



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107124/2019

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Held in Glasgow on 14 August 2019

Employment Judge R King

10 **Ms Y Rodger**

**Claimant
Represented by:
Ms D Flanigan -
Solicitor**

15 **Honeywell Control Systems**

**Respondent
Represented by:
Mr P Warnes -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claim is dismissed upon withdrawal and the Tribunal orders that a hearing is listed for 25 September 2019 to deal with the respondent's application for costs.

REASONS AND NOTE

1. The claim called for a hearing on 14 August 2019. At the outset, the
25 claimant's representative informed the Tribunal that the claimant now wished to withdraw her claim.
2. In response, the respondent's representative stated that in light of the timing of the withdrawal it was his intention to make an application for costs and that it was his request that the Tribunal should deal with that application
30 immediately.
3. In support of his request, he informed the Tribunal that the claimant had been sent a costs warning the day before the hearing and, furthermore, he understood that the claimant's agent already had with her a bundle of documents to be relied on in response to any costs application that would be

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made. The claimant was already on notice that an application for costs would be made but had chosen not to attend the hearing. To delay hearing the application would only incur further unnecessary costs. In all the circumstances he submitted that it was in accordance with the overriding objective to hear the respondent's application for costs immediately.

4. In response, the claimant's representative objected to the application for costs being heard today. While accepting that a costs warning had been made on the eve of the hearing, she had only been told the reasons for the application and the amount claimed on the morning of the hearing. She had therefore been unable to take the claimant's instructions or those of her trade union. While she had general instructions to protect her client's position in relation to an award of expenses, she had no instructions in relation to the specific terms of any application and therefore she was not in a position to deal with the application for costs today. Contrary to the respondent's representative's understanding she was not already prepared with a bundle of documents relevant to the issue of costs.

5. The Tribunal had regard to rule 77 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 which provides: -

"A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may order) in response to the application."

6. Having regard to the terms of Rule 77 and to principles of natural justice, the Tribunal was not prepared to deal with the respondent's costs application there and then. The claimant was entitled to a reasonable period of time to consider the respondent's application and respond to it. To allow the respondent's request in circumstances where she was unaware of the terms of its costs application would clearly have deprived her of that.

7. In all the circumstances the Tribunal refused the respondent's application to deal with its application for costs immediately upon withdrawal of the claim.
8. The parties agreed that a hearing to deal with the respondent's application for costs would be required and a hearing date was fixed for 25 September 2019.
- 5 9. In the meantime, the Tribunal directed that the respondent should send its written application for costs to the claimant within 7 days, with copies of any relevant vouchers, and that the claimant would have 14 days within which to provide the respondent with its written response.
- 10 10. If the claimant wishes her ability to pay to be taken into account in the consideration of the respondent's application, she must attend the hearing prepared to provide evidence about her means, including supporting documents such as pay slips and bank statements.

15 **Employment Judge: Robert King**
Date of Judgment: 20 August 2019
Date sent to parties: 22 August 2019