



EMPLOYMENT TRIBUNALS

Claimant: Ms A A Adelakun

Respondent: Three Media Associates Limited

Heard at: Manchester

On: 3 February 2018

Before: Employment Judge Phil Allen
(sitting alone)

REPRESENTATION:

Claimant: Miss Adelakun, Solicitor

Respondent: Did not attend

JUDGMENT having been sent to the parties on 17 February 2020 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:

REASONS

Claims and Issues

1. The claim brought by the claimant was one for breach of contract. The claim form stated that the claimant was owed £1,051.38 as a result of the respondent's failure to pay sums due in relation to notice.
2. The issues to be determined were how much notice was the claimant entitled to and whether the claimant had been paid the amount due for that notice.
3. In her email of 20 January 2020 the claimant had also made an application for a preparation time order. In the hearing it was confirmed that she made this application relying upon the respondent's conduct of the proceedings which she said was vexatious and unreasonable. Accordingly the issues for the Tribunal to determine were: whether the respondent's conduct of the proceedings was vexatious and unreasonable; whether the claimant should be able to recover costs as a result; and how much time should the claimant be awarded in relation to preparation time.
4. The application stated:

“I would like to claim for the eight hours of research around Employment Tribunals, data access requests and ICO procedure; the two hours spent on submitting the data access and escalation to the ICO and the three hours spent on researching preparation time orders and cost orders. In total I am claiming for 13 hours.”

5. In the Schedule of Loss produced for the hearing the claimant increased the total being claimed for preparation time to a total of 32 hours, at £40 per hour.
6. On the response form the respondent had completed the box in relation to a counterclaim for breach of contract, but as that box only referred to preparing a response it did not amount to a genuine counterclaim.

Procedure

7. The claimant attended the hearing on 3 February 2020 and was represented by Miss Adetakun, her solicitor. No one attended the hearing on behalf of the respondent. The claimant provided the Tribunal with emails which showed that the respondent had exchanged emails with the claimant about the preparation of the case and was aware of the hearing date.
8. The claimant had prepared a witness statement and a Schedule of Loss for the hearing. The claimant was sworn in and confirmed her evidence to the Tribunal. She was asked questions by the Tribunal about the case she wished to pursue and her evidence. The claimant's representative was able to make submissions.
9. The Tribunal considered and delivered judgment verbally, finding that the claimant's breach of contract claim was found and awarding the claimant damages in respect of breach of contract for the amount claimed.
10. In her Schedule of Loss for the hearing the claimant had also claimed an additional £197.83 as a penalty fee arising from having to withdraw from her lifetime savers account. The amount had not been claimed on the claim form and it was confirmed that the respondent had not previously received the Schedule of Loss. The Tribunal decided that it would not make an award for that amount.
11. After judgment was delivered on the primary issue, the claimant went on to make an application for a preparation time order. The claimant's representative made submissions. The Tribunal asked questions about the specific time sought. The Tribunal subsequently delivered a judgment in relation to the preparation time order sought.

Facts

12. The claimant was employed by the respondent from 8 May 2018 as a Business Analyst and Software Tester. She handed in her resignation on 11 June 2019. After an email exchange, it was agreed with the respondent that the claimant's last working day would be 9 August 2019.
13. Following this exchange and despite what had been agreed, on 24 July 2019 the respondent informed the claimant that her employment would be terminated with immediate effect. The respondent paid the claimant her salary due for the period

until the end of July 2019. The Tribunal finds that the contract was terminated in breach of the term as to notice which had been agreed.

14. There was no term in the claimant's contract (or at least in any document provided to the Employment Tribunal) which entitled the respondent to deduct or recover an amount for holiday taken over and above any entitlement.

15. The claimant claimed that she was due wages of £1,051.38 in lieu of the outstanding period of notice which had not been paid to 9 August 2019. The claimant gave evidence about how this figure was calculated, which was accepted by the Tribunal.

16. The claimant also alleged that she had incurred a penalty of £197.83 as a result of having to withdraw her money from a lifetime savers account, such loss arising from the breach of contract. This claim was not included on the claim form and had been raised for the first time in a schedule of loss prepared for the hearing, which the respondent had not seen. The Tribunal did not make an award for this amount as it was not part of the sum claimed.

17. In relation to preparation time, the claimant had represented herself when preparing for the hearing. The solicitor who represented her at the hearing did so on a pro bono basis and therefore the claimant had no legal costs and was not claiming for legal costs. The claimant's evidence and submission was that the amount claimed arose from the time required to: research into the matter; make a subject access request and raise matters with the ICO; speak to ACAS and to endeavour to settle matters; exchange emails with the respondent (including regarding documents); prepare the claim for hearing; and attend the Tribunal hearing.

18. The total amount claimed by the claimant included the time she spent in liaising with ACAS and in making a subject access request and pursuing that with the Information Commissioner. In terms of the preparation for the Employment Tribunal hearing, it was confirmed by her that the time spent was 20 hours (amounting to £800 at £40 per hour).

19. The claimant contended that certain documents which were central to the issues to be determined were in the possession of the respondent and were not disclosed by it. The Tribunal saw emails exchanged with the respondent, in which the respondent said: that it required further time to comply with the direction made regarding disclosure; and that it would not make the revised deadline. The evidence before the Tribunal was that the respondent had not complied with the obligation to disclose documents relevant to the issue and that the claimant had needed to spend some time endeavouring to obtain disclosure from the respondent.

20. The claimant's evidence was that as the respondent had not provided the documents this had required the claimant to need to send various emails and chase the respondent in order to prepare a bundle. In relation to the time taken to prepare the bundle, the claimant's evidence was that this took 4½ hours in total.

21. The respondent neither attended the hearing, nor provided any reason for its non-attendance (prior to the hearing).

The Law

22. The law in relation to the breach of contract claim is straightforward, is identified in the issues, and therefore does not need to be further outlined in the Judgment. It is for the claimant to prove that the contract was breached.

23. In relation to costs, the rules are laid down in the Employment Tribunal Rules of Procedure, Rules 74-79.

24. Rule 76 says that a preparation time order may be made where a party has (in terms of the grounds relied upon) acted vexatious or otherwise unreasonably in the way that the proceedings (or part) have been conducted.

25. Rule 75 provides that a preparation time order is made in respect of the receiving party's preparation time while not legally represented. Preparation time means time spent by the receiving party in working on the case, except for time spent in the final hearing.

26. Rule 79 says that the Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of: information provided by the receiving party on the time spent; and the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on preparatory work, with reference to the complexity of the proceedings, the number of witnesses and the documentation required.

27. The Tribunal has also had regard to Guidance note 7 of the Employment Tribunals (England & Wales) Presidential Guidance on general case management. That begins by recording the basic principle as being that Employment Tribunals do not order one party to pay the costs which the other party has incurred in bringing or defending the claim. The examples when costs may be ordered are described as exceptions to the basic principle. The awarding of costs is the exception and not the rule.

28. The claimant's contention was that the way that the proceedings had been conducted was vexatious and unreasonable. The respondent had not come to the Tribunal. The respondent had not responded to emails. The claimant also referred to the emails which she exchanged with the respondent regarding documents and preparation.

Conclusions

29. The amount claimed by the claimant for breach of contract was awarded as it was evidenced by the claimant at the hearing. The claimant's contract of employment was terminated in breach of what had been agreed regarding the end date. The Tribunal finds that the pay which would have been paid for the period up to 9 August 2019 is awarded to the claimant as damages for breach of the contract. Accordingly the respondent is ordered to pay the claimant £1,051.38 as damages for the breach.

30. In relation to the ISA penalty claimed by the claimant, the Tribunal did not award this amount as it was not part of the sum claimed on the claim form and the respondent had not been informed about this claim prior to the hearing.

31. The Employment Tribunal finds that the respondent's conduct of the proceedings has been unreasonable, in relation to the non-provision of documents to the claimant and its approach to documents. Such documents were clearly important to the case and should have been disclosed. The emails provided, evidenced the respondent acting unreasonably and that unreasonable conduct led to additional time being required for the claimant to liaise with the respondent about documents and to prepare for the hearing. The Tribunal therefore determined that the claimant is to be awarded the preparation time costs arising from this unreasonable conduct.

32. The award of costs is the exception in the Employment Tribunal and not the rule. The claimant sought 20 hours as the additional time required to prepare for the case, but that was not an amount of time which followed from the respondent's unreasonable conduct. The claimant was not entitled to preparation time costs for the time that would have been required to prepare her case in any event. A bundle would still have needed to have been prepared for the hearing and the process of disclosure would still have needed to be undertaken whatever the conduct of the respondent. The claimant would still have been required to attend at the Employment Tribunal and to prepare to do so.

33. The amounts claimed by the claimant in relation to her conversations with ACAS to resolve the matter was not time for which the claimant should be awarded preparation time costs and in any event that was not time that followed from the respondent's unreasonable conduct.

34. The time claimed by the claimant in relation to her data subject access request and her request made to the Information Commissioner was not time incurred in the Employment Tribunal proceedings. The Employment Tribunal does not have jurisdiction in relation to subject access requests or applications made to the Information Commissioner. Rule 75 only provides for time to be included in a preparation time order where the claimant is working on the case. Accordingly, the costs of this time could not be ordered. In any event, this time was also not time incurred as a result of unreasonable conduct by the respondent.

35. The Tribunal decides that the claimant is awarded the preparation time costs for two hours of time spent. This is the Tribunal's own assessment of the additional time required of the claimant resulting from the respondent's unreasonable conduct in relation to documents. This is an assessment made taking account of the fact that the claimant would have needed to prepare a list of documents, exchange documents and prepare a bundle in any event. The two hours of costs (at £40) awarded, is the additional time which the Tribunal assesses as the reasonable and proportionate amount of additional time required because of the respondent's unreasonable conduct.

36. The Tribunal did not award the claimant the costs for attending at the Employment Tribunal hearing, which the claimant would have needed to do in any event irrespective of the respondent's conduct. In any event, rule 75(2) means that time spent in at the final hearing cannot be awarded.

37. The respondent is required to pay the claimant £80 as a preparation time order.

Employment Judge Phil Allen

18 March 2020

REASONS SENT TO THE PARTIES ON

20 March 2020

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