



EMPLOYMENT TRIBUNALS

Claimant: Mr M Trcic

Respondent: Securitas Security Service (UK) Limited

Heard at: Newcastle Civil & Family Courts and Tribunal Centre

On: 8th & 9th March 2021

Before: **Employment Judge AE Pitt**
Members **MR S Hunter**
Mrs P Wright

Representation

Claimant: In Person

Respondent: Mrs Young, Counsel

JUDGMENT having been sent to the parties on 23 March 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. At the conclusion of the Hearing, the claimant made an Application for a Preparation time order under Rule 76 (1) (c) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013.
2. The history of this claim is as follows; the claim was presented to the Employment Tribunal on 29th July 2019, the respondent duly filed a response. A Case Management Hearing was held on 11th October 2019; the matter was heard by a Full Tribunal on 24th & 25th February 2010.
3. It was unfortunate that on the Saturday immediately prior to that Hearing, counsel who appeared before us sustained an injury that prevented her from attending the Tribunal on that date. She made an application on 23rd February 2020 for an adjournment. The Tribunal considered the request on the first day of the Hearing, namely, 24th February 2020. The request was denied; the Tribunal required the respondent to find an alternative

representative to act on its behalf. The Tribunal adjourned the Hearing to the following day for that to be done. The respondent, having been unable to secure the services of a representative, repeated its application for an adjournment. The application was granted at the Hearing on 25th February.

4. The claimant made an application for PTO on 3rd March 2020.
5. The matter was relisted for a final hearing on 1st & 2nd July 2020.
6. As a result of the impact of the Covid 19 pandemic, the Hearing on 1st July 2020 was converted to a Telephone hearing and adjourned.
7. The claim came before this Tribunal for final Hearing on 8th & 9th March 2021.

The Law

8. The law in relation to preparation time orders is contained within the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013. Rule 75 (2) defines A Preparation Time Order as "time spent by the receiving party... In working on the case except for time spent any final hearing."
9. Rule 76 (1) gives the Tribunal the power to make a Preparation Time Order, and a Tribunal 'shall consider whether to do so, where it considers that-
 - (c) a hearing has been postponed or adjourned on the application of a party made less than seven days before the date on which the relevant Hearing begins.
10. Mrs Young referred the Tribunal to the case of Cooper v Weatherwise (Roofing and Walling) Ltd [1993] ICR 81, EAT. This case establishes that a costs order should not be punitive; in addition, that costs should only be awarded in respect of costs incurred as a result of a postponement or adjournment.
11. Rule 79 sets out how a PTO is calculated. It sets an hourly rate, which would be £32 in February of 2020. A PTO award is the product of the number of hours assessed by the Tribunal and the rate set out above.

Submissions

12. Both parties presented submissions in writing. Mrs Young argues that a PTO should only be made in respect of costs incurred as a result of the adjournment or postponement. Therefore, such an order should not cover the general costs of preparing the case, as these will be costs attributable to the adjourned or postponed Hearing when it takes place. Cooper v Weatherwise (Roofing and Walling) Ltd [1993] ICR 81, EAT.
13. The claimant's claim is for 39 hours spent in preparation for the Hearing. He states in his application he took four days leave to read the documents and prepare for the previous Hearing. He expressly referred the Tribunal

that as English is not his first language, it was time consuming and required some assistance to prepare.

Discussion and Conclusion

14. The Tribunal notes that an award for a PTO is within its discretion. In this case, the application is on the basis that the Hearing was adjourned with less than seven days notice. The Rules do not make conditions, such as adjectives analogous to 'vexatious' or 'reasonable' as it does in other applications under Rule 76.
15. The Tribunal, therefore, although noting that the adjournment was not because of any fault of the respondent and despite the efforts of the Tribunal in February 2020 to ensure the Hearing commenced, concluded that the purpose of any PTO is to recompense the claimant for time spent in preparation for the Hearing. The reason for the adjournment is just one factor to be taken into account.
16. In relation to the argument that costs are only payable for sums incurred as a result of the adjournment, The Tribunal disagrees with Mrs Young's interpretation of the law.
17. The Cooper case was decided before the introduction of PTO; it relates to an application for costs under the Rules as formulated in a previous form. Rule 11, as it then was to compensate a party for 'costs incurred as a result of an adjournment.' The present formulation of Rules 75 & 76 make no reference to that phrase; rather Rule 75 simply states 'in respect of costs that the receiving party has incurred while legally represented.' Rule 76 sets out when a Tribunal must consider an order but again is silent in relation to compensating a party for 'costs incurred as a result of an adjournment.'
18. In addition, the claimant here is seeking a PTO, not an order for costs. A PTO specifically compensates a party for time spent 'in working on the case'; there is no reference to the costs incurred as a result of the adjournment. The Tribunal is therefore able to distinguish the Cooper case.
19. The Tribunal asked itself, did the claimant spend time preparing the case for hearing in February of last year. The claimant submitted he had spent a total of 39 hours and had taken time off work to prepare. The Tribunal was satisfied that the claimant had spent time on preparing for the case, which was evident from his presentation of his case before us.
20. Is it proper to compensate the claimant for that time? The Tribunal concluded that it was. The claimant is a litigant in person; it is not appropriate to hold such a person to the same standards as a legal representative; That is to say, simply because the preparation work was undertaken the claimant does not have to repeat the exercise. Even a legal representative would at the very least have to review their preparation notes. The Tribunal concluded that the claimant should be recompensed for his time.

21. Having heard the substantive case, the Tribunal assessed the Preparation Time at 24 hours, namely three days. The relevant rate is £32 therefore the respondent shall pay the claimant £768.

Employment Judge AE Pitt

Date 11th April 2021