



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

**AND**

**Respondent**

Miss S Musumeci

CH&CO. Group

**Heard at:** London Central Employment

**On:** 8 January 2020

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

## **Representations**

**For the Claimant:** Claimant in person, supported by Ms A Aiello

**For the Respondent:** Mr F Azman (Counsel)

## **JUDGMENT**

There will be no order of costs pursuant to the Respondent's application for costs by letter dated 15 January 2020.

## **REASONS**

1. The Respondent has applied under rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 ("the Rules") by a letter dated 15 January 2020 for their costs.
2. I have not considered representations from the Claimant in response, but do not consider that I need to.

3. The Claimant was awarded £851.58 to be paid net of tax and national insurance. She did not recover further sums for inconvenience, interest or wages lost.
4. The factual basis for the Respondent's application for costs are set out in eight paragraphs in the letter of 15 January, including the following points:
  - 4.1. As at 26 November 2019 the Respondent had proposed settling the claim by COT3 in the sum of £851.58, subject to interest being paid. It seems that the Respondent believed that an agreement in principle had been reached.
  - 4.2. The Claimant did not return the COT3 nor did she specify the quantum of interest payments, but asserted that she'd worked more than 392 hours contended by the Respondent.
  - 4.3. The Respondent incurred the cost preparing and filing an ET3 Response. The Respondent then offered £1,200, reflected in an amended COT3. Again the Respondent believed that this had been agreed but they say that the Claimant informed ACAS that she would not sign as her claim was worth more.
  - 4.4. The Respondent warned the Claimant in a letter dated 20 December 2019 that they would apply for costs if the Claimant pursued the matter to a hearing. Confusingly this letter asserted that the Respondent had made a payment of £851.58, whereas in fact no payment had been made at that point, but £599.11 (a figure net of deductions) was paid on 3 January 2020.
5. The Respondent argues that:
  - 5.1. The claim in excess of £851.58 had no reasonable prospect of success.
  - 5.2. It was unreasonable of the Claimant to pursue the matter to a hearing in view of the content of a costs warning letter sent by the Respondent on 20 December 2019.

## Law

6. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1, contains the following:

*76.—(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.*

**Conclusion**

- 7. A claim is not settled until the parties have complied with all of the formalities. In the case of using a COT3 and ACAS this requires both parties to confirm that they agree the terms. This did not happen in this case.
- 8. It is sometimes the case in negotiation that parties will think that they have achieved a settlement only to find that they have not.
- 9. I recognise a particular difficulty in this case is that the Claimant was acting in person without professional representation and also in a language which is not her own and in a legal system which she has limited understanding of.
- 10. The Claimant only appreciated in this case that she had received payment into her account over the weekend of 4-5 January 2020. She did not receive a pay slip or similar to explain how the net figure of £599.11 was reached from the gross figure of £851.58. She was only shown a slip showing the deductions made on the screen of a mobile telephone during the course of the hearing, which was not particularly satisfactory, since it made it difficult for her to evaluate it.
- 11. The Respondent's letter of 20 December wrongly stated that the Claimant had been paid £851.58, whereas in fact at that stage no payment had been made and the sum of £599.11 was not paid until a couple of weeks later.
- 12. The Claimant in this case may have been unwise not to accept the offer of £1,200, but that is with the benefit of hindsight. I do not consider that her conduct, taking account of the fact that she is a lay person and the language barrier amounted to acting vexatiously, abusively, disruptively or otherwise unreasonably.
- 13. As to the contention that the claim in excess of £851.58 had no reasonable prospect of success, I do not agree with this. Had the Claimant produced evidence that she had suffered financial loss as a result of late payment, she might have made out a claim under section 24.

Employment Judge Adkin

Date 23 Jan 2020

WRITTEN REASONS SENT TO THE PARTIES ON

27/1/2020

.....

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.