EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103995/2016

Held in Aberdeen on 19 November 2020

Employment Judge I McFatridge

Mr B Lashore	**Claimant** **No representations made**
Weatherford UK Ltd	**Respondent** **Written representations by Messrs Burness Paull**

EXPENSES JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The claimant shall pay to the respondent the sum of NINETEEN THOUSAND POUNDS (£19,000) as expenses in terms of rules 74-78 of the Employment Tribunals (Constitution and rules of procedure) regulations 2013 schedule 1.

NOTE

1. On 19 November 2020 I issued an oral judgement dismissing the claim against the respondents following the non-attendance of the claimant at the diet fixed for the final hearing of the case. Immediately thereafter the respondent's representative indicated that he was seeking an award of expenses. I advised that I was not prepared to deal with it at that stage since the claimant was not present and, although such a course might have been

anticipated by him given his decision not to attend the hearing, he had not had any formal notice that an application for expenses would be made.

2. I subsequently issued written reasons for the judgement on 26 November 2020. Subsequent to this the respondent's agent submitted an application for expenses by email dated 27 November 2020. The claimant was asked for comments on this application and to advise whether he wished to have the matter dealt with at a hearing or on the basis of written representations. The claimant has not responded to the correspondence by the tribunal on either point. The respondent's solicitors have indicated that, for their part, they are happy for the matter to be dealt with on the basis of their written representations contained in their email of 27 November.

3. On that basis I have considered the application in terms of rule 76. Although the respondents use the term "wasted costs" I am satisfied that this is not used in the technical sense in referring to an application under s80 but in the ordinary sense of meaning that the money which the respondents have spent in defending in the case has effectively been wasted.

4. The respondents state their position in their application succinctly:

"At all material times prior to the position adopted by the Claimant in his email of 10 November, the Respondents proceeded on the understanding that the hearing due to start on 19 November would indeed proceed on that date. The Respondents accordingly carried out the required preparations, instructed Counsel, dealt with the substantial documentation (including ensuring it was in readily accessible electronic form) and engaged with their witnesses. At no point prior to 10 November did the Claimant indicate that he was not going to appear."

5. The respondent then sets out the recent history of the matter which led up to the claimant intimating that he was not prepared to accept my decisions and was no longer prepared to turn up at the hearing.

6. I have already set out this sequence of events in my earlier judgement and do not intend to repeat it here.

7. I understand that the respondent's position is that the claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in the way the proceedings have been conducted in terms of rule 76 (1) (a).

8. My view is that the respondent is entirely correct in this contention. The claimant submitted an appeal to the EAT on the basis that he appeared to want his case to be considered by a different employment judge who would allow him to submit an amended witness statement and allow him to pursue a claim of ordinary unfair dismissal.

9. He referred to the fact that I had refused to enter into a correspondence with him over an earlier matter where he alleged I had lied about the existence of a document despite the fact that the document I referred to was a letter addressed to the tribunal from his former agent which was lodged as one of the documentary productions for the hearing.

10. He then failed to answer correspondence from the tribunal as to whether or not he was seeking an adjournment of the hearing pending his appeal until eventually, after I had made the decision that the hearing should proceed he then wrote to the tribunal on 10 November stating that he wished an adjournment. I would also agree with the respondent that his letter of 10 November is less an application for adjournment than a unilateral declaration that he did not intend to appear.

11. In those circumstances I have no hesitation in considering that the threshold for making an award of expenses in terms of rule 76 is met. It is therefore a matter for my discretion as to whether or not an award of expenses ought to be made and if so how much.

12. In this case I consider that it is appropriate for an award to be made. The claimant has conducted these proceedings in an appalling manner with absolutely no regard for the overriding objective. He has had the opportunity to take legal advice at various stages and is clearly an intelligent man who is able to access the information necessary to enable him to conduct his case in a reasonable way.

13. It is clear he is not prepared to accept decisions which go against him and throughout the proceedings he has shown that he is not prepared to follow the normal process but instead wishes to engage in an interminable direct correspondence with the tribunal in order to have reversed any decision of which he disapproves. The claimant was clearly entitled to appeal any decision of which he disapproves of within the rules. The fact is however that I was the tribunal judge seized with making the decision in this case including the decision as to whether or not to adjourn the hearing pending the outcome of his earlier appeal. The claimant was clearly aware of the decision which had been made and that the long planned tribunal hearing was due to proceed but deliberately decided not to attend. In my view it is inevitable that behaviour of this type should merit a finding of expenses.

14. With regard to the amount I note that the respondent considers their total costs to be well over £20,000 yet they are restricting their claim to this sum. I have noted the information provided about counsel's fees since the beginning of 2020 and have no doubt that their total fees in this matter are well over £20,000. I have no detailed information regarding the claimant's means since the claimant has not participated in these proceedings regarding expenses at all. The latest information I have indicates that he is a student but also has some other work. He is a well-qualified individual whose earning capacity is high albeit there may be difficulties in him working in the UK at present due to his immigration status. That having been said the oil industry is

international in nature and I do not believe that I can assume that the claimant would be unable in the longer term to pay any costs awarded against him.

15. I note that s78(1)(a) provides that the maximum amount of any costs order which I can make without reference to taxation is £20,000. I am aware that at an earlier stage in this case a costs order of £1,000 was made against the claimant. In the circumstances I consider that the maximum aggregate amount I can award at this point without taxation is therefore £19,000. Taking everything into account I believe the appropriate course of action in this case is to make an award that the claimant pay to the respondent the sum of £19,000 towards the expenses they have incurred in defending the case.

Employment Judge I McFatridge

Dated: 6 January 2021

Date sent to parties: 6 January 2021