



EMPLOYMENT TRIBUNALS

Claimant: Mr E Lanny

Respondent: J Moran Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: North Shields

On: 3 January 2019

Employment Judge Shepherd (in chambers)

JUDGMENT ON APPLICATION FOR COSTS

The judgment of the Tribunal is that:

The claimant's application for costs is refused.

REASONS

1. The judgment in this claim was given orally at the hearing on 7 December 2018 and sent to the parties in writing on 14 December 2018. The claimant succeeded in his claim for unfair dismissal.

2. The claimant wrote to the Tribunal applying for a costs order against the respondent on the basis that the claimant was a litigant in person and had engaged Ms Hogben of Counsel on a direct access basis. The respondent had been represented by Mr Moran, Managing Director of the respondent company who was, effectively, a litigant in person.

3. The respondent was provided with a copy of the claimant's application but has not provided any comment. I consider that both parties have had a reasonable opportunity to make representations and that it is appropriate to consider this application in writing.

4. The claimant's application for costs is made on the basis that the hearing had lasted three days and it is suggested by the claimant that matters may well have

been concluded by the end of day two but that the respondent, through Mr Moran, played a large part in the Tribunal hearing running over to a third day. The claimant referred to Mr Moran failing to prepare and supply papers and Ms Hogben then having returned to her chambers in order to provide further copies. Also, the claimant referred to Mr Moran returning to the hearing 30 minutes late following a break. Mr Moran being told that questions he was asking during cross-examination were not relevant and also requiring the Tribunal to view CCTV footage.

5. The claimant applied for costs in the form of counsel's fee in respect of the third day of the hearing.

The law

6. The Employment Tribunal is a completely different jurisdiction to the County Court or High Court, where the normal principle is that "costs follow the event", or in other words the loser pays the winner's costs. The Employment Tribunal is a creature of statute, whose procedure is governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Any application for costs must be made pursuant to those rules. The relevant rules in respect of the claimant's application are rules 74(1), 76(1) and (2), 77, 78(1)(a), 82 and 84. They state:

74(1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purposes of or in connection with attendance at a tribunal hearing).

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) had been conducted; or

(b) any claim or response had no reasonable prospect of success.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

77 A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party, was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may order) in response to the application.

78(1) A costs order may –

(a) order the paying party to pay the receiving party a specified amount not exceeding £20,000 in respect of the costs of the receiving party.

84 In deciding whether to make a costs, preparation time or wasted costs order and if so in what amount, the Tribunal may have regard to the paying party's ability to pay.

7. A two stage test was set out in Monaghan v Close Thornton EAT/0003/01 as follows:

“(1) Was the costs threshold triggered, for example, was the conduct of the party against whom the costs are sought unreasonable, and if so,

(2) Ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances”

8. The EAT case of **AQ Limited v Holden [2012] IRLR 648** provides that an employment Tribunal cannot, and should not, judge a litigant in person by the standards of a professional representative. Justice requires that Tribunals do not apply professional standards to lay people, who may well be embroiled in legal proceedings for the only time in their life. Lay people are likely to lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser. The EAT stressed that Tribunals must bear this in mind when assessing the threshold tests. This was not to say that laypeople are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or reasonably even when proper allowances made for their inexperience and lack of objectivity.

9. In this case, I have considered the claimant's application. The case had been listed for a three day hearing. Following an initial discussion of the issues before I commenced reading the statements and documents it became apparent that there were insufficient copies of the bundle of documents and Ms Hogben return to her chambers in order to obtain another copy. During that time, I carried out the necessary reading. This did not cause a substantial delay and the first day of the hearing ended at approximately 5:10 pm.

10. On the second day of the hearing Mr Moran did return to the Tribunal late following the lunch break. He indicated this was due to problems with car parking. The second day of the hearing concluded at 4:40 pm.

11. On the third day of the hearing I viewed the CCTV footage and the oral hearing then commenced at 10:30 am. Submissions commenced at approximately 11:40 am and judgment was delivered at approximately 2:20 pm.

12. It is not uncommon for hearings to move at a slower pace when parties are not legally represented. However, I am not satisfied that it has been established that this hearing was substantially delayed by reason of any vexatious, abusive, disruptive or otherwise unreasonable conduct of the proceedings by the respondent. The case

was listed for three days and I am not satisfied that it would have been heard within two days but for any conduct on the part of the respondent.

13. The threshold for a costs award has not been crossed and, in the circumstances, claimant's application for costs is refused.

**Employment Judge Shepherd
3 January 2019**