



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr D Justice**

**v**

**1. JSM Construction Ltd**

**2. Barry O'Dwyer & Royal London Group**

**Heard at:** Watford

**On:** 23 September 2020

**Before:** Employment Judge Manley

## Appearances

**For the Claimant:**

Did not attend

**For the First Respondent:**

Mr Fellows, Solicitor

**For the Second Respondent:**

Have taken no part in these proceedings

## JUDGMENT

1. The claimant's conduct has been vexatious, abusive and unreasonable and he is ordered to pay the sum of £7500 (seven thousand and five hundred pounds) as a contribution towards the first respondent's costs.
2. This order is stayed until the claimant is discharged from bankruptcy.

## REASONS

### Introduction and issues

1. This was a costs hearing held in person on 23 September 2020. The claimant did not attend. Mr Fellows, a solicitor, attended on behalf of the First Respondent. The Second Respondent has taken no part in these proceedings since an ET3 was presented on its behalf and this costs application does not affect it.
2. This costs application is governed by Rules 74 to 78 Employment Tribunal Rules of Procedure 2013. In summary, an order for costs may be made by a tribunal or judge under certain conditions; that is where a party has, in bringing or conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably.

### The facts

3. The claimant brought three claims, two against the First Respondent and another against the Second Respondent, which is a pension provider, in May of 2019. The two claims covered claims for discrimination on the grounds of sexual orientation, unfair dismissal (although that might be better interpreted as a whistle blowing claim), and notice pay.
4. A preliminary hearing was arranged for early December 2019 for the issues to be clarified.
5. On 7 October 2019, the First Respondent's solicitors wrote to the claimant with a costs warning. That letter put the claimant on notice that if he continued his claim, the First Respondent would be seeking an order for costs. Since then, the claimant has continued to correspond with a number of organisations; this includes the police, clients of the First Respondent, for example, UK power networks, and other examples contained within the respondent's application on the file.
6. The claimant withdrew his claims by letter of 2 November and this was confirmed in a judgment signed by Employment Judge Heal on 14 November 2019 but not sent to the parties until 1 December 2019.
7. There was considerable correspondence on this case and the tribunal files are extensive, even after the claimant withdrew. Much of that contains language that amounts to abuse, particularly directed to the First Respondent's representative and, latterly, towards the employment tribunal. This includes allegations of fraud and fabrication against the First Respondent, for instance, on 21 August 2019, the claimant wrote to the tribunal, saying that the managing director "*planned and orchestrated this deceit to mislead, the courts, the police and with the sole objective to harass and harm (the claimant)*". He said there was "*indisputable evidence of fraud*". In November 2019 said that the First Respondent's representative was guilty of "*continued dishonesty and incompetence*" and in December 2019 that he had referred the First Respondent's representative to the police and blocked his emails. In an email in April 2020 he concluded that the representative was "*nothing more than a parasite, that lies at every opportunity, and this Court refusal to address this is proof of its ineffectual ability to control him or give any layperson a fair hearing*". There have been a number of complaints from the claimant, all contained on the file, including letters accusing judges of "*attempting to pervert my legal rights*" and of "*unfit behaviour*", later referring to a "*bent employment judge*" and "*your corruption and stupidity knows no bounds*". I am afraid there are many other examples of this sort of language.
8. Before the application for costs the First Respondent noticed that the claimant had produced an email which it had no history of having received. It decided to appoint an external expert to look at that email, whose advice was that it was indeed a "*suspicious*" email. Of course, that has not been determined as the case has gone no further but it put the First Respondent to some cost.

9. The claimant was declared bankrupt on 29 June 2020.

### Conclusions

10. The claimant did not attend today. On 19 August 2020 he sent an email to the about the application for costs. He objected to an order being made and said the sale of his assets would “*just about cover genuine debt*”. He said he was unemployed and leaving his home at the end of September.
11. I also considered what the claimant would be likely to argue if he was in attendance and, indeed, if he had knowledge of the rules and how they worked. I challenged Mr Fellows with the fact that the costs warning letter appeared to have led to the claimant withdrawing his claim, which was what was intended. Mr Fellows pointed out that much correspondence and the behaviour complained about had post-dated the withdrawal.
12. I also considered the facts that the claimant is now bankrupt and we therefore have to consider the Insolvency Act 1986 and particularly s.285(1) with gives me the power to stay proceedings.
13. I therefore have to consider first, whether this is a case where I should make an order and then whether I intend to do so. I am satisfied that the claimant has, indeed, been vexatious. This is partly shown by the number of people named and claims brought. He has also been abusive in correspondence to the First Respondent’s solicitors as well as to other unconnected parties and the tribunal.
14. The claimant has made very serious allegations of fraud against the First Respondent so that it was contacted by the police.
15. Mr Fellows told me that there have been previous claims brought by the claimant against previous employers. I cannot comment on whether they may, in fact, have been genuine claims but if that is true, at the very least, the claimant should have known that this is not the way to conduct litigation.
16. Our rules are quite clear and even a litigant in person should understand that it is not appropriate to use the sort of language that he has continued to use through this litigation which, at times, has amounted to accusation of dishonesty and other criminal behaviour.
17. The claimant has put the First Respondent to considerable expense. I understand that it may have to pay an increased insurance premium and I can see from the schedule that there is a retention to be paid by them of £2,500.
18. This is a case where I do think, even though the claimant withdrew before the preliminary hearing, that I should make a costs order. His behaviour has clearly amounted to that envisaged in the rules as being the sort of behaviour which can lead to a costs order.

19. Clearly, there is a difficulty because he is now bankrupt and, indeed, information that he and the Official Receivers Office have provided, would suggest that, at those dates at least, he was unemployed. But courts, tribunals and respondents should not be put to the sort of expense that the claimant has put all parties to. A considerable time has been spent by the First Respondent's representative and the tribunal on two cases against the First Respondent that have gone absolutely nowhere.
20. This is a case where I will make a costs order.
21. I therefore consider what level of costs order to make. I have seen the schedule; it is based on fees of £275 an hour which is less than the representative would usually charge but it is because it is an insurance matter. I am told that costs were over £13,000 to February 2020 and, there are some costs after that in relation to this application which has been going on, and of course, Mr Fellows has attended today.
22. Doing the best I can, and understanding that it may be that this costs order may never be fully met, I have decided to make an order that the claimant pay a contribution towards those costs of £7,500. That is purely to show to the claimant that the amount of time that has been spent on his case by the First Respondents and its representatives is something which he should contribute to, his behaviour having been at least unreasonable, and what is more, vexatious and abusive.
23. Having said that, I do think that I should put a stay on the First Respondent enforcing that award. That means the Official Receiver will have to be informed of the debt but there will be no enforcement of it until the claimant is discharged from bankruptcy.

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Employment Judge Manley

Date:14.10.2020

Sent to the parties on: .....

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For the Tribunal Office