



EMPLOYMENT TRIBUNALS

Claimant: Mr R Wall

Respondent: Total Extraction Solutions Limited

JUDGMENT AS TO COSTS

The respondent's application for a preparation time order is refused.

REASONS

The respondent by letter of 18 May 2019 applied for a preparation time order following the claimant's withdrawal of his complaint of unfair dismissal on 18 April 2019. The application, it is noted, seeks the recovery of preparation time at an hourly rate of £250 whereas the tribunal is limited in its ability to award costs in respect of time expended on preparing the case only at a rate of £39 per hour.

Awards of costs in employment tribunals are the exception rather than the rule but grounds for awarding costs include circumstances where a party has acted vexatiously in bringing proceedings or where a claim has been brought which had no reasonable prospect of success. These are the grounds relied upon in the respondent's application.

There is no basis for concluding that the claim was brought vexatiously. The tribunal has considered the letter of 30 May 2019 from the claimant's representatives and accepts in the absence of evidence to the contrary that the claimant genuinely believe that his dismissal was unfair and may have resulted from his raising of the issue of expense payments.

The claimant, at the time he submitted his tribunal application had not been shown any evidence that due to the penalty points on his driving licence he could not be insured to drive the respondent's vehicles. It is noted that he was not disqualified from driving. There was a coincidence of time in the respondent enquiring regarding the claimant's penalty points and the claimant's enquiry regarding expense sheets.

Furthermore, in the circumstances, it cannot be said that the claim had no reasonable prospect of success. That goes somewhat beyond a requirement that the claim have a likelihood of success. A claim may be more likely to fail than succeed, yet not be one where it could be said to have had no reasonable prospects. In any event, having received disclosure documentation from the respondent the claimant instructed his representatives to withdraw his complaint just over two weeks after those documents had been disclosed and sometime before the final hearing which was listed to take place on 12 June 2019. The claimant therefore took prompt action to withdraw his complaint on him becoming aware that the prospects of success in his complaint were diminished.

The view taken by the tribunal may have been different had the claimant delayed in his withdrawal until the hearing itself was imminent.

Employment Judge Maidment

Date 11 June 2019