



EMPLOYMENT TRIBUNALS (ENGLAND & WALES)

Mr J Coke
Claimant

V

Prospero Recruitment Ltd
Respondent

HELD AT: London Central ON: 29-31/10/2019
Employment Judge: Mr J S Burns
Members: Ms P Hornby and Ms M Jaffe

Appearances

For Claimant: In person
For Respondent: Mr N Caiden (Counsel)

JUDGMENT

The Claimant must pay the Respondent £8000 costs by 30/11/2019

REASONS

1. Following the dismissal of the claim the Respondent applied for costs of £8000 (supported with a schedule of costs incurred by the Respondent of £17518). The Claimant made oral submissions in response, after a 25-minute break to allow him to prepare.
2. We regard as reasonable in quantum the costs incurred by the Respondent in defending a race discrimination claim with numerous witnesses and Counsel, with the trial originally listed for four days in London.
3. In so far as the Claimant's financial means are concerned, the Claimant told us that he had been self-employed and working in Hong Kong for six years until November 2016. After returning from Hong Kong until May 2019 he was a student during which time he had borrowed from friends, whom he is trying now to repay. He was unable to quantify those obligations. He also said that his house had been repossessed by Barclays some years ago and he owed Barclays £10000 on the mortgage but Barclays were not pursuing him for the money, at least at present. He set up a company in 2018 and from May 2019 has been providing consultant services for Scottish Widows in Edinburgh. His company through which he provides his services (and of which he is sole shareholder) is paid £450 per day five days a week (ie over £9000 per month) by Scottish Widows and in addition he is paid his expenses including Edinburgh hotel bills running at about £2300 per month. This is a temporary contract but it might be extended. The Claimant has recently this year taken separate trips to Hong Kong and Jamaica. He says he owns no residential property in the UK

but is the tenant of a London Council dwelling. He has agreed to pay £300 per month for the maintenance of his 5-year-old daughter and he is also paying for palliative care for his elderly father in Jamaica at the rate of about £1000 per month. We have taken this information into account and on a balance of probabilities have concluded that the Claimant would be able to pay the costs we have awarded without undue hardship.

4. The Claimant submitted that as the Respondent was insured against its legal costs, any costs award would be paid to the Respondent's insurers, so in fact the Respondent had suffered no loss in relation to costs so far and the only actual cost to it would be any marginal increase in its future insurance premiums. Mr Caiden told us that Mardner v Gardner UKEAT/0483/13 is authority for the proposition that insurance is irrelevant in the making of costs awards. In any event, apart from this authority, we would have reached the same conclusion on public policy grounds, namely that if taking out insurance meant that an employer could not recover costs, there would be less incentive to do so, and in any event insurers of employers would have to raise their premiums or might refuse to provide cover at all.
5. Costs can be awarded where a party has acted unreasonably in bringing or conducting proceedings or if a claim had no reasonable prospect of success.
6. In the event few facts were in dispute in this case. On the (mostly) agreed facts the Claimant had no reasonable direct race discrimination claim to bring. This had been explained originally in the Respondent's ET3. A detailed explanation why the claim was bound to fail was set out in the Respondent's WP second costs-warning letter dated 24/4/2019 which anticipated almost exactly the terms of the reasons for the judgment subsequently dismissing the claim.
7. Judge E Potter did not see grounds for a strike out application (see paragraph 6 of the case management note signed on 9/4/2019) but there is no rule that costs cannot be awarded after a trial of a claim which was not previously struck out. At a case management hearing when clarifying a claim, the judge has a very superficial view of the claim, based mainly or wholly on what the Claimant says, with no evidence or opportunity to see the real case which lies beneath the formal identification. The Claimant on the other hand has known all the relevant facts in detail for many months before trial, and he had the benefit of a clear and correct legal explanation in the costs warning letter, which he chose to ignore.
8. There were obvious non-discriminatory explanations for the events complained about and abundant evidence (important parts of which were disclosed in the letter of 24/4/2019) that the Respondent was simply applying compliance requirements which it applied equally to all applicants.
9. Furthermore at the trial far from making accusation of race discrimination against Mr Kulatunga or Ms Shanny (the two employees with whom the Claimant had direct dealings with at the Respondent) the Claimant in his oral evidence went out of his way to make it clear that he did not accuse the former of any racism and he found the latter to be courteous and professional.

10. The Claimant was urged in the 24/4/2019 letter to take legal advice. He says he could not have afforded this, but we do not accept this, certainly after his work with Scottish Widows started. In any event the letter informed him that he could seek free legal advice from the CAB or local law centre, but he did not even attempt to do so.
11. The claim was incoherent and obviously baseless. This is simply a case which should never have been brought, and the Claimant was warned about this, but he nevertheless pursued the matter to trial, causing the Respondent to incur substantial costs.
12. We find that the claim had no reasonable prospect of success and that the Claimant was unreasonable in pursuing it, especially after he received the costs warning letter, which he failed to engage with.
13. We find that it is appropriate to make a costs order against the Claimant in the sum of £8000 as a contribution to the Respondent's costs, which sum if recovered is to be paid to the Respondent's insurers.

Employment Judge - Burns

31/10/2019 London Central
Date and place of Order

For Secretary of the Tribunals

31/10/2019
Date sent to the Parties