



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms K Game

v

**Unique Associates Limited
(Trading as Threshold Surveyors)**

Heard at: London South Employment Tribunal

On: 1 March 2019

Before: EJ Webster

Appearances

For the Claimant:

Mr Otchie (Counsel)

For the Respondent:

Mr Spiro (Lay representative and owner of respondent)

COSTS APPLICATION JUDGMENT WITH REASONS

1. At the preliminary hearing on 1 March 2019 the claimant made an application for costs at the outset of the hearing. The application was for the claimant's costs of counsels' fees for attending a one day hearing. During submissions the respondent also made an application for all of his costs in responding to the claimant's claims.
2. A Judgment with reasons was promulgated on 30 March and sent to the parties on 4 May 2019. That judgment did not address the costs applications.
3. The claimant made her costs application on the basis that the respondent had behaved unreasonably in his conduct leading up to the preliminary hearing listed originally on 10 September 2018 and then re-listed by EJ Baron for 1 March 2019.
4. The nature of the respondent's unreasonable conduct was, Mr Otchie stated, contained within the voluminous amount of correspondence between the parties some of which was contained within the bundle and was evidence in part on the tribunal file. It was also, he said, evident from the fact that EJ Baron had had to postpone the PH on 10 September, despite both parties attending,

partly because of the 800 page bundle produced for that hearing, all of which the respondent stated was essential.

5. The respondent stated that he felt that EJ Baron had indicated at the PH on 10 September 2018 that the amount of documentation was not excessive and that in fact his orders had supported the fact that the respondent felt that there was significant documentation that remained undisclosed by the claimant and that ought to form part of the bundle.
6. As EJ Baron was not present it was not possible to determine for certain the intention behind his comments, nonetheless I believe it is relevant that his Notes and Orders document sent to the parties on 27 September 2018 states at paragraph 4 under the hearing 'Proportionality' that;

"In my view, there is a very serious risk that this matter will get out of hand. There are already over 800 pages before the Tribunal. It will simply not be possible for the Tribunal to refer to all those documents. I am not order that the existing bundles be slimmed down because that would only result in further costs and create the possibility of confusion. However, the number [of] existing documents to which reference will be made and the number of further documents to be introduced must be strictly limited."
7. I consider that this paragraph clearly indicates that the respondent had been told both at the hearing and in EJ Baron's Orders that the number of documents was disproportionate to the matter in hand and that any further documents ought to be limited.
8. Therefore, what followed in terms of the respondent's frequent, often lengthy correspondence requiring further documents and refusing to limit the bundle for today's hearing, borders on being unreasonable in the circumstances. This is further supported by the fact that I was taken to very few of the documents during the course of the preliminary hearing.
9. However I note that EJ Baron does not prohibit any further disclosure. I also note that it is clear that one of the reasons the original PH was postponed was that it had been insufficiently prepared by both parties as no witness statements had been prepared to deal with the issue of the claimant's employment status.
10. Rule 75(1)(a) and Rule 76 Employment (Constitution and Rules of Procedure) Regulations, Schedule 1 ('The Tribunal Rules') allow for a tribunal to make a costs award against a party in certain limited circumstances. The claimant applied on the basis that the respondent had behaved vexatiously or unreasonably in the way that he was conducting the proceedings (Rule 76(1)(a)). The tribunal's power to make such an award is discretionary though it has a duty to consider making any such order if it determines that the conduct falls within 76(1)(a).
11. I find that the respondent's behaviour has been, at times, difficult, and the volume of correspondence has at times been excessive. Nonetheless, he is a litigant in person and does not have the legal representation and advice which the claimant has the benefit of. The purpose of the preliminary hearing was to

look at facts which stretched back over many years to establish the claimant's status. The respondent was understandably anxious to ensure that the whole picture was portrayed to the tribunal albeit that the tribunal was nonetheless taken to very few of those documents in the end. Without the benefit of legal advice it may be difficult to fully understand the nature of the facts and supporting evidence that the tribunal needs to see to determine employment status particularly when the legal test is as complex as it is.

12. I therefore find that his behaviour did not amount to vexatious or unreasonable conduct though he should be aware that as this matter proceeds, he should take care to limit the volume of his correspondence so that preparation for any further hearings is conducted in a better way.
13. I also find that it was not just the respondent's conduct that led to the hearing being postponed, it was both parties' lack of preparation and failure to prepare a witness statement and therefore the costs of today or the adjourned hearing cannot be laid solely at the door of the respondent.
14. For those reasons I refuse the claimant's application for costs.
15. If I am wrong in that and the claimant's behaviour tipped over the edge into unreasonable conduct, I would not in any event exercise my discretion to award costs against him given that he is a litigant in person and whilst the documents produced were excessive, the tribunal hearing did not exceed the time allotted to it. Further, as stated above, the costs of the hearing were not solely incurred due to the respondent's behaviour.
16. Addressing the respondent's costs application I also do not award costs against the claimant. I do not find that the claimant or her representatives have acted in a way that satisfies any aspect of Rule 76. The claimant was entitled to have the issue of her employment status determined by the tribunal and I found that her claim that she was an employee was well founded.
17. For these reasons both costs applications are refused.

Employment Judge Webster
28 June 2019