



EMPLOYMENT TRIBUNALS

Claimant: Miss E Alboukharey

Respondent: Tools and Knobs Ltd

JUDGMENT

- 1 The Claimant's application for a preparation time order is refused.
- 2 The Claimant's application for a wasted costs order is refused.

REASONS

1 On 4 June 2019 the Claimant (who had been a litigant in person) applied for a preparation time order in the sum of £4,899.30 and a wasted costs order. The former application was made on the grounds that the response had had no reasonable prospect of success and that the Respondent had acted unreasonably in the way that proceedings had been conducted. The unreasonable conduct alleged was that the Respondent had sent the Claimant "*vexatious emails and spurious claims*", had sent her broken folders and had failed to send her the hard copy of the bundle in time before the court hearing, it had abused the court's time which had caused the hearing to run longer than the allotted time of three hours and that it had failed to pay her what the Tribunal had awarded her three weeks after the judgment was sent to the parties. The latter application was made on the grounds that the Respondent's legal team had sought a postponement of the hearing so that they could try and resolve the case, they had needlessly complicated a straightforward money claim by introducing issues such as company ownership and shares, had brought in an unnecessary witness and had pursued the Claimant in "*an emotional and personal revenge against*" her.

2 The Respondent opposed the application and set out its reasons for doing so in letters dated 7 June and 19 June 2019.

3 This decision should be read in conjunction with the Tribunal's judgment sent to the parties on 15 May 2019.

The Law

4 Rule 75(2) of the Employment Tribunal Rules of Procedure 2013 (the 2013 Procedure Rules”) provides,

“A preparation time order is an order that a party (“the paying party”) make a payment to another party (“the receiving party”) in respect of the receiving party’s preparation time while not legally represented. “Preparation time” means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing.”

Rule 76(1) provides,

“A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that –

- (a) a party (or that party’s representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that proceedings (or part) have been conducted; or*
- (b) any claim or response had no reasonable prospect of success;”*

Rule 79(1) provides,

“The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of –

- (a) information provided by the receiving party on time spent falling within rule 75(2) above; and*
- (b) the Tribunal’s own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matter as the complexity of the proceedings, the number of witnesses and documentation required.”*

Rule 80(1) provides,

“A Tribunal may make a wasted costs order against a representative in favour of any party (“the receiving party”) where that party has incurred costs –

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or*
- (b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.*

Costs so incurred are described as “wasted costs”.

“Costs” are defined in rule 74(1) as “fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing”.

Application for a wasted costs order

5 I do not accept that asking for a postponement in order to try to resolve the case amounts to an improper, unreasonable or negligent act by the Respondent’s lawyers.

Nor do I accept that the Respondent's lawyers unnecessarily complicated a straightforward money claim. The case was complicated because of the relationship between two companies (MOI and MOICS) and the way in which the two companies worked together and because of the way in which various individuals were involved in the two companies and how that changed over time. As a result of all the above it was not clear whether the Claimant's employment had been terminated and, if so, by whom and when. There was no evidence before me of the Respondent's lawyers pursuing the Claimant in an emotional and personal revenge against her. I do not accept that there was any improper, unreasonable or negligent act or omission on the part of the Respondent's lawyers, and there is, therefore, no basis for making a wasted costs order against the Respondent's legal representatives. Furthermore, the Claimant has not identified any costs, as defined by rule 74(1) that she incurred as a result of the conduct of which she complains.

Preparation time order

6 I do not accept that the response had no reasonable prospect of success. As I have said before the case was complicated because of the relationship between the various companies and individuals. There were difficult legal issues about the termination of the Claimant's employment and how to calculate a day's pay. There were factual disputes between the parties that needed to be resolved.

7 It follows from the above that I do not accept that the Respondent made "spurious claims." The Claimant received the bundle before the hearing. The folder might have been broken. It is not uncommon for folders to break when they are being transported. The hearing took longer than three hours but that was not due to the Respondent "abusing the court's time". The Claimant produced two new witness statements at the start of the hearing, and the hearing had to be adjourned to give the Respondent time to read those statements. The Tribunal agreed to admit some of the evidence of those witnesses. It appears from the Tribunal file that the decision was not sent by email to the Respondent on 17 May 2019 when it was sent to the Claimant. that was an administrative error by the Tribunal. That might have led to a delay in the Respondent paying the Claimant any award. I do not accept that the Respondent acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that it conducted the proceedings.

8 For the reasons given above, the Claimant has not established any of the grounds on which the Tribunal can make a preparation time order.

Employment Judge Grewal

Date 22nd July 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

23rd July 2019

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FOR THE TRIBUNAL OFFICE

