the ET1 that you found new employment before your notice from the Respondent expired. We understand that this new employment was at the same or better pay than your position with the Respondent. We invite you to confirm the position. If, as we believe to be the case, you suffered no losses, then it is difficult to imagine what compensation you seek.*

*We have made a number of offers of settlement in this matter including an offer of £10,585 being the figure that you expressly indicated in the ET1 would be acceptable to you.*

*Your failures to comply with the Tribunal Order above and to accept any of the offers that we have made are unreasonable and we reserve the right to raise this with the Tribunal (whether you succeed or not) in support of an application that you pay our legal costs. ...*

#### **CLAIMANT'S RESPONSE**

- 20 The Claimant confirmed that he had rejected all the offers of settlement but said that he believed that he had a strong case, that he did not believe it was unreasonable to reject the offers and he felt that after 12 years service more compensation could have been awarded.
- 21 He also said that he was represented at the hearing by his partner, that he earns only £80 per day and has two young children to care for. He also has debts to pay.

#### **DECISION**

- 22 In Kopel v Safeway Stores plc [2003] IRLR 753 and Power v Panasonic (UK) Limited EAT 0439/04 the Employment Appeal Tribunal found that the rejection of a reasonable sum in settlement could amount to unreasonable conduct of the proceedings and was a factor which a Tribunal could take into account in deciding whether to make an award of costs.
- 23 In this case the Respondent pointed out to the Claimant in clear terms that he was unlikely to be awarded compensation for loss of income as he had secured alternative employment with the same or better pay before the end of his notice period. Any reasonable enquiry by the Claimant would have revealed that the

offer of £10,585 was generous, and it was what the Claimant had said he would accept at the start of his claim.

- 24 There was nothing more the Respondent could have reasonably done to settle this claim but the Claimant failed to engage with the process and rejected sensible and reasonable offers. The rejection of the sum of £10,585 in settlement was unreasonable conduct of the proceedings. The effect was that the Respondent was put to the wholly unnecessary expense of defending the claim at a Tribunal hearing.
- 25 In these circumstances a costs order is appropriate.
- 26 Having taken account of the Claimant’s limited means and his commitments, the award will be limited to the Respondent’s costs of instructing counsel to advise and appear at the hearing. That is £1,900.

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Employment Judge Vowles

22 June 2017

Judgment sent to the parties on

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for the Tribunal Office