



EMPLOYMENT TRIBUNALS

Claimant: Mr M Latif

Respondent: Vodafone Limited

Heard at: Manchester

On: 19 October 2018
(in Chambers)

Before: Employment Judge Holmes
Mrs P Byrne
Ms S Khan

REPRESENTATION:

Claimant: Written representations

Respondent: Written representations

RESERVED JUDGMENT ON ASSESSMENT AND AWARD OF COSTS

The unanimous judgment of the Tribunal is that:

1. The claimant to pay the respondent's costs of and occasioned by the hearing on 11 August 2017, and of the application for reconsideration, summarily assessed by the Tribunal in the total sum of **£9847.50**
2. The Tribunal has no power to make an order in relation to an order for payment, sums ordered by way of Tribunal judgment being payable pursuant to rule 66 of the 2013 rules of procedure within 14 days, unless the Tribunal specifies a longer period. The respondent having sought an order for payment in 28 days, the Tribunal will so order.

REASONS

1. The Tribunal, having heard and determined, in principle the respondent's application for costs, at a hearing on 5 January 2018 also to determine the claimant's reconsideration application, gave further directions, in its judgment sent to the parties on 25 April 2018, for the assessment of those costs.

2. The respondent accordingly by letter of 11 May 2018 set out the costs sought in accordance with the Tribunal's judgment, and attached to that letter a Statement of Costs. The claimant was ordered to make any further representations on the assessment of the amount of the costs by 8 June 2018, and he did so, albeit late, on 25 June 2018, when he wrote to the Tribunal in these terms:

"I would like to mention that subsequent to our meeting in January I have taken onboard a large financial commitment and have used my savings and cash as a payment for a house purchase and subsequently taken loans to cover the deficit in the purchase price of the purchase of a house which is in the process of being finalised.

Furthermore this means I have not however up until recently secured a home for myself and my family that we have been able to call a home.

In relation to the costs from the respondent I appeal to the judge and request that they are reduced quite substantially because I might not be able to pay all at once and will most certainly struggle financially to cover basic costs if I'm ordered to pay the full amount the respondent mentions.

Please find it a judgment to reduce the amount and kindly through your powers to afford me monthly payment for the amount reduced to around the £1000 point."

3. The Tribunal wrote to the claimant on 2 July 2018 informing him that if he wished his means to be taken into account, he must provide full (emphasised) details of his assets, income and liabilities as soon as possible. The claimant next communicated with the Tribunal on 6 July 2018 saying (whilst also dealing with listing arrangements) that details of his means would be provided as soon as possible.

4. The claimant then on 2 October 2018 sent to the Tribunal an e-mail in which he said this:

"so my net income per year for tax is £12,000 per year

i have no other income and my household has 100 pounds other income from child benefit.

i have no other tax benefits or pension benefits.

i have 500£ in savings and have 495 to contribute for household expenses to my father for household expenses and food.

i have monthly expenses of £100 fuel and £50 mobile bills and expenses for my daughters £250 :- tuition, horseriding and school expenses.

this keeps us worth approx. 100 per month savings.

I don't own my own home and don't have any other land in any other countries."

5. The Tribunal wrote to him on 10 October 2018 pointing out that the information he had provided was wholly unsupported by any bank statements,

payslips or other documentation. Subsequently, on 16 October 2018 the claimant sent into the Tribunal a further e-mail, to which he attached an extract of his bank statements, covering the period 26 September to 15 October 2018. He made the comment that he was a litigant in person and was “wholly unaware of what further information was required”.

The assessment of the amounts of costs claimed by the respondent.

6. The first part of the Tribunal’s task is to assess the costs claimed by the respondent. This is a summary, and not a detailed assessment. As such, the Tribunal takes broad brush approach. As observed in **Ayoola v St Christopher’s Fellowship UKEAT/0508/13/BA** by HHJ Eady QC (para. 51) no particular procedure is laid down by the Tribunal rules for a summary assessment of costs, but the discretion as to the amount must be exercised judicially. She endorsed the view that a Schedule of Costs was not a requirement, but in this case one has been served. This follows the practice in the civil courts under CPR 44.

7. Consequently the Tribunal has considered the amounts claimed in the Statement of Costs , as it is entitled to, in order to see if they are reasonable, in terms of the work done, grade of fee earner involved, and proportionate to the limited items to which the Tribunal’s costs award in principle relates, i.e the costs of and occasioned by the hearing of 11 August 2017, and the application for reconsideration.

8. The total amount of costs claimed by the respondent is £12,780.70. That does not include VAT, nor should it, the respondent presumably being VAT registered.

9. That is broken down into £6,328.50 in respect of work done on documents, £2144.50 other work by the respondent’s solicitors, and £5,500.00 counsel’s fees. The client, however, has only been charged £7,181.00 in respect of the solicitor’s costs, which, with counsel’s fees of £5,500.00, totals £12,681.00. As we indicated in our previous judgment, we do not propose to award counsel’s travel expenses for the hearing on 5 January 2018.

Solicitors’ costs – documents and other attendances.

10. In the costs claimed the following hourly rates are claimed for the following grades of fee earners:

Grade A £275.00 (partner) and £230.00 (Director)

Grade C £175.00 (costs lawyer) and £165.00 (Associate)

Grade D £95.00

Trainee £95.00

The respondent’s solicitors are based in Bristol. In assessing the reasonableness of the rates claimed, the Tribunal has regard to the Guideline Hourly Rate last published on 19 April 2010, which has not been updated. Bristol falls under National grade 1 in the Guidelines. The relevant guideline bands for each Grade in 2010 were:

Grade A	£217
Grade C	£161.00
Grade D	£118.00

It will be noted that whilst the rates claimed for Grade D , which includes trainees, are within the guidelines, those claimed for Grades C and A exceed them, in the latter case by quite some margin. That said, the guidelines are only that, and a Court or Tribunal has a discretion as to their application. Further, they are of some age now, and have not been updated. The relevant time, of course, is 2017. Further, the respondent is a national company, and it would not have been surprising if it had used London solicitors, whose guideline hourly rates would be well in excess of those charged. Additionally, the rates claimed for the Grade D fee earners is significantly lower than even the 2010 guideline rate. We note too that a lot of the work was done by an Associate at Grade C, whose claimed rate at £165 per hour is only £4 above the 2010 guideline rate. There is thus something of a swings and roundabouts element to the reasonableness of the rates charged. In overall terms, however, we consider that the rates even out to some extent, and we are prepared to assess the costs on the basis of the rates claimed.

a) Schedule of work done on documents.

11. These sums claimed are set out in a document so headed in which the amounts claimed and time spent on documents are set out. The Tribunal now turns to the time claimed. The Tribunal's task is not to examine what work was actually done, but what work was reasonably done. To some extent the Tribunal is hampered by a lack of narrative as to what work precisely was done by whom, when, and why, so has had to take a broad view of what amount of work could reasonably be said to have been carried out.

10. There are several entries on this document which the Tribunal does not consider reasonable, and cannot see the justification for the amounts charged. They are:

Items 1 to 6

The respondent claims a total of 14 hours of time, spread over five different fee earners, 2 hours 42 minutes of which is for "considering and discussing position, strategy and next steps generally". The remaining 11 hours 18 minutes is claimed for "preparing and considering statements of costs for hearing 14 August 2017". It is to be noted that there is no corresponding claim for attendances on the client, so all this work has been internal. The Tribunal can see no justification for it. It is a substantial amount of time, and to the extent that the respondent prepared a costs application for the aborted hearing of 14 August 2017, it did so unreasonably, as it made an application at that time for the costs of the claim as a whole, which have not been awarded. For all the respondent knew, the claimant may have attended the hearing, and its costs application may well have been a waste of time. As it was, it was wasted work, or was then duplicated when this application was later made. On any view the Tribunal considers these costs to be inadequately explained or broken down, and excessive. They are disallowed, and hence a total of £1855.00 falls to be

deducted from the total for work done on documents in relation to all six of these items.

Items 7 to 15

The next items claimed are after the hearing of 14 August 2017 had taken place, and in its aftermath. We consider these are allowable items, in principle. Again they are, partly, for “considering and discussing position, strategy and next steps generally”. We note the bulk claimed is for the work done by the Associate at £165 per hour, with other work being done by the Associate Director, and some, more limited involvement by the Partner. Items 10 and 11 relate to a total of 7 hours 24 minutes of work, split between a Grade A and Grade C fee earner. The other work claimed for relates to “drafting application for costs”. 24 minutes are also claimed for a Partner. All the work is for “considering the position as regards the application for costs”, or the claimant’s postponement application. Again, it is to be noted that none of this work is replicated in any attendance upon client, and hence this was all internal discussion and consideration. We consider 7 hours and 24 minutes for such internal consideration and discussion to be excessive. A total of £1357.50 is claimed for these two items. We consider that 3 hours of a Grade A fee earner’s time would be reasonable, that is £690.00. Thus we propose to disallow £667.50 of the amounts claimed under Items 10 and 11.

A total of some 16 hours and 6 minutes work is claimed during this (unspecified) period. Whilst we consider that some of it was reasonable, we also consider that a total of 5 hours 42 minutes claimed across two fee earners for drafting the application for costs, and “filing the same” , which means sending it to the Tribunal, is excessive. We disallow 3 hours of the Associate’s claimed 5 hours for this work, at Item 15, and hence reduce the amount claimed by a further £495.00

Items 16 to 20

This section relates to the hearing held on 5 January 2018, at which the claimant claimant’s application for reconsideration and the respondent’s application for costs were considered. We consider that Item 16 is justified, and will allow it. Items 17, however, at 1 hour 24 minutes, for considering costs application and drafting instructions to Counsel, and Item 18, for “considering documents and preparing for hearing of 5 January 2018 , at 2 hours, are excessive, and a total of 2 hours for these items together is reasonable, that is 2 hours in total for the Associate at £165 per hour will be allowed. £231.00 therefore falls to be deducted from the amount claimed. At Item 19, 1 hour 24 minutes is claimed for “considering outcome of hearing of 5 January 2018” , by the Legal Director at £230.00 per hour. We consider that excessive, some 30 minutes is more reasonable. This leads to a further reduction of £148.50. Finally, at Item 20 , 3 hours is claimed for the costs lawyer, in drafting statement of costs of hearings 14 August 2017 , 5 January 2018, and costs application. We consider this excessive, given the previous work on statements of costs that had been undertaken. It is presumed that computerised time recording is utilised by the respondent’s solicitors, and it is hard to see why more than 2 hours work would be needed to complete these tasks, especially when costs applications had been made previously. At £175.00 per hour, a further £175.00 thus falls to be deducted from the sub total claimed.

11. Thus, the amounts to be deducted from the total sum of £6328.50 claimed for work done on documents are:

Items 1 to 6	£1855.00
Items 7 to 15	£1162.50
Items 16 to 20	£ 613.00
Total:	£3630.50

12. The Tribunal disallows those costs, and accordingly reduces this part of the costs claimed by from £6328.50 to a sub – total of £2698.00

b) Attendances.

13. Next is the section on attendances. This too is scant on detail, such as dates, and why the attendances were necessary. As observed, none are upon the client, save for a total of 2 hours by way of letters/e-mails out, and 24 minutes of telephone calls , all of which we consider reasonable. Similarly, the 48 minutes claimed for letters or emails out to the claimant we consider reasonable,

14. The Tribunal, however, does have difficulty in accepting the sums claimed under “attendances on others”. Those “others” are not identified, and whilst 48 minutes for letters out to others, and 1 hour 18 minutes for telephone calls out to others appear reasonable, we find it hard to understand why the Associate at £165.00 per hour spent 6 hour 18 minutes on the telephone to “others”. Accepting this may have been Counsel, her clerks, or the Tribunal, we still find it hard to justify more than 2 hours of telephone calls, and hence propose to reduce this element of the costs claimed by 3 hours , thereby reducing the total sum by £495.00. We have no difficulty with one telephone call by the Trainee at £9.50.

15. The total sum allowed for attendances is therefore £2144.50 less £495.00, £1649.50.

16. Turning to Counsel’s fees, we accept that Counsel’s brief fees of £4000.00 for the hearing of 14 August 2017 (which would have been delivered on the basis that the case was effective, and was a potentially significant discrimination claim) and of £1500 for the reconsideration hearing are reasonable, and will award those. No VAT is included in any sums claimed.

17. Hence our assessment of the reasonable costs which the respondent is entitled to seek to recover (the client not having been charged less than the sums assessed) is:

Work on documents	£2698.00
Attendances	£1649.50
Counsel’s Fees	£5500.00
Total:	<u>£9847.50</u>

The claimant's means and ability to pay.

18. Having assessed what would be a reasonable sum by way of costs, the Tribunal still has a discretion as to whether or not to order the claimant to pay the assessed sum in full, and may take into account his ability to pay.

19. The claimant has only provided the information about his means set out in paras. 2 to 5 above. It is far from satisfactory, and somewhat contradictory, in that:

a) In his e-mail of 8 June 2018 he said he was buying a house, and had used his savings for this purpose, but in his e-mail of 2 October 2018 he states that he does not own his own home and did not have any other land in any countries;

b) He makes reference to contributing £495 for household expenses to his father for expenses and food, but the impression given previously was that he lived with his wife and children in the home he had bought;

c) He is working in Belgium, but there is no clarity as to where he lives, where his wife and children live, what he pays for his accommodation, and to whom;

d) There is no clarity as to the number of persons in his household, and whether any of them work.

20. Further, the Tribunal is far from satisfied that the claimant has provided it with adequate or accurate details of his income. From documents the claimant sent to the Tribunal on 19 September 2017, in support of his application for reconsideration, the contracting job in Belgium that he obtained last year shows that the service company through which his services are provided is paid EU 47 per hour, which for a 38 hour week equates to EU 1786 per week, and annual sum of EU 92872. It is noted that the service company IBS Solutions Ltd, is the claimant's own company, but there is no information whatsoever as to how the claimant pays himself through that company. Whilst doubtless there are expenses he or the company can and does offset against the income received, it seems highly unlikely that the potential gross annual income of £80,000 (at an exchange rate of £0.87 to the Euro) is reduced to a mere £12,000 per annum. Alternatively, the claimant may be taking payments by way of dividends instead. Either way, there is a total lack of clarity about what the claimant's true income is.

21. Further, an analysis of the very limited extracts from his bank statements that have been produced does not support his claim that he only earns £12,000 per annum, in fact they rather undermine that assertion. An analysis of the bank statements produced by the claimant dated 15 October 2018, which cover the period from 26 September 2018 to 15 October 2018 shows the following payments into the account from IBS Solutions Ltd, the claimant's company:

30 September 2018	£ 30.00
30 September 2018	£1,500.00
2 October 2018	£ 484.00
5 October 2018	£ 210.00

14 October 2018 £ 250.00

Total: £2,474.00

22. This, it will be appreciated, is over a two week period, and is over twice the amount that the claimant has claimed he was receiving per month. Further, there is a receipt of £250.00 on 8 October 2018, which is from a Halifax Bank payment account, the details of which the claimant has not disclosed.

23. Consequently, the Tribunal is far from satisfied that the claimant has demonstrated that he lacks the means to meet a substantial costs order, and the Tribunal does therefore make an award in the full amount that it has assessed as due, in the sum of £9847.50.

24. The respondent has also brought to the Tribunal's attention the claimant's failure to discharge a previous costs award in the sum of £700, which he agreed to pay by instalments of £15, to which he has not adhered. The respondent has sought an order from the Tribunal in relation to that costs order, and, in relation to the order that it now is making. The respondent seeks an order that it be paid within 28 days.

25. The Tribunal has no power to make any orders in relation to enforcement of monetary awards. It cannot make any orders in relation to time to pay, or instalments. Further, in terms of the time for compliance with any judgment or order, it is set by rule 66 at 14 days, unless the Tribunal sets a longer period. Hence, as the respondent has sought 28 days, that is what the Tribunal will order.

Employment Judge Holmes

Dated : 7 November 2018

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

8 November 2018 2018

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**NOTICE****THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990**

Tribunal case number(s): **2400591/2016**

Name of **Mr M Latif** v **Vodafone Limited**
case(s):

The Employment Tribunals (Interest) Order 1990 provides that sums of money payable as a result of a judgment of an Employment Tribunal (excluding sums representing costs or expenses), shall carry interest where the full amount is not paid within 14 days after the day that the document containing the tribunal's written judgment is recorded as having been sent to parties. That day is known as "*the relevant decision day*". The date from which interest starts to accrue is called "*the calculation day*" and is the day immediately following the relevant decision day.

The rate of interest payable is that specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as "the stipulated rate of interest" and the rate applicable in your case is set out below.

The following information in respect of this case is provided by the Secretary of the Tribunals in accordance with the requirements of Article 12 of the Order:-

"the relevant decision day" is: **8 November 2018**

"the calculation day" is: **9 November 2018**

"the stipulated rate of interest" is: **8%**

MR J PRICE
For the Employment Tribunal Office

INTEREST ON TRIBUNAL AWARDS

GUIDANCE NOTE

1. This guidance note should be read in conjunction with the booklet, 'The Judgment' which can be found on our website at www.gov.uk/government/collections/employment-tribunal-forms

If you do not have access to the internet, paper copies can be obtained by telephoning the tribunal office dealing with the claim.

2. The Employment Tribunals (Interest) Order 1990 provides for interest to be paid on employment tribunal awards (excluding sums representing costs or expenses) if they remain wholly or partly unpaid more than 14 days after the date on which the Tribunal's judgment is recorded as having been sent to the parties, which is known as "the relevant decision day".

3. The date from which interest starts to accrue is the day immediately following the relevant decision day and is called "the calculation day". The dates of both the relevant decision day and the calculation day that apply in your case are recorded on the Notice attached to the judgment. If you have received a judgment and subsequently request reasons (see 'The Judgment' booklet) the date of the relevant judgment day will remain unchanged.

4. "Interest" means simple interest accruing from day to day on such part of the sum of money awarded by the tribunal for the time being remaining unpaid. Interest does not accrue on deductions such as Tax and/or National Insurance Contributions that are to be paid to the appropriate authorities. Neither does interest accrue on any sums which the Secretary of State has claimed in a recoupment notice (see 'The Judgment' booklet).

5. Where the sum awarded is varied upon a review of the judgment by the Employment Tribunal or upon appeal to the Employment Appeal Tribunal or a higher appellate court, then interest will accrue in the same way (from "the calculation day"), but on the award as varied by the higher court and not on the sum originally awarded by the Tribunal.

6. 'The Judgment' booklet explains how employment tribunal awards are enforced. The interest element of an award is enforced in the same way.