



EMPLOYMENT TRIBUNALS

Claimant

Miss M Juhasz

v

Respondent

Printexpress International Ltd (R1)
Murtaza Daya t/a Print Express (R2)
Roshan Ali Daya t/a Printexpress (R3)
Momtaz Daya t/a Printerexpress (R4)
ESP Colour Ltd (R5)

RESERVED JUDGMENT

The claimant is ordered to pay the total sum of £7,500.00 costs inclusive of VAT to the 1st to the 3rd respondents.

RESERVED REASONS

1. On 22 February 2019 all claims in these proceedings were struck out due to the manner in which the proceedings had been conducted by and on behalf of the claimant. That judgment was sent to the parties on 26 February 2019 and on 25 March 2019 reserved reasons were sent to the parties.
2. At paragraph 28 of the reserved reasons it states;

“I find that the claimant’s representative has been consistently offensive and abusive in his communications to both the Tribunal staff and to the judiciary. I realise that Judges must have a broad back and that deflecting and adsorbing anger, upset, and on occasions aggression, exhibited by parties towards a Judge is part and parcel of the judicial role. I have been careful to stand back from the abusive comments specifically directed towards me and have considered the wider picture of whether this claimant’s representative is prepared to engage with the Employment Tribunal and the judiciary in an appropriate way. The conclusion I inevitably come to is that he is not. It is not just my decisions that he has challenged but he has challenged the earlier decision of another Judge to extend time for service of a response. He does not accept that the Employment Tribunal is impartial and objective. He is not prepared to engage with the Tribunal in the way that is necessary and appropriate to ensure that matters progress in accordance with the overriding objective. A representative and a party must conduct themselves toward the staff of the Employment Tribunal in a reasonable and measured way. The language used by the claimant’s representative in his correspondence with the Tribunal’s staff has been grossly offensive and abusive. I am acutely conscious that the claimant’s representative is not a qualified lawyer but that cannot excuse repeated abusive behaviour towards the Employment Tribunal staff. There is nothing in the correspondence before me on the Tribunal file to indicate that

the claimant in any way demurs from the approach taken by her representative as to the conduct of these proceedings. The claimant was present at the hearing on 11 September and did not demur from the approach taken by her representative towards the respondent's counsel on that occasion. For all the facts found and set out above, I am entirely satisfied that the claimant's representatives conduct of the proceedings has been unreasonable and that the power to strike these proceedings out arises."

The 1st to 4th respondents cost application

3. Having given judgment on the 22 February 2019 the 1st to 4th respondents made an application for costs pursuant to Rule 76(1)(a) and (b), namely that a party or that parties representative had acted unreasonably in the way in which the proceedings had been conducted and that the claim had no reasonable prospect of success. I recorded that application is being made and indicated that I would give directions as to how the costs application should be dealt with once those reserved reasons had been sent to the parties.
4. On 2 April 2019 the parties were notified that any costs application made by the respondents must be sent to the Tribunal and copied to the claimant within 21 days. I indicated that I proposed to deal with the costs application without a hearing because in my view it was proportionate and appropriate in all the circumstances of the case. I directed that any objections by the claimant to the costs application must be copied to the respondent and the Tribunal within 21 days from the date on which the costs application was sent to the claimant and the Tribunal.
5. On 23 April 2019 the 1st to 3rd respondents requested a further 14 working days in order to consider the costs application position. They stated that was due to the 4th respondent Mrs Momtaz Daya having passed away and was the main reason for requesting an extension of time.
6. In the event the application received on the 23 April 2019, within 21 days of the Tribunal's letter of the 22 April 2019 requiring any costs application by the respondents to be sent to the Tribunal and copied to the claimant within that period, was received in time.
7. By letter dated 16 July 2019 on my direction that it was sent to the parties read as follows:

"The costs application submitted on behalf of the 1st to 3rd respondents has been referred to Regional Employment Judge Byrne. He points out that there is no detail provided of the hourly rate applied in calculating the costs claimed, nor is there any detail of counsel's year of call and seniority and in the absence of that information it is not possible to properly consider the application. It is also noted that the costs schedule is in excess of £23,000. The 1st to 3rd respondents are directed to notify the Tribunal by **6 August 2019** whether the application for costs is restricted to £20,000, Rule 78(1)(a), or whether in the event that a costs order is made they seek a hearing in order that a detailed assessment be conducted either by a County Court or an Employment Judge pursuant to Rule 78(1)(b)."

8. The respondents requested an extension of time beyond the 6 August 2019 to respond and an extension was granted to the 9 September 2019. On 9 September 2019 an email was received from the 1st to 3rd respondents stating that the application for costs was restricted to £20,000, that counsel's year of call is 1979, that the costs claimed are on the basis of fixed fees agreed with counsel and that counsel's hourly rate is £300 + VAT. The file was referred to me on the 22 October 2019. I apologise to the parties for the delay in further consideration of the file and the preparation of this judgment and reasons. I have been extensively committed across the south-east region throughout October, November and December 2019.

The Law

9. Rule 76(1)(a) of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that a party (or that parties representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing the proceedings (or part) or the way that the proceedings (or part) are being conducted.
10. Given my conclusions as set out at paragraph 2. above in the reserved reasons sent to the parties on 25 March 2019 there is a clear finding that the claimant's representative conduct to the proceedings was unreasonable. I have considered the case of **Mrs S Solomon -v- University of Hertfordshire (1) Paul Hammond (2) UKEAT/0258/18/DA, UKEAT/0066/19/DA**. The facts of that case were somewhat different to the facts I found in these proceedings. In that case the Employment Tribunal found the claimant's conduct of the proceedings was unreasonable in three particular aspects, namely failing to attend a mediation, continuing with litigation rather than accepting a pre-hearing offer, and again continuing with litigation rather than accepting a post-judgment offer.
11. In these proceedings involving Miss Juhasz I found that the way in which the claimant's representative Mr Szabo engaged with the Tribunal was unreasonable and that the language used by the claimant's representative in his correspondence with the Tribunal staff was grossly offensive and abusive. I found that he was not prepared to engage with the Employment Tribunal and the judiciary in a way that is necessary and appropriate to ensure matters progress in accordance with the overriding objective. I found the proceedings must take place without abusive behaviour on the part of any party. I found that the respondents in this case were equally entitled to a fair hearing as is the claimant and that a fair hearing could not take place in a climate of abusive and hostile behaviour. I accept that the claimant's representative was not a qualified representative and effectively a lay representative, and that he is not to be judged by the standards of a legal professional. However, he is to be judged against the overriding objective and whether he is prepared to engage with the

Tribunal in a way that is necessary and appropriate to ensure that matters can progress in accordance with the overriding objective and that a fair hearing can take place. Absent the claimant's representative and the claimant acknowledging the position of the Employment Tribunal as an impartial judicial body to whom determination of the dispute is to be entrusted I could not see how a fair trial could take place. The claimant's representatives conduct, and the claimant's conduct in not demurring from the approach taken by her representative was outside the range of reasonable responses in the circumstances and I am satisfied the power to make a costs order arises.

12. I am mindful of Rule 84 which states that in deciding whether to make a costs, preparation time, or wasted costs order, and if so, in what amount, the Tribunal may have regard to the paying parties (or where a wasted costs order is made) the representatives ability to pay. The respondents have not asked for a wasted costs order in this case but have sought an order for costs against the claimant. The parties were informed by letter from the tribunal on my direction on 2 April 2019 that any objections from the claimant to the costs application must be copied to the respondent and the Tribunal within 21 days of the day on which the costs application was sent to the claimant and the Tribunal. No objections, nor any correspondence at all has been received from the claimant or her representative since that letter of 2 April 2019. The schedule of costs prepared by the respondents was copied by them to the claimant's representative. There is no information currently before me as to the claimant's financial circumstances. The claimant has been copied with the application. There is no objection to the application, whether in principle or on the ground that the claimant is unable to pay. In all the circumstances of this case the lack of information as to ability to pay should not prevent me from considering a justified application from the 1st to 3rd respondents.

The amount of the costs order sought

13. The costs order sought by the 1st to the 3rd respondents is very substantial and I attach to these reasons the costs application. The total fees incurred are stated to be £38,592.00 inclusive of VAT and the 1st to 3rd respondents have restricted those costs to the sum of £20,000.00 for the purposes of the Tribunal determining the appropriate sum to be awarded. The figure of £38,592.00 includes costs which are described in the schedule of costs as "Costs of £11592.00 due to potential indemnity and subsequent liability to ESP Colour Limited with respect to Employment Tribunal proceedings post TUPE".
14. Counsel's year of call is 1979. Counsel's hourly rate is £300 plus VAT. Some of the costs incurred early in the proceedings are said to relate to, "Potential High Court injunction proceedings due to theft of confidential information and loss of business/damage to reputation due to false information being circulated on the world wide web." None of those costs it seems to me can properly be claimed as consequential upon the Employment Tribunal proceedings. Further, they are stated to have been

prepared with reference to the 1st to 4th respondents whereas the application is now clearly made on behalf of the 1st to the 3rd respondents.

15. An important factor I must also take into account in deciding what is an appropriate award of costs to make in this case is that there were major failings on the part of the administration in copying documentation to the other parties to the proceedings. This meant that the hearing on the 11 September 2018 went short and had to be relisted. It resulted in substantial additional correspondence. Quoting from the case management summary of the hearing of 11 September 2018 sent to the parties on the 17 September 2018;

“Unfortunately, there had been major failing on the part of the administration in copying documentation to the other parties to the proceedings. In particular, the respondents of the 2nd to 5th respondent had not been copied by the Tribunal to the claimant or the 1st respondent. The response of the 1st respondent had not been copied by the Tribunal to the 2nd, 3rd and 4th respondent and to the 5th respondent as provided for in orders 1 and 2 of the orders sent to the parties on 26 June 2018. The claimant’s application for amendment of the claim sent to the Watford Employment Tribunal by email of 12 August 2018 timed at 21:29 had been served by the claimant on the respondents. The claimant’s application received by the Tribunal on 1 August 2018 for strike out of the 1st to the 5th respondents responses had not been copied by the Tribunal to the respondents and had not been copied by the claimant to the respondents. That application of 1 August was referred to me with the application of 12 August 2018 for amendment. With the benefits of hindsight I realise that I had overlooked that the application of 1 August had not been copied to the respondents and did not direct that it should be copied for which I apologise to the parties.”

16. Those delays added considerably to the costs incurred by the respondents, but were no fault of the claimant or her representative. I exercise my discretion whether to make a cost order in favour of the respondent in all the circumstances of this case, and in my view the appropriate order for costs to make against the claimant in these proceedings are costs payable to the 1st, 2nd and 3rd respondent is the sum of £7500.00 inclusive of VAT. That amounts to a substantial proportion of the counsel’s fees incurred by the 1st, 2nd and 3rd respondents which directly relate to the Employment Tribunal proceedings and ignores any costs incurred in relation to the ineffective hearing on 11th September 2018, but does take account of preparation for and attendance at the hearing on 22 February 2019. Accordingly, that is the award I make.

Regional Employment Judge Byrne

Date: ...14 January 2020.....

Sent to the parties on: 30/01/2020

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For the Tribunal Office