Case Number: 1301347/2017
3334419/2018

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EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr A Adenekan	V	**British Gas Trading Limited**

PRELIMINARY HEARING

Heard at: **Watford** **On:** **12 April 2019**

Before: **Employment Judge Bedeau**

Appearances:

For the Claimant: **In person**
For the Respondent: **Mr S Purnell, Counsel**

JUDGMENT ON COSTS

The claimant is ordered to pay the respondent's costs in the sum of £500.

REASONS

1. On 18 January 2019, I held a preliminary hearing to determine a number of applications made by the claimant and the respondent, and to give case management orders. One of the applications, made on 18 October 2018, was whether I should issue a deposit order against the respondent as the claimant asserted that there was no little reasonable prospect of the defence to the claims succeeding. He claimed that the respondent should have made a number of adjustments to his work as he was, at all material times, a disabled person. He had strong claims in relation to his treatment as a disabled person. He further alleged, in a separate request for disclosure of documents on 18 October 2018, that the respondent had falsified documents.

2. Having listened to the arguments it was apparent to me that the claims and issues were in dispute and that they should be considered and determined at the final hearing before a full tribunal.

3. Mr Purnell, counsel on behalf of the respondent, submitted that EJ Gilroy QC, at an earlier preliminary hearing held on 6 July 2018, explained to the claimant, who applied to strike out the respondent's response as having no reasonable prospect of success, what was required to substantiate such an application. After which, the claimant withdrew his application. I was told that prior to the hearing the claimant had made three similar but unsuccessful applications.

4. The respondent at that hearing, made an application for costs based on the claimant's unreasonable conduct of proceedings and lack of particulars given in his strike out application but it was refused. EJ Gilroy is reported to have said that the claimant escaped costs by the "skin of his teeth" and was told about how to address the respondent's legal representatives in correspondence and to be respectful in his use of language.

5. The claimant said that EJ Gilroy only referred to avoiding using "pronouns such as he and she and instead use it" .

6. Mr Purnell's application for costs before me was on the claimant's conduct of proceedings after the 6 July 2018 and that the application for a deposit order was without merit. As regards the first, I was given a chronology of events. He submitted that notwithstanding the clear indication given by EJ Gilroy as to proper conduct the claimant continued to may unsubstantiated allegations of forgery and fraud.

7. In respect of the application for a deposit order, Mr Purnell said that the respondent's responses were presented prior to the legal and factual issues being clarified at the preliminary hearing held on 24 November 2017, before EJ Rose QC. The pleadings may not, therefore, be consistent with what is contained in the respondent's witness statements.

8. The respondent submitted that the claimant did not engage in its internal process to discuss his absence except for one home visit.

9. The claimant submitted that there was no discussion with the respondent about a return to work, vacancies, the respondent's procedures while absent, and appointing others to a vacant role.

10. As he had not had sufficient time to prepare his response to the costs application he asked for an adjournment. I ordered that he should serve his written response by not later than by 15 February 2019.

11. With the parties' agreement and in order to save costs, I decided to determine the application on the papers.

12. I had expected the claimant to have complied with my order but instead I received on 6 February 2019, yet another request from the claimant's representative for specific disclosure; an application for an Unless Order; a

request on 12 February, for an extension to time to serve his response to the costs application as he requested further disclosure of documents; on 13 February, a qualified response to the costs application as he was waiting for specific disclosure of documents; on 24 February, a request for reconsideration of my ruling given on 18 January in respect of his application for a deposit order; and on 8 March, a request for a strike out or deposit order.

13. The frequency at which the claimant's representative has been communicating with the tribunal and the lengthy nature of the correspondence, coupled with various requests, caused me some difficulty in addressing the costs application in a timeous manner.

14. I do not consider that claimant need specific documents to be disclosed before he can respond to the costs application as it was based on his alleged conduct following his appearance before EJ Gilroy and on his unsuccessful application for a deposit order. Both of which are within his own personal knowledge. His request for a reconsideration has only confirmed my view that there are issues in dispute which should be determined at a final hearing. Accordingly, it has no reasonable prospect of my ruling either being varied or revoked.

15. In his written response to the costs application, the claimant asserted that the respondent had failed to comply with various orders. He challenged what occurred at the hearing before EJ Gilroy and thereafter. He submitted that at the hearing before me he was successful in his request for disclosure. He repeated that he needed documents to be disclosed before responding to the costs application.

16. The hearing on 18 January 2019 started at 10am and finished at 5.45pm. Half of the day was spent on the deposit application and alleged falsification of documents.

The law

17. The costs provisions are in rules 74 to 84, schedule 1, Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended. "Costs" includes any fees, charges, disbursements or expenses including witness expenses incurred by or on behalf of the receiving party, rule 74(1).

18. The power to make a costs order is contained in rule 76. Rule 76(1) provides,

> "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) have been conducted ; or
>
> (b) any claim or response had no reasonable prospect of success."

19. In deciding whether to make a costs order the Tribunal may have regard to the paying party's ability to pay, rule 84.

Conclusion

20. I do not place much weight on the claimant's conduct since 6 July 2018 when he appeared before EJ Gilroy QC, as the accounts between him and the respondent do differ considerably. My focus has been on the claimant's conduct of proceedings in applying for a deposit order and in pursuing the allegation of falsification of documents.

21. It was apparent to me that there were factual and legal issues in dispute and on that basis, I could not determine in the claimant's favour that the responses had little reasonable prospect of success. The claimant knew that these were disputed issues and that tribunals will be reluctant to make deposit and strike out orders in such circumstances.

22. Half of the day was spent on his application. I acknowledge that I did order specific disclosure of documents, but the application for a deposit order was unmeritorious and did take up a considerable amount of time. I consider that his conduct in making such an application as being unreasonable. Further, there was no evidence before me that the respondent had falsified documents. The respondent incurred costs in preparing and in successfully defending the application, and in demonstrating that there was no falsification of documents, as counsel attended.

23. I have not been provided with evidence of the claimant's means. I do, however, order that he should pay the respondent's costs in the sum of £500.

24. I do not order further disclosures of documents nor will I consider striking out the response. This case has already generated an unnecessary amount of documentation and the claimant and his representative must bear in mind that their frequent correspondence to the tribunal has meant that a disproportionate amount of time is being spent on dealing with their case and not enough time being given to other cases.

25. Although the claimant only worked for the respondent for less than 2 years, there are 11 lever arch bundles prepared for the hearing. This, in my view, is disproportionate and not in keeping with the overriding objective, that of "saving expense". The claimant is reminded that, on its own initiative, a tribunal has the power to strike out a claim or claims under rule 37.

26. The parties must focus on preparing for the final hearing.

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Employment Judge Bedeau

...……12.04.19……

Sent to the parties on:

……12.04.19……..

For the Tribunal:

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