Case Numbers: 2208099/2017
2208100/2017
2200125/2018
2200126/2018

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Q		**R, S & T**

JUDGMENT ON COSTS
OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON:** 5 March 2019

BEFORE: Employment Judge A M Snelson (in chambers)

JUDGMENT

the Claimant is ordered to pay to the Respondents a contribution towards their costs in the sum of £500.

REASONS

Introduction

1. On 14 January this year, at a preliminary hearing which the Claimant did not attend, I struck out all his claims. Mr Keith Bryant QC, appearing for the Respondents, then applied for costs. I thought it fair to the Claimant to require the application to be made in writing and to give him the opportunity to respond to it.

2. By a letter dated 7 February the Respondents made their application. They pointed out that the Claimant had brought numerous claims but had consistently failed to clarify them and had played no part in the preliminary hearing. They limited their application to their costs incurred in instructing leading counsel to attend the preliminary hearing, namely £1,560, inclusive of VAT.

3. The Claimant replied in an email of 12 February, resisting the application. He made a number of points, some of which were not easily understood, including the following. First, the application was not made on behalf of any entity named as

a respondent. Second, he had been precluded by "security issues" and "case management errors" from participating in the preliminary hearing. Third, the Tribunal had persistently ignored him and violated his rights under the Human Rights Act 1998 and the Official Secrets Act 1989. Fourth, "fraud unravels all" and therefore the Tribunal's judgment cannot stand. Fifth, he had given notice to the EAT that the claims were withdrawn. Sixth, the Respondents should be compensating him for costs incurred, not claiming costs from him. Seventh, he has no income or means and could not pay any costs award.

4. I will not recite the background at any length. These claims, two of which were commenced in late 2017 and two in early 2018, arise out of unsuccessful applications for employment. The claim forms allege numerous infringements of the Equality Act 2010, citing the protected characteristics of age, race and disability, together with numerous other matters some of which do not appear to raise claims known to our law. The Tribunal has attempted to impress upon the Claimant the need for his case to be made comprehensible. At a case management hearing on 18 October 2018 Employment Judge ('EJ') Hodgson reviewed the claims as best he could with the assistance of Mr Bryant. Unfortunately, the Claimant did not attend. In a document sent the parties on 22 October 2018 the judge observed:

> **2.3 We considered the various claims. … There is a general reference to discrimination, discrimination relating to disability, discrimination relating to nationality, failure to make reasonable adjustments, harassment, victimisation, discrimination when a relationship has ended, inducing contraventions of the Equality Act 2010, and aiding contraventions. … There is little or no attempt to set out what specific factual circumstances are said to constitute any form of discrimination, or the basis on which any such allegation is made.**
>
> **2.4 Reading the claim forms generously, it is apparent that the claimant alleges that he has made a number of applications for employment. The applications have been unsuccessful. … It is possible that the claimant is suggesting that there was a failure of reasonable adjustments. However, whether that failure relates to some process of recruitment, or whether the claimant has something else in mind, is not set out or made clear.**
>
> **2.5 The claimant does not appear to set out whether it is his case that the refusal of any job application amounted to any form of discrimination. It is not enough for the claimant to point generally to a cause of action such as direct discrimination, harassment, victimisation and failure to make adjustments and then to simply refer to some general circumstances.**
>
> **2.6 It is necessary for the claim form to set out in some manner the relevant accusation of a causational link. … This does not have to be set out in any technical language, but the essential allegation, with the relevant causal link, must be set out.**
>
> **2.7 I considered whether there should be an attempt to order particularisation. I have taken the view it is not appropriate in this case. … It is not for the tribunal to require particularisation of something which in fact is not set out.**
>
> **2.8 it is unclear what is said to be the disability in this case. There is some**

reference to dyslexia. However, whether that is said to be the disability is unclear. If it is said to be the disability, there is a lack of detail. Moreover, it is unclear how it is said any dyslexia gave rise to a failure to make reasonable adjustments, or any other form of disability discrimination. It is not for the tribunal to speculate.

2.9 The claimant should consider his position carefully. If he wishes to make specific claims then those claims must be set out in detail. The claimant is invited to consider whether he wishes to seek amendments to clarify the claims or whether he wishes to provide, at the very least, further written details of the nature of his claims. I understand the respondent has already written to the claimant indicating the need to set out his claim and has provided a framework for him to do so. … I have now set the matter down to consider striking out the claims as having no reasonable prospect of success.

2.10 At the strike-out hearing, the tribunal will consider the claims as set out in the claim forms. If the tribunal concludes that it may be appropriate to strike out the claims, it will need to consider whether the claims can be, or ought to be, clarified. I therefore invite the claimant to give clarification now in order to assist the tribunal. If he does not address the details of the claim now, a tribunal may take that into account when considering the application to strike out, and it may not give any further opportunity for clarification.

2.11 The claimant has indicated that he did not wish to write to the respondents because it may breach the Official Secrets Act. I invited the respondents to provide an email address to which the claimant can safely send documentation. …

2.12 I understand the claimant has expressed some concern that the identity that of the respondents has changed. Whatever names are used, the identity of the respondents has remained the same. It is now only necessary to refer to the respondents by the anonymised names adopted.

The law

5. The power to award costs is contained in rule 76 of the Employment Tribunals Rules of Procedure 2013, the material part of which is the following:

(1) A Tribunal may make a costs order … , and shall consider whether to do so, where it considers that –

(a) a party … 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) have been conducted; or
(b) any claim or response had no reasonable prospect of success.

6. The effect of the rule is to pose two questions. First, is there jurisdiction to make a costs order? This turns on whether any of the specified conditions in rule 76(1)(a) (vexatiousness, abusiveness etc) is shown. If not, the possibility of making an order does not arise. If so, the second question is whether the power to make an order should be exercised. This involves a broad discretionary assessment, based on all relevant considerations.

7. When our rules of procedure were revised in 2001 several important changes were brought in, the most significant being (a) that the Tribunal was for the first time not merely permitted, but obliged, to consider making a costs order where any of the prescribed conditions (vexatiousness, abusiveness etc) was fulfilled, and (b) that a new and wider criterion of unreasonableness was added. It seems to me that these innovations, preserved in both subsequent revisions of the rules, indicate a desire on the part of the legislature to encourage Tribunals to exercise their costs powers more freely than they did in the past, where unmeritorious cases are pursued or where the manner in which litigation is conducted is improper or unreasonable. These things having been said, I am mindful of the fact that orders for costs in this jurisdiction are, and always have been, exceptional. Employment Tribunals exist to provide informal, accessible justice for all in employment disputes. I recognise that, if Tribunals resorted to making costs orders with undue liberality, the effect might well be to put aggrieved persons, particularly those of modest means, in fear of invoking the important statutory protections which the law affords them. It would be contrary to the purpose of the Tribunals if parties to disputes declined to exercise their right to bring (or contest) proceedings as a result of unfair economic pressure.

Discussion and conclusions

8. Having examined the application with care, I have concluded that the Claimant's conduct of the litigation was thoroughly unreasonable. It is not necessary to decide whether it was also vexatious. He presented claims which were profoundly unclear and so could not be responded to properly or fairly tried. He ignored repeated attempts by the Respondents and the Tribunal to extract clarity from him. He disregarded the helpful guidance of EJ Hodgson (from which I have quoted above). And, while doing nothing to further his case, he failed to withdraw it and so put the Respondents to the trouble and expense of attending the preliminary hearing to secure the striking-out order. The right to bring claims has responsibilities attached. There is no sign whatever of the Claimant having acknowledged them, much less honoured them.

9. It follows that I have power to make a costs order. Should I exercise that power? In my view, the circumstances warrant making an order. This is a bad case of unreasonable conduct. Moreover, I am offered little or no mitigation. The Claimant's behaviour has bordered on the perverse but I have, for example, no evidential basis for thinking that it could be the product of some medical or disability-related cause. I am not entitled to speculate.

10. I am, of course, entitled and indeed obliged to have regard to what the Claimant put before me. His principal contentions are summarised in para 3 above. I find no substance in any of them. The first was to do with the proper identification of the parties named as Respondents. EJ Hodgson dealt that matter (see above) and offered the Claimant all the reassurance he could reasonably wish for. As to the second point, it is simply not true that the Claimant was precluded (by "security

matters", "case management errors" or anything else) from participating in the preliminary hearing. EJ Hodgson did his level best to prevail upon him to engage with his own case, but no avail. Thirdly, contrary to the Claimant's assertion, the Tribunal did not ignore him, or violate his rights under the Human Rights Act 1998, the Official Secrets Act 1989 or any other legislation. Fourthly, the mantra "fraud unravels all" is not comprehensible and takes the case nowhere. Fifthly, even if (which is not established) the Claimant did tell the EAT that his claims were withdrawn, that act was not effective as between him and the Employment Tribunal, to bring his claim to an end. The sixth argument is obviously untenable: there is no possible ground for asserting that the Respondents ought to be paying costs to the Claimant.

11. Should I have regard to the Claimant's means? On balance I think it right to take what he says about his means into account. It is true that he has not supplied evidence of his means but he was not put on notice of any requirement to do so. The information he gives is exceedingly sketchy but on any view he puts himself forward as a person of very limited means. I do not have information or evidence from any other source which calls what he says into question.

12. What is the proper award? But for the question of means, I would not hesitate to make an order for the entire sum sought by the Respondents. Taking account of his means, it seems to me that the justice of the case is met by limiting my order to £500. I accept that even that sum is likely to be burdensome for someone in straitened circumstances, but an award of less than that would not properly reflect the wholly irresponsible and unreasonable behaviour on which the costs application is rightly based. No doubt the Respondents would not quibble at the Claimant paying what was due in instalments, and barring agreement it would be open to him at the enforcement stage (in the County Court) to argue for such an arrangement.

_____

EMPLOYMENT JUDGE SNELSON
5 March 2019

Reasons entered in the Register and copies sent to the parties on 5 March 2019

..... for Secretary of the Tribunals