



EMPLOYMENT TRIBUNALS

Claimants: Mr N Green
Mr W Richards

Respondent: Fairhome Property Investments Limited

Heard at: Manchester

On: Tuesday 16 April 2019

Before: Employment Judge Sherratt

REPRESENTATION:

Claimants: Mr T Wood, Counsel

Respondent: Ms A Proops, One of Her Majesty's Counsel

JUDGMENT having been sent to the parties on 24 April 2019 and written reasons having been requested on 7 May 2019 in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimants brought their claims on 12 March contending that they had been dismissed for making protected disclosures and they applied for interim relief. The application for interim relief has come before the Tribunal today.
2. The claimants provided their own witness statements and also provided a later statement from Paul Green, the father of Nicholas, who was an executive director of Fairhome Group Plc of which the respondent is a subsidiary.
3. The respondent's witness statements came from Ian Burgess, CEO of the Plc with overall responsibility for the group and its subsidiaries, John Russell, Group Executive Chairman and Stephanie Ashton, an Associate. A bundle of documents containing 232 pages was provided.
4. Both counsel provided skeleton arguments and addressed the Tribunal at the start of the hearing to indicate which of the documents provided should be read. Ms Proops took the opportunity to suggest that the claimants in their evidence had failed to deal with the respondent's documentary evidence including an email in which Mr Burgess explained why the whole business development team, including the

claimants, had to go. The claimants' evidence, she submitted, departed from their pleaded case with new and unpleaded allegations concerning the PIDs.

5. Mr Wood did not respond to the preliminary matters raised by counsel for the respondent.

6. I read the papers for 1.5 hours and confirmed to the parties that I had done so when the hearing resumed at noon. Counsel for the claimants told me that he was instructed to withdraw the application for interim relief and so it is dismissed on withdrawal.

7. Counsel for the respondent applied for costs on the basis that the claimants had acted unreasonably in making and/or pursuing the application for interim relief.

8. For the claimants Mr Wood told me that they made the decision to withdraw after seeing all the disclosure, all the statements from the respondent and receiving legal advice from him this morning. The bundle had been provided on the previous Friday. There had been an exchange of witness statements on Monday at 15:00. It is difficult to penalise the claimants based on what they knew at the time they applied for interim relief. They had made disclosures. They were placed at risk of redundancy.

9. For the respondent Ms Proops submitted that this was not a case where the claimants were ignorant of the process followed by the respondent because they were working in conjunction with Nicholas Green's father who was privy to all the respondent's documents and who had provided a late statement in support of the claimants. The claimants were not "in the dark". They knew the picture exactly. They had misled the Tribunal by mischaracterising the nature of the alleged disclosures. Their evidence was unreliable.

10. In my judgment based on my reading of the claim forms, the witness statements, the documents and the skeleton arguments the claimants' case on the protected disclosures comes out in a weaker fashion than it appeared in the Grounds of Complaint attached to the ET1. The claimants' knowledge, including information available to them from Paul Green, seems to me should have been sufficient for them to realise in advance of the hearing that the Tribunal would not, for an application under section 129 of the Employment Rights Act 1996, consider it likely that they would satisfy the Tribunal that they were dismissed because they had made protected disclosures.

11. On that basis it seems to me that the claimants have acted unreasonably in the way in which they have pursued and withdrawn their application for interim relief. Whether it is appropriate to order particular sums in respect of costs may depend upon their means in respect of which evidence will need to be given.

12. Mr Wood indicated that the claimants were still out of work and they had outgoings to meet. In response to the respondent's statement that their costs were in the region of £45,000.

13. In cross-examination on his means Mr Richards confirmed that he had not received an income since his dismissal on 5 March. He spent £3,000 or £4,000 a month on food, bills and entertainment whilst living rent free with his mother. His

father provided him with a car. His spending was based on his anticipated commission income.

14. Mr Green gave details of outgoings of £2,750 per month but although he was without an income he gave evidence of substantial funds that were available to him.

15. Given their means and their ability to pay, not necessarily immediately in the case of Mr Richards, the claimant Mr Green shall pay £10,000 and Mr Richards shall pay £5,000 towards costs incurred by the respondent while legally represented.

Employment Judge Sherratt

3 June 2019

REASONS SENT TO THE PARTIES ON

5 June 2019

FOR THE TRIBUNAL OFFICE

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