



EMPLOYMENT TRIBUNALS

Claimant: Mrs C Rawlinson
Respondents: (1) TLC Care Management Limited
(2) Christopher Houghton

AT A COSTS HEARING

Heard at: Leeds **On:** 9th January 2019
Before: Employment Judge Lancaster
Members: Mr D Dorman-Smith
Ms P Wolstencroft

Representation

Claimant and Respondents: Written submissions received, the parties were not required to attend

JUDGMENT

The Respondents' application for costs is dismissed.

REASONS

1. The Respondents apply for costs on the alternative grounds that the Claimant acted unreasonably in bringing or conducting these proceedings or that they had no reasonable prospect of success: rules 76 (1) (a) and (b) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The Respondents had always rigorously defended this claim and had in the initial Response, in the Amended Response and in a costs warning letter dated 31st May (5 days before the start of the final hearing) asserted that it had no reasonable prospect of success. The case was however listed for final hearing only.
3. At that final hearing the unanimous decision of this tribunal was that all complaints be dismissed. That is because, in the material respects, either we made findings of fact in favour of the Respondents, believing their witnesses' evidence as to what they had or had not done, or we found that the Claimant had not, on the balance of probabilities, made out her case.
4. We are, unanimously, of the view that the determination of this claim did require us to make those findings of fact, and could not have been concluded without that consideration of the evidence. Even though in the event the Claimant lost on every

point that does not mean that her complaints had no reasonable prospect of success from the outset, nor that it was unreasonable to have pursued them to the point of a determination on the evidence. That observation is just as must true of the preliminary ruling which we made in the course of our decision - that Mrs Turner was not in a material sense for the purposes of these specific harassment allegations the agent of the First Respondent – as it is of the factual allegations of discrimination. Whether or not Mrs Turner, who clearly was in certain respects the agent of the First Respondent, was or was not acting in that capacity at material times and in particular circumstances was a question of fact for us to decide.

5. In those circumstances we conclude that the Claimant, although ultimately unsuccessful did not bring, or pursue, complaints which can properly be said to have had no reasonable prospect of success. Nor did she at any stage, whether before or after the costs warning, act otherwise unreasonably in taking her claim through to a final hearing.
6. It is evident from the “impact statements” submitted by the Claimant and her husband and by Mrs Turner that the tribunal process was a stressful and difficult time for all the individuals concerned in these allegations and counter-allegations. It is unclear to us how these statements are in fact relevant to this costs application. However and in any case, it would not have been, in our view, unreasonable to have brought these complaints simply because in the event it caused stress for Mrs Turner. We certainly did not, and do not now, make any finding that this claim – which it appears was in many ways equally stressful for the Claimant – was in any sense vexatious or malicious or pursued otherwise than in a genuine, though ultimately mistaken, belief that the Claimant was unfairly treated had or may have been discriminated against.
7. We do not therefore have to decide separately whether we would have exercised our discretion to award cost, had the preconditions for doing so been met. Nor do we need to carry out any assessment of what in fact would have been the Claimant’s ability to pay or decide upon the appropriate forum for assessing the Respondents’ costs

EMPLOYMENT JU DGE LANCASTER

DATE 9th January 2019

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR SECRETARY OF THE TRIBUNALS

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