



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Respondent

S Gretton v Maldm Installations Ltd

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter

ON

17 April 2018

EMPLOYMENT JUDGE PSL Housego

### Representation

For the Claimant: Written submissions

For the Respondent: None

### JUDGMENT

The judgment of the tribunal is that the respondent is ordered to pay to the claimant costs of £6311 plus vat

### REASONS

1. The claimant applies for a costs order. The applicable provision is paragraph 76 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the regulations") which provides:

*"When a costs order or a preparation time order may or shall be made*

*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.”*

2. In support of this application the claimant asserts that the defence was misconceived and had no prospect of success, and that the actions of the respondent were within sub paragraph (b). In particular:

2.1. A costs warning letter was issued by those representing the claimant, which was acting “*otherwise unreasonably*” as by the time it was issued those representing the claimant had set out clearly the basis upon which the claim was to be advanced, and citing case law (King v The Sash Window Workshop Ltd CJEU, 29 November 2017, C-214/16) and it was precisely on this basis that the Tribunal found for the claimant.

2.2. Paragraphs 12.3 and 27 of the judgment of the Tribunal clearly set out that the tax arrangements were irrelevant, as the claimant had said, and that the only evidence provided of the assertions of the respondent in that regard had been a letter from an accountant.

2.3. The contention that there was a profit share was not backed by any evidence.

2.4. The respondent himself described how he “*took on*” the claimant, so indicating worker status.

2.5. The diary notes “*Steve off*” were the respondent’s own evidence, and clearly evidenced worker status.

2.6. Those representing the claimant had specifically drawn the attention of those representing the respondent to the case of King v The Sash Window Workshop Ltd CJEU, 29 November 2017, C-214/16, but Counsel who represented the respondent at the hearing was taken by surprise by that case.

2.7. On 07 December 2017 those representing the claimant offered to settle the case for £20,000, said why they thought the case must succeed, and said that they would ask for costs if the outcome was as they said it would be, and as it was.

3. Those representing the respondent have not responded to the claim for costs.

4. The matters set out by those representing the claimant accurately set out the position.
5. I decide that for the respondent to threaten to seek costs when they had a such a poor case was to conduct the case “*otherwise unreasonably*” within the meaning of the regulations.
6. The defence of the respondent had no reasonable prospect of success. Before the hearing the legal analysis which is set out in the Tribunal judgment was pointed out to those representing the respondent by the representative of the claimant. That issue was not addressed at all by the respondent in the hearing. The respondent maintained a position that the evidence provided, or accepted, by the respondent was the basis for defending the claim, but it could not so support it, for the reasons set out in the judgment. The response was not backed by evidence and nor did it deal with the applicable law. It had no reasonable prospect of success for both reasons.
7. Accordingly for both reasons set out in regulation 76 I decide in principle that the claimant is entitled to an order for costs against the respondent.
8. The representative of the claimant has provided with a schedule of costs incurred. The hourly rate is £195 plus vat which is modest. The work is fully detailed and is reasonable. The respondent has not made any comment on it. I decide that the amount claimed was the amount of costs incurred by the claimant and that the respondent should be ordered to pay it. The amount is £6311 plus vat.

\_\_\_\_\_  
Employment Judge PSL Housego  
Dated 17 April 2018

Judgment sent to Parties on

\_\_\_\_\_  
\_\_\_\_\_