



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr F Chagas

v

The London Borough of Enfield

Heard at: Watford (By CVP?)

On: 20 and 21 October 2020

The present video hearing was directed by the tribunal in accordance with the current guidance in response to the covid-19 pandemic.

Before: Employment Judge Bloch QC

Appearances

For the Claimant: Mr Anyiam, Counsel

For the Respondent: Ms Banton, Counsel

COSTS JUDGMENT

The claimant is ordered to pay the costs of the claim to the respondent in the amount of £1000 at the rate of £50 per month. The first instalment of £50 is to be paid on 1st March 2021 and the balance in monthly payments of £50 hereafter on the 1st day of each successive month until the balance has been paid in full.

REASONS

1. Following the judgment which I have just given rejecting the claimant's claim for unlawful deduction from wages, the respondent makes application under Rule 76 of the Employment Tribunals Constitution and Rules of Procedure Regulations (2013) Schedule 1, for a costs order on the basis that the claimant has acted unreasonably in the bringing of and the conduct of this case and/or that the claim had no reasonable prospect of success.

2. Under Rule 84 I may have regard to the paying party's ability to pay in deciding what, if any, sum to order by way of a costs payment.
3. On behalf of the respondent Ms Banton made powerful submissions in favour of a costs order. She pointed out that as a contract claim this claim was bound to fail. The claim for vast amounts of unpaid TOIL in respect of time on call but not worked was wholly unrealistic. I am bound to agree with that submission. In the event, after clarification, no claim was pursued under the Working Time Directive or the National Minimum Wage Regulation. The claimant had no basis for a claim whether in contract or statute. That was explained to the claimant by letter of 23 December 2019 (marked without prejudice save as to costs). While the emphasis there was on the European cases, it said that absent any contractual arrangement to the contrary that was an end to the matter. That emphasis was, as Ms Banton told me and I accept, as a result of the way in which the case was then being put. Ms Banton points out that quite apart from that letter, an offer of settlement of £5,000 was made which was rejected, the claimant insisting on something of the order £60,000. There was also a mediation which failed. Ms Banton argued that there was no other way in which the respondent could better have explained its position or protected its costs position.
4. Mr Anyiam, on behalf of the claimant, says that this was not an obvious case. It was a highly arguable and complicated situation. I don't agree. In my judgment, once the matter claim was stated to be brought in contract only, no reasonable reading of the emails could have given the claimant the entitlement which he asserted and the peripheral indirect references to European case law took the matter no further.
5. I accordingly conclude that the claimant has acted unreasonably in the bringing of and the conduct of this case and that the claim had no reasonable prospect of success, so that an order for the claimant to pay costs to the claimant is appropriate.
6. I have to consider the effect of Rule 84 and it does seem to be clear from what the claimant has said in evidence today that his financial position is dire. He remains unemployed maintaining that with the kind of reference which he has been given, various opportunities for work have been denied to him. I make no comment on whether or not the reference was justified or unjustified but I can see that arising out of this dispute it may be that references were written in very limited terms making it more difficult than perhaps usual for the claimant to obtain alternative employment. In any event, given the state of the economy during the covid-19 crisis, I can understand that jobs are not thick on the ground for the type of employment that the claimant seeks. He is in what he describes as a dreadful financial situation. He describes himself as being subject to repossession proceedings in relation to his mortgage and has various problems in relation to his car being repossessed and so forth. He gave that evidence on oath

and was not cross examined on it, Ms Banton realistically accepting that cross examination would probably not add much to this picture.

7. So, I am left in a position of considerable sympathy with the respondent about having to fight a case which, in my judgment, should not have been brought and not pursued particularly after the attempts that I refer to above were made to settle it. That said, I am also conscious that no application was made by the respondent to strike out the case or to ask for a deposit but I am told that that may have been as a result of various developments in the case where the claimant sought to broaden out the case by way of amendment. This amendment was eventually not allowed. So, while the ET3 set out the respondent's position that the claimant's claim should be struck out, that was not pursued to an actual strike out or deposit application.
8. I am accordingly left in the difficult position of wanting to make a costs order to mark the disapproval of the tribunal concerning a claim being brought and pursued without any reasonable prospect of success and where the weakness of it has been pointed out by the respondent to the claimant and attempts made to settle it. Against that, it seems to me to serve no purpose to make a substantial costs order because the claimant will simply not be able to pay it. The claimant's costs were shown to me in a schedule as being £48,000 and I am told that the respondent's costs schedule is approximately £26,000.
9. Doing the best I can, I will make a costs order but of a somewhat symbolic nature, which Ms Banton accepted, might have to be the case.
10. I order the sum of £1,000 to be paid in respect of the respondent's costs and in light of the financial situation of the claimant I order that that it be paid at the rate of £50 per month with the first instalment to be paid on 1st March 2021 and then in monthly payments thereafter on the 1st of each month until the £1,000 has been paid.

Employment Judge Bloch QC

Date: 2.12.20

Sent to the parties on: 30/10/20

..S Bloodworth.....
For the Tribunal Office