EMPLOYMENT TRIBUNALS

Claimant: **Mr D West**

Respondent: **The County Tyre (Holdings) Limited**

Before: **Employment Judge Barrowclough**

Representation

Claimant: Written representations
Respondent: Written representations

JUDGMENT

IT IS ORDERED that the Claimant pay a contribution of £500 towards the costs incurred by the Respondent in defending his claim against them, pursuant to Rule 75 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

REASONS

1. On 23 May 2019, the Claimant (who has acted in person throughout these proceedings) presented a claim to the Employment Tribunal against his former employer, identified as 'The County Tyre Group of Companies'. The Claimant's claim consisted of a single complaint of unfair dismissal. The Claimant alleged that he had been employed as a driver, working 42 hours per week, from 27 November 2018 until the termination of that employment on 25 January 2019. At section 8.2 of his ET1 claim form, the Claimant provided background and details of his claim. He said that he had worked for *'B.I.T.S'* for about six years, and that in September 2018 he had sold his house in Cornwall and moved to Ipswich, apparently being transferred by his employer from their Bristol to their Colchester branch. However, he was unable to start work until 27 November that year because the new van which he was supposed to be driving did not arrive until then. Then, on about 23 January 2019, the Claimant received a letter informing him that he was being dismissed with effect from 25 January, due to unsuitability as a result of his driving licence having been revoked for several weeks. In addition, the Claimant said that he had not been paid for the two months during which he was waiting for a van to be provided for him to drive.

2. The Respondent filed and served an ET3 response form, disputing and resisting the Claimant's claim, on 2 July 2019. As a preliminary point, the correct respondent to the Claimant's claim was identified as being 'The County Tyre (Holdings) Ltd', trading as British & International Tyre Supplies, or *"B.I.T.S."*. In relation to the Claimant's claim, the

Respondent accepted that the Claimant had been employed as a driver at their Bristol branch for an aggregate total of about six years, from April 2012 until September 2018, albeit in two separate and distinct periods, with a gap of about four months between December 2014 and March 2015. Additionally, the Claimant had resigned from his employment on 27 September 2018, at the time of his move from Cornwall to Ipswich, before being employed at the Respondent's Colchester branch, once again as a driver, from 27 November 2018 until he was dismissed on 25 January 2019. Accordingly, the Respondent contended that the Claimant did not have the requisite two year qualifying period of continuous service prior to the termination of his employment on 25 January 2019; and that, pursuant to s.108 Employment Rights Act 1996, the Tribunal did not have jurisdiction to hear and determine the Claimant's unfair dismissal complaint.

3. The Respondent also pleaded to the issue of the Claimant's dismissal, in the alternative. They alleged that the Claimant was absent from work, apparently sick, from 18 to 21 December 2018, but that he worked on 24, 27 and 28 December. On 28 December, the Claimant informed a manager called Emma Wiles that DVLA had suspended his driving licence on about 11 December that year. Ms Wiles offered the Claimant a different role, working in the Respondent's warehouse, during the period of his driving suspension, but the Claimant rejected that offer. Since he was unable to fulfil his duties as a driver, the Claimant did not subsequently attend or undertake work prior to his dismissal on 25 January 2019. Because the Claimant was employed as a driver, and it was an essential requirement of that role that he held a valid driving licence, he was dismissed for 'some other substantial reason'. In fact the Claimant had notified Ms Wiles on 18 January 2019 that his driving suspension was still then continuing, and the Respondent had written to the Claimant on 22 January thereafter dismissing him with effect from 25 January due to 'unsuitability'.

4. Finally, the Respondent accepted that the Claimant had not been paid for the period between 28 September and 26 November 2018, for the simple reason that he was not then employed by or undertaking work for them.

5. The Tribunal had issued a notice of hearing, listing the claim for a one-day hearing on 20 September 2019, when giving notice of the claim to the parties by letter dated 3 June 2019. That letter also set out a number of standard case management orders with which both parties were required to comply, including providing for disclosure of documents, agreeing and preparing a trial bundle, the preparation and exchange of witness statements, and the Claimant providing details of what remedy he was seeking. In their solicitors' letter of 17 October 2019, the Respondent asserts that they complied with all those orders, but that the Claimant wholly failed to do so; and that, the Claimant having not responded to their letter dated 12 August 2019 seeking compliance, they applied to the Tribunal to strike out the Claimant's claim on 3 September thereafter. None of those matters have been disputed by the Claimant.

6. In any event, the Tribunal wrote to the Claimant on 6 September, requiring him to respond to the strike out application by 12 September; but he failed to do so. The Claimant did however contact the Tribunal, by email during the evening of 19 September, the day before the full merits hearing of his claim. In that email, which was not copied to the Respondent, the Claimant said that, due to work commitments, he would not be attending the Tribunal on the following day.

7. At the hearing on 20 September 2019, the Claimant was neither present nor represented; and no written representations were submitted by him or on his behalf. The Respondent was represented by Mr Berry, an operations manager, who was accompanied by three witnesses who were (it was anticipated) to give evidence, the Respondent having decided to deal with matters themselves in an attempt to save costs. Pursuant to rule 47 of the 2013 Regulations, I dismissed the Claimant's claim and without hearing any evidence on his failing to attend the full merits hearing without reasonable cause, the brief judgment being sent to the parties by the Tribunal on 9 October.

8. The Respondent's solicitors then wrote to the Tribunal on 17 October, applying for a costs order against the Claimant on two bases. First, that the Claimant had acted vexatiously, disruptively or otherwise unreasonably in bringing and/or conducting these proceedings, in breach of rule 76(1) of the 2013 Regulations, not least in failing to notify the Tribunal (as instructed) before 3.00pm on 19 September whether or not he would be attending on the following day. Secondly, that the Claimant had failed to comply with the case management orders which the Tribunal had made (rule 76(2)) for the reasons summarised above. A signed Statement of Costs incurred in the sum of £6,636 was enclosed with the solicitors' letter, copies of both being sent to the Claimant simultaneously by email.

9. At my request, the Tribunal then wrote to the parties on 1 November, asking them whether they wished the Respondent's costs application to be determined at a hearing, or alternatively on the papers before the Tribunal. The Respondent's solicitors responded, opting for the latter course; the Claimant replied by email on 7 November stating that he did not understand the options being put forward. Evidently that was clarified for the Claimant, since he then wrote to the Tribunal by email on 14 November, stating that he strongly objected to the Respondent's claim for costs.

10. In his email, the Claimant gives details of his financial circumstances. He states that whilst he is working, he is on a low income, being paid only £9 per hour. The Claimant says that he makes monthly mortgage payments of £649, in addition to monthly payments of £120 (Council tax) and £100 (credit card bills); and that any costs order against him would result in financial hardship and put his mortgage at risk. By contrast, the Claimant says, the Respondent is a multi-million pound company, for whom the costs incurred are insignificant. In relation to his claim, the Claimant says that it was the Job Centre at Harwich who pushed him into starting a Tribunal claim against the Respondent, but then left him without help; and that, had it not been for them, that he would not even have considered bringing such a claim. Finally, the Claimant makes a number of comments about it being well-known that he was transferring from the Bristol to the Colchester branch, although they are not relevant in my view to the Respondent's costs application.

11. The general principles applicable to costs applications of this nature are clear. Under rule 76(1), the Tribunal must first ask itself whether a party's conduct in bringing or conducting proceedings has been vexatious, abusive or otherwise unreasonable; if so, then the Tribunal must go on to ask whether it is appropriate to exercise its discretion in favour of awarding costs against that party.

12. I am satisfied that at least the Claimant's conduct of his claim has been unreasonable. Even giving the Claimant the benefit of the doubt concerning the circumstances in which his claim was issued, and provisionally accepting that it was

based solely on third party advice or prompting, it must, or at least should, have been clear to him from the time that he saw the Respondent's ET3 response that his claim was misconceived. The Claimant had ample opportunity to seek to resolve, abandon or withdraw the claim, particularly when as he says he was receiving no advice or support. Instead, the Claimant simply ignored both the Tribunal's case management orders (itself giving rise to a potential costs liability under rule 76(2)), as well as correspondence from both the Respondent's solicitors and the Tribunal; and took literally no steps to progress or resolve his claim. Additionally, the Claimant failed to respond in a timely manner to the Tribunal's urgent enquiry as to whether he would attend the hearing of his claim (and no reason for that failure has been put forward), thereby wasting both the Tribunal and the Respondent's time, and giving rise to further unnecessary costs. In my judgment, such conduct can realistically only be described as unreasonable.

13. In relation to whether costs should be awarded against the Claimant, I bear in mind that he has always been a litigant in person in these proceedings, and that professional standards should not be applied to lay people, who may be inexperienced and embroiled in legal proceedings for the first time in their lives. Nevertheless, the extent of the Claimant's failure to engage with the Tribunal or the Respondent in relation to a claim which he had initiated, including failing to give prompt notice that he would not be attending the hearing of it, when it is reasonable to presume that he must have been aware of any conflicting engagement some time beforehand, is such that the Tribunal's discretion should in my view be exercised in making such an order.

14. As to the amount of such a costs order, here too the Tribunal has a discretion. I make plain that I do not consider that the costs sought by the Respondent are inflated or unreasonable, bearing in mind that, so far as they knew, they were preparing for and attending a one day fully contested hearing, with three witnesses of their own, on 20 September last year. However, I also bear in mind and accept what the Claimant says in his email to the Tribunal of 14 November 2019 about his means and his ability to pay. Whilst the Claimant was then apparently in work, albeit he provides no details of what kind, it was not particularly well-paid, and he has a number of legitimate and regular outgoings, in particular mortgage and Council tax payments. I also take account of the extraordinary circumstances current at the time of preparing this judgment due to the Coronavirus pandemic, which is threatening and affecting virtually everyone in this country, both physically and economically; and I have no reason to think that the Claimant is an exception to that general rule. Doing the best I can and exercising my discretion in the light of the Claimant's financial circumstances, the order I make is that the Claimant should pay a contribution of £500 to the Respondent's costs of defending his claim.

Employment Judge Barrowclough
Date: 26 March 2020