



EMPLOYMENT TRIBUNALS

Claimant:
Ms T Pitkin

v

Respondent:
The London General Transport
Services Ltd

Heard at: Reading

On: 3 October 2017

Before: Employment Judge Gumbiti-Zimuto
Members: Mr J Cameron and Ms H Edwards

JUDGMENT ON AN APPLICATION FOR COSTS

The respondent's application for costs is dismissed.

REASONS

1. Following a Judgment sent to the parties on 10 June 2017, the respondent made an application for costs. The respondent and the claimant consent to the application for costs being considered in writing without the need for a hearing.
2. The grounds of the respondent's application for costs is contained in a letter dated 10 May 2017. The claimant's grounds of resistance to the costs application are contained in a letter from Mr John Neckles, the claimant's representative, dated 14 August 2017.
3. The respondent's application is made under rule 76(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The respondent's case is that the claimant in bringing the proceedings, the way that the proceedings were conducted and in continuing the proceedings has acted unreasonably. The respondent contends that the claimant's claims had no reasonable prospect of success.

4. Under sections headed “The Unlawful Deductions Claim” and “The Race Claims” in respect of the removal of the claimant from the school rota and also in relation to the heading “Breach of Working Time Regulations”, the respondent sets out in relation to each heading reasons why the claimant’s claim had no reasonable prospect of success. It points out features of the case and refers to the way it was presented. We do not consider it necessary to repeat the contents of the letter.
5. A Tribunal may make a costs order and shall consider whether to do so where it considers that any claim had no reasonable prospect of success. The view of the Tribunal is that the respondent has been able to show that the claimant’s claims were ones in respect of which there was no reasonable prospect of success. The Tribunal is satisfied that in respect of these claims, the Tribunal is required to consider whether to make an order for costs.
6. The Tribunal has had regard to the matters put forward by Mr Neckles on behalf of the claimant resisting the costs application. Mr Neckles argues that the claims were justifiably brought and that there was a reasonable prospect of success. Mr Neckles’ arguments, set out in his letter of 14 August 2017, are not accepted by the Tribunal.

Should we make an application for costs in relation to this case?

7. We have come to the conclusion that an order for costs in this case would not be in the interests of justice. In arriving at that conclusion, we have taken into account the fact that firstly, we consider that the claimant had a genuine sense of grievance in respect of events which took place between herself and the respondent. She thought she should not have been dismissed. Having been dismissed and reinstated she thought she should not have been required to repay the money that she received in notice pay from the respondent.
8. The claimant’s approach to dealing with this matter was based on the view that she had legal claims against the respondent on which she could succeed when in fact she did not. This mistaken view point informed her actions.
9. We are satisfied that the claimant made the serious allegations of discrimination based on the genuine belief in their validity. However, we are unable to conclude for the reasons set out in our Judgment that there was any basis for such a conclusion once the matters had been properly considered and assessed against the legal duties and obligations arising from the Employment Rights Act 1996, the Working Time Regulations 1998 and the Equality Act 2010.
10. Some legal argument presented, in particular related to a breach of the Working Time Regulations 1998, were misconceived but presented in a respectful and forceful way by Mr Neckles. We did not consider that the conduct of the case by the claimant or Mr Neckles on her behalf was

vexatious, abusive, or disruptive in a way that would have merited an award of costs being made.

11. The claimant was litigating matters of genuine concern to herself. She was wrong in her view that she had a right to legal remedy in respect of those matters but she pursued it in an appropriate manner using the employment tribunal the proper forum for doing so. On balance, we do not consider that an award of costs should be made.
12. Our conclusion is that the claimant's claim is not one in which we should make an award of costs. Making an award of costs against the claimant in a case such as this in our view is tantamount to treating the case as one where costs follow the event. Costs do not follow the event in employment tribunals, the provisions contained in rule 76 have to apply before costs can be ordered against a party. The claimant's case failed and in our view was always doomed to fail but exercising our discretion, for the reasons previously explained that the claimant was litigating matters of genuine concern to herself in an appropriate manner, we do not consider costs should be awarded.
13. We recognise that the claimant's claims were without merit in the sense that they had no reasonable prospect of success but taking into account the claimant's genuine belief in those complaints and the appropriate manner in which they have been conducted, we are satisfied that this is not a case in which to make an award of costs. The respondent's application for costs is refused.

Employment Judge Gumbiti-Zimuto

Date: ...16 October 2017.....

Judgment and Reasons

Sent to the parties on:

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For the Tribunal Office