



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr K Sidapara

Metroline Limited

JUDGMENT ON COSTS

Upon the respondent's application made on 27 July 2018 for a costs order under Rule 76 Employment Tribunal Rules of Procedure 2013 and without a hearing:-

The application for costs is granted. The claimant is ordered to pay the sum of £2500 as a contribution towards the respondent's costs.

REASONS

Introduction

1. By a claim form presented on 1 October 2016 the claimant presented claims of disability discrimination and unlawful deduction of wages. In the reserved judgment sent to the parties on 28 June 2018, I dismissed the claims because I found they had no reasonable prospect of success. The claimant made an application for reconsideration which has been refused.

The application for costs

2. The application for costs of 27 July 2018 sets out the chronology of the claim which has included three preliminary hearings (PH) before the substantive one in May where the claims were struck out. That chronology is apparent from the file. The claimant was ordered at the first PH in December 2016 to clarify his complaints but the document which was supplied did not comply with the order and, at a further telephone PH the claimant was given further time to comply. At the third PH in August 2017 an unless order was made for the complaints to be fully set out by 6 October 2017. The claimant complied with that order and, in November 2017, he also made a detailed application to amend. The claimant is formally unrepresented and it is understood that many of the documents are prepared by the claimant's son or with his assistance. At the PHs, the claimant has been represented by direct access counsel.

3. The respondent had written to the claimant, who has been in its employment throughout, on two occasions in March and May 2017, with offers that it would not pursue an application for costs if he withdrew his claim. That was repeated at the PH in August 2017. The respondent applies for costs on the grounds that the claim was misconceived because it has no reasonable prospect of success and/or the claimant (or his representative) have behaved unreasonably in the bringing or conducting of the proceedings. The application is for a proportion of costs only in the sum of £4604.83 (being just over 8 days at £550 per day). The respondent's representative has spent over 60 hours on this matter, excluding lengthy correspondence with the claimant.

The claimant's opposition to the costs application

4. The claimant opposed the application by email and attachment of 17 August 2018. He states that his reconsideration application is outstanding and that he has appealed to the EAT. He points out that there is no finding that the claimant has acted "vexatiously, abusively, disruptively or otherwise unreasonably". I am referred to the cases of *Ganase v Kent Community Housing Trust* UKEAT/1022/01 and *ET Marler Ltd v Robertson* [1974] ICR 72. The claimant takes issue with the respondent's version of the chronology of the claim and the amount of costs claimed. He submits that the letters sent by the respondent which contain a "drop hands" offer is not a costs warning letter. I am referred to the case of *Lake v Arco Grating (UK) Limited* EAT0511/04 which makes it clear that the tribunal must decide whether conduct has been unreasonable and *McPherson v BNP Paribas* [2004] ICR 1398 which states that the tribunal must have regard to the nature, gravity and effect of any unreasonable conduct.

The claimant's ability to pay

5. At the PH in May 2018, the claimant answered some short questions about his means for the purpose of considering whether a deposit order should be made, and, if so, in what amount. My note of his responses indicates net income of £2600 per month with £220 every two weeks for a carer's benefit. He has no rent or mortgage payments but has council tax of £175. He said he had fuel costs of £120 and food costs of £300-£400 per month. He also mentioned "general expenses" of £500 per month. He said his son lives at his home with the claimant and his wife but does not contribute to the household expenses. He has no savings.
6. In the claimant's response to the application for costs, slightly different figures are provided. His net income from the respondent and pensions is recorded as £2482 per month. Council tax is £132 and there are other expenses for water, telephone, energy, insurance and so on totaling £244. Fuel costs are £50 with road tax of £16. The claimant then lists some rather higher items of expenditure. One item is "clothes, gifts and personal expenses" of £250; another is "private personal insurance plan" of £270; another is "holiday" of £200 and "other expenses (eg property

maintenance and replacing faulty things)” of £500. All the expenditure totals £2153.

Rules

7. The relevant part of Rule 76 reads as follows:

“(1) A tribunal may make a costs order or a preparation time order, and shall consider to do so, where it considers that –

a) a party (or that party’s legal 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”

8. Rule 84 provides that the tribunal may have regard for the paying party’s ability to pay in deciding whether to make a costs order and the amount. In essence, my task is first to decide whether the claim was misconceived and/or there has been unreasonable behaviour in the conducting of the proceedings. If I decide there has been, I may make an order for costs.

Conclusions

9. This matter has needed considerable input from the tribunal and the respondent as can be seen from the chronology above. The claims have now been dismissed because I found, after a full day’s hearing and reserving judgment, that they had no reasonable prospect of success. I do find that the claims were misconceived. I understand that might have not been obvious to the claimant or those assisting him at the outset, but it must have become clear to him as he tried many times to articulate a claim under Equality Act 2010.

10. I also find that the way in which the proceedings have been conducted has been unreasonable. There have been many delays and orders (including the need for an unless order) and this has led to the respondent needing to read many documents, often relatively lengthy, and attend hearings. The claimant would have been well advised to consider the offers made by the respondent but that is not the only aspect of unreasonableness.

11. I have taken account of the claimant’s ability to pay and note that the application for costs is limited to a very small proportion of the legal costs expended by the respondent on this case. On either account of the claimant’s means, he has some income that would allow for him to pay a modest costs order. The claimant is now ordered to pay the sum of £2500 towards the respondent’s costs, primarily towards time spent for the third and fourth PHs, including responding to the application to amend and other preparation and attendance at those hearings.

Dated: 05.09.18

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Employment Judge Manley
South East Region

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Judgment sent to the parties on

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For Secretary of the Tribunals