



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr Seewoosunkur Gopaul**

**v**

**West Hertfordshire Hospitals NHS  
Trust**

**Heard at:** Watford

**On:** 23 March 2018

**Before:** Employment Judge Henry  
Mrs G Bhatt, MBE  
Mr R Jewell

## **Appearances**

**For the Claimant:** Written submissions

**For the Respondent:** Written submissions

## **JUDGMENT ON AN APPLICATION FOR COSTS**

1. On an application for costs by the respondent pursuant to Rule 76(1)(a) and (b) of the Employment Tribunal Rules of Procedure 2013, the tribunal awards costs to the respondent.
2. The tribunal orders the claimant to pay to the respondent the sum of £8,806.00, in respect of costs incurred in defending the claimant's claims.

## **REASONS**

1. By an application pursuant to Rule 76(1)(a) and (b) of the Employment Tribunal Rules of Procedure 2013, the respondent seeks an award of costs against the claimant, on grounds that the claimant has acted unreasonably in the conduct of proceedings, and that the claim had no reasonable prospects of success, following their communication to the claimant on 28 June 2016, seeking the claimant review the merits of his case, and further following the Reserved Judgment of the tribunal as sent to the parties on 8 February 2017; the hearing having been heard over four days.

2. It is the respondent's submission in support of its application that, the claimant, having been written to on 28 June 2016, referencing the respondent having reviewed the claimant's case following exchange of witness statements, that:

“Nothing either in the documents that have been disclosed as part of these proceedings, or the content of your witness statement, suggest that you have been treated less favourably because of your age or race. The respondent's witnesses have clearly explained in their witness statements the process that is followed in order to select, interview and recruit candidates. Now that we have been able to review your statement, in the respondent's view it is clear that your claim has no merit. In the circumstances, the respondent's position is that continuing to pursue your claim is unreasonable.

...

We strongly recommend that you take legal advice on the contents of this letter. Please note that it is possible to access free legal advice through organisations such as Citizens Advice Bureau and Law Centres.”

3. The respondent seeks costs in respect of costs incurred from the date of this correspondence on the claimant then persisting with his claim, in the sum of £19,485.25 and has furnished a statement of costs for this period. Exhibited enclosure 3.
4. On the claimant presenting claims for race and age discrimination, for which four different recruitment processes, over a period spanning two years were examined, and on the tribunal finding that in respect of each allegation, the claimant had failed to show facts from which the tribunal could find, or otherwise infer, that race or age were factors in consideration in the processes, the respondent maintains that this evidenced that there was no reasonable prospect of success in the claimant's claims, which the claimant would have gleaned, had he acted on their correspondence and sought advice, and was thereafter, unreasonable conduct, on him then further pursuing his claims, necessitating the four day hearing.
5. It is the claimant's response to the application that, having attended a preliminary hearing on 5 February 2016, where an application for strike out of the claim on grounds that the case had no reasonable prospects of success, or otherwise that he be ordered to pay a deposit to continue the claim, on there being little reasonable prospect of success, on the employment judge refusing to strike out the case on those grounds or otherwise order a deposit to be taken on grounds that the claim had little reasonable prospect of success, the claimant states that he was thereby, reasonably of the opinion that he had a strong case.
6. On 1 July 2016, following receipt of the respondent's correspondence of 28 June 2016, the claimant states that having raised the issues raised by the respondent with the tribunal, on his being informed that the issues raised would be dealt with at the hearing, he understood the position then to be that, “I might have to pay some money if the judge realised that I did not submit documents on time or if I do not behave appropriately during the hearing.” The claimant advising the respondent thereof stating: “*Shall we wait and see*”.

7. It is further the claimant's submission that, on being invited by the respondent to take advice from the Citizens Advice Bureau, on being at the tribunal on 1 July 2016, he had sought advice from a solicitor who was appearing for another client, who led him to understand that he may only be made to pay costs if he acted unreasonably during the proceedings, and in further making contact with the Citizens Advice Bureau, Mr Sake of the Employment Law Office of the Citizens Advice Bureau, whilst unable to accept the claimant's case because of prior commitments, he had advised that his (the claimant's) case was arguable. The claimant submits that having followed this advice, and on the judgment of the employment judge at the preliminary hearing, he did not then at any time perceive that his case was weak, further stating: *"Indeed I still believe that I had strong point, which unfortunately I could not put forth to the satisfaction your lordship. I have at no time acted in any way that would be construed as acting unreasonably, nor have I been unruly in any way."*
8. That in essence, are the submissions of the parties.
9. In giving consideration to the respondent's application for costs, the tribunal has reminded itself of the exceptional nature for costs to be awarded in the employment tribunal. However, the tribunal is equally conscious of the fact that the conduct of employment tribunal cases has become more complex and the costs associated in such litigation can be quite substantial, as has been the case in this instance, which is a real cost to the parties and, as such, is a matter requiring careful consideration by the tribunal in exercising its discretion.
10. In considering the claimant's conduct of his case before the tribunal, it is clearly the case that the claimant held a deep conviction in the merits of his claims, and the tribunal is conscious that for a litigant in person it is often difficult for the individual to take a dispassionate and objective view of their case. However, despite this, it is pertinent here to note that on 28 June 2016, when the respondent wrote to the claimant, they were doing so at a point in time where witness statements and documents had been exchanged, such that the parties would then have been fully apprised of the type of evidence the opposing party proposed to present to the tribunal. This is a different position from one that a party may take at the initial stages of litigation, where all that is then before them are assertions without the substance of documentary evidence or the precise evidence that witnesses are proposing to give. In these circumstances, it was incumbent on the claimant to fully review his claim in light of all the material then before him.
11. Whilst the tribunal acknowledges the steps taken by the claimant in seeking advice by his encounter with a solicitor at tribunal, and from the Citizens Advice Bureau, without the claimant presenting the specific details of his case, namely statements and supporting documentation for those bodies to review, on a brief encounter with a solicitor tending another matter at tribunal and on discussions with Mr Sake of the CAB in circumstances where because of prior commitments, he could not then assist the claimant, it is unlikely that they would have been in a position to give appropriate

consideration to the relevant documents, such that the advice they offered would have been on a general understanding of the case as presented by the claimant, where the claimant, as above stated, was passionate about his claim.

12. In making this observation, the tribunal is conscious that on a complaint of discrimination, it is never the case that evidence thereof is overt, and in respect of which, it is only after a claimant has had an opportunity to test the response of the respondent's witnesses that one can conclusively determine the issues and, as such, the tribunals are to be slow in finding against a claimant in circumstances where, after evidence has been tested, his allegations are not substantiated.
13. This however, does not abrogate the need of the claimant to give consideration to his claim when they are seized of all the information on which they can then make an informed decision, such as where it clearly evidences a factual basis of which the claimant was ignorant, and which gave rise to their suspicions but which, when the facts were then made known, and of which there is no challenge, it is incumbent on the individual to re-assess their claim and act accordingly.
14. The claimant has clearly failed to do this, in circumstances where it was reasonable for him to have done so; the allegations of the claimant being far reaching. Instead, the claimant has sought to discount the factual evidence before him, and has challenged the respondent's witnesses as an explanation for the factual inconsistencies then existing in his submissions, as is evident in respect of the claimant's claim that, as set out at paragraph 14 of the tribunal's judgment, in respect of Ms Dubbin offering the claimant support and assistance in respect of job applications that: *"whilst accepting that he received such assistance, nevertheless challenges the genuineness thereof and submits that the efforts of Ms Dubbin was geared towards assisting him in gaining employment outside of the respondent Trust and that whilst the assistance was appreciated it was motivated by the desire not to have Asian employees progress beyond Band 6 in the Trust,"* the claimant not prepared to accept the simple facts then before him.
15. The tribunal is satisfied that, in all the circumstances of this case, this is a case for which the claimant has, in persisting with his claim following the respondent's correspondence of 28 June 2016, acted unreasonably and for which an award of costs in favour of the respondent is appropriate.
16. In giving consideration to the level of costs, the tribunal is conscious that costs are not to be punitive but are to compensate the receiving party.
17. It is clear from the tribunal's findings that, the claimant's claims for discrimination on grounds of race and/or age were without merit, for which the respondent is entitled to be compensated for in respect of their defending those claims, following their reasonably inviting the claimant to consider the merits of his claim, having then been seized of the respondent's full case answering his claims.

18. In giving consideration to the amount of an award, and indeed whether to make an award in this particular case, the tribunal has given regard to Rule 84, as to the ability of the claimant to pay an award.
19. The tribunal unfortunately, has not been provided with any financial evidence from the claimant as to his disposable income, save for the tribunal having received from the respondent a statement of the claimant's salary in the sum of £35,225.00 per annum.
20. In the absence of evidence from the claimant as to his ability to pay, the tribunal as best it is able, giving regard to general costs of living, in circumstances where there is no other evidence to assist the tribunal, believes that an assessment of 25% of the claimant's salary is a sum that would be within the claimant's ability to pay. The tribunal accordingly awards costs to the respondent in the sum of £8,806.00, being 25% of the claimant's annual salary, and a sum which the tribunal in all the circumstances of this case find reasonable in respect of the costs incurred by the respondent.
21. The tribunal awards the respondent costs in the sum of £8,806.00 to be paid by the claimant.

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Employment Judge Henry

Date: 3 / 5 / 2018

Sent to the parties on: .....

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For the Tribunal Office