



EMPLOYMENT TRIBUNALS

Claimant: Miss F Fletcher

Respondent: Magicare Limited

Heard at: Watford

On: 29 January 2019

Before: Employment Judge Manley

Representation

Claimant: Not in attendance

Respondent: Mr Watson, consultant

JUDGMENT ON COSTS

- 1 The claimant acted unreasonably in continuing with this claim after 27 June 2018.
- 2 Having taken into account the claimant's ability to pay, I make no order for costs.

REASONS

Introduction and issues

1 The claimant's claims for constructive unfair dismissal and race discrimination and harassment were unsuccessful at a hearing between 23-25 July 2018.

2 By letter of 31 July 2018 the respondent's representative made an application for costs. It set out a summary of the findings of the tribunal which were given orally at the hearing. The application also included a copy of a letter sent to the claimant on 27 June 2018 which provided details of the legal tests that the tribunal would apply to her claims, a strong encouragement to the claimant to seek legal advice and a warning that they would seek a costs order if the claimant was unsuccessful. The letter also contained an offer of £2000 if she withdrew her claims. The claimant did not accept the offer which was repeated on 17 July 2018.

3 The claimant responded to the application for costs on 3 September 2018 with a short email which reads as follows:

"I do not agree to the cost payment.

Reason being I am not employ at present and also I am a single parent of two very small children with no saving in the bank.

My current status at the moment is that I am a full time student living off a student finance and will be in education for the next three years.

I am sorry but there is no way I will be able to pay those charges".

4 A hearing was listed for today to determine the matter although the respondent had asked for it to be considered on the papers.

5 The claimant did not attend the hearing and the two non-legal members were not present. Mr Watson, for the respondent, had prepared a bundle of documents and agreed that I could determine the matter without the non-legal members. I indicated that I would consider the matter on the papers. Mr Watson corrected the schedule of costs which needed to be amended to a preparation time order as the previous representative, Mr Quinn, had not been qualified at the time of the hearing. The amount claimed was therefore substantially reduced to £978.50.

The Rules

6 Rules 74-79 Employment Tribunal Rules of Procedure 2013 (the Rules) apply to this application. To summarise, rule 76 states that a tribunal may order costs or preparation time if a party has acted "*vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way in which the proceedings have been conducted*". Preparation time orders are for time spent in preparation of employees or advisers who are not legally qualified. The hourly rate is set currently at £38 per hour.

7 Rule 84 of the Rules states that the tribunal may have regard to the paying party's ability to pay any order.

Conclusions

8 The claimant did not behave unreasonably in bringing this claim at the outset as it is possible that she did not appreciate the legal tests that have to be applied. She did behave unreasonably in continuing the claim after she was warned by the respondent that an order for costs would be sought and she failed (as far as I am aware) to seek legal advice. That was an opportunity for the claimant to consider her case and its likely chances of succeeding. She did not do so. That is unreasonable behaviour.

9 I then considered whether to make a preparation time order in the light of that finding. I can appreciate that the respondent might feel that it has been forced to use precious resources to have to defend a claim that is ultimately unsuccessful. However, I can also appreciate that the claimant appears to be of limited means. In the circumstances, given that the claimant is a litigant in person and taking into account her ability to pay, I have decided not to make an order for costs.

Employment Judge Manley

Date 29 January 2019

JUDGMENT SENT TO THE PARTIES ON

13 February 2019

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FOR THE TRIBUNAL OFFICE