



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs S Garrett

v

Commissioner of Police for the Metropolis

Heard at: Watford

On: 24 January 2020

Before: Employment Judge Manley
Members: Ms S Goldthorpe
Mr D Bean

Appearances

For the Claimant: In person
For the Respondent: Ms A Chute, Counsel

JUDGMENT ON RECONSIDERATION

1. It is in the interests of justice to reconsider the judgment of costs made on 19 June 2019.
2. That judgment is confirmed with respect to the finding that the claimant acted unreasonably in pursuing parts of that claim. That part of the judgment is confirmed.
3. The order for costs is varied. The sum now payable by the claimant to the respondent as a contribution towards its costs is £15,000.

REASONS

Introduction and issues

1. This is a matter that was substantively determined at a hearing in October 2018 with judgment being sent to the parties on 16 November 2018. All the claimant's claims were unsuccessful.
2. There was a hearing to determine the respondent's application for costs on 19 June 2019. An order for costs was made against the claimant. In the reasons for that judgment, some background is recorded and it is not repeated here. This judgment should be read with that earlier judgment.

3. Judgment on costs having been sent to the parties on 29 July 2019, the claimant made an application on 9 August 2019. This is a very detailed document (pages 273c to 273n) which covers several other matters not related to the costs awarded. However, in summary, there was considerable detail there about why the claimant believed the judgment on costs should be reconsidered. The application was framed as an “appeal” and it seems there is an appeal pending at the EAT. The employment judge considered that there was sufficient in that document for it to be read as an application for reconsideration of the judgment on costs.
4. The respondent presented a detailed response to the claimant’s application for reconsideration (pages 273dd to 273oo). In summary, it said there was no reasonable prospect of the tribunal’s decision being varied or revoked and that the claimant had put forward no grounds for the tribunal to reconsider our judgment. At page 273mm the respondent set out reasons between (i) and (xi) as to why the application should be rejected. In summary, the respondent says the claimant has already had an oral hearing, that she was advised as to what she needed to provide about her means, that there is no fresh evidence and that there should be finality in litigation. At a telephone preliminary hearing the matter was listed for hearing today. At that preliminary hearing there was discussion about which documents might be needed and an order made for a joint bundle of documents.
5. The right to apply for reconsideration is contained within Rules 70-73 Employment Tribunal Rules of Procedure 2013. The application was made within the 14 days in Rule 71. The most significant feature of the determination of any application to reconsider is whether such reconsideration is in the interests of justice. Several cases give guidance on the interpretation of that phrase, but it is generally the case that there is a relatively wide discretion for a judge or tribunal when assessing interests of justice.

The hearing

6. Unfortunately, as this hearing started, the claimant produced some documents which the respondent had not seen before the morning of the hearing. She also presented a lengthy document with her submissions on the application. The documents presented by her included an extract from the Equal Treatment Bench Book, particularly in relation to litigants in person and her disability. It also included copies of personal bank statements and other relevant documents.
7. The respondent reminded us of the skeleton argument prepared for the previous costs hearing and objected to the claimant being allowed to present these documents so close to the hearing. It was submitted by the respondent that the tribunal could first consider whether it was in the interests of justice to reconsider the judgment on costs without taking account of those documents. The tribunal took the view that it would be better to consider those documents at the same time and we therefore broke off the hearing for about 50 minutes for the respondent to have time

to read the claimant's documents and for the claimant to consider any further matters she wanted to raise. After that adjournment when we all read all relevant documents, the claimant gave some brief evidence. We then had further submissions which were fairly in line with those already made, deliberated and came to our conclusions.

Conclusions

8. The first question for us is whether it is in the interests of justice to reconsider the judgment on costs that we made in June 2019. We have listened carefully to the claimant's submission on issues which have affected her, as a litigant in person, and, also, further details about the symptoms of her disability. We have also considered the impact on the respondent and the inconvenience of counsel having to return to the tribunal to re-argue some of the points that were argued in June 2019. It is a difficult balance, but we have decided that it is in the interests of justice to reconsider the judgment we made to allow the claimant a further chance to put forward all relevant information, particularly on her ability to pay any costs awarded.
9. We then went on to consider whether to confirm, vary or revoke the judgment. The first step was to consider whether we should vary or revoke the decision that we had made, that the claimant's behaviour was unreasonable. We have taken into account the fact that the claimant had received both free and paid legal advice and we cannot comment on the accuracy or otherwise of that advice. We have also heard her submission that her claim could have been rejected at an earlier stage and that there was no deposit order made. It is not unusual for no deposit order to be made, particularly in a case where a large volume of factual information is provided, and the extent of the allegations at the point a deposit order was being considered there were 58 separate allegations of disability discrimination. These were reduced to 35 by the time of the hearing in October 2018.
10. We have reminded ourselves that we took the view, expressed at paragraph 21 of the previous judgment on costs, that some parts of the claim were properly brought and argued, even though the claimant did not succeed. However, nothing has been said to us which would lead us to vary or revoke the judgment with respect to the many other aspects of the claimant's claim which took so much time in the tribunal. We have reminded ourselves of paragraphs 18, 19 and 20 of the judgment on costs, which set out matters which we considered to amount to unreasonable behaviour. We do not agree that we were wrong in reaching those conclusions.
11. We have also reminded ourselves of the costs warning which the claimant received from the respondent as set out at paragraph 22 of the judgment on costs. There has been nothing said at this hearing which has led us to change our view that the claimant's behaviour in pursuing a large number of allegations, which had no reasonable prospect of success, and failing to

consider her case when warned by the respondent, amounted to unreasonable behaviour and that part of the judgment is confirmed.

12. We then turn to the final step which is whether to confirm, vary or revoke our order for the claimant to pay costs of £20,000. In particular, we have considered the further information we now have on the claimant's ability to pay and what has occurred with the passage of time. The claimant has now had her baby and we understand that she and her family are almost ready to occupy the house they own. The claimant has now completed an EX410 form with more details on that property. This appears at page 312(e). She has also provided further information on the business where she is a director and employee. We are now satisfied that that business is running at a loss and her individual income is otherwise limited to her Personal Independence Payment and Child Benefit.
13. As pointed out by the respondent's representative, the claimant has not provided any further information with respect to her husband's income but we have assumed that it is not argued that it is less than the £45,000 referred to in the costs judgment (paragraph 11). There have also been some further loans to the claimant from her mother and a friend.
14. When considering whether to confirm, vary or revoke to order for costs we have taken account of the apparent equity in the house she jointly owns with her husband, of over £100,000. There may well be some changes in the future such as the business beginning to make a profit and other factors which we cannot predict.
15. Having considered those matters, and taking into account the fact that the claimant has now provided documentary evidence which confirms her low income and the loss through an insolvent building company, we have decided to reduce the costs award to £15,000. The tribunal appreciates that the sum is a fraction of the costs the respondent has incurred but has decided that the claimant's ability to pay should be recognised in a lower award.

Employment Judge Manley

Date: 31/01/2020

Sent to the parties on: ..05/02/2020

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For the Tribunal Office