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# EMPLOYMENT TRIBUNALS

**Claimant:** Ms E Osei  
**Respondent:** Basildon and Thurrock University Hospital NHS Trust  
**Heard at:** East London Hearing Centre  
**On:** 23 November 2018  
**Before:** Employment Judge Brown

**Representation**

**Claimant:** In person  
**Respondent:** Ms K Fudakowski, Counsel

## JUDGMENT ON COSTS

The unanimous judgment of the Tribunal is that the Tribunal does not award costs against either the Claimant or the Respondent.

## REASONS

1 The Respondent made an application that the Claimant pay costs of £4,015.19, representing the Respondent's costs from 14 September 2018 until today's hearing. It did so on the basis that the Respondent had offered the Claimant £8,400 compensation to settle her claim for injury to feelings, being an offer which was open until 14 September, and which represented the top of the lower band of *Vento*. The Claimant did not accept the offer and took her claim for compensation to this remedy hearing. The Respondent contended that the Claimant acted unreasonably in refusing the offer.

2 The Claimant made an application that the Respondent pay her costs of the whole proceedings in the sum of £9,390, because the Claimant had tried to settle the claims through ACAS before issuing proceedings and that she had therefore had to go to

unnecessary expense in pursuing her proceedings, which were ultimately successful in respect of the victimisation claim. She said that the Respondent made no offer of settlement at the outset of the claim and was unreasonable in failing to do so until after the liability hearing.

3 The Tribunal decided that the Claimant was not unreasonable in refusing the offer of £8,400, even though it was at the top of the lower band of *Vento*. The Claimant was seeking both an injury to feelings award and costs against the Respondent. The Tribunal had upheld the Claimant's victimisation claim, relying on the evidence given at the Tribunal of Mr Shah and Ms Archer, the Respondent's own witnesses. The Tribunal considered that the Claimant had a reasonable argument that the Respondent should have settled the victimisation claim and had been unreasonable in doing so, because the Respondent's witnesses knew well the factual basis of the Claimant's victimisation claim and they were unreasonable in continuing to defend it. Ultimately, the Tribunal considered that the Respondent was reasonable in defending the victimisation claim because, as Ms Fudakowski pointed out, the victimisation claim was potentially out of time. While the Tribunal extended time, it was reasonable for the Respondent to argue that the ET should not do so and to defend the victimisation claim on that basis.

4 Nevertheless, the Tribunal considered that the Claimant had a reasonable argument for costs in the victimisation claim and, therefore, that she was not unreasonable in refusing an offer which included no element of costs and represented only an injury to feelings award. The Tribunal award to the Claimant today was not so far below the £8,400 offered to her as to have meant that an award of costs, along with an injury feelings award plus interest, could not have exceeded the £8,400 offered.

5 The Tribunal did not award costs against the Respondent. The Respondent successfully defended most of the claims, apart from the victimisation claim, at the liability hearing. While the Tribunal did consider that there might be grounds for awarding costs against the Respondent, in that it had not offered any settlement at all in respect of the victimisation claim - when the Respondent's witnesses knew the true facts, as they admitted in evidence, of the act of victimisation - the Tribunal also accepted that it was reasonable to defend the claim and make no offer of settlement, because that act of victimisation was *prima facie* out of time and time might not have been extended for it. Therefore, the Tribunal found that it was reasonable for the Respondent not to make any offer of settlement to the Claimant. There was no basis for awarding costs against the Respondent because it had not acted unreasonably in the conduct of proceedings.

Employment Judge Brown

12 December 2018