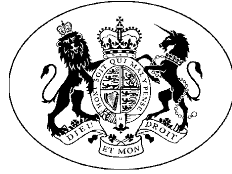

EMPLOYMENT TRIBUNALS

Claimant: Ms C. Towns
Respondents: (1) S L Media Group Ltd
(2) Mr. R. Johnson

London Central **On:** 1 June 2021

Employment Judge Goodman
Ms. N. Sandler
Mr. P. Secher

COSTS JUDGMENT

No order for costs on the claimant's application

REASONS

1. At a hearing on 18 and 19 February 2021 the tribunal found that the respondents had jointly and severally sexually harassed the claimant, and ordered the respondents to pay her £1,692.44 compensation.

2. On 9 March 2021 the claimant's solicitors applied for reconsideration of judgement. That application was dismissed under rule 72 on 17 March 2021 on ground that it had no reasonable prospect of success.

3. In the same letter, the claimant's solicitors applied for costs. That letter was copied to the respondents' representative. On 18 March 2021 the tribunal directed that the respondents were to reply by 1 April identifying the grounds on which the application was disputed, and that the application would be decided on the written representations unless by 8 April either side sought a hearing.

4. Neither party has responded to this letter, and accordingly the tribunal has convened today to discuss the application on the basis of the previous judgements of the tribunal and the claimant's application.

Relevant law

5. In tribunals, unlike the courts, costs do not follow the event. The default position is that each side bears their own costs, but there is provision in the Employment Tribunal Rules of Procedure 2013 to make orders for costs in particular circumstances:

> **When a costs order or a preparation time order may or shall be made**
>
> 76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—
> (a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted.

6. Close reading of rule 76 makes it clear that the tribunal must first consider whether one of the threshold tests (vexatious, abusive, disruptive or otherwise unreasonable conduct) has been met, and should then exercise discretion on whether to make an order. At either stage it may have regard to the paying party's ability to pay (rule 84). There should be some relationship between the conduct of the claim and the costs being awarded, but it need not be a precise causal link.

7. By rule 78, the tribunal may make a summary order for an amount up to £20,000. For an amount over that, it may order a detailed assessment of a bill of costs to be made by the County Court or by an Employment Judge.

Grounds of application

8. The claimant's application is set out here in full:

> "The Respondents defended the case on the basis that the Claimant was being dishonest and that she was seeking unjust compensation:
>
> a) At Paragraphs 10 and 14 of the Grounds of Resistance they describe aspects of the Claim as "highly defamatory" (BP51-2)
> b) At Paragraph 17 of the Grounds of Resistance they describe an aspect of the Claim as "fictitious" and "entirely fabricated allegations"
> c) In oral evidence the Second Respondent suggested that the Claimant had tampered and fabricated evidence (the Google plans) to support her claim.
> d) In oral evidence the Second Respondent suggested that the Claimant had fabricated her case in order to claim compensation.
>
> In light of the Tribunal's findings, that the Claimant's evidence was to be preferred and true, it must follow that the Second Respondent's denials were untrue and that his characterization of the Claimant's claim as being dishonest and fabricated was also untrue. That defence went well beyond merely putting the Claimant to proof and, knowing the claims to be true, the Respondents' defence of the Claim was vexatious and unreasonable. In particular, the Respondents challenged a default judgment and put the Claimant through the ordeal of a trial in the knowledge that the claim was true.

We did warn the Respondent that we would be making an application for costs on 18th February 2021 – copy correspondence attached, along with our Bill of Costs in this matter.

Also, at the preliminary hearing of 15th October 2020, the Claimant was awarded £500 by way of a contribution to her costs. This amount still remains due and owing."

9. The claimant's warning letter of 18 February was sent on the morning of the first hearing day. Costs to date were estimated at £15,000. There is reference to earlier negotiation. It is stated that the tribunal would have to find that one party or the other lied, and that if the respondents conceded liability the hearing need only go ahead on remedy and the claimant would not pursue an order for costs in that event. There is reference to the tribunal's previous finding (Employment Judge Russell, order setting aside default judgement October 2020, with order that the respondents pay the claimant's costs in the sum of £500) that the respondents had unreasonably delayed filing the response. Then there is reference to the respondents having given a costs warning, which the claimant would rely on in seeking an order for aggravated damages and in making its own costs application. Finally, there was a proposal to settle for £7,000.

10. As we have no response from the respondents, the tribunal considered the application as it stands and in the light of the earlier judgement. In the absence of information we assume that either or both respondents have the ability to pay.

Discussion and Conclusion

11. As we noted in the judgement signed 19 February 2021, at the conclusion of the hearing, it was perhaps not surprising that there were inconsistencies in the recollection of events on both sides given the length of time that had elapsed. In the second respondent's case, if it was right that he had not received the claim form sent at the end of 2019, and only saw it in September 2020, he might well have difficulty recalling conversations and events not recorded in any contemporary document. We considered whether by not limiting himself to simple denial, but going further and suggesting that the claimant was defaming him, or fabricating a claim for the sake of gain, the second respondent was acting unreasonably. We concluded that this was not so unreasonable as to merit an order for costs by itself. There are almost always disputes between parties about the facts which the tribunal has to resolve. First, it is not surprising that the second respondent might not remember events as the claimant remembered them, given the lapse of time and lack of documents. Second, the claimant herself was not always consistent about times and places, and although we found that in substance her recollection of the content of conversations was true, we had been troubled by her account of injury to feelings (for example a reference to race, when there was no other mention of race in this claim or to significant depression without any reference to medical records), suggesting she was not herself always as

scrupulous as she should have been about accuracy, or free from exaggeration. The assertion that the claimant was fabricating a fictitious claim for gain went beyond saying she was mistaken in her recollection, but her claim did contain inaccuracies. It was not of itself unreasonable conduct to say so, and if it was, it would be inequitable to order costs when the claimant was sometimes in error. It is always unsavoury when unsupported allegations of fabrication are made, (and can weaken a case if there is little evidence for them) but they are not uncommon when parties believe strongly that a claim is falsely made.

12. For completeness, we do not accept that the claimant fabricated Google maps, lacking as we do the technical knowledge to understand how discrepancies might occur, but in any case the maps (showing her route on particular days) played little part in our findings.

13. As for the argument that the respondent should not have had the default judgment set aside knowing the defence to be untrue, we observe first that it is by no means clear that the respondent knew it to be untrue, and he too was entitled to defend his reputation, second that it is better that claims are tried on their merits, thirdly that there is already a costs order made in respect of *delay,* fourthly, but importantly, it was not unreasonable to defend on the legal ground that an unpaid intern was not entitled to bring a claim under the Equality Act in the employment tribunal, even though on the facts we found we did not accept she was not an applicant for employment. The stress to the claimant of giving evidence on disputed facts could have been avoided if there had been a preliminary hearing on the point, but the claimant did not choose to ask for one. The claimant does not argue that the jurisdiction defence was unreasonable conduct.

14. We do not attach much weight to the costs warning. It was delivered very late, leaving the respondents' team little time to consider it, or avoid costs being incurred. The claimant's offer to settle (to avoid a hearing on remedy) was significantly higher than the amount awarded.

15. Nor is it of significant weight in unreasonable conduct that the respondents have not yet paid the October 2020 costs awards. The respondents' reasons for not paying are unknown and the claimant can enforce the judgment in the usual way in the courts, with interest and the costs of enforcement payable.

16. For these reasons we do not find that the respondents' conduct of the claim's defence was unreasonable and merits a costs award.

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Employment Judge Goodman

Date: 01/06/2021

ORDER and REASONS SENT to the PARTIES ON

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. 01/06/2021.

FOR THE TRIBUNAL OFFICE