



EMPLOYMENT TRIBUNALS

Claimant

Mrs. Paulina Sulima

v

Respondent

**DHL International (U.K.)
Limited**

Heard at: Leeds via CVP On: 6 May 2021

Before: Employment Judge Wedderspoon

Representation:

Claimant: No attendance

Respondents: Mr. R. Dunn, Counsel

JUDGMENT

1. The Claimant do pay the costs of the respondent in the sum of £960.

REASONS

1. On 6 May 2021 this matter was listed for a final hearing. The claimant chose not to attend the hearing and her claim was dismissed pursuant to Rule 47 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. The Respondent applied for costs against the claimant in the sum of £960 inclusive of VAT by letter dated 26 May 2021. The respondent confines its application to counsel's fees for the final hearing which were unnecessarily incurred as a result of the claimant's non-attendance at the final hearing. The basis of the application is that the claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings (or part) or the way that the proceedings (or part) have been conducted. The respondent requested the application to be dealt with on the papers.
2. The Tribunal requested the claimant to comment on the respondent's application and to comment upon whether she was happy for the Tribunal to consider the application on the papers. The claimant has failed to respond. The Employment Tribunal has determined that pursuant to the overriding objective it is in the interests of justice to deal with the application on the papers.

Background

3. On 16 December 2020 the Employment Tribunal listed the final hearing for 6 May 2021. The parties had seven days to vacate the date and seek a re-listing. No application was made by either party and a notice confirming the final hearing date was issued on 17 December 2020.

4. By application dated 15 April 2021 the claimant sought to adjourn the hearing. The application was refused on 19 April 2021. The Employment Tribunal informed the claimant on 19 April 2021 that if she wished to rely upon Polish recordings she needed to provide an English translation by 26 April 2021. The claimant failed to respond to this order.
5. At 7.15 a.m. the claimant on 6 May 2021 (the morning of the final hearing) the claimant emailed the Tribunal (not copying in the respondent) alleging serious allegations namely that the Employment Judge had colluded making up an order. It is presumed the claimant meant the order dated 19 April 2021.
6. On 6 May 2021 the claimant did not attend the CVP hearing. The Tribunal clerk on the instruction of the Employment Judge attempted to contact the claimant but attempts were unsuccessful. The claimant did not provide any further explanation.

The application

7. The basis of the respondent's application is that the final hearing had been listed for nearly 6 months. The claimant only informed the Tribunal and the respondent of her intention not to participate in the hearing at the last possible moment. In doing so it is submitted the claimant had made serious yet unsubstantiated claims against both the Tribunal and the respondent which were only made visible to the respondent on the day of the hearing. The failure of the claimant to meaningfully engage with proceedings has meant the Tribunal and respondent have spent unnecessary yet significant time and costs preparing for the final hearing including witness attendance at the final hearing to which the claimant had no intention of attending.

The Legal Framework

8. Rule 76 of the ET Rules provides the Tribunal with a discretion to make a cost order where it is satisfied that a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way that the proceedings have been conducted or where any claim or response had no reasonable prospect of success.
9. If satisfied the threshold for a cost order has been met, the Tribunal will then consider at the second stage whether it would be appropriate to exercise its discretion to make an order for costs in the particular circumstances of the case.
10. If it is deemed so appropriate, the Tribunal at the third stage determines the amount of costs awarded or refers that question for assessment to the county court. The three stage test is set out in the case of **Haydar v Pennine Acute Hospitals NHS Trust (UKEAT/0023/18)**.
11. In exercising its discretion, the Court of Appeal stated in **Yerrakalva v Barnsley Metropolitan Borough Council (2012) IRLR 78** that Tribunals should consider the whole picture of what happened in the case and ask whether there has been unreasonable conduct by the putative paying party in the bringing, defending or conducting of the case and in doing so should identify the specific conduct relied on, what was unreasonable about that conduct and what effect it had on the proceedings.

12. Where a claimant withdraws a claim in the Employment Tribunal at the last moment thereby causing the respondent unnecessary costs and expense in preparing the case may well have acted unreasonably in delaying the withdrawal; **McPherson v BNP Paribas SA (2004) EWCA Civ 616**.

Conclusions

13. The claimant decided not to attend the final hearing on the morning of the hearing. Her reasons for doing so were based on serious unsubstantiated allegations of impropriety against the Tribunal and the respondent without any evidence. The Tribunal finds that amounts to unreasonable conduct pursuant to Rule 47 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.
14. The Tribunal has requested the claimant to comment upon the respondent's application for costs and challenge anything in the respondent's application dated 26 May 2021. The claimant has failed to respond.
15. The Tribunal concludes that it is appropriate to make an order for costs against the claimant taking into account the particular circumstances of the case; the claimant did not seek to withdraw at an early stage but instead withdrew from proceedings at the very last moment on the basis of serious allegations of collusion between the Tribunal and the respondent which were unsubstantiated. The claimant had not informed the respondent about this. By this late point of time, the respondent had instructed counsel to attend the hearing to conduct its case and incurred costs.
16. The respondent has limited its costs to the fees of counsel attending on the day. The Tribunal finds that the sum of £960 is reasonable. The claimant has failed to make representations about her ability to pay. In the absence of evidence to the contrary the Tribunal determines that the claimant has ability to pay and a cost order is made in the sum of £960.

Employment Judge Wedderspoon

Date: 11 July 2021

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.