



EMPLOYMENT TRIBUNALS

BEFORE: EMPLOYMENT JUDGE BALOGUN

**MEMBERS: Ms S Campbell
Ms S Murray**

Mr I Kamal

Claimant

And

Tesco Stores Limited

Respondent

ON: 3 December 2018 (In Chambers)

COSTS JUDGMENT

The Claimant is to pay the Respondent £2000 towards its costs.

REASONS

1. By an application dated 22 March 2018, the Respondent applies for its costs in this case. The application is made under rule 76(1)(b) of the Employment Tribunal Procedural Rules 2013 on grounds that the claim had no reasonable prospect of success. The Claimant objects to the application.
2. At the request of the parties, the application has been dealt with on the papers.
3. There are 2 stages to the task before us: i) whether the threshold for a costs order has been met and; ii) whether a costs order should be made and if so, in what amount.
4. On 4 separate occasions, the Respondent sent the Claimant a costs warning, once through his former Solicitors and 3 times to him directly. The Respondent advised the Claimant that it considered his claims to have no reasonable prospects of success and provided a detailed explanation for its view. The Claimant was warned that if he did not withdraw his claims and was unsuccessful at tribunal, the Respondent would apply for its costs. The Claimant's response was that he did not agree with the Respondent's assessment and wished to continue with his claim.

5. The Claimant duly proceeded with his claim, which was heard over 5 days, and all of his complaints were dismissed. We concluded in our judgment that none of the matters complained about either individually or collectively amounted to a fundamental breach of contract and that the Claimant resigned to avoid being dismissed; that there was no protected act upon which to base a victimisation complaint; and that the factual allegations on which the harassment and disability discrimination claims were based were not made out and/or were out of time.
6. Our findings should not have come as a surprise to the Claimant and it should have been obvious to him that a pharmacist caught in possession of a testosterone injection, multiple needles and a syringe without prescription would be a matter that the Respondent would view seriously and want to investigate. The Claimant's complaints about the process had been considered by the Respondent internally through the grievance process and he was aware of the Respondent's explanations for its actions. Notwithstanding, the Claimant chose to reject those and pursue a case of constructive dismissal, victimisation, harassment and disability discrimination with any evidence to support those claims.
7. Based on the Tribunal's judgment, we are satisfied that the claims had no reasonable prospect of success and in pursuing them in the face of the repeated costs warnings, the Claimant acted unreasonably, causing the Respondent to incur considerable costs in resisting his claims.
8. We are satisfied that the threshold for an order for costs has been met.
9. The Respondent's Schedule of Costs is for £20,000. Rule 84 provides that the Tribunal may have regard to a party's means. On 15 June 2018, the Tribunal ordered the Claimant to provide a schedule of his income, expenditure and savings. He did not do so. We have therefore not been able to take account of his means. Nevertheless, we have borne in mind that costs do not follow the event in this jurisdiction and remain a matter of the tribunal's discretion. Also, costs are still relatively unusual.
10. Taking all of these matters into account, we have decided to award the Respondent £2000 towards its costs.

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Employment Judge Balogun
Date: 4 February 2018