EMPLOYMENT TRIBUNALS

Claimant: Ms K Alcock

Respondent: ABM Aviation UK Limited

Heard at: Manchester (by CVP) **On:** 1 February 2021

Before: Employment Judge Whittaker

REPRESENTATION:

Claimant: In person
Respondent: Mr O'Neill, Solicitor

JUDGMENT ON COSTS

The judgment of the Tribunal is that:

1. The respondent's application for costs against the claimant for the period up to and including 19 November 2020 is dismissed.

2. The respondent's application for costs against the claimant in respect of the period between 20 November and 18 December 2020 is successful. The claimant is ordered to pay the sum of £800 to the respondent representing professional costs incurred by the respondent in defending the Remedy Hearing which took place on 18 December 2020.

REASONS

1. The respondent argued, in effect, that the conduct of the claimant up to 19 November 2020 was unreasonable because of the way in which she conducted the proceedings during that time. In the view of the Tribunal, the criticism of the claimant is largely in connection with her conduct of disclosure. The claimant did not provide documents which were essential for the fair hearing of the claims of the claimant and it was necessary for the Tribunal to intervene by holding a Preliminary Hearing to discuss disclosure issues and indeed an Unless Order was made. However, an

Employment Judge equally recognised, in writing, that the claimant could not produce what she did not have.

2. The Tribunal fully appreciated the frustrations which had been experienced by the respondent's representative in dealing with the claimant in connection with disclosure. However, the claimant was at all times unrepresented. While she remains an experienced HR professional, the claimant has no relevant experience at all of the conduct or procedure associated with Employment Tribunals. That is not something that she has ever become involved in. The Tribunal therefore considered the difficulties and challenges which had arisen in connection with disclosure but found that they were the type of issues which commonly arise when either a claimant or respondent is unrepresented and has no knowledge of the practice and procedure of an Employment Tribunal. The claimant was unable to provide certain essential documents because they were not in her possession. Whilst that was surprising to this Tribunal, it nevertheless was the fact. Ultimately, however, the claimant accepted, without complaint, that the documents needed to be produced and indeed they were produced. The Tribunal concluded, therefore, that the challenges which arose in connection with disclosure were not unreasonable. They were the type of issues which arise commonly when a party is unrepresented and is struggling to deal with something which they have no experience of dealing with. The Tribunal could find no evidence at all that the claimant had been obstinate or obstructive or that any of her conduct had been in any way deliberately difficult or challenging.

3. The Tribunal therefore found that up to and including 19 November 2020 the conduct of the claimant did not meet the threshold of being unreasonable in the manner in which she was conducting the claims which she was bringing before the Employment Tribunal.

4. The Tribunal then considered the period between 20 November and 18 December 2020. On 20 November 2020 the respondent wrote to the Tribunal conceding that the claimant was unfairly dismissed. In his representations relating to costs Mr O'Neill, solicitor for the respondent, suggested that this was in some way a "technical" issue. There was nothing technical about it. The respondent conceded that the claimant was unfairly dismissed and a Judgment, by consent, was therefore issued in those terms. That part of the claimant's claim, therefore, was entirely successful and the Judgment against the respondent will obviously be entered in the public records to demonstrate that.

5. The hearing on 18 December 2020 therefore was to decide remedy only. The claimant did not seek reinstatement or re-engagement and the hearing was therefore to determine the value of compensation. A separate Judgment has been prepared and issued. The judgment of the Tribunal was that the claimant was not entitled to any compensation. However the respondent, following the concession sent to the Tribunal on 20 November, had made offers to the claimant of £1,000 and then £2,500 in full and final settlement. These offers were refused.

6. The central plank/argument of the claimant at all times was that a substantial ex gratia payment that she had received under the terms of a Settlement Agreement was money which the Tribunal would not be entitled to take into account when deciding what the "losses" of the claimant were. The Tribunal rejected that argument at the earlier hearing. The Tribunal finds that on a number of occasions Mr O'Neill,

in patient and professional terms, had made it clear to the claimant in writing that the Tribunal would take those monies into account. There is no evidence to show that despite those repeated assertions by Mr O'Neill that the claimant ever conducted any research to check whether or not that would be correct. She had previously engaged legal advisers and there was no evidence to show that she had checked that point with them. There was no evidence equally to show that she had attempted to research that point by use of the internet or by contacting any of her HR colleagues. The assertion by Mr O'Neill was made to the claimant on a number of occasions. The Tribunal finds that any reasonable person in those circumstances would have checked whether Mr O'Neill was justified in making the assertions that he did about how the Tribunal would or would not take those substantial monies into account. The decision of the Tribunal at the hearing in December was that the value of that ex gratia payment under the Settlement Agreement completely extinguished any losses of the claimant. That amount of money, in excess of £2,500, was therefore a very important and central plank of the respondent's arguments, and indeed of the claimant's arguments, about the value of compensation that should be paid by the respondent. The Tribunal, however, concluded in December that that is a relatively straightforward legal issue and that the claimant was never going to be entitled to simply benefit from that money, keep it on one side, and keep it away from the calculations and judgement of the Employment Tribunal. The claimant was adamant that that was the case but was never able to put forward any legal argument or principle to justify what appeared to be simply her personal view about what was fair and reasonable.

7. Failing therefore to check what the relevant legal principles were about that ex gratia payment was, in the opinion of the Tribunal, unreasonable conduct on the part of the claimant in conducting these proceedings. Mr O'Neill had made the point to the claimant on a number of occasions, and indeed it had been made very clear to her in a Schedule of Loss sent by the respondent on 11 September 2020. That was three months before the hearing on 18 December 2020. Furthermore, the claimant had sent a counter schedule in early October but at no stage did she indicate in that counter schedule that view about the ex gratia payment in the Settlement Agreement being ignored was something was in any way supported by any legal principle. It appeared to simply be the view of the claimant. To continue to hold that view was unreasonable in the view of the Tribunal. In those circumstances the Tribunal finds that the threshold of unreasonable conduct in the second period of time being considered by the Tribunal has been met by the respondent.

8. The Tribunal therefore had to decide whether or not to exercise a discretion as to whether the claimant should pay any or all of the claimed sum of £2,319 relating to that period of time. The Tribunal believed that it was appropriate to exercise that discretion because of the conduct of the claimant and because of the fundamental and relatively straightforward nature of the issue relating to the ex gratia payment under the terms of the Settlement Agreement.

9. The claimant is working. She has a net monthly income of approximately £1,900. She contributes £1,000 per month to household bills and expenses. This leaves her with approximately £1,050 because she also receives a pension of approximately £150 per month. Obviously the claimant has other expenses which she has to pay including food and all the usual associated living expenses. The claimant told the Tribunal that she had very recently set up a savings account in

which she was making regular monthly payments of £100. The Tribunal considered, therefore, that the claimant clearly had disposable income of at least £100 per month. The Tribunal considered the total costs incurred by the respondent but did not consider that it was fair or reasonable to order the claimant to pay the full sum of £2,319. That sum would have to be paid over a very considerable period of time and would obviously have required the claimant to come to some arrangement with the respondent about payment of costs over a relatively lengthy period of time if the full sum was ordered.

10. Taking into account therefore all the circumstances, including the financial circumstances of the claimant, the Tribunal considered that it was appropriate to make an order for costs in favour of the respondent in the sum of £800.

_____

Employment Judge Whittaker

Date: 25 February 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON
25 February 2021

FOR THE TRIBUNAL OFFICE