



EMPLOYMENT TRIBUNALS

Claimant: Mr C Thacker

Respondent: Chrisalis Worldwide Ltd

Heard at: Liverpool **On:** 8 December 2020

Before: Employment Judge Ord

Representation

Claimant: Ms Daniels (McKenzie Friend)

Respondent: Mr M Rudd (Counsel)

RESERVED COSTS JUDGMENT

The respondent's application for a costs order is refused.

REASONS

The application and issues

1. Upon the tribunal delivering an oral judgment on remedy on 8.12.2020, the respondent applied for a costs order under rules 75 and 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (the Regulations) on the ground that the claimant acted unreasonably in not accepting the respondent's offers of settlement.
2. The issues for the tribunal are:
 - 1) Whether the ground is established;
 - 2) If so, whether in the tribunal's discretion it ought to make a costs order; and
 - 3) If so, in what amount.

Evidence

3. The tribunal had before it a 7 paged costs bundle submitted by the

respondent. It also heard submissions from both the respondent and the claimant.

Procedural History

4. At the remedy hearing on 8.12.2020, the tribunal ordered the respondent to pay to the claimant a total sum of £1,500.17, consisting of a basic award in the sum of £750.00, and a compensatory award and holiday pay award together amounting to £750.17.
5. The claimant claimed £7,542.03 for losses incurred from his effective date of termination (EDT), including £4,500 loss of earnings. Whilst the claimant had successfully secured alternative employment after his EDT, on 21.02.20, he unreasonably resigned from his job. The tribunal found that this broke the chain of causation and significantly reduced his award.
6. The respondent thereafter made a costs application, making the following submissions in support:
 - 1) An offer was made to the claimant to settle in the sum of £750.00, which the claimant rejected by e-mail of 2.11.2020 (page 5 bundle).
 - 2) In an e-mail dated 4.11.2020 headed "*Without Prejudice & Subject to Contract Save as to Costs*" the respondent offered the claimant "1,000 in full and final settlement. It also warned that if this sum were not accepted and the claimant were awarded a sum equal to or less than the sum offered, the respondent would be in a position to apply for a costs order (page 4 bundle). The claimant did not accept the offer.
 - 3) In an e-mail dated 19.11.20 and headed "*Without Prejudice & Subject to Contract Save as to Costs*" the respondent increased the offer to £1,500 in full and final settlement. It warned that if this sum were not accepted and the claimant were awarded a sum equal to or less than the sum offered, the respondent would apply for a costs order as failure to accept would be unreasonable (page 6 bundle). The claimant did not accept the offer.
7. The claimant's submissions in response were essentially:
 - 1) He was responding to offers made and thought he could go beyond 21.2.20 with his compensation. He responded to all e-mails and was not unreasonable.
 - 2) He did not have a solicitor. He got help from a web-site called "Just Answer" after paying a small fee.

The Law

8. The relevant parts of rules 75 to 84 of Regulations are set out in Schedule 1 and provide:

75(1) A costs order is an order that a party ("the paying party") make a payment to—

(a) another party (“the receiving party”) in respect of the costs that the receiving party has incurred while legally represented ...

76(1) A tribunal may make a costs order ..., and shall consider whether to do so, where it considers that—

(a) a party (or that party’s representative) has acted unreasonablyin the way that proceedings (or part) have been conducted.

78(1) A costs order may—

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

84 In deciding whether to make a costs...order, and if so in what amount, the Tribunal may have regard to the paying party’s ... ability to pay.

9. Rule 76(1) imposes a two-stage test; first the tribunal must decide whether the threshold has been reached for a party’s conduct to fall within rule 76(1), and if so, it must consider whether it is appropriate to exercise its discretion in favour of awarding costs.
10. In *Anderson v Cheltenham and Gloucester Plc* [2013] 12 WLUK 163 the Employment Appeal Tribunal held that a failure to beat a Calderbank-type offer of settlement did not of itself justify an order for costs. A tribunal must consider other factors that might have contributed to the claimant’s refusal to accept.
11. In *AQ Ltd v Holden* [2012] IRLR 648, The Employment Appeal Tribunal held that a tribunal should not judge a litigant in person by the standards of a professional representative. Lay people were likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser.
12. In deciding whether unreasonable conduct should result in an award of costs, the Court of Appeal held in *Barnsley Metropolitan Borough Council v Yerrakalva* [2012] ICR 420 that the tribunal should have regard to the nature, gravity, and effect of the conduct. The vital point in exercising discretion is to look at the whole picture.

Conclusions

13. The claimant was awarded marginally more than the respondent’s final offer; that is an award of £1,500.17 against an offer of £1,500.00. Whilst technically he exceeded the final offer, the award was substantially equal to it. Nonetheless, applying *Anderson*, the mere fact the claimant failed realistically to beat the final settlement offer, does not mean he was unreasonable. To reach the threshold of “unreasonable” under the Regulations requires something significantly more. The respondent has not relied on anything more.

14. Whilst the tribunal found to the contrary, the claimant's belief that his February actions would not break the chain of causation was not unreasonable. Although the claimant failed to come close to recovering the quantum of damages claimed, this does not mean that his claim was misconceived or that he had no reasonable prospect of success. The tribunal also takes account of the fact that the claimant was a litigant in person with only the help of a McKenzie Friend and a web-site.
15. Consequently, the tribunal finds that the threshold required by the rules has not been reached and the claimant has not acted unreasonably. Therefore, the respondent's application for a costs order fails.

Employment Judge Liz Ord

Date: 12 December 2020

JUDGMENT SENT TO THE PARTIES ON

19 January 2021

FOR THE TRIBUNAL OFFICE

Notes

1. The hearing code "V" in the heading to this judgment indicates that the hearing took place on a remote video platform. Neither party objected to the format of the hearing.