



# EMPLOYMENT TRIBUNALS

## Claimant

Ms J Presland

v

## Respondent

(1) The Governing Body of North  
Walsham High School;  
(2) Norfolk County Council

**Heard at:** Norwich

**On:** 8 March 2019

**Before:** Employment Judge Postle

## Appearances

**For the Claimant:** Mr Amunwa, Counsel

**For both the Respondents:** Miss Rankin, Solicitor

## COSTS JUDGMENT

1. The respondents made application for costs. The claimant is ordered to pay a contribution towards the respondents' costs assessed at £2,000

## REASONS

1. This is the respondents' application for costs against the claimant arising out of the claimant's withdrawal of proceedings after the preliminary hearing.
2. The costs application is based on two grounds. One that the claimant's claims were unreasonable in the way that she conducted the proceedings by withdrawing the claim and secondly, that the claim had no reasonable prospect of success.
3. The law in this matter is set out in the Employment Tribunal Rules of Procedure and Regulations 2013, particularly rule 76(1)(a) says that the Tribunal may make a Costs Order or 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 the proceedings, or part, have been conducted; or

- b. any claim or response had no reasonable prospect of success.
4. The Tribunal, in deciding whether to make an order for costs, will have regard to rule 84, the claimant's ability to pay, in deciding whether to make Costs or Preparation Time or wasted costs and if so what amount, the Tribunal may have regard to the paying party's ability to pay.
5. In this hearing I have had the helpful written submissions on behalf of both the claimant's Counsel and the respondent's Solicitors, I have also had the claimant's witness statement setting out her position, though not attending in person, I have also seen a list of the claimant's outgoings and income and a short report from the claimant's psychiatrist.
6. The background to this is quite simply the claim was issued on 18 September 2017 where the claimant made claims for unfair dismissal and claims under the Equality Act 2010 for the protected characteristic of disability. The disability being Meniere's disease.
7. The respondents filed a response on 2 November 2017 and the notice of preliminary hearing was sent out well in advance for 15 February 2018. The claimant had been represented throughout. It would appear, just shortly before the preliminary hearing, that representation ceased. The claimant had led the respondents, as I understand it, to believe that she would be attending the preliminary hearing but without warning, or the courtesy of telling anybody that she would not be attending, she failed to attend. As a result of that, there was an Order made at the hearing the claimant to show cause why the claim should not be struck out on the grounds that it was no longer actively pursued. The order went out late due to an administrative problem with typing, the order time compliance was extended and the claimant then withdrew her claim on 23 March without any explanation.
8. Dealing with the unfair dismissal claim, I have listened to the representations made on her behalf and I do consider that there was arguable points, particularly procedural points that the Tribunal would have dealt with and I cannot say that part of the claim had no reasonable prospect of success or was doomed to fail from the outset.
9. However, dealing with the disability discrimination claim, the claimant's disability of Meniere's disease and looking at the allegations (the claimant had been involved in exam irregularities) that the claimant faced and the reasons for the claimant's dismissal, one cannot form a view that they were in any way linked at all. I take the view that to issue a claim for disability discrimination where there was clearly no link between the disability and the reasons for dismissal was simply doomed to fail from the outset. It had no reasonable prospect of success.

10. Also, on the question of the second limb, unreasonable, the claimant had plenty of warning of the preliminary hearing, she had plenty of representation it seems in the lead up to it. Preliminary hearings are important for not only the Tribunal, but for the respondents to understand the nature of the case, the claimant to articulate clearly what that case is about and to make further progress. To simply not turn up and to not warn the parties and then when forced to give an explanation, simply to withdraw does fall within the definition of unreasonable. Failing to attend, not warning and then withdrawing with no explanation does fall squarely, in my view, as unreasonable behaviour.
11. I accept there is a high hurdle in Tribunals with regard to costs orders and of course on costs there is the two stage test. Firstly, has any of the matters set out in rule 76 come into play as I have indicated? Certainly, the disability discrimination case I take the view was doomed to fail, the unfair dismissal did have arguable points. I also consider the second point, the unreasonableness of pursuing the claim and the way it was withdrawn, it falls into play. The next question I have to ask, should I exercise my discretion to make a Costs Order? This is a case, and claim that falls within, quite rightly, the exercising of that discretion, I have had regard to the claimant's means and also to her potential future means, I have also looked at the claimant's outgoings, some of which appear to be inflated in my view and I am going to order the claimant to make a contribution towards the respondent's costs where I have assessed having regard to the fact the unfair dismissal was an arguable claim in the sum of £2,000.

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Employment Judge Postle

Date: 10 / 4 /2019

Sent to the parties on: 10 / 4 /2019

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For the Tribunal Office