



EMPLOYMENT TRIBUNALS

Claimant: Mr D Cook and others (see Schedule)
Ms D Pawson

Respondent 1: YTM Group Limited (in administration)
Respondent 2: Contract Furniture Manufacturing Limited

HELD AT: Leeds

ON: 2 December 2019

BEFORE: Employment Judge Lancaster

REPRESENTATION:

Claimant: Mr D Flood, counsel

Respondents: (1) No appearance entered
and did not attend
(2) Ms L Bairstow, counsel

JUDGMENT having been sent to the parties on 3 December 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, taken from the transcript of the oral decision given immediately upon the conclusion of the case:

REASONS FOR COSTS

1. This is an application for costs by Contract Furniture Manufacturing Limited (CFM) in respect of two cases where all claims have now been dismissed upon withdrawal.
2. The first of those is claim 1802198/2019, a multiple claim against two respondents. The First Respondent is the YTM Group Limited (now in administration) and CFM is the Second Respondent. That is a claim for failure to consult on a putative TUPE transfer from YTM to CFM and it is a claim that is brought in parallel with case 1802175/2019. That was a claim for protected awards where the tribunal has earlier today awarded all claimants a protected award for the maximum 90 day period.

3. The second claim in relation to the costs application is a stand-alone complaint by one of those multiple claimants on the earlier cases, that is Miss D Pawson, case 1803001/2019. Although she also asserts a number of monetary claims it is essentially an allegation of automatically unfair dismissal where she says the reason for termination was connected with the transfer from YTM to CFM.
4. The application is brought under both limbs of Rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, that is either that the collective claimants or Miss Pawson had acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing the proceedings or in the way they have been conducted, or that the claims had no reasonable prospect of success.

1802198

5. In relation to the multiple claim I am satisfied that the preconditions for a costs award are not met . The tribunal of course has made no determination on whether or not there was a TUPE transfer and I accept Mr Flood's submission that it is not necessarily a straightforward factual matter to determine. I do not therefore consider that it was in any way unreasonable for the claimants to pursue these applications effectively in the alternative.
6. There were mass redundancies effected on 14 February of this year. Shortly afterwards the business in administration, YTM Group, through its administrators sold a number of assets to CFM. CFM began a similar business from one of the trading premises in Pontefract with a correlation between the management of the two companies.
7. I consider it entirely proper for the claimants to have pursued the alternative arguments that that failure to consult prior to their multiple dismissals was either a failure in relation to collective redundancy consultation or, alternatively in relation to the prospective TUPE transfer that may have occurred at around that time.
8. Mr Flood, for the claimants, had always indicated from the time of the earlier case management discussion held on 16 October of this year that in the event of the claimants' succeeding on their protected award, the alternative monetary claims in relation to the same effective failure to consult under TUPE would not be pursued: and that has been the case.
9. These were always potentially claims that could have been brought and they did not only involve CFM. The first claim for protective awards could only properly be brought against YTM Group, and YTM are also a party, although not participating, in this second tranche of cases. They were properly claims in the alternative against YTM and the position of the Claimants with regard to CFM could not finally be determined until judgment in the first claim had in fact been given.

1803001

10. In relation to the stand-alone claim of Miss Pawson, the situation is more complicated. She is the only one of these multiple claimants who has ever sought to argue that her dismissal was anything other than for redundancy. I indicated on the last occasion that there were substantive evidential difficulties in

pursuing that claim. Not least because if she did in the event succeed as part of the multiple that obtained a protective award, that necessarily, it seemed to me at the time, would involve a finding that she had been dismissed for redundancy or some other substantial reason. That was an economic technical or organisational reason that would preclude her bringing her claim of automatically unfair dismissal.

11. Furthermore, on the last occasion there was a suggestion that Ms Pawson may in fact have obtained a payment already from the Redundancy Payments Office in respect of that termination. It now transpires that that is the case.
12. Against those evidential difficulties I nonetheless declined on the last occasion to accede to Miss Bairstow's request that I impose any form of sanction by way of deposit against Miss Pawson. I took the decision that the sensible way in managing this case was to deal with the substantive claim on the protective awards, which we have done and, in the light of that as had been anticipated Mr Flood, for the claimant, has then withdrawn the alternative complaint of a failure to consult under TUPE. He has also withdrawn the additional complaints by Miss Pawson. It now has been confirmed by the tribunal's ruling of earlier today, that she was dismissed and entitled to a protective award, and confirmed by her own evidence that she has received payment by way of redundancy already. She cannot therefore now argue that she is nevertheless entitled to assert that her dismissal was not, in fact, for redundancy.
13. However, even if I were just persuaded on balance, as I am, to hold that her further complaint, when set against that substantive evidential difficulty, had no reasonable prospect of success, I do not exercise my discretion to award costs solely in that regard.
14. This case was listed concurrently with the preliminary hearing on the multiple 1802198/2019 which as I say was properly brought in the alternative. Nothing in effect transpired as a result of the additional claim of Miss Pawson. She prepared a short witness statement. She has confirmed she has received a redundancy payment. There is nothing else that fell to be done by the respondent to meet that claim which in those circumstances was, as had been intermated on the last occasion, almost certainly going to be dismissed upon a finding she had had her employment terminated for an economic technical organisational reason. There was a good reason for dealing with the case in that way and now disposing of it in this manner, which has in the event proved to be expeditious and proportionate.
15. In all those circumstances, certainly from the outset, I do not believe that Miss Pawson can be said to have had no reasonable prospect of success. She was entitled to explore the possibilities as to what was happening around the somewhat convoluted and complicated circumstances of termination. Particularly as Mr Flood now reminds me my earlier assertion that the reason for dismissal is only what is in the minds of the decision maker may need to be revisited: it may be too broad an assertion in the light of the Supreme Court decision of **Jhuti v Royal Mail**.
16. Notwithstanding that, once it became apparent that Miss Pawson had in fact already received her redundancy payment I consider that at that later stage it may well have become apparent that it was unreasonable to continue or that her

claim had no reasonable prospect. But even so, it is not automatic even in those circumstances that I must award costs. Given the context of this claim I do not think it is appropriate for me to exercise that discretion.

17. So, the application for costs in relation to both claims concurrently listed for a public preliminary hearing today following on from the earlier full tribunal decision, both those applications are dismissed.

Employment Judge Lancaster

Date 16th December 2019

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1802198/2019	Mr D Cook
1802199/2019	Mr D Cook
1802200/2019	Mr P Jones

1802201/2019	Mr J Penny
1802202/2019	Mr G Jones
1802203/2019	Mr T Johnson
1802204/2019	Mr C Smith
1802205/2019	Mr J Smith
1802206/2019	Ms N Ruther
1802207/2019	Mr M Clarkson
1802208/2019	Ms D Pawson
1802209/2019	Ms V Croft
1802210/2019	Mr P McLean
1802211/2019	Mr D Clayton
1802212/2019	Mr I Westwood
1802213/2019	Mr J Miles
1802214/2019	Ms A Carroll
1802215/2019	Mr D Henry
1802216/2019	Mr R Fleming
1802217/2019	Mr R Game
1802218/2019	Ms Esteva
1802219/2019	Mr A Thornhill
1802220/2019	Mr W Beasley

Number of Cases **23**

