



EMPLOYMENT TRIBUNALS

PRIVATE PRELIMINARY HEARING

Claimant: Mr R Craggs

Respondent: BMS Electrical Services Limited

Heard at: Newcastle Hearing Centre **On:** Monday 2nd March 2020

Before: Employment Judge Martin

Members: Mr R Dobson
Mr S Moules

Appearances:

Claimant: Mr Henshaw (Solicitor)
Respondent: Mr G Ridgeway (Consultant)

Judgement

The Claimant's application for his costs of these proceedings is partially upheld. The Respondent is ordered to pay the Claimant's costs of these proceedings in the sum of £1,782.40 (including VAT and Counsel's fees).

REASONS

1. The Tribunal considered Rule 76 of Schedule 1 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2013. It also considered and was referred to the case of *Cartiers Superfoods Limited v Laws* 1978 IRLR 315 and the case of *Yerrakalva v Barnsley MBC* 2012 ICR 420, in particular the principal guidelines set out by Lord Justice Mummery in that decision.
2. The Tribunal considered that the respondent did act unreasonably and potentially vexatiously in pursuing applications to strike out the claimant's case on day 4 of the Hearing and in making an application of no case to answer immediately following that application. We consider that conduct was unreasonable in the context of the way in which the proceedings were conducted generally by the respondent and the respondent's representative.

They made the application to strike-out the claimant's claim, yet called little relevant evidence to support that application. That application took one day of the Tribunal's time. The respondents then followed it up immediately the following day with an application of a submission of no case to answer in relation to the constructive unfair dismissal claim. This was despite the fact that the Tribunal would, in any event, have to consider the claimant's claim for disability discrimination. All of this has to be put into the context of the manner in which the respondent cross examined the claimant as is noted at paragraph 3 of the Reserved Judgment dated 16th October 2019 and the various repeated allegations which were made alleging bias against the Tribunal and which were subsequently withdrawn.

3. Accordingly, this Tribunal considers that the respondent's unreasonable conduct does merit a costs award. However the Tribunal does not accept that the costs should be in respect of all of the costs, which the claimant incurred after he reinstructed his legal representatives. We consider that the costs attributable to the unreasonable conduct of the respondent is limited to just over one third of the total costs being claimed. Therefore we consider that the appropriate award on costs should be £1,782.40 including VAT and Counsel's fees)

CONSEQUENCES OF NON-COMPLIANCE

1. Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
2. The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
3. An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative.

**Employment Judge Martin
Date 3 April 2020**