



EMPLOYMENT TRIBUNALS

Claimant

Mr T Hancox

v

Respondent

National Farmers Union & Others
Ms Minette Batters
Mr Sarb Heer

JUDGMENT OF THE EMPLOYMENT TRIBUNAL (ON RECONSIDERATION) WASTED COSTS ORDER

Application for reconsideration; Rules 71 & 72 Procedure Rules 2013

Heard at: Birmingham
(Remotely in chambers)
(Papers Hearing)

On: 23 June 2021

Before: Employment Judge Lloyd

JUDGMENT

UPON APPLICATION by the Claimant for reconsideration of the Tribunal's Order and Judgment for wasted costs of 22 April 2021, in the sum of £3,000.00,

AND UPON reading the detailed written representations of the Claimant, and the response of the Respondents' counsel to the said application, dated 18 May 2021, which response was copied to the Claimant,

AND the parties having given their consent to a reconsideration hearing on the papers,

I exercise the Tribunal's powers under Rule 70, and I revoke the wasted costs judgment of 22 April and I make and substitute a new costs judgment as follows:

The Claimant is ordered to pay forthwith the Respondents' wasted costs of 22 April 2021, but limited to the sum of £750.00, being 25% of counsel's brief fee for the hearing.

REASONS

Background

1. The Claimant failed to attend the Preliminary Hearing at 10.00am on 22 April 2021, having sent an email to the Tribunal at 23.30 on 21 April 2021 explaining the reasons for his non-attendance. Efforts were made on the morning of the hearing by the Tribunal clerk to contact the Claimant by telephone on the number provided by the Claimant, but there was no response.
2. As a consequence of the Claimant's non-attendance, the hearing could not proceed, and the Tribunal adjourned the hearing to **7 May 2021 at 10am** for an Open Preliminary Hearing.
3. The Respondents made an application for the costs thrown away by the Claimant's failure to attend the hearing on 22 April 2021. In considering that application, the Tribunal took account of the Claimant's correspondence of 21 April 2021. It was sent at 23.30 prior to the day of the hearing. It did not disclose reasonable grounds for failing to attend. No medical evidence was provided to support any assertion that the Claimant was not fit to attend a hearing. The Tribunal was not satisfied that the Claimant had reasonable grounds for failing to attend the hearing, having given short notice of his non-attendance. The Claimant remains unsatisfied with the Tribunal's decision, at the date of this reconsideration hearing.
4. The parties have given their consent to a reconsideration hearing on the papers.
5. The Claimant's failure to attend the hearing on 22 April amounted to unreasonable conduct of the proceedings and the hearing had to be adjourned less than 7 days before the date on which the hearing began (r.76 ETs Constitution & Rules of Procedure) Regs 2013, Sch 1).
6. The Claimant's application is set out in his email of 23 April 2021. The grounds are:
 - 6.1 The costs order of £3,000.00 is not justified. The Employment Judge and the respondent's counsel did nothing more than speak with each other and make directions. This happened 24 hours before the "main case" which should not have been discussed at on 22 April.
 - 6.2 The order for costs was made without any notice or opportunity to make representations: including, producing medical evidence of the Claimant's disabilities that were stated as his reason for non-attendance (see Rule 77).
 - 6.3 No regard was had to the Claimant's ability to pay under Rule 84.
 - 6.4 The interests of justice require a reconsideration.

The Application

7. The Respondents have acknowledged that it is necessary in the interests of justice for the Tribunal to reconsider the costs order made at the hearing on 22 April 2021. The Claimant had not had a reasonable opportunity to make representations (in writing or at a hearing) in response to the Respondent's application for costs (Rule 77). Moreover, while the Respondents acknowledge that a costs order is a 'judgment' within the meaning of Rule 1(3)(b)(i), the Tribunal's order adjourning that hearing is a case management order. The latter is not therefore subject to the reconsideration procedure.
8. I accept the Respondents' submissions and that the Tribunal should reconsider the costs order alone. I acknowledge that such a course is fair and just to the claimant and is compliant with the rules. That is therefore the process I have undertaken in this paper re-consideration in chambers.
9. The claimant has set out his representations on reconsideration to the Tribunal extensively in a series of emails to the Tribunal, which along with the Respondents' written submissions and the case papers, I have made the basis of my chambers decision making process.
10. I have reconsidered the costs order alone.

Findings and Conclusions

11. It is in the interests of justice for the Tribunal to reconsider the costs order; not least as at the time of the making of the order, the Claimant had not had an opportunity to make representations in writing or at a hearing, on the making of the costs order in accordance with Rule 77.
12. The claimant has since the making of the order, been given the opportunity to make representations. He has done so through a series of detailed emails addressed to the Tribunal. The claimant contends that the Employment Judge and the Respondents' counsel had no substantive or procedural grounds to discuss his case on 22 April 2021. Moreover, what in his conclusion was a brief exchange between counsel and the Judge at the time, and the agreement of a direction for adjournment of the hearing, was no just basis for requiring him to pay counsel's fees: in the amount of the brief fee for the hearing as listed, namely, £3000,00.
13. The claimant had been given notice to attend the hearing listed for Thursday 22 April 2021.
14. At about 11.30pm on the night of 21 April 2021, the Claimant wrote to the Tribunal, and copied the email to the Respondents' solicitors, to "outline my reasons for not attending this hearing". The Claimant objected to the bundle the Respondents had submitted for the hearing. The Claimant set out several issues in his letter, in particular relating to the Interim Relief Judgment from

August 2020. Under the heading 'reasons for non-attendance' the Claimant asserted that his health had deteriorated significantly in the previous 48 hours since he had received the hearing bundle and made reference to his disabilities. The Claimant did not, however, produce any medical evidence to establish that he was not fit to attend the hearing on 22 April 2021.

15. His letter asserted that he may consider joining the hearing at the Judge's request and that he would be on the phone for any updates or instructions the court wished to give him. However, the Tribunal clerk attempted to contact the Claimant by telephone on the morning of the hearing but received no response. The Claimant did not join the CVP hearing.
16. At the hearing, the Respondents invited me to adjourn the hearing to allow the Claimant to attend and to be clear that he was on notice that the Respondents' strike out applications would be considered at the adjourned hearing. This adjournment was only required because of the Claimant's refusal to attend the hearing.
17. The Respondents made an application for the costs thrown away by that adjournment, namely Counsel's brief fee in the sum of £3,000. The Respondents application for an order for costs in respect of the wasted costs of the hearing of 22 April 2021 was made on the basis that the Claimant had acted unreasonably in the conduct of the proceedings in failing to attend that hearing and causing it to be adjourned (r.76(1)(a)) and/or the hearing had been postponed or adjourned on the application of the Claimant made less than 7 days before the date on which the relevant hearing began (r.76(1)(c)).
18. The Respondent confined its application to the amount of Counsel's brief fee in the sum of £3,000. I accept that the Claimant's claims, and his conduct of the proceedings has necessitated the consistent involvement of experienced Counsel. I accept that Counsel's brief fee was not calculated on the basis of how long the actual hearing eventually lasted but rather on the basis of significant preparation. The Respondent limited its application to those costs.
19. I accept that no consideration was made of the Claimant's ability to pay the costs order. That was a consequence of the Claimant failing to attend the hearing and the order being made in his absence, A Tribunal is not obliged by Rule 84 to have regard to ability to pay, it is merely permitted to do so.
20. I have no evidence before me now to suggest that the Claimant does not have access to funds to pay the entirety of the wasted costs order as made, namely £3,000.00.
21. However, I acknowledge that the sum is a significant liability. Also, that before that order was made the Claimant was not able to set out his objections.
22. Having regard to the totality of the matters which I have set out in this judgment and in the strictest observance of the overriding objective of this tribunal to maintain strict justice for all parties, I vary the wasted costs order to a figure

which I believe is the absolute least that fairly can be awarded to the Respondents in all the circumstances described. I vary the wasted costs order to £750.00 which I order the Claimant to pay to the Respondents forthwith.

Signed electronically by Employment Judge B Lloyd

Signed and Dated: 24 June 2021