



EMPLOYMENT TRIBUNALS

Between:

Claimant: Ms M Baker

Respondent: Sussex Police

Heard at London South Employment Tribunal on 30 August 2018

Before Employment Judge Baron

Lay Members: Mrs S Dengate and Mrs C Upshall

Representation:

Claimant: The Claimant was not present nor represented

Respondent: Tim Dracass - Counsel

COSTS ORDER

The Tribunal **orders** the Claimant to pay costs to the Respondent in the sum of £20,000.

REASONS

- 1 The Claimant presented a claim to the Tribunal on 19 May 2015 at a time when she was employed as a Police Community Support Officer. The allegations were of breaches of the Equality Act 2010 based upon the protected of disability and of victimisation. The hearing lasted for eight days and we spent further time in our deliberations and the writing of the reasons for the judgment. In the reasons for the judgment it was recorded that the list of issues agreed between counsel for the parties extended to over 14 pages. There were 56 heads of claim arising from 19 factual allegations. We heard evidence from 11 witnesses for the Respondent and had four lever-arch files of documents. This was a substantial hearing. The claims were dismissed by a judgment dated 14 March 2017, a copy of which was sent to the Claimant on 30 March 2017. The judgment and reasons consisted of 42 pages and 192 paragraphs.
- 2 On 21 April 2017 the Respondent applied for an order for the Claimant to pay certain of the costs of the proceedings. The Claimant decided not to

attend this hearing but provided written submissions and some documents. The Respondent was represented by Mr Dracass as at the principal hearing.

- 3 The relevant provision as to costs in these circumstances is in rule 76(1) of the Employment Tribunals Rules of Procedure 2013:

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.

- 4 The application was made on the basis that the Claimant had acted unreasonably in the bringing and/or the conducting of the proceedings, and also that the claims had no reasonable prospect of success.

- 5 Mr Dracass drew our attention to comments made in our reasons, and findings of fact and conclusions reached. Among the points he made were the following:

- 5.1 The factual allegations extended over a long period from April 2012 to March 2016.
- 5.2 In paragraphs 9 to 13 we made adverse comments on the way that the claims were pleaded, despite the Claimant having been professionally represented. For example, in paragraph 11 we referred to claims under sections 19 and 20 of the Equality Act 2010 and we noted that the alleged provision, criterion or practices were not pleaded.
- 5.3 We commented in paragraph 15 that 'in our view the claims have not been pursued by the Claimant in a proportionate manner.'
- 5.4 We also noted that Miss Lintner of counsel who represented the Claimant at the hearing had had to limit her written submissions to matters where she felt able to assist the Tribunal. It was clear to us at the time that professionally she could not do otherwise taking into account her duty to the Tribunal.
- 5.5 We found that the claims were out of time and that time should not be extended.
- 5.6 Only two of the multifarious claims would have succeeded. The first was that the Claimant was not initially paid for three hours on 17 October 2013 in relation to a medical appointment. The Claimant was in fact paid on 22 November 2013. The second matter related to the requirement to wear a uniform jacket during a few shifts in July 2014.
- 5.7 In respect of each of the other allegations we found fairly and squarely against the Claimant.

- 6 A letter was sent by the solicitor at East Sussex County Council then representing the Respondent to the Claimant's solicitors on 4 April 2016. It was a costs warning. Three points were made. The first was that the vast majority, if not all, of the claims were out of time. The second was that the merits were weak. The third was whether it was proportionate to pursue the claims in the light of the only remedy being an award for injury to feelings. It was stated that at that time the costs incurred by the Respondent amounted to about £22,000 and that up to a further £14,000 would be incurred in preparation for and in conducting the hearing. The Claimant did not heed that warning. The Respondent then decided to instruct outside solicitors, and the costs being claimed only relate to the fees of those solicitors and counsel's fees.
- 7 The issue as to whether to make an order breaks down into two principal questions. The first is whether one or other of the criteria in rule 76 have been satisfied. If that is the case then the Tribunal has the jurisdiction to make an order. The second issue is whether to make an award, and of what amount.
- 8 Having heard all the evidence and considered it at considerable length we are entirely satisfied that apart from two minor points, the claims did not have any reasonable prospect of success from the outset, and that the Claimant had acted unreasonably in bringing them. Our reasons need to be read in full to see the details of the conclusions we reached on the merits of the various claims. It is said that the Tribunal is a 'no costs' environment. That is true to the extent that unlike to ordinary civil courts costs do not follow the event. There is a threshold which must be met before an order can be made. That threshold has been met here. We therefore decide that we have the jurisdiction to make an order for costs.
- 9 In our judgment this is a case where an order for costs is entirely justified at least from the date when the costs warning was given. Mr Dracass pointed out that that warning was given shortly before the merits hearing was first due to take place, and after the bundle had been agreed, and witness statements exchanged. The Claimant therefore knew what the Respondent's witnesses would be saying in evidence.
- 10 We have considered that schedule of costs provided which showed a grand total of the fees of the Respondent's solicitors, counsel's fees and VAT of just over £46,000. The Tribunal has jurisdiction to make a summary award of a maximum of £20,000. It is not our function to undertake a detailed assessment. We looked carefully at the individual elements of the fees of Mr Dracass, and also discounted the solicitors' costs as no doubt there would have been some reduction in a detailed assessment. The total did not come down to £20,000.
- 11 The Claimant had provided some limited information as to her finances. She did not attend to provide full information to us. We are not satisfied that the Claimant has been entirely open about her finances. We note that she provided a copy bank statement which showed £22,000 in her current account. We also had a Statement of Account from her solicitors showing

that she had been billed a total in excess of £71,000. Further, the Claimant stated that she made monthly mortgage payments but did not provide any details as to the ownership of the property or its capital value. For those reasons we have not taken her means into account.

**Employment Judge Baron
Dated 05 September 2018**