



EMPLOYMENT TRIBUNALS

Claimant: Mrs S Garrett

Respondent: The Commissioner of Police for the Metropolis

Heard at: Watford

On: 19 June 2019

Before: Employment Judge Manley
Ms S Goldthorpe
Mr D Bean

Representation

Claimant: In person with Mr Norton and Ms Reader, lay representatives
Respondent: Ms A Chute, counsel

JUDGMENT ON COSTS

- 1 The claimant acted unreasonably in bringing and conducting these proceedings, particularly with respect to the unfair dismissal and certain aspects of the disability discrimination claims.
- 2 Having taken into account what we can ascertain of the claimant's ability to pay, she is ordered to pay the sum of £20,000 (twenty thousand pounds) as a contribution to the respondent's costs.

REASONS

Introduction and issues

- 1 The claimant's claims for disability discrimination and unfair dismissal were considered at a hearing between 1-17 October 2018. A reserved judgment was sent to the parties on 16 November 2018. The judgment is 64 pages long and should be read in conjunction with this judgment on costs. The claimant's claims were unsuccessful.
- 2 By letter of 12 December 2018, the respondent made an application for costs. The application was made on the basis that the claimant had acted unreasonably in bringing and pursuing the claims and that she had failed to comply with tribunal orders. A telephone preliminary was held on 28 January 2019 so that the matter could be listed to hear the costs application and orders were made for preparation for this hearing.

Although the claimant was advised to complete the means form Ex140 and a copy was sent to her, she elected to provide what she called a "financial statement". Shortly before the hearing, upon enquiry by the tribunal, the respondent stated that it was limiting its application to the tribunal limit, without assessment, of £20,000.

The costs hearing

- 3 The respondent had prepared a bundle of documents with all relevant tribunal correspondence and orders as well as a detailed schedule of costs, showing a total of legal costs incurred of a little over £200,000. The bundle also included copies of the costs warning letter sent by the respondent to the claimant on 26 July 2018 and her reply on 9 August 2018. At the costs hearing, the respondent handed in a detailed skeleton argument and added to it orally. The claimant's representatives had prepared two documents, one entitled "Response to MPS Reasons for costs/costs schedule" and the other "Court Costs Argument". We heard from the representatives and heard limited evidence from the claimant on her ability to pay any costs awarded.

Facts

- 4 This case was a complex one. The claim form was presented on 28 February 2017 and contained a long narrative with no clear indication of what was alleged to be disability discrimination. The respondent prepared a table of allegations which was sent to the claimant for her to complete before the first preliminary hearing on 1 June 2017. The claimant was advised by a judge to attempt to complete the table before the preliminary hearing but did not do so. At that first preliminary hearing, the claimant was represented by counsel and it was agreed that the table of allegations would be completed and sent to the respondent by 22 June. The claimant asked the respondent for more time but that was not agreed, and the table of allegations was completed by her and sent to the respondent on 28 June. There was to have been a further preliminary hearing in August but that was postponed because there was no available judge and re-listed on 30 November 2017.
- 5 At that preliminary hearing, the claimant withdrew some claims and those against the individually named respondents at that point. Although the claimant had completed that table of allegations, there were still a total of 78 discrimination allegations which were, with the claimant and counsel's input, reduced to 35. An application by the respondent for a deposit order was refused at that hearing. We also understand that the respondent was asked, at that hearing, to consider its position about whether the claimant was a person with a disability at the relevant time. It did so and conceded the point at that hearing.
- 6 There was still a need for further clarification of the claims which was ordered to be and was provided by 14 December 2017. The response then provided its response to the claims as finally clarified by 25 January 2018, eleven months after the claim was presented.
- 7 In July 2018, the respondent sent a detailed warning letter as to costs to

the claimant. The tribunal has now seen that letter. It set out the legal tests for the making of a costs order and what the respondent said were the weaknesses in the claimant's case, both for the unfair dismissal and the disability discrimination claims. It set out the tests with respect to time limits for discrimination claims and informed the claimant that legal costs already incurred by the respondent were over £35,000.

- 8 The claimant provided a detailed response to that costs warning letter on 9 August 2018. She indicated she had "*ongoing legal advice*", took issue with many of the points made by the respondent and concluded "*Unless a considerable offer is made, I will be pursuing my claim*".
- 9 There were some difficulties in preparing the bundle of documents, which, as the reserved judgment makes clear, was extensive. The hearing commenced in October with two days of reading. At the end of the claimant's evidence after the parties had left the tribunal room, we have now been told, the respondent repeated the offer that it would not pursue an application for costs if the claimant withdrew. The claimant's representatives have raised concerns about how that offer was made, characterising it as "*threat*", but the tribunal accepts that the legal representatives for the respondent understood their duties to convey that message in an appropriate manner. The hearing continued and judgment was reserved.
- 10 The claimant provided a financial statement for this hearing. She said she was struggling financially, and her only income was Personal Independence payment (PIP) of £229.20 per month. She has not worked since her dismissal except for being a director of a limited travel company which is running at a loss. She said that she and her husband are living with her mother, having bought a house two years ago and lost £17,500 to builders who went into liquidation. The house is said to be uninhabitable. Her husband pays the mortgage and other outgoings on that house. She is now 6 months pregnant and hopes to move to the house before the baby is born. She co-owns a 2009 Ford Fiesta and has savings of a little over £3000. She still owes her solicitor for legal fees incurred in this case. She has monthly expenses of £74.30 and some other car and mobile phone related expenses.
- 11 The claimant was asked further questions on her finances. She said she did not know her husband's salary, but he works in insurance underwriting and is paid over £45,000 per annum. The respondent had added documents to the bundle from Companies House on the travel company the claimant is a director of. This shows a loss for the period ending April 2018 but there are no up to date accounts as the claimant says they are not due. She was asked about the house she co-owns. She believes it was bought in September 2016 for around £340,000 with a deposit of 10%. She does not know its current value but thinks it's about the same as it was when they bought it. She had no documentary evidence of the matters she refers to in her statement and could not explain why she did not complete the EX140.

The Rules

- 12 Rules 74-79 Employment Tribunal Rules of Procedure 2013 (the Rules) apply to this application. To summarise, rule 76 (1) states that a tribunal –
- “may make an order for costs or preparation time and shall consider whether to do so, where it considers that –*
- a) a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way in which the proceedings have been conducted; or*
 - b) any claim or response has no reasonable prospect of success*
 - c) -”*
- 13 Rule 76 (2) states that the tribunal may also make an order where a party has been in breach of an order or practice direction. Rule 84 states that the tribunal may have regard to the paying party’s ability to pay any order.
- 14 The process for the tribunal to decide on an application for costs is a two-stage process. We must first determine whether there was unreasonable conduct or a breach of orders etc and then, if we find there has, we move on to determine whether to make an award and, if so, in what sum.

Submissions

- 15 The respondent prepared detailed written submissions and referred us to cases which it was believed would be of assistance to us. We were asked to consider Shields Automotive v Grieg (UKEAT/0024/10) which stated that the tribunal should take a party’s whole means into account, including capital which could include equity in a home. In Sud v London Borough of Ealing (UKEAT/0482/10), it was found that a tribunal had not erred in taking the claimant’s husband’s earnings into account as well as the value of their house, mortgage payments and so on. Oni v NHS Leicester City [2013] ICR 91 was the case that recommended use of form Ex140 to help a tribunal take into account a person’s ability to pay any costs award. The case of Millin v Capsticks Solicitors (UKEAT/0093/14) reminds us that it is usually advisable for the party making an application for costs to warn the other party of that risk, particularly where that party is not legally represented.
- 16 The claimant’s submissions were to the effect that a costs order should not be made. Those assisting the claimant were of the view that the respondent had wasted public money and should have considered mediation to resolve matters. They still felt that the claimant had been badly treated by the respondent and appeared not to accept our earlier judgment. It was pointed out by them that no deposit order had been made when it had been requested at the preliminary hearing and, although the claimant had had legal representation and advice at various points, it was not helpful to her. We were reminded of the claimant’s health issues, her pregnancy and financial difficulties.

Conclusions

- 17 The claimant did breach an order of the tribunal to complete the table of allegations by 22 June, but it was completed by 28 June, albeit not entirely satisfactorily. The tribunal does not consider such a breach should lead to a costs order.
- 18 The claimant did behave unreasonably in other aspects of the bringing and progressing of these claims. She brought far too many allegations of treatment she considered to be discriminatory and was not able to sufficiently concentrate on the more significant matters. This took up considerable time in the preparation of the case and at the hearing. It led to a long hearing and considerable time in deliberations and judgment writing. Although the tribunal understands it is not always easy for litigants in person, the claimant had legal representation at various points as well as guidance from judges at preliminary hearings and in correspondence. She also brought unnecessary claims against individual respondents which caused extra work for the respondent's representatives.
- 19 We also find that the claimant had no reasonable prospects of success in some parts of her claims. First, her claim for unfair dismissal was very hard to argue. All evidence pointed to a large and detailed re-organisation, that led to redundancy, without any indication of discriminatory treatment. The claimant should have been able to appreciate that on the undisputed evidence of the documents. She was informed of the weakness of that claim by the respondent.
- 20 Secondly, a considerable proportion of the 35 allegations of disability discrimination had no reasonable prospect of success. In broad terms, these were the complaints which related to the redundancy programme, alternative work opportunities and the respondent's application of the sickness absence procedure and so on. There was a significant difficulty with the PCPs which had been agreed when the claimant was represented which we attempted to deal with by considering an alternative PCP for some of the complaints. Even then, the claimant often failed to show any facts from which we could conclude there was discriminatory treatment (see complaints 3, 4, 12, 15 and 19, 16 and 17, 20, 23, 25, 28, 32 and 34).
- 21 Other claims of disability discrimination which related to her request to reduce her working hours, the provision of draught boards and pay arising from reduced hours, were matters which we find were properly brought and arguable, even though the claimant did not succeed. The problem was that pursuing all complaints, even those which were weak, led to much longer preparation and hearing time than was proportionate.
- 22 We also find that, although the claimant might not have understood the weaknesses in her claims initially, she was clearly warned in the letter from the respondent in July 2018 and had an opportunity then to consider not proceeding or, at least, not proceeding with all the complaints. We find that the claimant has acted unreasonably in pursuing these complaints.
- 23 We then considered whether to make a costs order in the light of that finding. We have considered, with care, the claimant's ability to pay. We are very concerned about the lack of information provided by the claimant with respect to her income and outgoings as well as those of her husband.

We are particularly concerned that there was no up to date information about the finances of the company of which she is a director. She provided no supporting evidence about money lost to builders, the value of the house she jointly owns, the outstanding mortgage or mortgage payments. We understand she is due to have a baby in the next few months but taking the family's finances into account where there is likely to be equity in the house, we have decided to make an award of costs. The cost of this case to the public purse has been significant and, in all the circumstances, we have decided to make a costs award in the sum of £20,000 which is about 10% of the reasonable costs of the respondent.

Employment Judge Manley

Date _____ 1/7/19 _____

JUDGMENT SENT TO THE PARTIES ON

.....29/7/19.....

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FOR THE TRIBUNAL OFFICE