EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr S Jeffries **v** **Powa Pak Cleaners Limited**

Heard at: Birmingham **On**: 14 May 2018

Before: Employment Judge Broughton

Appearances:
For Claimant: no attendance
Respondent: Mr P Holmes, consultant

JUDGMENT

The respondent is entitled to a preparation time order for 18 hours.

The claimant must pay to the respondent £648

Employment Judge Broughton

17 May 2018

Reasons

The facts

1. The facts of the case are adequately set out in my judgment of 19 February 2018.

2. The additional relevant facts are that on 25 October 2017 the respondent sent to the claimant a without prejudice save as to costs letter. It clearly set out their measured view of the prospects of success of the claim and also of potential quantum if successful.

3. The claimant was urged to take legal advice. The respondent made a reasonable initial settlement offer of £2,000. The claimant was warned of the potential for a costs award if he unreasonably rejected such an offer.

4. On 26 January 2018 the claimant made a counter offer claiming that he had received legal advice on merits and quantum. He sought £40,000.

5. It seems to me that anyone looking at this case at that stage would have viewed the claimant as having, at best, a difficult task proving his case which, at the very least, needed clarity over the alleged final straw.

6. Moreover, it was clear by this stage that even if he was successful, and there were no deductions, he could not recover more than £12,000 and, potentially, considerably less than that. The respondent suggested that the claimant may only have been able to recover a little more than the basic award because he had been unfit for work until he secured better paid employment in August 2017. In addition, the claimant appeared to have scant regard to the relevance of his various acts of misconduct to both liability and quantum.

7. Whether the claimant did not actually receive any legal advice in relation to this matter, or did not follow that advice, or the advice was wrong is unknown. If it was the latter he may, of course, have some recourse against those advisors. If it was the former he must have deliberately misled the respondent.

8. In addition, in his response to the respondent's offer the claimant made veiled threats of "bad publicity" for Mr Cope, referencing his role as a Councillor.

9. He had, a couple of days earlier made what appeared to be entirely unsubstantiated allegations of possible fraud and tax evasion, again referencing Mr Cope's position as a Councillor, his constituents and other Councillors. In that context, coupled with the fact that the claimant was apparently already sharing such unsubstantiated allegations with employees of the respondents, it seems likely that he was engaging in such tactics to increase the pressure on the respondent to settle at an unrealistic level.

10. The respondent objected strongly to this approach. They also clearly explained to the claimant the appropriate way for him to put together his schedule

of claimed losses which he ultimately abided by, but only after the respondent made an application to the tribunal in respect of the same. Their costs warning was repeated.

11. Discussions continued via ACAS with the claimant continuing to hold out for far more than the claim was potentially worth, despite the conciliator advising him of the proper approaches to quantifying his claims. This seemingly confirmed that the claimant was knowingly seeking an unreasonably inflated settlement. He had been using wholly inappropriate tactics to attempt to achieve it.

12. The claimant suggested, before me in the previous hearing and in without prejudice email correspondence, that it was never about the money but it clearly was. In the settlement negotiations he was seeking nothing else.

13. In my judgment on the merits of the case I found that there were a number of difficulties in the claimant's case but not that it was entirely misconceived. There were a few arguable contentions and so I cannot say that the claim, whilst weak, had no reasonable prospect of success.

14. I note that my original view was that the claimant felt genuinely, but largely unjustifiably, aggrieved. That said, his actions in the settlement negotiations cast some doubt on that.

15. Following promulgation of my decision on liability the respondent made an application for a preparation time order based, primarily, on the without prejudice save as to costs correspondence.

16. The parties were invited to consider whether the application could be dealt with on the papers but the claimant requested a hearing, as was his right. However, he then did not comply with the directions, did not attend and did not contact the tribunal, nor was he contactable.

17. That was unreasonable conduct and I draw adverse inferences from it.

The issues and the law

18. I have had regard to rules 74 to 84 of the Employment Tribunal Rules of Procedure 2013. Specifically, under rule 76 I can make a costs or preparation time order where a party has acted vexatiously or otherwise unreasonably in the way the proceedings have been conducted.

19. Under rule 84 I may have regard to a party’s ability to pay.

20. I have considered the cases of Kopel v Safeway Stores Plc 2003 IRLR 753 and Power v Panasonic (UK) Limited EAT/0439/04, particularly the helpful guidance at paragraph 12.

21. Specifically

a. Costs are the exception not the rule.

b. It is a two stage process, firstly to determine whether a party has acted unreasonably and only then to go on to determine whether to award costs.

c. Costs are compensatory, not punitive.

d. The Calderbank rule has no place in this jurisdiction.

e. The discretion is not limited to costs caused by the unreasonable conduct.

f. To unreasonably press for a high award, despite warning, could potentially amount to unreasonable conduct.

Decision

22 It seems to me that, absent the benefit of hindsight, it was not necessarily unreasonable for the claimant to refuse the respondent's initial offer.

23 It was, however, unreasonable to seek a settlement more than three times greater than the maximum he could hope to recover, particularly after having claimed to have received legal advice.

24 It was unreasonable for him to continue to press for an inflated settlement even after receiving guidance from ACAS.

25 Whilst ordinarily a claimant is entitled to hold out for a declaration, irrespective of any offers open to them, in this case I have found it was all about the money, notwithstanding the claimant's disingenuous claims to the contrary.

26 Most tellingly, it was vexatious for the claimant to seek to use threats of "bad publicity" and to reference Mr Cope's civic position in that context, let alone to start spreading what appear to have been malicious unsubstantiated rumours.

27 Furthermore, my findings are confirmed by the claimant's failure to attend this costs hearing, having expressly requested it.

28 Accordingly, stage one of the test I must apply is met.

29 I then have to consider whether it is appropriate and just to award some or all of the claimed costs.

30 I consider that the conduct was so unreasonable as to warrant a preparation time order. The question then is how much of the claimed preparation time should I award?

31 On the one hand, other than the preparation time wasted in negotiations and attending the hearing today, the preparation time was not unduly increased by the claimant's actions. On the other hand, the respondent was denied the

opportunity to settle the case, which as I have found was all about money, at a reasonable level. As a result, all time incurred after the claimant adopted an unreasonable position potentially flowed from his conduct.

32 The total amount claimed by the respondent was very reasonable, modest even. They claimed around £1200 including the preparation for today. I note that they also limited themselves to preparation time rather than claiming costs as lay representatives, which would have included the hearing time and added around another 15 hours to the claim. The respondent also had the unnecessary costs of this hearing.

33 I have also considered the limited information I have about the claimant's means, which suggests that he is working in a skilled manual role, earning in excess of £500 per week. From the previous hearing it appeared that he had little or no savings.

34 Taking all of the above into consideration it seems to me that is just and equitable to award the respondent’s preparation time from the date of the claimant’s unreasonable counter offer, being 26 January 2018.

35 As a result, the claimant is required to pay the respondent for 18 hours of preparation time, amounting to £648.