



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE BALOGUN
BETWEEN:

Mr D Williams

Claimant

AND

Commissioner of Police of the Metropolis

Respondent

JUDGMENT ON COSTS

The Claimant is ordered to pay the Respondent £1550 (plus VAT) towards its costs of the postponed hearing on 25 January 2019.

REASONS

1. As indicated in the case management order, sent to the parties on 9 February 2019, the preliminary hearing listed for 25 January 2019 was postponed on the day at the request of the Claimant as he felt unable to proceed without legal representation. On that occasion, I determined that, pursuant to Rule 76(1)(a) of the Employment Tribunal Procedural Rules 2013, the threshold for a costs order against the Claimant had been met as his failure to notify the Respondent or the tribunal in advance that he needed a postponement, in circumstances where he knew of his representatives' unavailability on or before 14 January was unreasonable. To be clear, I have not at any point determined or suggested that the Claimant's conduct was vexatious.
2. I have received the Claimant's 14-page submission relating to the Respondent's costs of the postponed hearing and the Respondent's email in response. Both documents have been considered.
3. Rule 84 of the Rules provides that in deciding whether to make a costs order, the Tribunal may have regard to the paying party's ability to pay. The Respondent's costs of attending the hearing, set out in its Costs Schedule, have been limited to £1550 plus VAT.

4. The Claimant gives a number of reasons why an order for costs should not be made or, in the alternative, should be limited to 25% of the sum claimed. I address some of these below:

That he only wanted one aspect of the hearing adjourned (strike out) and that it could have proceeded on other matters

5. The main purpose of the preliminary hearing was to consider whether detriments 14(1) and (2) of the list of issues should be struck out. Whilst it is correct that the Tribunal wrote to the Claimant on 23 January 2019, stating that he could raise the issue of specific reasonable adjustments at the hearing, that was on the basis that the hearing would be effective. If the Claimant had requested a postponement of the strike out application in advance, it would not have been proportionate for the hearing to proceed as a separate hearing on reasonable adjustments, as that issue has already been considered at great length, during the previous 5 day case management hearing.

The hearing was not wasted as it did not conclude until 12.45pm

6. To the extent that the hearing proceeded, it was in order for the tribunal to hear and consider the application for postponement and deal with case management matters arising from the postponement, including re-listing of the hearing. Any other matters were peripheral, and no issues of substance were resolved.

The Claimant's means

7. The Claimant is currently employed by the Respondent and although he has been suspended from work for a considerable period, he has continued to receive his monthly salary, currently £2450 take home. The Claimant has eluded to the fact that he has assets and saved funds but contends that these are needed to fund his ongoing litigation costs in his criminal case. The Claimant has not provided details of his outgoings, assets or savings and in the absence of that information, there is no basis for me to conclude that he cannot afford to meet a costs order. It is not sufficient, in my view, for the Claimant to argue that his potential liability for unquantified future litigation costs in the criminal proceedings should take priority over or mitigate against liability for the already incurred costs of the Respondent in these proceedings.

Conclusion

8. In all the circumstances, the Claimant is ordered to pay the Respondent £1550 plus VAT towards its costs of attending the postponed hearing on 25 January 2019.

Employment Judge Balogun
Date: 1 May 2019

