



EMPLOYMENT TRIBUNALS

Claimant: Mr Hannagan

Respondent: DNXB Group Limited

JUDGMENT

The claimant's application dated **29 June 2021** for a costs order is refused.

REASONS

1. The claimant emailed the Tribunal on 29 June 2021 following the final judgment in the above claim being sent to the parties on 15 June 2021.
2. The email dealt principally with an application for reconsideration of the judgment. That application has been considered and refused by a separate judgment.
3. At the end of that email, the claimant wrote:

I have incurred legal costs that the respondent has not any [sic]. Can I ask that the respondent becomes responsible for these legal costs or at least a share of them?

4. The email does not provide any further detail about either the amount of such costs or the basis upon which the application was made.
5. Rule 76 of the Tribunal's Rules of Procedure provides as follows:

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;

(b) any claim or response had no reasonable prospect of success; or

(e) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

6. The first question for me, therefore, is whether the respondent's conduct falls within Rule 76(1)(a) or (b) (Rule 76(1)(e) not being even potentially relevant).
7. The claimant has not set out why in his view the respondent acted vexatiously, abusively, disruptively or otherwise unreasonably in their conduct of the proceedings or provided evidence in support of any such argument (if this is what he contends). I do not find that the respondent has conducted proceedings abusively, vexatiously, disruptively or otherwise unreasonably.
8. The claimant has also not set out why in his view the respondent's response had no reasonable prospects of success (if that is what he contends). In broad terms, the respondent succeeded in its argument that the claimant was not an employee but failed in its argument that the claimant was not a worker. However, in light of my knowledge of the claims, and the outcome, I conclude that the respondent's defence in respect of the worker argument cannot be characterized as having had no reasonable prospects of success. The respondent's argument that the claimant's status was in reality that of business owner rather than worker was stronger than an argument which had "no reasonable prospects of success", although it was ultimately unsuccessful.
9. In fact the wording of the claimant's application for costs suggests that it may have been made on the basis that he considers it unfair that he incurred legal costs but the respondent did not. However, it was his choice to instruct solicitors and the respondent's choice not to. These different choices are not a basis for a costs order to be made.
10. For these reasons, the respondent's conduct of its defence to the claim does not fall within Rule 76(1) and so the claimant's application for a costs order fails.

Employment Judge Evans

Date **16 July 2021**