



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr M Longobardi

and

Respondent

Aviation Fuel Services Limited

DECISION ON APPLICATION FOR COSTS

1. A Costs Order is made in favour of the Respondent in the sum of £3,380. The Claimant is ordered to pay this sum to the Respondent.
2. Reasons for this decision are attached.

REASONS

Background

- 1 Following a Tribunal preliminary hearing held on 14 March 2017 at Reading (Employment Judge Vowles sitting alone) the Claimant's whole claim was struck out under rule 37 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The reserved judgment with reasons was sent to the parties on 6 April 2017. This decision should be read alongside that judgment.
- 2 The Claimant's application dated 9 April 2017 for reconsideration of the judgment was refused in a decision sent to the parties on 11 May 2017.
- 3 The Claimant's appeal (UKEATPA/0278/17/JOJ) against the judgment was refused by the Employment Appeal Tribunal on 10 August 2017 under rule 3(7) of the EAT Rules 1993.

Application for Costs Order

- 4 In an application dated 10 April 2017 the Respondent made an application for a Costs Order. A copy of the application was sent to the Claimant.
- 5 In a case management order dated 11 May 2017 the Claimant was ordered to send to the Tribunal (with a copy to the Respondent) no later than 14 days after the date

the order was sent to the parties, his written response to the application with reasons why a Costs Order should not be made against him and details of his ability to pay such an Order.

- 6 It was stated that the application and the response would be considered by the Tribunal without a hearing. This was in view of the Claimant's unreasonable conduct at previous hearings.

Relevant Law

- 7 *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;*
- 8 *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.*
- 9 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.
- 10 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.
- 11 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.
- 12 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

- 13 The Respondent claimed that its legal costs amounted to £15,036.67. and a detailed schedule of legal costs incurred was attached.
- 14 It was claimed that the Claimant had 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. This was based upon the findings in the preliminary hearing judgment that the manner in which the Claimant had conducted the proceedings had been scandalous, unreasonable and vexatious and he had not complied with the Tribunal's order dated 12 October 2016. The judgment was that the conduct of the Claimant had been such that it was no longer possible to have a fair hearing and the whole claim was struck out under Rule 37 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The 5 day full merits hearing listed for 24-28 April 2017 was cancelled.

Claimant's Response

- 15 The Claimant's response, dated 19 May 2017, was as follows:

Re: Application for cost order Rule (77) 74-84 ET letter sent to the parties dated 11/05/2017

The reason that the Employment Tribunal should not order costs against the Claimant is that Watford Employment Tribunal failed to follow procedure of Law and therefore does not represent Justice.

When you consider this case and the discrepancy of orders that have been adhered to, you may ask yourself, have you behaved in a manner worthy of your highly revered role?

- 16 There was no information provided as to the Claimant's ability to pay a Costs Order.

Decision

- 17 In this case the Claimant has acted vexatiously, abusively, disruptively and unreasonably in the way that he has conducted the proceedings based upon the findings in the reserved preliminary hearing judgment referred to above.
- 18 In these circumstances a Costs Order is appropriate. The gravity of the Claimant's conduct was so serious that a fair trial was no longer possible. The effect of the conduct has been to put the Respondent to the expense of making an application for a strike out of the claim and attending the preliminary hearing on 14 March 2017.

That expense would have been avoided if the Claimant had conducted the proceedings in a reasonable manner.

- 19 It is clear that the Claimant received the case management order dated 11 May 2017 but has declined to provide any details of his ability to pay a Costs Order.
- 20 Having taken account of the above, the award will be limited to the Respondent's costs of preparation for, and attending the preliminary hearing on 14 March 2017. That work is set out in the schedule of legal costs as being done on 10, 24 and 27 February 2017 and 2 and 14 March 2017. The total is £3,380.

Employment Judge Vowles

1 September 2017

Judgment sent to the parties on

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for the Tribunal Office