



EMPLOYMENT TRIBUNALS

Claimant: Mr S Middleton
Respondent: Manpower UK Limited

COSTS APPLICATION

Before: Employment Judge Lancaster

JUDGMENT

The Respondent's application for costs is refused.

REASONS

1. The claim was withdrawn on 3rd July 2018 - 2 weeks before the listed final hearing - and dismissed by a judgment dated 11th July and sent on 30th July 2018.
2. The Respondent applied for costs and by direction of Employment Judge Maidment the parties were notified on 24th January 2019 that the application would be dealt with on the papers without a hearing.
3. The Claimant submitted his response to the application in writing on 6th February 2019.
4. There has never been any determination on the facts of this case. On the face of it the Claimant appears to have at least an arguable case and no suggestion to the contrary was made at the preliminary hearing before Employment Judge Little which was held on 28th March 2018.
5. The reason for the withdrawal was not that the Claimant retracted his allegations of discrimination but that he had taken a job abroad, in Myanmar.
6. In accordance with Judge Little's case management directions, and following mutual exchange of additional information between the parties, the document bundle was agreed by the Claimant on 22nd May 2018 (in fact 3 days before the final date set for compliance with this order). That was the last contact he had with the Respondent's solicitors.
7. The Tribunal wrote to the Claimant on 11th June 2018 because he had not copied the Tribunal into his additional disclosure of information to the Respondent. The Claimant replied immediately querying the request as he maintained he had done all that was asked of him. That communication from the Claimant was not copied to the Respondent. The Tribunal did not follow that matter up further. That was, therefore, the last contact that the Tribunal had with the Claimant prior to the withdrawal notice. As at 11th June 2018 therefore the Claimant was still actively pursuing his claim.

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8. The deadline for exchange of witness statements was 22nd June 2018. The Respondent had, according to the schedule of costs, prepared its statements for exchange between 29th and 31st May 2018. The Claimant did not exchange on the due date and the Respondent chased the matter up by emails dated 22nd and 26th June, to neither of which he replied.
9. On 2nd and 3rd July the Respondents therefore applied for an unless order to compel the Claimant to provide his statement and reserving its right to apply for costs should the Claimant have continued “not to engage with the process”.
10. The Claimant did then reply promptly (and apologetically) on 3rd July explaining that he was now in Myanmar but that communications were poor and that it had taken him some time to get connected to the internet.
11. It is not clear precisely when the Claimant moved to Myanmar but it was evidently within the relatively narrow window between 11th June and 3rd July 2018. He has confirmed in his submission of 6th February 2019 that he was still actively seeking work in the UK up to June 2018.
12. It is not every late withdrawal of a claim that will attract an award of costs.
13. There is nothing in this case to suggest that the Claimant was acting unreasonably. He had complied in good time with the first stages of the directions timetable, subject only to a query as to whether he has copied the Tribunal into information which he had certainly provided to the Respondent as ordered. He had also replied promptly to the last communication from the Tribunal on 11th June 2018. All the indications are therefore that he was still on schedule to meet the statement exchange date of 22nd June but that there was a sudden change in his circumstances at about this point. He withdrew the claim in sufficient time to avoid the expense of the Respondent’s solicitors making arrangements to attend from Edinburgh.
14. It is unfortunate that the Respondent had already incurred the cost of statement preparation, but this had in fact happened at a time when the claim was certainly still being actively pursued. That cost did not arise as a consequence of any unreasonable delay on his part. Indeed the total period between the Claimant missing a deadline and withdrawing his claim is only 11 days from 22nd June to 3rd July.

EMPLOYMENT JU DGE LANCASTER

DATE 28th February 2019