



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondents

Ms L Coats

(1) Great Marlborough Productions Ltd

(2) Ms S Fell

(3) Mr B Bocquelet

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 20 July 2020
(in chambers)

BEFORE: Employment Judge A M Snelson (sitting alone)

On reading the written representations of the parties, the Tribunal adjudges that:

- (1) The Claimant's application for the Tribunal to recuse itself is refused.
- (2) The Claimant's application for a stay in the event of it declining to recuse itself is refused.
- (3) The Claimant's applications for wasted costs and preparation time orders order are refused.

REASONS

Introduction

1 On 27 February 2019 following a final hearing held on 11 to 15 February (the last day was devoted to private deliberations), a Tribunal chaired by me issued a reserved judgment with reasons dismissing the Claimant's complaints of post-employment victimisation. I will call this the liability judgment.

2 On 12 September 2019 the Tribunal issued a judgment dismissing the Claimant's application for wasted costs and ordering her to pay the entirety of the Respondents' costs (including those incurred in the costs proceedings), such costs, said to total over £170,000, to be the subject of a detailed assessment. I will call this the costs judgment.

3 On 2 June this year, the Tribunal issued a further judgment reconsidering the costs judgment on its own initiative and reducing the sum awarded to £20,000, the maximum sum awardable without a detailed assessment. We did so to give effect to the decision of the Respondents to limit their costs claim to that sum. Despite the furious opposition of the Claimant, it was, to state the obvious, a decision in her favour. I will refer to this adjudication as the reconsideration judgment.

4 To the extent necessary, the reasons for the three judgments just mentioned should be read with these. Many of the key findings underlying the liability judgment are reproduced in the costs judgment.

5 Shortly before the reconsideration judgment was issued I gave instructions for a letter to be sent to the Respondents' solicitors refusing a (deemed) application by that firm for the costs judgment to be reconsidered and varied to include an award of costs in *their* favour (*ie* in addition to the £20,000 award in favour of their client) in respect of its defence of the Claimant's wasted costs application. That letter (sent in the form of an email dated 2 June) should also be read with these reasons.

6 Prior to the activity referred to in paras 3 and 5 above, I had refused an application by the Claimant for me to recuse myself for apparent bias, seemingly because of my indication conveyed in correspondence that I was minded to vary the costs judgment by limiting her liability under it to £20,000. The recusal application was refused on the ground that no basis for it was shown (see the email from the Tribunal dated 19 May 2020). I also refused the Claimant's application for a stay to enable her to appeal against my decision on recusal.

7 This short introduction spares the reader a full exegesis of the painful history of this baseless litigation, which has placed a colossal burden on the Tribunal's hard-pressed resources and put the Respondents to utterly unreasonable expense and trouble. We commented on the way in which the Claimant has conducted the case in our reasons for the reconsideration judgment, at para 5 and following.

8 One might have hoped that, following our disposal of the reconsideration issues, the Claimant would finally accept that there was no more mileage in the first-instance proceedings.¹ Not a bit of it. On 24 June this year she issued fresh applications:

- (1) Against the Respondents' solicitors for:
 - (i) the entire Tribunal to recuse itself;
 - (ii) if recusal was refused, a stay pending appeal; and
 - (iii) (subject to (i) and (ii)), a wasted costs order;²
- (2) Against the Respondents for:
 - (i) the entire Tribunal to recuse itself;
 - (ii) if recusal was refused, a stay pending appeal; and
 - (iii) (subject to (i) and (ii)), a preparation time order.

¹ That would still have left her with, it seems, as many as four current appeals to the EAT.

² As explained below, the application was ambiguously presented.

9 The applications were briefly opposed as groundless.

The law

10 In our reasons for the costs judgment we summarised the law relevant to the issues then before us, which were wider than those now under consideration. We will not repeat that summary here. Some additional references to the Employment Tribunals Rules of Procedure 2013 are included below, cited by rule number only.

Analysis and conclusions

11 Contrary to the Claimant's understanding, this is not a matter for the full Tribunal. It concerns costs or preparation time associated with my individual adjudication referred to in para 5 above.

12 I have already been asked to recuse myself and have declined. In so far as the request is repeated, it amounts to an abuse of the process. There is in any event no possible ground for recusal. Since the costs judgment the Tribunal has given two significant rulings in the Claimant's favour. There is no foundation for alleging apparent bias. I am sorry if she would prefer her latest applications to be considered by a differently-constituted tribunal but we do not have a legal system in which 'judge shopping' is allowed.

13 Nor is there any arguable ground for staying the case. Again, the Claimant repeats an application made unsuccessfully in the reconsideration proceedings. To state the obvious (again), it is high time this exceedingly stale litigation came to an end. If any appeal succeeds, any matter remitted to the Tribunal will, of course, be dealt with it in accordance with the direction of the relevant higher court.

14 That brings me to the substance of the first application. Here I find an immediate ambiguity. The Claimant asks for a wasted costs order in respect of the Respondents' solicitors' application for 'variation' of the costs order (see above) but then formulates her claim as one for preparation time. She neither claims nor even identifies any 'costs'. A wasted costs order is an order in respect of "costs" which are "incurred" as a consequence of any improper, unreasonable or negligent act or omission by the relevant representative (r80(1)(a)). 'Costs' are "fees, charges, disbursements or expenses incurred by or on behalf of the receiving party"(r74(1)). Wasted time is not compensable under the wasted costs provisions. The wasted costs application is misconceived.

15 In so far as the first application is properly interpreted as a claim for preparation time against the Respondents' solicitors, it is equally untenable. A preparation time order is an order requiring "a party" to make a payment in respect of the receiving party's preparation time (r75(2)). The Respondents' solicitors are not a party. The parties are the Claimant and the Respondents. The Tribunal has power to add parties (r34), but it has not exercised that power in this case, or been invited to do so. I conclude that there is no power to make a preparation time order against the Respondents' solicitors.

16 For completeness I should add that, even if the first application were not misconceived in law, it would have failed on its merits. The Claimant fails entirely to demonstrate a ground for making a wasted costs or preparation time order. The Respondents' solicitors manifestly did not act improperly, unreasonably or negligently (r80(1)). Nor did they act vexatiously, abusively, disruptively or otherwise unreasonably (r76(1)(a)). They made a permissible attempt to persuade the Tribunal that the costs order was defective. They put forward legitimate arguments in support of their contention that the Tribunal had failed in its judgment to make provision for their costs (as opposed to their clients') of resisting the wasted costs application. In short, they raised an arguable point. The fact that I was not persuaded is no ground for making a wasted costs or preparation time order.

17 The second application fares no better. Although a party can be ordered to pay costs or a preparation time award based on the conduct of its representative (r76(1)(a)), the power so to order will not arise unless the conduct is vexatious, abusive, disruptive or unreasonable. For reasons stated in para 16, I am satisfied that the Claimant falls hopelessly short of establishing that the Tribunal has a discretion to make an order, let alone that this would be a proper case in which to exercise such a discretion.

Outcome

18 For these reasons, the Claimant's applications are refused.

EMPLOYMENT JUDGE - Snelson

Reasons entered in the Register and copies sent to the parties on - 20/07/2020
.....**For Office of the Tribunals**