



EMPLOYMENT TRIBUNALS

Claimant: Mr. L. Olkowski (C) &
Legalbase WRX Ltd (respondent to Wasted Costs Order
Application)

Respondent: Flextrude Ltd (R) (Applicant – Costs and Wasted Costs Orders
Applications)

HELD by: CVP and on papers **ON:** 19th November 2020 &
15th March 2021

BEFORE: Employment Judge T. Vincent Ryan

REPRESENTATION:

Claimant: Ms Praisoody, Counsel (for C1)
Mr. M. Szukala, Director (for C)

Respondent: Mr. C. Pavlou, Solicitor

JUDGMENT on Costs Application

The judgment and Order of the Tribunal is that:

1. The respondent's application for a Wasted Costs Order against Legalbase WRX Ltd is dismissed on withdrawal, terms of settlement having been agreed;
2. The claimant's conduct of these proceedings has been unreasonable and C shall pay to the respondent costs of £50.

REASONS

1. Background and findings:

- 1.1. In a situation was C, represented by Legalbase WRX Ltd (LB), presented a claim to the tribunal alleging unauthorised deductions from wages and a failure to pay holiday pay by R, and those claims were dismissed as they were submitted out of time, R has applied for a Costs Order against C and Wasted Costs Order against LB.

- 1.2. C's claim was valued at £576.20. It was dismissed on 11th October 2019. C's effective date of dismissal was 15th November 2018 (giving a limitation expiry date of 14th February 2019 for commencement of conciliation); his Early Conciliation Certificate show conciliation was attempted between 29th March 2019 and 11th April 2019; LB presented C's claim on 1st May 2019.
- 1.3. As at 19th November 2020 R's claimed costs amounted to £6,966.60 plus VAT. The listed costs application hearing on 19th November 2020 was aborted owing to technical issues and the parties have agreed, or not objected, to the proposal to convert the hearing to a consideration on the papers (notwithstanding that C had commenced his evidence under oath and cross-examination).
- 1.4. Since that aborted hearing I have received notification as follows:
 - 1.4.1. R has withdrawn its application for a Wasted Costs Order against LB on the basis of a settlement having been reached (which I understand from C to have been payment by LB of a contribution of £1,500 towards R's costs).
 - 1.4.2. C pursued his claim against R for unpaid wages and holiday pay in the County Court and judgment was obtained based on settlement of his claims in the sum of £300 paid by R to C.
 - 1.4.3. R persists in its application for a Costs Order against C;
 - 1.4.4. C persists in his opposition to the application.
- 1.5. I have also received and considered:
 - 1.5.1. C's supplementary witness statement (and a copy of the County Court judgment, a building society statement, confirmation of Universal Credit entitlement);
 - 1.5.2. Ms Praisoody's written submissions on behalf of C;
 - 1.5.3. R's written submissions;
 - 1.5.4. Emails from each party including comments on the other party's submissions and emails.
 - 1.5.5. The hearing bundle and submissions/statements from last November's hearing and additional documents.
- 1.6. R maintains its application against C on the basis of conduct it alleges was "nothing short of vexatious, abusive, disruptive or otherwise unreasonable in the bringing of proceedings and the way that the proceedings have been conducted".

- 1.7. In essence R says that C acted unreasonably in presenting a late claim (“which was doomed to fail”), persisting in it (proceedings which have been “painfully prolonged...due largely to the conduct of the claimant”), refusing settlement offers made in the context of clear costs warnings and allegedly misleading the tribunal about the role of LB, as to when he instructed LB and LB’s role as interpret/translator or representative. Furthermore C failed to comply with Orders and initially insisted on a hearing knowing that written submissions had been prepared by R. It alleges that C was then reluctant to participate in the hearing and has provided unsatisfactory and untrustworthy information about his ability to understand spoken English and of his means.
- 1.8. In essence C says LB managed his claim for him from an early stage and re-assured him that he could pursue it notwithstanding the lapse of time, he was left to his own devices at the hearing on 11th October 2019 and did not fully understand why his claim had been dismissed only finding out about the costs warnings when LB explained the dismissal to him; he says that he was re-assured by LB that the warnings were addressed to it and not him and furthermore that it would resolve matters and appeal.
- 1.9. LB applied for reconsideration of the dismissal judgment on C’s behalf (which was refused) and it has settled its liability under the Wasted Costs Order Application in a sum agreed by it with R.
- 1.10. It is clear from everything I have been told and read that LB played an active role as a representative in these proceedings and its actions went far beyond translation services as it purported was the case. It is also evident, and was evident at both hearings to date, that C was reliant and dependant on LB to advise and assist as well as to translate and explain matters. I am not convinced that C was aware of the full implications of the costs warnings issued to LB, or even when he became aware either before or after the dismissal of his claims, that he understood the extent of the risk that he would be liable to pay anything like the amounts now claimed. He placed all his trust in LB. C accepted its advice and delegated management of his claims wholly to LB who assumed full control. C was let down by LB. That said C must have been aware that there was a risk of his claim not succeeding, that R would seek a contribution towards its costs from someone and that his litigation cannot have been entirely risk free for him; I find he was so aware and there is no evidence or submission before me to suggest that LB gave him reason to believe he was fully indemnified and bound to succeed. I find it more likely than not that C knew he could terminate his instructions to LB at any time. He was however content to let matters continue and to take a chance that he would avoid any liability and succeed with his claim.
- 1.11. R conducted the litigation efficiently at least at first, in terms of case management (if not budgetary control which is a matter for R). It defended the claim and made apparently appropriate offers to settle (again a commercial matter for R). It issued reasonable costs warnings to LB in all the circumstances. Despite its clear and correct view on how the claim would end it ran up an enormous (in context) legal bill, one wholly disproportionate to the value of C’s claim, (again a commercial matter for R).

2. **The Law:** Both parties have correctly identified and commented on the applicable law set out in Rule 76 (1) (a) and (b) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“the Rules”). Furthermore, as R correctly cites, Rule 84 permits but does not require a tribunal to take account of a party’s ability to pay any Order made; the principle however is that poor litigants however, may not act with impunity.

3. **Application of law to facts:**

3.1. C was let down by LB. I am no longer required to adjudge whether it acted unreasonably etc. Subject to final submissions which I did not receive (or require, in the circumstances of settlement) my provisional view is that the lion’s share of responsibility for the unreasonableness in presenting and pursuing this claim and resistance to costs applications rested with LB. That said, C could have terminated his instructions and made that clear earlier but he was prepared to take his chances, which did put R to expense; that was unreasonable in all the circumstances.

3.2. I accept that C is relatively impecunious. He has caring responsibilities and limited income, supported by Universal Credit. He ought however pay something towards R’s costs, albeit his contribution, while potentially significant to him, can only be modest in terms of R’s claimed costs.

3.3. R decided to run up what appear to be extravagant costs in a straightforward claim of very limited value (albeit significant to an employee relying on wages and holiday pay, and to a company having to pay out of its running costs or profits). The legal work charged for appears wholly disproportionate to R’s exposure to risk. The claim was for £576.20 and R considered it “doomed to fail”. It was always likely to fail. R could reasonably have sat back at a fairly early stage and let it. It could have compromised the claim and still have saved itself a massive outlay in legal costs. Its legal advisers know that in the tribunal costs do not routinely follow the event and that recovery of costs is often difficult. Whatever tactical or principled reasons R and its legal advisors had for investing so disproportionately in this litigation is a matter for them, and not reasonably visited on C. I am led to believe that R has already recovered almost three times the value of the claim in LB’s contribution to costs.

3.4. Taking all of the above and all submissions into account, applying the applicable law I allow the application in principle, adjudging that C acted unreasonably and ought to pay a contribution to R’s costs, and I order that C shall pay £50 in costs.

Employment Judge T.V. Ryan

Date: 15.03.21

JUDGMENT SENT TO THE PARTIES ON 16 March 2021

FOR THE TRIBUNAL OFFICE Mr N Roche