



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Siddiqui

**Respondent:** Telecom Service Centres Ltd t/a Webhelp UK

**Heard at:** Nottingham

**On:** 29, 30 and 31 January 2018

**Before:** Employment Judge Moore

**Representation**

**Claimant:** In Person

**Respondent:** Mr S Milligan, Solicitor

## JUDGMENT

1. The Respondent's application for costs under Rule 76 (a) and / or 76 (b) is refused.

## REASONS

### Background

1. The Claimant presented a claim against the Respondent on 27 April 2017 for unfair dismissal, discrimination on the grounds of religion or belief, race and sex. A Preliminary Hearing took place on 30 November 2017 where the Claimant made an application to amend her claim. Employment Judge Evans gave a Judgment that the Claimant's application to amend her claim was refused and the Tribunal did not have jurisdiction to hear the discrimination claims as they were out of time. The constructive dismissal claim remained live and was heard at Nottingham Employment Tribunal on 29 – 31 January 2018.
2. An oral judgment dismissing the Claimant's remaining constructive dismissal claim was given on 31 January 2018. The Respondent submitted a written application for costs dated 26 February 2018 pursuant to S76 (a) and / or 76 (b) of the Employment Tribunal Rules of Procedure. The Respondent's application referenced principal grounds for their application and referenced full grounds and submissions could be made at any hearing or if directed in writing.
3. The Judgment was sent to the parties on 8 March 2018 with written reasons following on 15 June 2018.

4. The Claimant objected to the costs application on 6 March 2018 and indicated she would respond fully once written reasons had been received. On 9 March 2018 the Claimant informed the Tribunal that she had been unwell and provided evidence she had been in hospital for 2 days and requested an extension of time to respond to the application. This was granted and the Claimant was required to send a written response to the costs application by 22 April 2018.
5. On 23 May 2018 the Claimant wrote to the Tribunal to advise she was experiencing severe attacks of labyrinthitis and as having been advised to avoid all stress and anxiety she would not be attending a costs hearing in person.
6. The Tribunal wrote to both parties to advise that the Respondent's costs application would be considered on the various written submissions made by the parties to date. No objections were received and accordingly the Respondent's application has been decided without the need for a hearing and based on the information made in the application dated 22 February 2018.

#### The application

7. The application was made under 76 (1) (a) and/ or 76 (1) (b). There were six grounds set out in the application which were in summary;
  - a) The Claimant's bringing of discrimination claims which were time barred;
  - b) The Claimant sought to introduce new factual matters in a Scott Schedule not pleaded and a new head of claim (age discrimination). Further at a Preliminary Hearing on 30 November 2017 the Claimant made an application to amend her claim to take into account events post dating the Scott Schedule which was refused.
  - c) The discrimination claims had no reasonable prospect of success due to the jurisdiction issue.
  - d) The Claimant did not succeed in her constructive unfair dismissal claim and did not persuade the Tribunal there were breaches of contract and even if there had been the Claimant had affirmed her contract due to the delay between matters relied upon and the Claimant's resignation and there was no cogent explanation for the delay.
  - e) The Claimant was written to on 12 January 2018 in Without Prejudice Save as to costs" correspondence and put on notice an application for costs would be made.
  - f) The bringing and conducting of the proceedings in respect of the constructive unfair dismissal claim was unreasonable as the claim had no reasonable prospect of success.
8. In considering the application I must consider whether the Claimant's conduct falls under 76 (1) and if so I must go on to consider whether to do so.

#### Discussion

##### Grounds 1 – 3

9. Prior to the preliminary Hearing on 30 November 2017 the Claimant's discrimination claims relied upon a series of events the last of which took place on 22 December 2015. The Claimant sought to amend her claim at the hearing to add allegations that the Respondent committed further acts of discrimination when her grievance was rejected in 2016. This was clarified by EJ Evans (paragraphs 21 – 22) as the last act being the refusal of her appeal against the grievance outcome dated 16 June 2016, said to have been received by the Claimant in mid July 2016.

10. The application to amend was refused. Accordingly as the last act of alleged discrimination was 2 December 2015 and the ET1 was presented on 27 April 2017 the remaining issue to be determined was whether it was just and equitable to extend time under Section 123 Equality Act 2010.
11. The Claimant relied upon a number of reasons to assert it was just and equitable to extend time. In summary these were a legitimate belief she needed to exhaust all internal avenues stemmed from legal advice, although legally qualified she was not an employment lawyer, the balance of prejudice weighed in her favour, and she had suffered a breakdown in the autumn of 2015.
12. Employment Judge Evans concluded it would not be just and equitable to extend time. The claims were very substantially out of time - more than a year; the reasons for delay were unsatisfactory particularly coming from a qualified lawyer; the cogency of evidence would be reduced and would prejudice the Respondent more than the Claimant and the Claimant acted with extraordinary negligence when failing to take advice in relation to limitation.
13. Having regard to Employment Judge Evans findings at the Preliminary Hearing I find there could have been grounds to conclude that the Claimant's conduct fell within the grounds of S76 (1) (a) and (b). However notwithstanding these findings I do not consider that a costs order should be made. These findings were made at a Preliminary Hearing and I now have had the benefit of hearing the full facts of the case and the events that led to the Claimant's eventual resignation and claim for constructive unfair dismissal.
14. In exercising my discretion I have considered that the Tribunal does have jurisdiction to extend out of time claims under the just and equitable extension and this warrants appropriate consideration of the evidence and reasons the claims have been brought out of time at a Preliminary Hearing. The Claimant did advance a number of reasons as to why the claims had been brought out of time as set out above. The same can be said for her application to amend her claim by her belief albeit rejected that the Respondent had committed further acts of discrimination in 2016. All of these points were at least arguable and she was entitled to have these heard and have them examined at a Preliminary Hearing. I do not find they were so hopeless that they were unreasonable or had no reasonable prospect of success.
15. In addition, the Respondent has not set out what costs were attributable to the discrimination claims. They have had an opportunity to do so. The discrimination claims did not proceed after the preliminary Hearing on 30 November 2017.

#### Grounds 4 – 6

16. Having determined the constructive dismissal claim I do not consider the Claimant's conduct in the bringing of the constructive dismissal claim was unreasonable or that the claim had no prospect of success. I found that the Claimant had been consistent in her reason for resignation namely her allegations of harassment by Mr Farquhar her line manager and that her SME status had been removed. Whilst I found that the acts relied upon by the Claimant did not amount to a fundamental breach of contract I did make findings that there were shortcomings in Mr Farquhar's management style and there also had been inappropriate behaviours in the workplace. I also found that the procedure followed by the Respondent in respect of her interview on 22 December 2015 was insensitive and not conducted appropriately. It should be noted that Mr Farquhar received a final written warning from the Respondent arising from his conduct in connection with the Claimant's case. For these

reasons I do not consider that a costs order should be made.

17. The Judgment of Employment Judge Evans made findings on delay in respect of the discrimination claims at a Preliminary Hearing. The substantive hearing on the constructive dismissal claim heard further evidence on the Claimant's attempts to pursue internal avenues in respect of her grievance after Miss Reilly had concluded the grievance appeal by writing to the new head of site in September 2016 full evidence of which was not before Employment Judge Evans. Whilst I found there was no explanation from the Claimant as to why she delayed to resign until January 2017 I do not conclude that this alone results in her claim having no prospect of success or the bringing of the claim being unreasonable as to warrant a costs order. The Claimant's case overall was not wholly without merit or could be deemed to have had no reasonable prospect of success.
18. If I had done so I would not exercise my discretion to issue a costs order given the findings I made in respect of the culture operating within the Respondent.
19. The application is therefore refused.

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Employment Judge Moore

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Date: 27 July 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

30 July 2018

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FOR THE TRIBUNAL OFFICE