



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr R Harding

**Respondent:** The Valuation Office Agency

**Heard at:** Lincoln

**On:** 26 June 2019

**Before:** Employment Judge Evans (sitting alone)

## Representation

**Claimant:** In Person

**Respondent:** Mr Lyons of Counsel

**JUDGMENT** having been sent to the parties on 10 July 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## JUDGMENT

The Respondent's application for an order that the Claimant pay its costs fails and is dismissed.

## REASONS

### Background and Issues

1. These reasons were given extempore at the conclusion of the Hearing on 26 June 2019. The Claimant presented his Claim on 14 December 2018 and the Respondent filed a Response. There was then a Preliminary Hearing on 26 June 2019 to consider whether the Claimant's claim should be struck out because the Tribunal had no jurisdiction to hear it or because it had no reasonable prospects of success. I struck it out on the basis that it had no reasonable prospects of success.

### The Respondent's application

2. The Respondent's application may be reasonably summarised as follows. The Respondent submitted that its application for costs should succeed because the claim had been misconceived. The Claimant had been told why it was misconceived without prejudice save as to costs. A letter had been sent to him and the Claimant had failed to respond positively to it. The Respondent relied on the 22 page bundle of correspondence dating almost exclusively from May and June 2019. I read that bundle in its entirety when I retired to consider the Respondent's application.

## The Law

3. Rule 76 of the Tribunal Rules of Procedure gives the Tribunal the power to make a costs order or preparation time order in certain circumstances. It provides:-

*(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 the proceedings (or part) have been conducted or;*

*(b) any claim or response had no reasonable prospect of success; or*

*...*

*(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.*

4. As such the Tribunal has an obligation to consider making a costs order when it is of the view that any of the grounds for making one have been made out. However, whether or not to make an order in such circumstances is a matter for the discretion of the Tribunal.

## Conclusions

5. As I had struck out the Claimant's claim as having no reasonable prospect of success, the threshold established by Rule 76(1)(b) was passed. However, as I have said above, the question of whether to make an order for costs remains a matter for my discretion.
6. I have concluded that I should not exercise my discretion in favour of the Respondent in this case and therefore reject its application for the following reasons:

6.1. The party-party correspondence to which I was referred and which I have read from the Respondent's side generally focussed on the relatively narrow issue of why the Claimant had no entitlement to a statutory redundancy payment. That is to say because he was a Civil Servant and because he had not been dismissed. However, fairly understood, and as set out in my judgment in relation to the Respondent's strike out application, the Claimant's claim was not that he was entitled to a statutory redundancy payment but that he had a cause of action arising from not being made redundant and his subsequent treatment during the grievance procedure. I conclude that it is unsurprising that the Claimant did not regard the Respondent's explanation as to why his claim was misconceived or had no reasonable prospects as an answer to the complaint that he wished to pursue.

6.2. Further and separately, costs in the Tribunal are of course the exception and not the rule.

- 6.3. Further and separately, although the threshold tests in Rule 76 are the same for represented and unrepresented litigants the status of a litigant is a matter which the Tribunal may take into account (see in particular AQ Limited v. Holden [2012] IRLR 684). I do take the Claimant's status as a litigant in person in this matter into account and I find his confusion in relation to his legal rights and the causes of action which he might be able to pursue understandable.
- 6.4. Further and separately, this is a claim which has fallen at the first interaction of the Claimant with the Employment Tribunal. This is not a case, for example, where, despite there having been case management discussions from which the Claimant might have understood the likely ultimate view of the Tribunal on his claim, or at least its limitations, the claimant has ploughed on regardless.
- 6.5. Further and separately, from long experience as both a practitioner and an Employment Judge, it is not uncommon for employees to believe that a cause of action may arise when they are not made redundant in circumstances when they believe fairness dictates they should have been as a result of the nature of the alternative employment offered to them.
7. Overall, therefore, I do not exercise my discretion to make an award of costs.
8. Finally, although the application was made primarily on the basis that the threshold for costs was crossed because the claim had no reasonable prospects of success, I have also considered what my view would have been if the application had been made expressly under Rule 76(1)(a). In those circumstances I would have concluded that the Claimant had not acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way that they were conducted and I would have made no order for costs on that basis either.

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Employment Judge Evans

Date: 24 October 2019

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE