



EMPLOYMENT TRIBUNALS

Claimant: Mr S Davis

Respondent: Helen Geldard

Heard by CVP at: Newcastle upon Tyne

On: 14 January 2021

Before: Employment Judge O'Dempsey

Representation

Claimant: self

Respondent: Middleton (solicitor)

JUDGMENT

The respondent's application for costs is partially successful. The claimant shall pay the respondent £1000.00 by way of costs

REASONS

1. These are brief proportionate reasons for my judgment: This was a remote hearing to which the parties consented or did not object. The form of remote hearing was CVP (V). A face to face hearing was not held because it was not practicable to do so and no one requested a face to face hearing or because it was not practicable and all issues could be determined in the current format of hearing.

2. The claimant's claim was struck out for failure actively to pursue his claim and for breach of an order made on 4 December 2019 whereby he was required to supply any witness statement upon which he was going to rely (including his own witness statement). At the time of the order he was represented by solicitors. On 14 April 2020, however, the claimant was told by his then solicitors that they were no longer going to represent him.

3. At that time the claimant was required to comply with the order of the tribunal that he should supply witness statements. The claimant explained to me during the course of today's hearing that he did not understand the order of 4 December 2019. He told me that eventually he did read it after his solicitors had stopped

representing him. I accept what he tells me, namely that he misunderstood the order. He believed that it required him to provide witness statements from anyone he was calling as a witness but he did not appreciate that his own evidence would have to be given by way of a witness statement. I therefore do not base the order that I have made on his failure to comply with that order of the tribunal.

4. When I consider the basis on which it costs order may be made, I have to consider the terms of rule 76. This provides that I may make a costs order and must consider whether to do so where I consider that a party has acted unreasonably in either the bringing of the proceedings or the way in which the proceedings or part of them have been conducted. Rule 76 (2) is the basis for making a costs order where a party has not complied with an order of the tribunal. However, that has no relevance given the view I reached referred to in the paragraphs above.

5. After the claimant ceased to be represented by solicitors, he had an email from the respondent's representatives which said that he should supply his witness statement and any others that he had. Again, I accept the claimant's explanation that he did not appreciate that he needed to provide a witness statement. He believed that he would, as a claimant, simply attend the tribunal and give his evidence orally whereas his witnesses would need a witness statement.

6. The tribunal, however, wrote to the claimant warning him that his claim could be struck out failure to comply with the tribunals order and because it seemed that he was not actively pursuing the case.

7. The claimant had no explanation for why he did not respond to the tribunal's correspondence and orders. I consider that the claimant conducted the proceedings unreasonably from once he took over the running of the proceedings and failed to participate in them. There is nothing technical about writing to the tribunal to say but one wishes to continue to pursue a claim and explaining any difficulties that one has in order to bring the claim to a trial. His failure to do this constitutes unreasonable conduct.

8. I do not think it can be said that the claimant's behaviour before April was unreasonable. However, after that date I think there is plain evidence that he was acting unreasonably.

9. the claim its conduct therefore meets the threshold and because it exceeds that threshold for me to consider whether I should make an award of costs I have to consider whether in my discretion I should make an order for costs. I also have to consider how much should be awarded by way of costs.

10. On the one hand the claimant was unrepresented, and the respondent ran up costs as a result of the claimant failing to engage with the process of the litigation. It is also clear that the claimant was a litigant in person and was not fully aware of what he needed to do.

11. On balance, however, I consider that it is appropriate to make an order for costs. That order is going to be a proportionate order. The respondent's representative ascertained approximately how much of the £10,000 odd claimed by way of costs (including today's costs) related to work that had been done after the claimant had ceased to be represented and had ceased to engage with the

process. I am not allocating the costs strictly in this way but it was helpful to get an idea of the proportion of the costs relating to that period of time. It is only conduct of part of the proceedings that has been unreasonable. The costs incurred prior to that unreasonable behaviour would have been incurred in any event, and the respondent did not pursue an allegation that the claim was misconceived from the start. This would have been a difficult argument to mount given the terms of the respondent's pleadings to the original claim and the nature of the claim itself. So it cannot reasonably be said that the conduct of the proceedings was unreasonable.

12. I received information about the claimants means and I take account of the point that the respondent made, which was that the claimant had said nothing about his capital means but only his income. From what he did say it was clear that he has approximately 150 pounds disposable income per month (and it appears that he rents his accommodation). In those circumstances I do not consider it proportionate to award the full amount of the costs claimed and I have determined that the appropriate amount to award the respondent is £1000. I think anything over this, in the light of the claimant's means, would be disproportionate.

Authorised by Employment Judge **O'Dempsey**

Date 15 January 2021