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EMPLOYMENT TRIBUNALS

Claimant: **Mr S Althaf**

Respondent: **Southend University Hospitals NHS Foundation Trust**

Heard at: **East London Hearing Centre**

On: **Tuesday 15 January 2019**

Before: **Employment Judge Prichard**

Representation

Claimant: In person (no support)

Respondent: Ms C McCann (counsel, instructed by DAC Beachcroft LLP, London EC4)

JUDGMENT

The judgment of the Tribunal is that the claimant is ordered to pay a contribution to the respondent's costs of today in the sum of £3,000.00

REASONS

1. The respondent has made an application for costs in the sum of £5,435.70. They are claiming the costs incurred since the last hearing because of the claimant's conduct which has brought about the necessity, they say, for the present hearing. It was eminently avoidable. Their costs amount to £5,435.70

2. The respondent's letter of 21 December 2018 afforded the claimant every opportunity of responding to apparently simple requests which could have resulted in the vacating of this hearing. It was a fair letter. The claimant was warned:

> "In particular you should know that if the PH goes ahead our client may need to consider making an application against you for the unnecessary costs it has occurred that could have been avoided had you complied with the tribunal's order or engaged with our correspondence on this matter."

3. I have been shown enough detail of how the respondent has extended deadline after deadline to help the claimant to comply despite what he uncommunicatively described to the respondent as "personal issues". This was all set out in quite a detailed letter from the respondent to the tribunal dated 18 October 2018.

4. The respondent's letter prompted Judge Brown to issue a strike out warning on 5 November inviting the claimant's objections. That elicited a 3-page submission from the claimant dated 19 November detailing limited assistance he was getting and enumerating mental and physical problems diabetes, haemolytic anaemia of unknown origin, seronegative rheumatoid arthritis, stress and depression.

5. I am satisfied that the criterion of unreasonableness in rule 76(1)(a) has been satisfied in this case, even if, as I explained at the hearing, there may be reasons for the claimant's unreasonableness. The respondent was making modest demands and always allowing extended deadlines for the claimant to respond.

6. I also consider that the respondent's warning letter of 21 December 2018 was received by the claimant. Whether it was emailed or posted is not clear from the letter itself.

7. The claimant made a telling statement to the tribunal today: "I have a few emails which I have not dared to look at". That, as I indicated, could hardly be anything other than unreasonable conduct.

8. I also have a discretion as to whether I should award costs anyway. In this case, given the protracted failure to comply and what I find to be a forbearing stance taken by the respondent's solicitors with successive failures by the claimant to comply with the orders that I made on 27 July last year, I think it would be wrong for the tribunal not to make an order for costs. I find it hard to see when I would make an order for costs if I did not make one today.

9. I have had to consider the claimant's means which I have asked by direct questioning of the claimant. As stated earlier, he has no substantial means and he is living off his partner, a freelance journalist. He owns no property either here or in India. He lives in a privately rented old farm house near Wickford for which his partner is paying £1,950 per month rental. It is a 4-bedroom property, probably larger than they need.

10. The couple only have one vehicle. The claimant's partner has this vehicle which is registered to her mother.

11. I also note that when he brought his first set of proceedings he paid the fee and never made an application for remission then.

12. Given the scale of these things and considering rule 84, I would not make an order for the entirety of the respondent's costs for this hearing, although I came close to it. I make an order for £3,000 costs. It is my belief, from the claimant's description, that these costs are achievable for the claimant from the best assessment I can make.

13. I am also reminding myself of the principle that the prerogative of mercy lies not so much with the tribunal as with the receiving party who needs to make a conscious decision whether to enforce the order or not.

Employment Judge Prichard

21 January 2019