



EMPLOYMENT TRIBUNALS

Claimant: Mr M Golden

Respondent: Premier Recruitment Derby Limited

Heard in private on 9 July 2020

Before: Employment Judge Brewer
Mrs C Hatcliff
Mr J Hill

JUDGMENT

The Respondent's application for a preparation time order succeeds

ORDER

The Claimant is ordered to pay to the Respondent the sum of £3,273.00 made up as follows:

**16 hours @ £38.00 per hour for preparation of witness statements
18 hours @ £38.00 per hour for preparation for and attendance at preliminary hearings
37.5 hours @ £38.00 per hour for evidence gathering
15 hours @ £38.00 per hour for bundle preparation**

REASON

1. Following the conclusion of this case, the judgment was promulgated to the parties on 14 February 2020 dismissing the Claimant's claims. The Respondent made application for a preparation time order for costs in their favour in accordance with Rule 77 of the Employment Tribunals Rules of Procedure 2013 against the Claimant.
2. The matter was set down for a telephone hearing before Regional Judge Swann to determine the best way forward of dealing with this application in particular taking into account the current Covid19 pandemic crisis. The Respondent had copied in the Claimant to its application which was made in two parts with supporting evidence. Mr Barnes appeared on behalf of the Respondent. There was no appearance by Mr Golden who had sent an e-mail to the Tribunal to confirm that he was unable to attend because he was involved in a new delivery job and had no access to the telephone.
3. Given the circumstances Regional Judge Swann decided that the most appropriate way of dealing with the application was for it to be determined on paper in accordance with Rule 77 of the Employment Tribunals Rules of Procedure 2013 and for the Claimant to have the opportunity to make any representations in writing that he so wishes to the Tribunal to be taken into account in response to the preparation time order application. At the date and time of the consideration of the application Mr Golden had made no representations.
4. It is noted that in the Tribunal's Rule a Tribunal may make a preparation time order if the Tribunal considers that the Claimant has, *inter alia*, acted unreasonably in bringing or conducting the proceedings or that the Claimant has otherwise acted unreasonably or that the claim or any part had no reasonable prospect of success (Rule 76 (1)(a) and (b)). The amount of the order is in the discretion of the Tribunal. The amount of any order is based on information provided by the Respondent and the Tribunal's own assessment of what the Tribunal considers reasonable and proportionate (Rule 79). In making an order the Tribunal "may" have regard to the Claimant's means to pay (Rule 84).
5. Having considered the papers, in particular the judgment and the Respondent's application, the Tribunal is satisfied that the Claimant acted unreasonably in bringing the claims, that he acted unreasonably in his conduct of the claims and that his claims had no reasonable prospect of success. This conclusion is based on the following factors (numbers refer to paragraphs in our judgment in this case).

6. The Claimant failed to attend the preliminary hearings, he failed to co-operate in preparation for the substantive hearing, he failed to produce a witness statement (instead he relied upon his ET1) and he promised that a witness would give evidence to substantiate his claims, such witness (KW) in the event never attended the hearing [33].
7. The Claimant abandoned his claims for harassment during his cross examination saying he never intended to bring such claims even though on the face of his ET1 there are express claims for harassment [36]. The claimant's age discrimination claim was fundamentally flawed. He made wholly unsubstantiated assertions about what he said was in the minds of the Respondent's managers, his own evidence was self-contradictory, he was shown in some respects to have been dishonest [22], [24], [25], [26] and [27]. We did not find the Claimant to be a credible witness in any respect.
8. The Claimant emailed the Tribunal at around 9.14 am on day 2 of the hearing. with an application to postpone the hearing. That application was made on 3 grounds. First, he said in effect that he was unhappy with how the tribunal had handled day one of the hearing and wanted a more 'professional' panel. He set out a number of concerns and comments. Second, he wanted to give the tribunal time to determine which documents should be in the bundle. Third, the claimant said he had been unwell throughout day 1 of the hearing, that he was on strong painkillers and he said he was seeking an urgent doctor's appointment. We considered the application. The request for a postponement on the first two grounds was refused. In short, we concluded that he may have been unhappy with how day one of the hearing had unfolded, but he had misrepresented or mis-remembered much of what transpired, it was not for the tribunal to determine what should be in the bundle, and in any event there was an agreed bundle which the claimant had not objected to until he was being questioned.
9. As to the medical application, we reminded the claimant of the Presidential Guidance and the need for medical evidence. We determined that the case would not go ahead on day two. We said that if the claimant provided the required evidence, we would consider his application to postpone for medical reasons. We were clear that if he did not provide medical evidence, or if he did and the application was refused, the case would resume at the start of day three even if the claimant failed to attend. In the event no further communication was received from the claimant and he failed to attend on day three. The case proceeded in his absence. We also note that no evidence was led on unpaid expenses and as for wrongful dismissal, there was no breach of contract by the Respondent on which to base such a claim. We concluded that the Claimant's evidence was so sparse as to not even shift the burden of proof. Overall, we consider that the threshold of unreasonable behaviour is met, and it should have been obvious that the Respondent's concerns, and their reason for dismissing the Claimant, quite clearly related to concerns over his honesty, integrity and performance and had nothing to do with his age. The Claimant's insistence that he had not been the subject of performance concerns is also a manifestation of his unreasonable conduct [28]. Further, we consider that no-one, even someone not legally qualified, could reasonably have concluded that these

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claims had any merit and the “no reasonable prospect” threshold is met. For those reasons we find for the Respondent.

10. In relation to the amount of the order, we have accepted the Respondent’s submissions in respect of the costs incurred save for in relation to the preparation of witness statement where we have concluded that in our experience 16 hours is reasonable and proportionate given the relative brevity of the evidence which is reflected in the length of the statements.

Employment Judge Brewer

Date: 9 July 2020

JUDGMENT SENT TO THE PARTIES ON

23/07/2020.....

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL