



EMPLOYMENT TRIBUNALS

Claimant: Miss N Carruthers

Respondent: Mr M Heskett-Saddington

JUDGMENT

The Respondent's application for a Preparation of Time Order under Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, schedule 1, rule 76 is dismissed.

REASONS

1. On 14 June 2018, I dismissed the Claimant's claim for unfair dismissal Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, schedule 1, rule 47. She had not attended the final hearing. The Claimant applied for a reconsideration of the judgment. On 17 July 2018, I reconsidered the judgment and decided that it should stand. The Respondent has applied for a Preparation of Time Order ("PTO") under Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, schedule 1, rule 76.
2. The Respondent has claimed £2,187.50 and justifies his claim as follows:

My request is based upon my opinion that the claimant had substantial notification of the date and time of Employment Tribunal to prepare and make suitable arrangement for her attendance, for instance, the use of public and/or private transport, (City of Sunderland is connected to the Tyne and Wear Metro Service and there are convenient metro stations near the Court and her home, travel distance 1.5 hours). In addition, there are appraise bus routes. If child care was required there was substantial time for the Claimant to organise appropriate cover to drop her daughter off at the local primary school in Sunderland and there was a breakfast club for £3 which the claimant could have accessed and attended on time but she chose not to attend at all on the first day. The Claimant's partner and father of her daughter was at her family home (they live together) the evening before the tribunal at 7pm and 9pm when

collecting and dropping off her daughter. The Claimant's partner's mother and father live within very close proximity of the Claimant's home, the claimant's young daughter often stays overnight at her grandparents' home at the weekends whilst the claimant's partner and claimant's child's father, lives at the claimant's home. In addition, the Claimant has a large family network, members of which have access to private cars and there would have been no hesitation dropping and picking up the Claimant's daughter to school/home.

We were informed by the Tribunal's Clerk that the Claimant contacted the court office at 9.00am to inform the court that she would be 1.5 hours late owing to some kind of child care issue. Judge A.M.S. Green and ourselves accepted such a request, however, the hours went by and the claimant failed to inform the court on her travel progression to attend the tribunal. Judge A.M.S. Green even tried to contact the claimant via mobile telephone as to her progression and reason for further delay. At about 12.15 Judge A.M.S. Green decided the cut off point for the Claimant was to be 1.00pm before proceedings would start.

I am of the opinion that the Claimant had no intention of attending the tribunal in the first instance, showed disrespect to court proceedings and to Judge A.M.S. Green, in addition to my wife and our witnesses who took time off from their work and/or final A Level revision studies. Moreover, there must have been a substantial cost incurred to the state, for example court time and Judge's.

The Claimant's original claim statement and later witness statement received 8 days late after the agreed date, show that the claimant provided two totally different versions of events and had changed her 2nd statement in response to the evidence and truth submitted by the respondent and all witnesses

3. The Claimant has resisted the claim on the following grounds:

i do not agree at all with this request. Two of the witnesses were not witnesses as well as three being completely irrelevant to the case as these witnesses were only stating opinions about the claimant not at any particular time or date relevant to the case, just bully tactics to try and intimidate and pressure the claimant, i also believe after reading witness statements which are all so similar in language these were actually written by the same person to show the claimant in a bad light rather than provide any facts towards the case also i do not believe any of the witnesses including the respondent were earning £35 per hour. As the respondent insisted on the case spanning over 2 days after canceling one court date and not cooperating with the original orders and also failing to provide a list of documents and witnesses by the agreed date the respondent failed to comply with the court's orders and therefore should not be entitled to any costs just as the claimant was not entitled to a fair and unbiased hearing.

4. There are several grounds under which the Tribunal can make a PTO. Having read the Respondent's submissions, it appears that the relevant ground relied upon as set out in rule 76 (1) (a) which is as follows:

A party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing or conducting of proceedings (or part thereof)

5. All the grounds for making a PTO are discretionary. This means that the Tribunal may make a PTO if the ground is made out but is not obliged to. Where the conduct of a party is vexatious, abusive, disruptive or otherwise unreasonable rule 76 (1) provides that the Tribunal shall consider whether to make a PTO. Therefore, it has a duty to consider making an order but has the discretion whether to make the award. In other words, rule 76 (1) imposes a two-stage test: first the Tribunal must ask itself whether the Claimant's conduct falls within rule 76 (1) (a); if so it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against the Claimant.
6. I am mindful of the fact that the Claimant was a litigant in person and it is appropriate to judge her less harshly in terms of her conduct than a litigant who is professionally represented. It would not be right to judge the Claimant by the standards of a professional representative. Justice requires that tribunals do not apply professional standards to laypeople, who may well be embroiled in legal proceedings the only time in their life. Laypeople are likely to lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser. I accept that the Claimant did at least notify the Tribunal that she was running late. However, for the reasons set out in my original judgement, she failed to update the tribunal and we waited until 1 PM before I decided to dismiss her claim. If there was evidence to the effect that the Claimant was not telling the truth about why she could not come to the hearing and had simply acted to cause maximum inconvenience to the Respondent I would have considered such behaviour to be vexatious, abusive or unreasonable etc.
7. Many of the things that the Respondent has asserted in his application for the PTO had not been tested in evidence and I have not seen a pattern of behaviour having reviewed the file on the papers that is consistent with such an allegation. I do not think that the claim could be considered as vexatious. For a claim to be vexatious, it would have to have been hopeless with the Claimant having no expectation in recovering compensation. The Claimant would have to have acted out of spite to harass the Respondent or for some other improper motives. The evidence does not suggest this as there were clearly factual issues that needed to be determined. If the Claimant had a history of failing to attend hearings or to comply with directions it might be argued that her behaviour was abusive or disruptive. In this case, she failed to attend the final hearing. I do not believe that this is enough to amount to abusive or disruptive conduct. Was there any evidence of unreasonable conduct? "Unreasonable" has its ordinary English meaning and it is not to be interpreted as if it meant something like vexatious. In determining whether to make an order under this ground, the Tribunal should consider the nature, gravity and effect of a person's unreasonable conduct. The vital issue is to look at the whole picture. The Tribunal must ask whether there

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has been unreasonable conduct by the Claimant in bringing, defending or conducting the case. Reasonableness is a matter-of-fact. This is not a case, where I believe there has been unreasonable conduct. For example, there has not been a persistent failure to provide information and the evidence had not been tested before it could be said that there had been lies or false evidence. I did not see any evidence of poor course of conduct or failing to accept an offer of settlement or prolonging proceedings prior to the Claimant's non-attendance at the Final Hearing.

8. Under all the circumstances, I do not believe that it would be appropriate for the Tribunal to exercise its discretion in favour of the Respondent and the application is, therefore, dismissed.

Employment Judge A.M.S. Green

Date 13 August 2018