



EMPLOYMENT TRIBUNALS

Claimant: Miss S Markwick

Respondent: J D McDougall Ltd

Upon reconsideration of the Judgment and order sent to the parties on 19 December 2019 on the Tribunal's own initiative under rule 73 of the Employment Tribunals Rules of Procedure 2013, and without a hearing.

COSTS ORDER

In accordance with the Order promulgated on 27 March 2019 that the claimant pay the whole of the Respondent's costs of defending these proceedings and that the exact amount be determined by way of detailed assessment of costs the Tribunal has assessed the total costs as £91,906.07.

The claimant must pay to the respondent the costs of £91,906.07.

REASONS

1. The claimant made 32 claims of unlawful sex discrimination, sex harassment and sex discrimination and claims of unfair dismissal, unlawful deduction of wages and holiday pay. These claims were heard and considered by an employment tribunal, over 11 non-consecutive days, between November 2017 and March 2018 and all claims were dismissed in a judgment sent to the parties on 4 September 2018.
2. The respondent made a successful application for an award of costs following the Tribunal's dismissal of all the claimant's complaints. The Tribunal ordered the claimant to pay the whole of the respondent's costs of defending these proceedings.
3. The Tribunal ordered that the exact amount the claimant was to pay in costs would be determined by way of detailed assessment, to be carried out by an Employment Judge in accordance with the Civil Procedure Rules 1998.
4. The claimant's application for reconsideration of the award of costs was dismissed in a judgment sent to the parties on 28 May 2019.

5. The respondent sent to the Tribunal and the claimant a Detailed Bill of Costs in the sum of £103,486.07 to be assessed by the tribunal on the standard basis if not agreed and that amount payable by the claimant, pursuant to paragraph 75 of the Judgment dated 19 March 2019.
6. The Tribunal wrote to the claimant by a letter dated 27 June 2019 informing her that she could formally dispute any part of this bill by 26 July 2019. The claimant did not reply but was granted additional time to dispute the bill until 29 September 2019 or seek a costs hearing.
7. The claimant did not respond to the letter dated 27 June 2019 and the claimant was eventually ordered to pay the costs in full.
8. The claimant appealed the award of costs to the Employment Appeal Tribunal. Her appeal was dismissed on 18 September 2020.
9. The Employment Tribunal subsequently noticed that the claimant had referred to the award of costs in her communications with the Employment Appeal Tribunal (EAT) in the following documents:
 - 9.1 In a document headed 'written reasons' dated 9 July 2019 (at paragraph 5):

' The further extension is required to also allow me sufficient time to respond to the reasons I have that object to reimbursement of the respondent's legal fees.'
 - 9.2 In an email dated 16 August 2019, at paragraphs 3), 4) and 5) and
 - 9.3 In an email dated 23 September 2019 12.12: at the final paragraph and in attachments (1) print of Forbes Hall 'Employment Fees' (3 pages) and (2) Disputing Bill of costs (2 pages).

It appeared to the Tribunal that the claimant might have mistakenly supposed that in the course of her communications with the Employment Appeal Tribunal that she was engaging with the Employment Tribunal's bill of costs dispute procedure. The claimant has not been represented throughout these proceedings and is a litigant in person. It therefore appeared that it was in the interests of justice to reconsider the costs judgment and give the parties a reasonable opportunity to make further representations.

10. Under Rule 73 of the Employment Tribunals Rules of Procedure 2013, where the Tribunal proposes to reconsider a decision on its own initiative it shall inform the parties of the reason why the decision is being considered. A letter was therefore sent to the parties dated 28 October 2020 explaining that it was in the interests of justice for the costs judgment to be reconsidered. The parties were asked to inform the tribunal whether they objected to this course and/or whether they considered the reconsideration could proceed without a hearing.

11. In an email dated 20 November 2021, the respondent informed the Tribunal that it did not oppose the proposed reconsideration of costs and that the reconsideration should proceed without a hearing.
12. The claimant did not make any substantive reply to the notification of the reconsideration hearing, although the claimant made an application for an extension of time to reply, which was refused. An appeal to the EAT was made by the claimant, which appeal was dismissed on 23 March 2021. The claimant has not provided any additional comments to the Employment Tribunal that could be reasonably construed by the Tribunal as appearing to dispute the amount of costs.
13. Having considered the respondent's comments sent on 20 November 2020 the Tribunal reconsidered the costs judgment taking into consideration the claimant's comments and submissions sent to the EAT in the documents referred to at paragraph 9.
14. In her correspondence with the EAT, the claimant has made allegations of wrongdoing by the respondent. These allegations are not relevant to the amount of costs awarded and have not been repeated in this reconsideration of the assessment of costs.
15. The assessment was reconsidered on the Judge's own initiative taking into consideration that the claimant is unrepresented and the possibility that she mistakenly believed that she was providing points of dispute.
16. The following comments were sent by the claimant in her communications with the Employment Appeal Tribunal and appear on the Tribunal's file having been copied to the Employment Tribunal by the claimant and/or the EAT office.

16.1 In an email to the EAT dated 9 July 2019, the claimant stated:

'The further extension is required to also allow me sufficient time to respond to the reasons I have that object to reimbursement of the respondent's legal fees.'

16.2 In an email sent to the Employment Appeal Tribunal dated 16 August 2019 at paragraphs 3), 4) and 5) the claimant made some comments alleging wrongdoing adding:

'...excessive amounts claimed for [witnesses] Andrew Monk, Tara Hornsby and Nick Hancock Court attendance. The value listed cannot be justified by having reimbursed the cost of their travel fees and expenses alone. Further to the point I shall need to acknowledge why Mr Paganuzzi [respondent's solicitor] attended the hearing... Simon Robinson, the Barrister, conducting the internal investigation (please note had agreed prior the cost would not exceed £1250, however the respondent then claims £1500.00 plus VAT in his bill submitted)...' and

- 16.3 In an email dated 23 September 2019 12.12, at the final paragraph 12.12 and in attachments entitled (1) print of Forbes Hall 'Employment Fees' (3 pages) (2) Disputing Bill of costs (2 pages):

'.. the respondent should not have expected to have been invoiced over the amount stated ['in the legal representative's business web page'] perhaps as seen £19,000-£40,000.... I do not see how he can justify over £60,000.

...I counted 430 letters sent...Considering I only counted a total of 22 letters sent to me from the respondent's solicitor as seen in the case bundle index. I find it difficult to comprehend how such an excessive amount could have made his unusually high figure...

...there are references made to witness payments and attendances which seem extraordinary...The total amount claimed for witnesses...is in fact £7296..'

17. Having regard to the overriding objective the Tribunal has taken into consideration the claimant's statement that the amount invoiced [billed] by the respondent's solicitors is excessive as set against its advertised rates of business.
18. The advertised rates of business are not relevant to the amount of costs assessed; however the Tribunal has construed reference to this by the claimant as a challenge to the overall amount of costs incurred by the respondent in defending these proceedings. The claimant also refers to the number of letters sent to the witnesses but has not set out clearly why the number is said to be excessive or unnecessary.
19. In considering the claimant's points of dispute, the Tribunal had regard to the explanatory background and summary attached to the bill, addressed to the assessing judge, which sets out the false allegations being made by the claimant against Mr McDougall, the potential reputational damage of these proceedings to the respondent given the serious allegations being made by the claimant, that the claimant had at one point valued her claim at £100,000, the length of time taken to complete the hearing and to the unlawful, unreasonable and dishonest conduct of the claimant as found by the Tribunal. In the circumstances of this case the Tribunal is satisfied that it is appropriate for the respondent to have to used a specialist solicitor. The Tribunal bears in mind that the Tribunal heard from 7 witnesses for the respondent at the hearing and considered the witness evidence of one witness unable to attend the hearing. The claimant's witness statement comprised of 33 pages. The claimant has made broad allegations that the sums incurred are unjustified but given the substantial number of complaints of sex discrimination, the allegations of dishonesty, and other claims, it is not possible to conclude that the expenditure is not justified without having received detailed points of dispute. No reduction is made in respect of the costs of preparing and presenting the case.

20. The claimant broadly disputes the solicitor's costs. The Tribunal considers it was appropriate to engage a specialist solicitor and the hourly rate of £275/£285 for a solicitor specialising in employment and commercial litigation is reasonable. (The claimant appears to suggest that the cost of Mr Robinson's internal investigation has been included in the Bill of Costs, as far as can be made out, that has not happened.)
21. Finally, the claimant disputes the need for Mr Paganuzzi to attend the tribunal hearing. It is recorded that Mr Paganuzzi attended the tribunal in addition to counsel. The Tribunal agrees with this point made by the claimant. It considers that it is not proportionate for experienced counsel and also experienced solicitor to attend a tribunal hearing together. That point of dispute is accepted and the sum £9650 plus VAT 1930 (£11, 580) for the solicitor attending the hearing (under a fixed fee agreement) is not allowed. That amount has been deducted from the costs awarded of £103,486.87 in the judgment sent to the parties on 19 December 2019. The Tribunal has therefore assessed the total costs as £91,906.07,
22. Therefore the Judgment on the application for costs sent to the parties on 19 December 2019 is, accordingly, varied and the Judgment of the Tribunal is that the claimant is ordered to pay to the respondent costs in the sum of £91,906.07.

Regional Employment Judge Taylor
Date: 30 April 2021