



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mr Navdeep Singh

Ramgarhia Board Sikh Temple

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Birmingham

**ON** 9 May 2017 & 20 February 2018

**EMPLOYMENT JUDGE** Gilroy QC

### Representation

**For the Claimant:** Mr S Ghataore (Lay representative)

**For the Respondent:** Mr M Stephens (Counsel)

## JUDGMENT IN RELATION TO THE RESPONDENT'S COSTS APPLICATION

The judgment of the Tribunal is as follows:

1. The Claimant's claim had "no reasonable prospect of success" within the meaning of rule 76(1)(b) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The Claimant is ordered to pay the Respondent the sum of £10,375.00 inclusive of VAT in respect of its costs of these proceedings.

## REASONS

### **Introduction**

1. By its earlier Judgment containing full reasons, the Tribunal dismissed the Claimant's claim of race discrimination by way of a preliminary issue, "the preliminary issue", on the basis that the Claimant was not at any material time within the "employment" of the Respondent within the meaning of s.83(2)(a) of the Equality Act 2010, "EqA".

2. The Judgment containing full reasons in relation to the preliminary issue is taken “as read”.
3. At the Preliminary Hearing, it was intimated on behalf of the Respondent that if it succeeded on the preliminary issue it would make an application for costs against the Claimant. It was directed that any such application could be made on paper in the interests of saving costs.
4. The Respondent duly made a written application containing submissions. The Claimant provided written submissions in reply.

### **The relevant rules on costs**

5. Rule 76(1)(a) and (b) of Schedule 1 to the Employment Tribunal’s (Constitution and Rules of Procedure) Regulations 2013, “The Tribunal Rules”, provide as follows:

***“76. When a Costs Order or a Preparation Time Order may or shall be made***

*(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....”*

### **Submissions**

6. The Respondent bases its application on each of the five available grounds, namely that the Claimant acted vexatiously, and/or abusively, and/or disruptively, and/or otherwise unreasonably, and/or that the Claimant’s claim had no reasonable prospect of success.
7. At the Preliminary Hearing, a number of issues were raised in the evidence and other material presented to the Tribunal, which had no bearing on the Tribunal’s determination of the preliminary issue. The Tribunal raised this with the parties, both orally and in the Judgment relating to the preliminary issue. There is clearly an acrimonious relationship between the parties, and the parties were keen to offer their respective sides of that story at the Preliminary Hearing. The Tribunal made it clear at the Preliminary Hearing that its sole focus was the determination of the preliminary issue.
8. In its application for costs, the Respondent seeks to go into areas which were not relevant to the determination of the preliminary issue, such as the Claimant’s motivation for bringing this claim. The Tribunal did not make any findings about the Claimant’s motivation for bringing this claim. In short, there is no basis upon which the Tribunal could conclude that the Claimant acted either vexatiously or abusively or disruptively or otherwise unreasonably in either the bringing of the current proceedings or the way that they were conducted.

9. The Tribunal therefore focuses upon the issue of whether the Respondent's costs application is merited on the basis that the claim had no reasonable prospect of success.
10. The Respondent maintains that in consideration of the detailed information that was provided to the Claimant within the Respondent's Grounds of Resistance, the directions provided by the Tribunal at an earlier (Case Management) Preliminary Hearing, the information provided to the Claimant by means of the Respondent's letter of 6 March 2017 and its attachments, together with a witness statement provided on behalf of the Respondent by Mr Virdee (which intimated that a costs application would be made if merited) together with the Tribunal's findings on the preliminary issue, it should have been absolutely clear to the Claimant that there was no reasonable prospect of him succeeding on the preliminary issue.
11. The Claimant's Costs submissions seek to go behind the findings made in relation to the preliminary issue, for example making a challenge in respect of the "list of signatures" produced by the Respondent (see paragraph 26 of the Judgment relating to the preliminary issue). Wholly irrelevant considerations are put forward such as the suggestion that witnesses for the Claimant were denied renewal of their executive committee membership, etc. A Chronology of Proceedings is set out in the Claimant's Submissions. It is suggested (in more than one place in the Claimant's Submissions) that the claim was brought based upon advice from the Equality Advisory Support Service, "EASS". That, of course, is of no assistance to the Claimant. Either the claim had reasonable prospects or it did not. Whoever was responsible for advising the Claimant of that aspect, it was the Claimant's decision to place the matter before the Tribunal. The Claimant's costs submissions contain a wholly irrelevant discussion of events within the Respondent Temple.
12. In short, in submissions consisting of over six pages, no serious attempt is made to engage with the crucial issue of whether the Claimant's claim had any reasonable prospect of success.
13. In the judgment of the Tribunal, this is a case where an order for costs against the Claimant is merited under r.76(1)(b) in that this claim had no reasonable prospect of success. In reality the claim, was hopeless and the Claimant wholly failed to come anywhere near discharging the burden of establishing that he was employed within the meaning of s.83(2)(a) of EqA.
14. In reaching the conclusion that a costs order is merited, the Tribunal takes account of the following:
  - (1) Against the background that there was no evidence of any written contract of employment, the Claimant failed to place before the Tribunal any cogent evidence based upon which it could be concluded that there was an express or implied oral contract of employment.
  - (2) Ditto the existence of a contract personally to do work.
  - (3) Much of the Claimant's claim was based on the contention that he was denied membership of the Respondent's Executive Committee but even if

he had obtained a position on that Committee, he would not have brought himself within s.83(2)(a) of EqA.

- (4) The Claimant provided no evidence as to what he was employed to do, what his hours were, how much he was to be paid or indeed any of the normal features of an employee/employer relationship or a relationship between two parties whereby one of those parties agrees personally to do work.
  - (5) The Claimant provided no evidence of what amounted to his “sacking”. He did not specify how his “sacking” took place, who sacked him or from what employment he was “sacked”.
  - (6) The basis upon which the Respondent intended to contest the claim was clearly articulated in its Grounds of Resistance together with the witness statement of Mr Virdee. Any reasonable scrutiny of that material would have resulted in the conclusion that this claim was indeed hopeless.
15. The Respondent filed a detailed Statement of Costs, seeking a global figure of £10,375.00 inclusive of VAT. The Claimant’s submissions on costs say nothing in relation to either (a) the specific sums sought by the Respondent in respect of specific items of work, or (b) the overall amount claimed generally.
  16. Having reviewed the Respondent’s Statement of Costs with care, the Tribunal concluded that all of the figures sought in relation to all of the items of charge were entirely reasonable.
  17. In its costs submissions, the Respondent indicated that the Claimant’s financial position was unknown and should submissions be provided on his behalf in relation to that topic, the Respondent sought the opportunity to respond. In his submissions on costs, the Claimant provided no information in relation to his ability to pay any costs.
  18. Under r.84 of the Tribunal rules (“Ability to pay”), in deciding whether to make a Costs, Preparation Time, or Wasted Costs Order, and if so in what amount, the Tribunal may have regard to the paying party’s ability to pay. The Tribunal was provided with no information based upon which to make that assessment. The Tribunal does not take any account of the Claimant’s ability to pay.

## **Conclusion**

19. In the Judgment of the Tribunal, the Respondent’s Costs Application is well founded, the sum sought is reasonable and the Claimant is ordered to pay the Respondent the sum of £10,375.00 inclusive of VAT in respect of its costs of these proceedings.

**Employment Judge Gilroy  
20 February 2018**