



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs M Kemp

v

**Norwich & Central Norfolk Mental
Health Resources
T/A Norwich & Central Norfolk Mind**

Heard at: Bury St Edmunds

On: 28 March 2018

Before: Employment Judge Cassel

Appearances

For the Claimant: Mr S Kemp, Husband of Claimant.

For the Respondent: Mr D Chapman, Solicitor.

RESERVED COSTS JUDGMENT

1. The tribunal makes no order as to costs.

RESERVED COSTS REASONS

1. The claimant brought claims against the respondent which were first considered at a preliminary hearing and case management discussion which took place on 9 December 2016. The matter came before me on 3 and 4 July 2017 when the claims were dismissed and reasons were sent to the parties on 27 July 2017.
2. On 10 August 2017 the solicitors representing the respondent applied to the tribunal for a costs order to be considered against the claimant, and subsequently the hearing was listed for today at Bury St Edmunds Employment Tribunal.
3. The claimant was represented by her husband, who had appeared for her at previous hearings. Mr Kemp is not legally qualified. Mrs Kemp was unable to attend the hearing by reason of illness, but Mr Kemp, so I understand from him, had her authority to continue to act. Mr Chapman appeared for the respondent.

4. Following the application for a costs hearing, directions were given as a result of which both parties presented written submissions and, Mr Chapman, helpfully produced a bundle of documents relevant to today's hearing. In addition, a schedule of costs was attached which described the necessary work that was undertaken and details of an invoice that was sent to the respondent in the sum of £13,010 plus VAT.
5. Within the respondent's written submissions there was extensive reference to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Mr Kemp provided two documents, one giving grounds for the resistance to the application for costs, and a second document headed "Jurisdiction".
6. I invited oral submissions today which I deal with sequentially as follows. First, whether the tribunal has jurisdiction to make a costs order; second, argument as to whether a costs order should be made, and whether I should exercise my discretion so to do; third, whether the quantum of costs was reasonable; fourth, Mrs Kemp's financial means to satisfy any order.
7. At the end of the oral submissions, for which I am grateful, I announced that my decision was reserved which I give herewith.

Jurisdiction under Rules of Procedure

8. There was no dispute that a claim was presented by Mrs Kemp which is provided for under rule 8. The claim was accepted and sent to the respondent, and under rule 16 a response was submitted.
9. Under rule 75(1) a costs order is an order that a party ("the paying party") make a payment to (a) 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.
10. Rule 74(1) defines "costs" in the following way:

"74.—

(1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing)."

11. Rule 76(1) describes when a costs order may be made in the following terms:

"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.”

12. Rule 84 is entitled “Ability to pay” and it is in the following terms:

“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 (or, where a wasted costs order is made, the representative’s) ability to pay.”

Conclusions

The Claimant’s Conduct

- 13. The tribunal has discretionary power to make a costs order under rule 76(1) where it considers that a party has acted in the manner described above. The written submission made by Mr Chapman which was supplemented in oral submissions, reflect issues that have been raised in the past in correspondence sent to Mr Kemp. In his oral submission, Mr Chapman argues that Mr Kemp as the representative of the claimant, has acted in a disruptive manner, has chosen not to take legal advice and by his actions has put the parties to additional costs.
- 14. Mr Kemp submitted that advice had been sought from the Citizen’s Advice Bureau but more detailed advice and assistance was beyond the financial capabilities of the claimant. He gave details as to why he had responded in the way that he did in the belief that the respondent had acted in a way which was intimidating and unhelpful, and he described their behaviour as unreasonable.
- 15. I bear in mind that Mr Kemp is a lay person representing his wife. It is apparent that he lacks the objectivity and knowledge of law and practice that one would reasonably expect of a professional representative. The language that he used in correspondence was measured although the comments and proposals were not ones that a professional representative would have made. Although some of the proposals, such as a restraining order on the respondent’s legal advisers, were unhelpful and excessive they were certainly not vexatious, abusive or disruptive. Given all the circumstances I find that the actions do not meet the threshold of being “unreasonable” and not in my judgment as such to merit the making of a costs order.

Whether the claims had no reasonable prospect of success

- 16. The claims were considered at a preliminary hearing by Employment Judge Morron. In regards to the claim for holiday pay at paragraph 4 of

the discussion document, Judge Morron decided not to strike out that claim in order to give the claimant time to seek such advice.

17. At paragraph 6 of that discussion document he made the following comment:

“I explained that this left only one claim which the tribunal currently had jurisdiction to determine, namely that for arrears of wages. This claim too is problematical. The respondent’s case is that no wages were paid because no shifts were worked. It goes onto say that no shifts were worked because the claimant refused to work them; the claimant vigorously disputes this.”

18. At paragraph 7 of the discussion document is the following comment:

“The claimant indicated that she was considering whether to resign and claim constructive dismissal. Again indicated that I could not advise but that she may wish to seek advice.”

19. At paragraph 8 was the following comment:

“No application was made to strike out or make a deposit order.”

20. Following correspondence, a letter from the tribunal was sent to the parties dated 30 January 2017. Within that letter comments were made by Judge Morron clarifying that the claimant should be urged to seek independent legal advice, but more importantly he made the following comment:

“I note that the respondent has conceded that the claimant was an employee, but the question for the final hearing will be whether there was an entitlement to be paid for time not worked. I do not seek to prejudge the issue; but I have indicated that the claimant may find that problematical. I can say no more without evidence.”

21. Mr Kemp relied heavily on the comments made by Judge Morron. Simply put, he submitted, that the overriding impression that he had received, confirmed in documentation that was sent to him and detailed above, was that there was indeed a triable issue and that no moves had been made or decision made to strike out any part of the claim.

22. Bearing in mind that Mr Kemp is not a professional adviser, and looked at reasonably and sensibly I accept Mr Kemp’s submission that he firmly believed, with some good reason, that the claim or at least part of it, could only be determined after the submission and consideration of evidence. I find therefore that the claim having been considered in tribunal as it has been, that it cannot be said that the claim had no reasonable prospect of success and there were reasonable grounds for reaching that conclusion. An order for costs in these circumstances would not be appropriate.

Quantum of costs

23. I comment simply that the schedule of costs that has been drawn up and on which Mr Chapman made oral submissions is reasonable in the circumstances.

The claimant's means

24. I find in any event that the claimant has no income nor savings, although she does have a joint interest in a freehold property. I make this finding for the sake of completeness.

25. I make no order as to costs.

Employment Judge Cassel

Date: 16 / 04 / 2018

Sent to the parties on:

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For the Tribunal Office