



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Miss A Tape

v Project 11 (Marsden) Limited

This has been a hearing on the papers directed by me but to which no party objected or sought a hearing.

JUDGMENT

The respondent shall pay to the claimant the sum of £768 plus VAT in costs thrown away by a wasted hearing.

REASONS

1. The chronology is this. The claimant worked for a café/restaurant and was dismissed in January 2020.
2. She commenced ACAS conciliation of which the respondent was aware between 11 and 13 February 2020.
3. On 23 March 2020 the respondent closed its premises in consequence of the Covid 19 pandemic
4. On 26 March 2020 the claimant presented complaints of unlawful discrimination because of pregnancy or pregnancy related illness and unfair and wrongful dismissal.
5. On 9 April 2020 the service papers were returned to the Tribunal with a Royal Mail certificate that the address was inaccessible.
6. A search of the companies house register confirmed that the proceedings had been posted to the company's registered office and a judge directed a final hearing of the claims.
7. Mr Morgan, the husband of the respondent's director, attended its premises sporadically.
8. On 18 May 2020 notification of the absence of response and listing for a one day hearing was sent to the claimant, and copied to the respondent's premises, also asking if the claimant could participate in a Skype hearing. That document was not returned by the Royal Mail from the respondent's premises.
9. On 20 May 2020 notice of remedy hearing was posted to the respondent, again at its registered office; again that document was not returned by Royal Mail from the respondent's premises.

10. On 1 June 2020 a hearing took place by Skype before me, for three hours, at the end of which I gave partial judgment for the claimant, providing reasons orally, having heard oral evidence from her and representations from Mr Henshall on her behalf.
11. On 9 June Mr Morgan attend the respondent's premises and opened the Judgment letter.
12. On 10 June he consulted solicitors but required time to put them in funds, and pursue his own occupation as an electrician.
13. On, 30 June 2020 solicitors instructed by the respondent presented an application for reconsideration of the Tribunal's judgment and/or the set aside of judgment with an extension of time to present a draft response.
14. On 9 July 2020, the application not having been copied to the claimant's solicitor, his comments were sought and he provided those comments on 15 July 2020.
15. On 23 July 2020. I granted an extension of time for the respondent's response and I commented as follows in describing the chronology prior to the hearing on 1 June: "This was a registered office address. There was a substantial likelihood that to render a registered office inaccessible when there had been ACAS awareness previously, without making arrangements for alternative service, would be found to be unreasonable conduct of proceedings. There was also little point in re-service to an address that had been rendered inaccessible". The inclusion of that comment in the past tense was to explain a decision to proceed with the hearing in a party's absence (rather than to adjourn at that stage).
16. In granting an extension of time to present a response I provided a timetable for any application for costs from the claimant and any response to that application from the respondent, and that such application would be determined on the papers. There was no application from either party to vary that order.
17. The claimant's application was presented on 5 August 2020 seeking costs of £2499.84, including VAT, adopting the grade A fee earner rate of £217 per hour.
18. On 3 September 2020, the respondent's solicitors presented its opposition to a costs order.
19. The relevant principles include that parties' conduct before proceedings cannot be a proper basis for a costs order, taking into account the provisions of Rule 76(1). I must put out of my mind the rendering of the premises inaccessible before service.
20. The relevant principles also include that litigants in person should not be held to the standard of professional representatives.
21. I am satisfied applying the law to the facts above, that the respondent, whose director is **Mrs** Morgan, has engaged in unreasonable conduct after the proceedings had commenced. I do not assess that by reference to the conduct of a professional representative but by reference to the reasonable conduct of an ordinary businesswoman faced with the pandemic situation, with which all business were faced. That unreasonable conduct includes failing to deal with the post which was sent after the initial service papers (which was not returned, Mr Morgan having attended sporadically); failing to contact the Tribunal at all in consequence of that or attend the hearing to seek more information as a lay person after the proceedings had commenced.

22. I am satisfied that this conduct has given rise to the thrown away costs of the claimant in being represented by Mr Henshall at the hearing on 1 June 2020 and I do exercise my discretion to make a costs order.
23. As to the amount, it must always be proportionate and reasonable in the round, to be summarily assessed by me. I consider that preparation and attendance at a three hour undefended hearing in a claim which includes Equality Act claims, properly justifies a Grade B fee earner, but not Grade A. I consider, given the length of hearing, that this is properly assessed at four hours at £192 plus VAT. The other documentary and preparatory work is not thrown away – the case is currently listed for a hearing by CVP for one day on 21 October 2020.

Employment Judge JM Wade

Date: 16 September 2020