



EMPLOYMENT TRIBUNALS

Claimant: Mr A Cuthbert

Respondent: Rephouse Europa Limited

HELD AT: Liverpool **ON:** 12 March 2018

BEFORE: Employment Judge Grundy

REPRESENTATION:

Claimant: Mr J Chambers, Solicitor

Respondent: Mr D Jones, Solicitor

JUDGMENT ON COSTS

The judgment of the Tribunal is that:-

1. The Tribunal declares that the respondent has acted unreasonably in the conduct of its defence of proceedings and had no reasonable prospect of success in its defence. The respondent shall pay three quarters of the claimant's costs claimed, the respondent shall pay £1,602.90 to the claimant.

REASONS

1. At the conclusion of the hearing relating to the uplift in this matter the Tribunal having given judgment the Tribunal proceeded to deal with the claimant's application for costs against the respondent. The respondent's costs application was not pursued in the light of the judgment on the uplift. The claimant applies for costs and provided the Tribunal with a costs application bundle and a written application for costs with reasons for costs being sought. Within that application the claimant set out its submission that the respondent had acted unreasonably in the conduct of the proceedings relating to entering a defence and persisting with the defence relating to failing to engage with the Tribunal process or co-operate with requests for documents and witness statement and by failing or refusing to disclose its intention to concede the breach of contract claim until two hours before close of business on

the Friday before this hearing on Monday 12 March, the claimant also asserts that the respondent's response had no reasonable prospect of success in that although the claimant was dismissed summarily by reason of his conduct, gross misconduct has not been alleged or pleaded and the respondent has not produced any evidence or witness statements in support of its defence. Further, the respondent admitted liability for three months notice pay claimed by the claimant on 9 March 2018.

2. The Tribunal has heard oral submissions on behalf of both parties, the Tribunal is concerned that the claimant made absolutely clear his intention to seek costs at page 6 and page 10 of the costs application bundle in emails on 10 January 2018, on 7 March 2018 and 9 March 2018 and there was little response from the respondent until late on the Friday before this hearing an offer of settlement relating only to the notice pay and car allowance was made to the claimant, that left still in issue the uplift aspect and the costs. The claimant has within the costs application bundle claimed the total sum of £2,137.20, all of which has been in the Tribunal's view reasonably incurred.

3. So far as the respondent is concerned the respondent asserts that the respondent had a genuine belief in its entitlement to terminate the claimant's contract when the defence was entered albeit that it had no legal advice at that time. The respondent asserts that the Schedule of Costs is in part incurred due to focussing on settlement and it is unfair of the claimant to assert that they were not engaging in the process. So far as the reasonable prospects of success of the ET3 is concerned it is conceded that the concession came rather late in the day and that the claimant has been successful in respect of the uplift but that is not without legal argument.

4. I have considered Rule 76(1)A and B of the 2013 Employment Tribunal Rules of Procedure, I have concluded that the respondent has acted unreasonably and that the response had no reasonable prospect of success. I have given unreasonable its ordinary meaning in applying the law to the facts of this case. I am encouraged to consider looking at the whole picture and to my mind the concession in late afternoon on Friday before the Monday of a hearing postponed from January is significant in relation to the reasonableness or otherwise of the respondent's conduct, it meant that this matter insofar as a dispute is concerned has been held over the head of the claimant since early January.

5. Further, in my view the defence to the notice pay claim has always been illusory. There was no defence hence the ultimate concession two months down the line after the postponement of the hearing in January. The costs warnings were also given to the respondent in correspondence by the claimant so the respondent knew that the claimant was likely to pursue costs if this hearing went ahead and went in the claimant's favour. I am satisfied therefore that the respondent has acted unreasonably and had no reasonable prospect of success in their defence. I am troubled by whether or not I should award the totality of costs or otherwise. The respondent has submitted that there has been some attempts to settle the claimant's claim and I accept that that is probably so, I also consider that its naturally the case that some costs are incurred at the outset of a claim being formulated which may or may not be apportioned to the respondent's door. Advice at the outset of this type of executive employment ending is usual so I consider overall that it is unfair to require the respondent to bear the totality of the costs and therefore my order is that

the respondent bears three quarters of the cost which on my calculation as I have said amounts to £1,602.90 which the respondent shall pay the claimant.

Employment Judge Grundy

13th March 2018