



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH
BEFORE: EMPLOYMENT JUDGE BALOGUN
BETWEEN:

MR T PURNELL

Claimant

AND

ASHDOWN MEDWAY ACCOMMODATION TRUST

Respondent

ON: 4 December 2020

Appearances:

For the Claimant: In Person

For the Respondent: Written Representations

JUDGMENT ON COSTS

1. The respondent's application for a preparation time order is granted.
2. The claimant is to pay the respondent £2000 in respect of time spent preparing for these proceedings.
3. The deposit of £1000 paid by the claimant pursuant to a Deposit Order dated 1 December 2018 is to be paid out to the respondent in part settlement of the preparation time award.
4. The claimant is to pay the respondent the balance of the award of £1000.

REASONS

1. This was a hearing to deal with the respondent's application for a preparation time order. The application is made under rule 76(1) of the Employment Tribunal's Rules of Procedure 2013 (the "Rules"). Rule 76 provides that a Tribunal may make a preparation time order, and shall consider whether to do so, where it considers that a party....has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or in the way they have been conducted....
2. The respondent contends that the in bringing and/or conducting the proceedings, the claimant acted unreasonably and vexatiously.
3. By prior arrangement, the respondent's representative was not in attendance as he was self-isolating for Covid-19 related reasons. He did however provide a written submission and a hearing bundle. The claimant attended in person and provided a separate bundle. In addition, in response to a direction from the tribunal, the claimant provided documents in relation to means.
4. There are 3 stages to the task before me: 1) whether the threshold for a costs order has been met 2) whether a costs order should be made and 3) if so, in what amount

Unreasonable behaviour

5. Rule 39(5) provides that if at any stage after the making of a deposit order the tribunal decides against the paying party in relation to the specific allegation or argument for which a deposit is paid, for substantially the reasons given in the deposit order, the paying party shall be treated as having acted unreasonably in pursuing the specific allegation unless the contrary is shown.
6. On 1 December 2018, following a preliminary hearing on 30 November 2018, Employment Judge Andrews made a deposit order against the claimant of £1000 in respect of two allegations, namely, that he had been dismissed for making a protected disclosure and that he had been dismissed for raising health and safety concerns.
7. The order was made on the basis that the two allegations had little reasonable prospect of success. In making that assessment, EJ Andrews refers to the absence of any reference to these matters during the dismissal process. She also relies on the contents of contemporaneous documents which reference the breakdown in the relationship between the parties.
8. In a reserved judgment sent to the parties on 11 May 2020, I dismissed the claimant's claim and my reasons for doing so closely correspond to the reasons for the deposit order.
9. In those circumstances, and in the absence of evidence to the contrary, I find that the claimant has acted unreasonably in pursuing the claim.

Vexatious conduct

10. The respondent alleges a campaign of harassment by the claimant, which they say started when he lodged a complaint with the HSE, leading to a health and safety investigation. There were other reports made by the claimant to third parties about the respondent's business which are referred to in the respondent's skeleton. The claimant denies the allegations and contends that he was reporting genuine concerns.
11. A party acts vexatiously if they bring a hopeless claim not with the expectation of recovering compensation but out of spite to harass his employers or for some other improper motive, he acts vexatiously. Reporting matters to third parties on its own, is insufficient to establish vexatious behaviour, it requires something in addition, such as evidence that the matters reported were untrue and that the claimant knew them to be so. There is insufficient evidence for me to make that assessment and I am therefore not satisfied that the claimant has acted vexatiously as alleged.
12. Nevertheless, based on my finding of unreasonableness, the threshold for a costs order has been met.
13. Rule 84 of the Rules provides that in deciding whether to make a costs order, the Tribunal may have regard to the paying party's ability to pay. To that end, I heard evidence from the claimant as to his means. The claimant is a self-employed tradesman. His current earnings are £650-700 per month. This is lower than normal as, like many traders, his current ability to earn has been affected by the Covid-19 pandemic. However that is not a permanent state of affairs and I anticipate that his earning capacity will recover in the near future. The claimant lives with his partner, whose monthly earnings are £650 per month. His general outgoings per month are £740. The claimant owns a 3 bedroom house worth between £300-350K. It is mortgage free. As at 30 October 2020, the claimant had £13,867.98 in his bank account.
14. I am satisfied from these figures that the claimant will be able to meet a costs order.
15. The respondent seeks £3170.16 for its preparation time expenses. I have borne in mind that costs in this jurisdiction do not follow the event and are always discretionary. I also bear in mind that they are intended to be compensatory and not punitive. With that in mind and having regard to what is just and equitable, I make a preparation time order in the sum of £2000. The claimant's deposit of £1000 will be paid out to the respondent in part satisfaction of this sum, the balance to be paid by the claimant.

Employment Judge Balogun
Date: 4 December 2020

