



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr J Godwin

and

Respondent

United Kingdom Atomic Energy Authority

DECISION ON APPLICATION FOR COSTS ORDER

1. A Costs Order is made in favour of the Respondent in the sum of £5,000. The Claimant is ordered to pay this sum to the Respondent.
2. Reasons for this decision are attached.

REASONS

Background

- 1 On 19 February 2018 the Claimant presented a claim for Unfair Constructive Dismissal, Redundancy Payment and Holiday Pay to the Tribunal.
- 2 On 28 March 2018 the Respondent presented a response and resisted the claim.
- 3 The case was listed for a 2 day full merits hearing on 17 and 18 December 2018.
- 4 The Claimant withdrew his claim on 12 December 2018.
- 5 On 14 December 2018 the Respondent made an application for a Costs Order against the Claimant in the sum of £15,057.
- 6 In a case management order dated 28 January 2018 the Respondent was ordered to produce a breakdown of the costs claimed. The Claimant was ordered to produce a written response to the application with reasons why a Costs Order should not be made against him and details of his ability to pay such an Order. It was stated that the application and the response would be considered by the Tribunal without a hearing unless requested. Neither party has requested a hearing.

Relevant Law

- 7 The relevant law is set out in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

“Rule 76 - 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 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.*

8 The Tribunal rules impose a two stage test. First the Tribunal must ask whether a party’s conduct falls within rule 76(1)(a) or (b). If so, the Tribunal must then go on to ask whether it is appropriate to exercise the discretion in favour of awarding costs against that party.

9 Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420.

The Court of Appeal confirmed that a Tribunal’s power to order costs is more sparingly exercised and is more circumscribed than that of the courts where the general rule is that costs follow the event. In Tribunals costs orders are the exception rather than the rule. In most cases the Tribunal does not make any order for costs and if it does, it must act within the rules that confine its powers to specified circumstances. The vital point in exercising the discretion to order costs is to look at the whole picture. The Tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case, and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

10 Osannaya v Queen Mary University [2011] EAT 0225/11 The use of the word “unreasonable” requires a high threshold to be passed when a costs order is made.

Respondent’s Application

11 The Respondent claimed that the Claimant had acted vexatiously, unreasonably and had abused the Tribunal process in the bringing and conduct of the claim. It had been forced to incur legal fees to defend the case. The Claimant had failed to comply with the Tribunals’ case management order with numerous failures to exchange witness statements, attempting to delay the process by applying for a postponement of the hearing and waiting until 3 days before the hearing to withdraw the claim had resulted unnecessary legal fees. The Claimant pursued the claim without a genuine sense of belief in the claim.

Claimant’s Response

12 The Claimant set out at length what he claimed were the facts and merits of his claim. He said that he chose to withdraw because he would not be able to question a witness he would call, and therefore could not expose the inconsistencies in the Respondent’s argument. He had considered writing his witness statement in such a way as to challenge the Respondent’s position on a number of points, but finally concluded that this would be too difficult. He had hoped to have legal support from his trade union but because he started the claim without their advice he was unable to do this. He did not realise this at

the time because the date for filing the claim was approaching at a time when he was busy learning his new job.

Decision

- 13 The Tribunal's case management orders required the parties to exchange witness statements on 9 May 2018. The Claimant requested the Respondent to agree 6 extensions of time to do so, up to 5 November 2018. The Respondent did not object until the Claimant failed to exchange on 5 November 2018, and then they applied for strike out of the claim or an unless order.
- 14 On 14 November 2018 the Claimant applied for a 2 months postponement of the hearing in order to obtain representation. The application was refused. He had ample time to arrange representation.
- 15 On 12 December 2018 the Claimant withdrew the claim. The hearing on 17 and 18 December was cancelled. The claim was formally dismissed on 27 January 2018.
- 16 I find that the Claimant acted unreasonably in misleading the Respondent, over a period of 6 months, into believing that he intended to produce a witness statement, and agreeing to extensions of time, but then, without good cause, failed to produce a witness statement and requested a postponement of the hearing. When that was refused he withdrew the claim just 3 working days from the start of the hearing. No reasons for the withdrawal were given.
- 17 It is not unreasonable conduct by itself to withdraw a claim before it proceeds to a hearing. But here the Claimant's conduct indicated that he never made any serious attempt to engage with the Tribunal process. He must have realised that the Respondent would be incurring legal costs in preparing for the hearing up to the point that he withdrew. He himself appears to have done nothing to prepare for the hearing. Taking account of the Claimant's whole conduct of the proceedings, this was unreasonable conduct justifying the making of a Costs Order.
- 18 In these circumstances, I consider it is appropriate to exercise the discretion to make a costs order. The Respondent has incurred unnecessary legal costs when there is no indication that Claimant had any genuine intention at any stage to comply with the Tribunal's orders to produce a witness statement.
- 19 The Claimant is in gainful employment earning £30,900 p.a. He said that he lives alone and has to meet costs for mortgage payments, council tax, heating, water etc, but did not specify the amounts. I am satisfied that he has the ability pay a Costs Order.
- 20 I find that this was a relatively straightforward case, listed for 2 days, and that the solicitors' claims are not justified in full. The order will therefore be limited to a contribution, but a significant contribution, to the Respondent's legal costs. The Costs Order will be in the sum of £5,000.

Employment Judge Vowles

Date: 29 March 2019

Sent to the parties on

16 March 2019

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For the Tribunal office