



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Cooney

Respondent: Somerset Care Ltd

Employment Judge Hargrove sitting at Bristol CFJC on 11 June 2019

JUDGMENT ON COSTS

1. Pursuant to rule 76 of the Employment Tribunals (constitution and rules of procedure) Regulations 2013, the tribunal orders the claimant to pay to the respondent costs amounting to £4000.00.

REASONS

1. On the 17th of April 2019 the employment tribunal promulgated its written judgement and reasons rejecting the claimant's claims of unfair and wrongful dismissal, having originally given oral reasons at the end of the hearing on the 28th of March. The respondent made an application for costs. The amount claimed was set out in a schedule presented to the tribunal on 2 alternative bases. The respondent had sent to the claimant letters containing without prejudice offers to settle her claims with costs warnings. These were put before the tribunal and, in a letter dated the 28th of January 2019, The offer was to pay £6100 in full and final settlement. It is to be noted that in the course of the negotiations the claimant had put forward an offer to settle at a figure £2000 higher than the total contained in the schedule of loss. In a second letter, dated the 12th of March 2019 the respondent increased its offer to £8000, which it left open until the 15th of March, 12 days before the hearing was due to begin. The total amount of costs claimed

in respect of the period after the first letter to the hearing date was £5208, and in respect of the second letter, £4459.20 p, including counsel's fees for the hearing amounting to £3120 inclusive of VAT.

2. In response to the application for costs, the claimant asserted on the 28th of March that she had refused the offers because she claimed that the proposed COT3 settlement terms contained provisions which restricted her from bringing a personal injury claim, and/or provided for the settlement amount to be repaid if a third-party breached the non-disclosure agreement. In the circumstances the tribunal made orders for the respondent to disclose to the tribunal all versions of the proposed COT3 agreement and an opportunity for the claimant to provide written reasons why a costs order should not be made against her, and to provide evidence as to her means. The parties subsequently agreed that the application could be dealt with on paper without a hearing. By way of an explanatory note, the tribunal set out the provisions in rule 76(1)(a): "A tribunal may make a costs order..., and shall consider whether to do so, where it considers that a party... has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing of the proceedings (or part) or in the way that the proceeding have been conducted".
3. Rule 78 provides that: –
 - (1) A costs order may (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the cost of the receiving party.
4. Rule 84 provides that: –

"In deciding whether to make a costs order, and if so in what amount, the tribunal may have regard to the paying party is ability to pay".
5. Thus, before making any costs order, the tribunal must first decide whether the threshold for the making of the costs order contained in rule 76 (1) is made out; and if it is, the tribunal must exercise a discretion whether or not to make a costs order, not exceeding £20,000, and if so how much, and in exercising a discretion as to the amount, the Tribunal may take into account the means of the paying party.
6. I find that the claimant did act unreasonably in bringing the proceedings. Her claims were without merit. As is apparent from the written reasons, the claimant wilfully refused to accept the respondent's wholly reasonable explanation for changing the uniform policy, issued a grievance which was comprehensively investigated and justifiably refused with

detailed reasons; which she refused to accept unreasonably and appealed. In the meantime, for a number of months she was allowed to continue to wear her yellow uniform top provided originally by the respondent, notwithstanding that all other staff who wore a uniform top had accepted the change of policy without demur. Having been notified at the end of the grievance process, but before her wholly unjustified appeal had been heard, that she must comply with the policy change, she insisted on turning up for work still wearing the uniform top, and was sent home to change, being notified only that she would lose pay for the period of time that it took her to change, which she unreasonably interpreted as suspension without pay and did not return to work; and subsequently returned the uniform and name badge, by which stage the senior management had decided to allow her to continue to wear her yellow top, which she refused to believe! The claimant then submitted her claim to the tribunal, alleging that she had been constructively dismissed. The tribunal found, unsurprisingly, that there was no repudiatory breach of contract on the part of the respondent, and that the claimant had resigned and had not been dismissed. It was wholly unreasonable for the claimant to have brought these proceedings in the first place, but it was also unreasonable for her to have pursued them to a hearing in the light of the extremely generous without prejudice offers that the respondent's solicitors made to settle the claim in a reasonable attempt to avoid the costs of a hearing, including the costs of instructing Counsel. I have examined the terms of the COT3s provided to the claimant. The first clearly permitted the claimant to pursue a personal injury claim; there is no evidence that the claimant queried the terms of the other COT3s in that respect. The confidentiality clause is of a standard kind very common in tribunal proceedings, and is entirely unobjectionable. The terms provide no excuse for not settling the claim. This is more evidence of the claimant's unreasonable attitude to litigation, and, if she failed to take legal advice that she had no claim in the first place, that is her own fault.

7. As to her means, I note that she has savings and shares of a value many times the amount of the costs order I consider it appropriate for her to pay.

Employment Judge Hargrove

Date 11 June 2019