



THE EMPLOYMENT TRIBUNALS

Claimant: X

Respondent: Barbara Thubron

Heard at: North Shields Hearing Centre **On:** Monday 25th February 2019

Before: Employment Judge B N Speker OBE DL

Members:

Representation:

Claimant: In Person

Respondent: In Person

JUDGMENT

1. By consent the respondent shall pay to the claimant the sum of £42.67 as outstanding notice pay and the sum of £27.60 for outstanding holiday pay. These sums shall be paid within seven days.
2. The claimant shall pay to the respondent a contribution to costs of the respondent in relation to the matters which culminated in the dismissal of her claims at a preliminary hearing held on 27th July and 12th September 2018 and the amount of the costs order is £500.00.
3. The claimant's application for an order in relation to anonymity is refused.

REASONS

1. This hearing was convened to deal with a number of issues.
 - 1.1 Outstanding money claims made by the claimant for notice pay and holiday pay

1.2 An application by the respondent for an order for costs following upon the dismissal of the claimant's disability discrimination claims

1.3 An issue raised by the claimant as to anonymity.

2. This case was before me on 27th July and 12th September 2018 for a preliminary hearing as to disability in order to determine whether the claimant was at all material times suffering from a disability as defined by section 6 of the Equality Act 2010 and if so whether the respondent knew or ought reasonably to have known that the claimant suffered from a disability or disabilities.
3. My judgment on those issues was promulgated on 8th October 2018, the decision being that the claimant's disability claims were dismissed. The claimant appealed to the EAT but subsequently withdrew that appeal.

Money claims

4. I deal firstly with the money claims. It appeared from the calculations produced by the parties that the claimant submitted that £42.67 was still outstanding for notice pay and £27.60 for holiday pay. The respondent suggested that the sums due were £18.24 and £14.00 respectively. The totals in dispute were either £70.27 or £32.24. I indicated that to hear evidence on issues for these amounts, and a difference between the parties of only £38.03, was not proportionate. Mrs Thubron realistically agreed this and was willing to consent to a judgment in relation to each of the amounts claimed in the sums claimed by X namely that she will pay to the claimant £42.67 for notice pay and £27.60 for outstanding holiday pay and that these sums are to be paid within seven days. Accordingly orders are made to that effect.

Application for costs

5. Both parties had filed detailed written submissions supported by a number of documents. In the claimant's case this ran to 163 pages and in the respondents to 20 documents. Some of these papers had already been included in the bundle for the two-day preliminary hearing which had consisted of 239 pages.
6. The respondent submitted that she had indicated at various stages in the proceedings both in pleadings and in correspondence the view that the claimant's claim was unreasonable and had no reasonable prospect of success and should be struck out and had indicated this to the claimant and that a costs application would be made. In the respondent's submissions to this hearing she made the following points:
 - 6.1 She referred to the comment at paragraph 27 of my judgment where I stated that I found that the claimant had a tendency to exaggerate her evidence and that her attitude in relation to the proceedings appeared to amount to a vendetta which was a term that had been used in fact on behalf of the respondent in argument.
 - 6.2 That the claimant had grossly exaggerated her loss claim.

- 6.3 That she had sought to damage the respondent's professional reputation as a solicitor extending over forty years.
- 6.4 That she had wrongly accused the respondent of unreasonable and scandalous behaviour and made vexatious claims to the police, the CPS and the SRA and to the Magistrates Court.
- 6.5 That the claimant had incorrectly alleged that the respondent had falsely used an incorrect name for a witness to prevent the witness being traced.
- 6.6 That the claimant had deliberately extended the length of the preliminary hearing in order to make the respondent incur substantial costs.
- 6.7 That the respondent had issued a costs warning including even before proceedings had commenced by way of correspondence with ACAS and that a further costs warning had been included in the grounds of resistance and again in the amended grounds and also that the respondent had forwarded to the claimant breakdowns of costs at a number of stages.
- 6.8 The respondent further suggested that she had been bombarded with e-mails by the claimant over the period of more than twelve months when the case was proceeding and that the claimant had further extended the proceedings by lodging an appeal and then withdrawing it.
- 6.9 The respondent's position was the claimant had acted vexatiously and otherwise unreasonably in bringing proceedings and in the conduct of those proceedings. The respondent's case was that she had incurred costs and counsel's fees coming to a figure of £22,943. She conceded that more than half of these were for work she had undertaken herself essentially amounting to a preparation time claim. It was noted that the fees included in the breakdown for counsel were incorrect and Mrs Thubron produced a further fee note from which it was possible to calculate that the actual amount of counsel's fees was £4,050 plus VAT and that would make a total of £23,793 for the total costs included in the application being made.

The claimant

7. In her submissions X set out detailed arguments and responses to the points made and referred to a number of cases. GV Shell UK Limited 2003 IRLR648, AQ Limited v Holden 2012, Attorney General v Bowden 2000 1FLR759 a case dealing with the interpretation of the word "vexatious." The points made by X in response to the costs application were as follows:
 - 7.1 That the case was not straightforward and it could not be said that she had understood that it was considered as having no reasonable prospect of success.
 - 7.2 That she suffered from post-traumatic stress disorder and this would hamper her in dealing with the case.

- 7.3 That she was a litigant in person and not a qualified lawyer and that she had done her best. Employment Judge Johnson had described the case as involving difficult areas of law.
- 7.4 That she had not been vexatious but had acted in good faith throughout.
- 7.5 That she had no ulterior purpose in bringing the claim but had raised issues in good faith.
- 7.6 She genuinely believed that she had been discriminated against.
- 7.7 That she challenged the respondent's calculations of costs and the amounts of costs as well as the inclusion of VAT and the attempt to claim both a preparation order and a costs order covering counsel's fees; and that the amounts claimed were excessive and that no effective costs warnings letter had been sent.
- 7.8 The claimant also alleged that she was impecunious and in her bundle there were documents as to her finances including bank statements, details of student loan liabilities, an investment known as LISA in the sum of £10,000 and various other financial particulars. She maintained that the money that was invested was for her future. She said that if she were to be made to pay costs it could lead to her becoming bankrupt and thus could impede her future career prospects. She maintained that it had been reasonable for her to calculate a claim in the sum of £59,000 as she had been relying upon some guidance she received from ACAS including the Vento guidelines and she was looking at the case on the basis that following dismissal by the respondent she would be entitled to seek to recover loss of earnings up the end of her university course.

The Law

8. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 set out in Schedule 1, the Tribunal rules. Those which are relevant to this costs application are rules 74, 75, 76, 77, 78 and 79. At 75(3) it is stated "*a costs order under paragraph 1A and a preparation time order may not both be made in favour of the same party in the same proceedings. A tribunal may if it wishes decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.*"

Rule 76 when a costs order or preparation order may or shall be made

- (i) *A tribunal may make a costs order or a preparation time order and shall consider whether to do so where it considers that*
 - (a) *a party or that party's representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing of the proceedings or the way that the proceedings have been conducted or*
 - (b) *or any claim of response had no reasonable prospect of success or*

(c) a hearing has been postponed or adjourned on the application of a party made less than seven days before the date from which the relevant hearing begins.

Findings

9. In general terms Employment Tribunals rarely make costs orders. One of the traditions of the tribunal system is enabling employees to challenge the fairness of dismissals or to challenge potential discrimination within the work place and not to be discouraged from doing so because of the risk of being ordered to pay for the costs of the employer. It is fundamental that cost orders are the exception rather than the rule as opposed to what occurs in the Civil Courts where costs normally follow the event.
10. The provisions as to when a costs order may be made are as I have just stated and they are to deal with situations where the tribunal finds that the costs should be awarded because a party has acted in the ways described. An employment judge has a discretionary power to make a costs order on these grounds. It is right to say that an employment tribunal should not judge a litigant in person by the standards of a professional representative. Lay people are likely to lack the objectivity and the knowledge of the law and practice of a professional legal advisor. The discretion of the employment tribunal should take into account all of the circumstances of the case. However it should be stressed that this does not exempt lay people from liability for costs if they have acted in breach of the rules as stated.
11. With respect to the claimant, she is regarded and treated as a lay person. Although undertaking a law degree, this does not make her a lawyer. Employment Judge Johnson commented at the preliminary hearing that she was “clearly an intelligent, educated and articulate lady”. During the two days preliminary hearing it was clear to me that she did possess those attributes. However I did find as I set out in the judgment that she had a tendency to exaggerate her evidence and that the way in which she conducted herself appeared to be a form of vendetta. I concluded this from the manner in which she raised very serious allegations against Mrs Thubron and pursued them relentlessly with various official bodies in a manner which she would know would be potentially very professionally damaging to the respondent. In addition the suggestion that had the claim amounted a sum of £59,000 appeared preposterous in the context of the circumstances of the claim, the amount of pay and the length of the employment.
12. I have no doubt that the claimant used her legal training to progress the case. She is not to be criticised for this but it is expected that she will use some judgement in how she conducts what are serious legal claims with very significant consequences.
13. I find that there is no doubt that the liability to having a costs claim and a costs order made against her was very clear to her and that she would have understood this. Whilst she may have regarded this as very unlikely, that does not amount to a protection from a costs order.
14. I find the claimant behaved unreasonably and in some respects vexatiously in the manner in which this case was pursued and that an order for costs is appropriate.

15. As to the amount of any order it is necessary for me to take this into account in applying the rules. I find that the respondent cannot claim a preparation order as well as a costs order. Mrs Thubron, being a solicitor, had included a claim for all of the work done by herself in preparing the case effectively as an instructing solicitor whereas she is a party in the case. Although she relied upon some advice from her counsel as to costs, which of course I did not see, there was no advanced to me anything which would overcome regulation 75(3), that there cannot be both a preparation time order and a costs order. Accordingly I find that only a costs order can be made in this case and that essentially can relate only to the amount of counsel's fees and on the basis of the fee note eventually produced and showing the breakdown, the total sum which could be claimed as £4,050.
16. I have considered the question of what the claimant describes as her impecuniosity or effectively how much she should be ordered to pay or how much she could pay. I take into account that she is a student, has significant student loan liability and no employment at present. Her financial position was somewhat complicated looking at information referring to payments she has been making for significant sums for pony livery which she said equated to some contra-payment in relation to rental to the same organisation {test removed} and some limited documentation as to companies in which she is a director and shareholder. These were briefly referred to during the preliminary hearing. The claimant's financial position presented is incomplete and in many respects unsatisfactory. Evidence was given with regard to a £10,000 investment under the title LISA which is to provide for future prospects or getting into the housing market and emanates from compensation received by the claimant in the past, topped up by Government contribution. That money is for the future and the claimant referred to some penalties which were incurred if monies are drawn out of that investment prematurely.
17. While I accept that the claimant is a student, I am persuaded that because of the existence of the LISA and other lifestyle evidence and in relation to the companies albeit of limited value that the claimant has means from which she can meet a realistic costs order.
18. However I do take into account that the only costs in relation to which a contribution should be made by the claimant are counsel's fees of £4,050. I feel that the claimant allowed herself to be led into believing that she had a stronger case than she did and pursued this in a way which can clearly be described as unreasonable. Accordingly I consider that this is case, taking into account what was alleged against the respondent and the expenses to which she was being put, that a cost order should be made. In all the circumstances and comparing this with other cases, I find that a fair contribution towards the respondent's costs is £500 and I order that is the sum which the claimant must pay. The claimant like all litigants must recognise that where cases are dealt with unreasonably they may suffer the consequences of a costs order, albeit in rare cases.

Anonymity

19. The claimant raised an issue in reliance upon the Sexual Offences Amendment Act. She argued that steps should be taken in order to protect her anonymity which might

be revealed by enquiries on social media which could arise out of the judgment from the preliminary hearing and that individuals might be able to link this with a conviction of an individual which occurred in the Magistrates Court. I took note of the fact that in the judgment made by me there is no reference to any sexual offence. The Employment Tribunal Rules do cover the making of restricted reporting orders for which an application can be made at an earlier part of the proceedings or within a relevant hearing. No application has been made for such an order.

It does not appear that there is anything within my judgment which identifies any of the orders which are the mischief at which the 1992 Act is directed. In any event, any application which the claimant would wish to make to protect her privacy and anonymity should not be made to this Tribunal, but to other authorities or to media organisations. Accordingly there is no authority for me to make an order with regard to this aspect raised by the claimant and her application for an anonymity order is dismissed.

EMPLOYMENT JUDGE SPEKER OBE DL

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON 19 March 2019**

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.