



EMPLOYMENT TRIBUNALS

Claimant: Ms Mason

Respondent: Miltech Engineering Limited

COSTS JUDGMENT

The Claimant must pay the Respondent's costs in the sum of £2,000.

REASONS

1. The Claimant was employed as Race Team Secretary/Administrator and her employment started on 24 April 2019. Her employment terminated following a three-month notice period on 16 January 2020.
2. On 19 April 2020, after the expiry of the relevant 3-month time limits, the Claimant registered for early conciliation with ACAS.
3. On 19 May 2020 she brought claims for unpaid holiday pay pursuant to regulation 14 of the Working Time Regulations 1998 (WTR) and in respect of damage caused to her car by a third party while attending a race event between 25-28 July 2019. The claim for unpaid holiday was expressed as an estimate of £800. The claim in respect of her car was for £1,443.38. No legal basis for that latter claim was identified.
4. Also on 19 May 2020, liaising with ACAS, the Respondent refuted the allegations made but offered the Claimant £500 "as a gesture of goodwill to bring the matter to a close". The Claimant rejected the offer. The offer was increased to £800, but again the Claimant rejected the offer.
5. In their Response the Respondents maintained it had paid the Claimant all her outstanding holiday pay and that it had no liability towards her in respect of her car. It made an application that the claim be struck out on the grounds it had no reasonable prospect of success or for a deposit order on the basis it had little reasonable prospect of success. It also made an application that the claim be struck out because it had been lodged out of time.

6. The matter was subsequently listed a Preliminary Hearing on 19 November 2019 at 14.00 to determine whether the claims had been brought out of time and/or whether the Tribunal had jurisdiction to hear them.
7. On 18 November 2019, the Respondent instructed solicitors. The solicitors informed the Claimant via ACAS that if she withdrew her claim by 10am on 19 November 2019 the Respondent would not seek costs against her.
8. At 10am on 19 November 2019 the Claimant stated she would withdraw her claim if the Respondent paid her the £800 that had been offered previously. The Respondent refused as it had now incurred legal fees. The Respondent's solicitors informed her that if the Claimant withdrew by 11am the Respondent would not seek costs against her, but that if she continued with the claim the Respondent was likely to make a costs application against her.
9. The Claimant then told the Respondent's solicitors that she "had proof of insurance fraud and would accept £800." The Respondent's solicitors made it clear that they considered the Claimant was trying to bribe the Respondent and that if the hearing went ahead the Respondent would incur substantial and unnecessary legal fees.
10. At around 13.30 the Claimant telephoned Simon Crompton, Director of the Respondent but he chose not to engage in conversation with the Claimant.
11. At the Preliminary Hearing at 14.00 the claims were struck out as being out of time.
12. By way of letter dated 15 December 2020 the Respondent has made an application for costs on under rule 76 Employment Tribunal Rules of Procedure 2013 on the basis that the Claimant's bringing of and conduct of the proceedings has been unreasonable and/or that the claims had no reasonable prospect of success.
13. The Claimant has responded to that application by undated letter.
14. In **Barnsley Metropolitan Borough Council v Yerrakavla [2012] IRLR 78** the Court of Appeal stated:

"The vital point in exercising discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, identify the conduct, what was unreasonable about it and what effects it had."
15. In this case I consider the Claimant's conduct has been unreasonable.
16. Although the claim was, in the event, struck out because it was out of time, it is plain that the Claimant had no claim against the Respondent in respect of the damage to her car and her claim form does not suggest any such basis. As regards the claim for holiday pay, this appears to have been a long-running dispute with the Respondent in respect of which the Respondent made its

position clear to the Claimant on several occasions, culminating in a final letter of 1 April 2020. While I cannot ignore the possibility that, had the Claimant brought her claim in time and it had progressed, she might have succeeded in respect of this aspect of her claim, I note the Respondent offered her £800 in May 2019, which was the totality of what she was claiming in respect of holiday pay. Accordingly, despite the fact the claim had been brought out of time the Claimant was offered the full amount of what she was claiming on the only aspect of her claim that had any legal basis.

17. Furthermore, even if she was not already aware, the Respondent's Response should have put the Claimant on notice that her claims were out of time and that the Respondent considered they had no reasonable prospect of success. Yet the Claimant still maintained her claim and appears to have taken no steps to research the reasonableness of her position or resolve the matter with the Respondent. She was also given the opportunity to withdraw from the litigation at the 11th hour without incurring any liability to costs yet chose not to do so. Instead, she said she would now take the sum of £800 that had been offered previously, and then resorted to an attempt at bribery.
18. Accordingly, I consider that by rejecting the initial offer of £800 and then pursuing the claim to the point of hearing without any proper consideration of its merits, the Claimant has acted unreasonably. As a result, her actions have caused the Respondent's to needlessly incur substantial legal costs.
19. I therefore find that that the conditions for making a costs order in rule 76 are satisfied and I consider it appropriate to exercise my discretion and make such an order. Although the Claimant is not represented, she could and should have obtained legal advice, or better informed herself, before continuing to pursue a case in respect of which she had been put on notice both that it was out of time and that the Respondent believed it had no reasonable prospect of success.
20. Although the Respondent has stated that it incurred legal fees of over £5,000 it is seeking costs in the sum of £2,743.00, being the sums incurred from the point of 11am on 19 November 2020, of which approximately £800 relates to the cost of making the costs application itself. There is no evidence that the Claimant does not have the means to pay such a costs order. Nevertheless, I have decided to award less than the sum sought and make an award for £2,000. The Respondent could have avoided the cost of making the cost application by making the costs application at the hearing itself and requiring the Claimant to pay approximately two fifths of the costs incurred by the Respondent is, in my judgment, an appropriate level of contribution in the circumstances.

Employment Judge S Moore

Date: 12 February 2021

Sent to the parties on:

Case Number: 3304837/2020 (CVP)

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For the Tribunal:

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