



EMPLOYMENT TRIBUNALS

Claimant: Mr O Justice

Respondent: Moon Developments Limited

JUDGMENT

1. Following the Judgment of 11 November 2019, the Claimant is to pay the Respondent £2,145 in respect of its preparation time under rules 75-79 of the Employment Tribunal Rules.

REASONS

1. This Judgment and Reasons is to be read in conjunction with the Judgment and Reasons of 11 November 2019.
2. The Claimant responded to the Respondent's application in an email dated 9 December 2019. Mr Scappaticci, his father-in-law, asserted that "*the claimant denies profusely all of the allegations made by Mr Newman*". The email then explained that the Claimant's decision to withdraw had been based upon the view that it was uneconomic to instruct a representative for the hearing. No comments about his means to pay a preparation time order were made.
3. Mr Scappaticci had ably represented the Claimant at the Case Management Preliminary Hearing in August 2019. It was not understood why he was not able to do so again at the final hearing. Further and more importantly, it was not clear why the Claimant had come to his view about the economics of instructing a representative so late. The claim had been issued in January 2019 and listed for the final hearing in August. It was the lateness of the notification which had caused the Respondent's loss because of the recent preparation for the hearing (see paragraph 11 of the Reasons of 11 November 2019).
4. The timing of the notification was not adequately explained by the Claimant and the general challenge to the accuracy of Mr Newman's assertions did not address any of the specific issues which had been raised, as set out in paragraphs 7 and 8.
5. The question which arose here was whether the Claimant's actions had been '*unreasonable conduct...in the way that proceedings had been conducted*' as

defined by rule 76 (1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Tribunal had concluded that that threshold appeared to have been passed when it considered the issue on 11 November (see paragraph 9), subject to any representations from the Claimant. Although now received, for the reasons stated above, they did not rebut that earlier decision.

6. Rule 76(1) imposed a two-stage test, however; first, a tribunal had to consider whether the Claimant's conduct fell within rule 76(1)(a), which it had done, as set out above. Secondly, it had to go to consider whether it was appropriate to exercise its discretion in favour of awarding costs against that party. As the Court of Appeal reiterated in *Yerrakalva v Barnsley Metropolitan Borough Council 2012 ICR 420, CA*, costs in the employment tribunal were still the exception rather than the rule. It commented that the tribunal's power to order costs was more sparingly exercised and was more circumscribed than that of the ordinary courts, where the general rule was that costs followed the event.
7. Nevertheless, in light of the issues raised in the Reasons of 11 November and the brief and unspecific attempt to address them by the Claimant on 9 December, it was appropriate for discretion to have been exercised in the Respondent's favour.
8. No representations were made about the Claimant's means (see paragraph 12 of the Reasons of 11 November) and it was assumed that the Claimant had the means to meet such an award.

Employment Judge Livesey

Date: 10 December 2019

Judgment sent to parties: 19 December 2019

FOR THE TRIBUNAL OFFICE