



EMPLOYMENT TRIBUNALS

Claimant: Mr M Clipsham

Respondent: David Thomas Helley
t/a CNC Rotary.com

Heard at: Nottingham
On: Friday 4 October 2019

Before: Employment Judge Blackwell (sitting alone)

Representatives

Claimant: No parties attended
Respondent: No parties attended

JUDGMENT ON COSTS APPLICATION

The decision of the Employment Judge is pursuant to an application for a costs order made under Rule 77 of the first schedule of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

1. The Respondent's application succeeds in part and the Claimant is ordered to pay to the Respondents the sum of £450.00 plus VAT.

REASONS

1. By way of a letter of 27 June 2019 the Respondent's solicitors made an application for costs under Rule 76 of the first schedule to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the regulations). It was based on two arguments, the first being that the Claimant had acted unreasonably in both bringing the proceedings in that he knew that he did not have the requisite continuity of employment to bring a claim against the Respondent and further that he had acted unreasonably throughout the proceedings in putting the Respondent to expense and failing to comply with Orders of the Tribunal.

2. The second limb was that the claim had no reasonable prospect of success from the beginning but that claim is based upon the same hypothesis, namely that the Claimant never had sufficient continuity of employment.

The Relevant Law

3. Rule 76(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 are as follows:

“(1) 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 the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.”

4. Rule 77 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 are as follows:

“A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.”

Chronology

5. The Claimant brought a complaint to the Tribunal which was received on 29 November 2018 alleging unfair dismissal on the basis that he had been made redundant without any consultation. The Claimant alleged that he had been employed by CNC Rotary from 1 November 2014 to 10 September 2018.

6. On 13 March 2019 BRM Solicitors on behalf of the Respondents filed a response. The grounds of resistance were essentially that the Claimant had insufficient continuity of service in that since 1 November 2017 he had been employed by PL Solutions Switzerland Limited his employment with the Respondents having ended by mutual agreement on 31 October 2017. Thus it was argued that he did not have sufficient continuity of employment to bring a claim against either the Respondents or PL Solutions Switzerland Limited and further that, as a consequence, any claim against the Respondents was out of time. Thus, the response was purely jurisdictional in nature and did not address the merits.

7. The Tribunal made orders sent to both parties on 14 February requiring the Claimant to serve a statement of the remedy he wished the Tribunal to grant by 15 March 2019 and there was a further order requiring the parties to exchange lists of documents upon which they wish to rely by 29 March.

8. On 11 March the Respondent’s solicitors wrote a “without prejudice save as to costs” e-mail to the Claimant inviting him to withdraw the claim within 48

hours and that if he should do so the Respondents would not pursue him for costs.

9. On 21 March the Respondent's solicitors applied for an unless order because of the Claimant's failures to comply with the orders set out above.

10. In that letter the Respondent's solicitor said:

"As the Respondent does not believe the Employment Tribunal has jurisdiction to hear the Claimant's claim against the Respondent, the Respondent is reluctant to incur any further costs in this matter until consideration has been given to that point (ie the application for an unless order) and as such we also seek to vary the case management orders dated 29 March and 12 April, pending receiving a response to the jurisdictional point as this will save costs to all parties."

11. On 3 April the Tribunal wrote to the Claimant as follows:

"Given the response, does the Claimant accept the Respondent was not his employer at the material time and that his employer was PL Solutions Switzerland Limited at the time of dismissal? Please reply by 10 April 2019. In the interim current directions are suspended."

12. The Claimant did not respond and accordingly an unless order in my name was issued on 24 May 2019. Again the Claimant did not respond and on 5 June 2019 pursuant to Rule 38 of the regulations the Claimant's claim was dismissed.

13. As indicated above there then came the application for costs and the Claimant was invited to comment on that application via a communication from the Tribunal of 12 July. Again he did not respond and as a consequence the application was listed for a hearing on the papers by a letter from the Tribunal of 31 August.

Conclusions

14. I will deal firstly with that part of the application based upon the assertion that the Claimant's claim had no reasonable prospect of success. I have no material other than the pleadings to go on, for example the Respondent's solicitors have not sent the contract of employment which they allege the Claimant entered into with PL Solutions Switzerland Limited. In those circumstances I cannot say that the Claimant's claim had no reasonable prospect of success.

15. Turning now to that part of the application founded upon the same premise ie that the Claimant acted unreasonably in bringing such a claim knowing that the Tribunal did not have jurisdiction to hear it. That again fails for the same reason.

16. Turning now to the last part of the application, namely that the Claimant has acted unreasonably in the way in which the proceedings have been conducted. There is clear evidence to support that contention. Since the bringing

of the claim the Tribunal has heard not a word from the Claimant, he has chosen to ignore every communication from the Tribunal and that of course led to his claim being struck out. He has not even bothered to comment upon the Respondent's application for costs. I conclude therefore that the Claimant has acted unreasonably and I note also the warning he received from the Respondent's solicitors of 11 March to which again he did not respond. Thus in principle the application succeeds. In my view then the Respondents are entitled to recover such costs as they have incurred since the service of the response. Having regard to the correspondence undertaken and its nature, in my view this should be restricted to some two hours. I therefore award those costs at the rate set out in the schedule, ie £225.00 per hour, plus VAT.

Employment Judge Blackwell

Date: 22 Oct 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE