



EMPLOYMENT TRIBUNALS

Claimant: Mr S Verma
Respondent: Hovis Limited
Employment Judge: Pritchard

JUDGMENT UPON AN APPLICATION FOR WASTED COSTS

Upon consideration of the Respondent's application dated 1 May 2019 for wasted costs against Glen Solicitors Limited;

And upon Glen Solicitors Limited having failed to make any representations in response to the application in accordance with paragraph 2 of the Case Management Order dated 11 April 2019:

The Respondent's application is granted. Glen Solicitors Limited is ordered to pay to the Respondent the sum of £3,135.60

REASONS

1. By way of an ET1 presented on 24 April 2018, the Claimant made claims for unfair dismissal, age discrimination, unpaid wages, and notice pay. The Respondent resists the entirety of the claims. The Claimant's age discrimination claim was subsequently dismissed.
2. The parties' representatives appeared before Employment Judge Corrigan at a preliminary hearing on 27 July 2018 when the Employment Judge made case management orders. The Claimant was represented by his solicitor, Mr N Sahota. The Respondent was represented by its solicitor, Mr R Hickford. The Claimant's representative made no request at the preliminary hearing for an interpreter to be present at the final hearing.
3. The case came before the Tribunal on 11 April 2019 for final hearing. The parties attended with their witnesses. Mr Kamara, consultant for the Claimant, informed the Tribunal that his client would require a Punjabi interpreter: Mr Kamara had only been instructed the day before.
4. There was no correspondence on file to suggest that the Claimant's

representative had at any stage in the proceedings requested an interpreter.

5. It was not in the interests of justice for the hearing to continue. The day was wasted. Costs were unnecessarily incurred.
6. A Tribunal has power to make a wasted costs order against a representative under Rule 80 of the Employment Tribunals Rules of Procedure 2013 as a result of any improper, unreasonable or negligent act or omission on the part of any representative. A representative means a party's legal or other representative.
7. The principles to be applied by the Tribunal are contained in the Court of Appeal Judgment in Ridehalgh v Horsefield [1994] 3 ALL ER 848. When considering whether to make a wasted costs order, a three stage test should be applied:
 - 7.1. Has the legal representative of whom complaint was made acted improperly, unreasonably or negligently?
 - 7.2. If so, did such conduct cause the applicant to incur unnecessary costs?
 - 7.3. If so, is it, in all the circumstances, just to order the legal representative to compensate the applicant for the whole or part of the relevant costs?
8. 'Improper' covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such, whether or not it violates the letter of a professional code.
9. 'Unreasonable' aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. The acid test is whether the conduct permits of a reasonable explanation.
10. 'Negligent' should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession. In adopting an untechnical approach to the meaning of negligence in this context, the Court firmly discountenanced any suggestion that an applicant for a wasted costs order under this head need prove anything less than he would have to prove in an action for negligence".
11. A legal representative is not to be held to have acted improperly, unreasonably or negligently simply because he acts for a party who pursues a claim or defence which is plainly doomed to fail.
12. The Claimant's solicitors, Glen Solicitors Limited, acted negligently, both at the preliminary hearing before Employment Judge Corrigan and throughout, by failing to inform the Tribunal that the Claimant would require an interpreter at the final hearing. Glen Solicitors Limited has failed to provide any explanation for the failure.

13. The final hearing could not proceed and the Respondent has incurred unnecessary costs. It is just that Glen Solicitors Limited be ordered to compensate the Respondent for the costs incurred as set out in paragraphs 1.10 and 1.11 of the Respondent's application.

Employment Judge Pritchard
Date: 15 July 2019