



EMPLOYMENT TRIBUNALS

Claimant: Christine Doddington

Respondent: Paul Poppy (1)
Sally Jane Poppy (2)
Brian Poppy (3)

Heard at: Norwich (on the papers) **On:** 16 July 2021

Before: Employment Judge Housego
Tribunal Member Gunnell
Tribunal Member Stones

Representation

Claimant: Doug Frame, solicitor

Respondent: Paul Poppy

JUDGMENT

The Respondents are jointly and severally ordered to pay to the Claimant costs assessed at £10,200.

REASONS

1. A successful claimant may claim costs. Rule 76 deals with this:

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; or

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

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing; and

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

(4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer's contract claim or application and that claim, counterclaim or application is decided in whole, or in part, in favour of that party.

(5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.

2. Costs do not follow the event in Employment Tribunals. For a costs order to be made against a party, that party must have behaved unreasonably (as described in Rule 76(1)(a)) or the case put forward by that party must have had no reasonable prospect of success.
3. If the Tribunal finds this to be so, the Tribunal must consider whether or not to make a costs order. The Tribunal then has a discretion as to whether to order costs or not. The Tribunal must consider all the circumstances when exercising that discretion.
4. If it decides to order costs it may summarily fix the amount, up to £20,000, or order detailed assessment of costs (Rule 76).
5. In this case, the Claimant points out, or asserts, that:
 - 5.1. The Respondents did not cross examine the Claimant despite the Judge explaining carefully and repeatedly the consequence of that.
 - 5.2. The 2nd and 3rd Respondents took no part in the case at all.
 - 5.3. The Respondents were unreasonable in not accepting at an early stage that the Claimant was disabled.

- 5.4. The Respondents simply wanted to put the Claimant to trouble and expense, as was apparent from the submissions and comments of Paul Poppy as the hearing progressed, which showed that he simply did not expect to win the case.
- 5.5. No meaningful defence was offered at any stage.
- 5.6. The time recorded cost exceeded £12,000, but a fixed fee had been agreed, of £8,577.50 (which included the disbursement of a medical report fee), so the claim was reasonable. Vat was sought in addition.
6. Paul Poppy responds that:
 - 6.1. He had never been in this position before, so that it was only lack of knowledge that caused him to act in any way that was wanting, and he apologised for lack of decorum during the hearing.
 - 6.2. He could not afford advice.
 - 6.3. He thought the Judge would investigate all the evidence.
 - 6.4. He now realised that he had not acted properly in dismissing the Claimant and apologised.
 - 6.5. They had paid the whole judgment, and it would take years to earn back that money.
 - 6.6. There had been adverse media coverage as a result of the case.
 - 6.7. The Claimant did not need to be represented by a lawyer.
 - 6.8. While he fully accepted the decision and reasons for it, there were elements of provocation by the Claimant.
 - 6.9. Sally Poppy was unwell, and Brian Poppy cared for her, which was why they took no part in proceedings.
7. The Judgment notes that only the 1st Respondent filed a response, but it was taken as being for all. Paul Poppy was of the view that it was nothing to do with him, as it was his mother, Sally Poppy, who employed Ms Doddington. He accepted that it was he who had dismissed Ms Doddington. There was no medical evidence to support his contention that she was unable to participate. Paul Poppy said that it was nothing to do with his father, Brian Poppy, as he had retired 5 years or so ago, even though he remained the licensee, and a tenant of the property run by the pub. These were contentions that it was unreasonable to make and which had no reasonable prospect of success.
8. Paragraph 22 records Paul Poppy saying that Brian Poppy was no longer a respondent, which was simply not the case.
9. Paul Poppy did not dispute that Ms Doddington had told Sally Poppy of her osteoarthritis, but said that he did not know of it. Since his contention was that

Ms Doddington was employed by Sally Poppy, the contention that the employer did not know of Ms Doddington's arthritis could not succeed.

10. Paul Poppy fully accepted that notice pay was due, and had no reason why it had not been paid.
11. In his final submissions Paul Poppy said that he fully expected a cost to the business, and that the Tribunal "had to do what it had to do" (paragraph 28 of the judgment).
12. The claim for unfair dismissal could not do other than succeed given the dismissal by text message (paragraph 36 of the judgment) and the reasons given at paragraph 49 of the judgment. The contradictions in the assertions that Ms Doddington was in the wrong in going to see Sally Poppy, because he was the manager, cannot sit with the contention that Sally Poppy was the employer. When appeal was mentioned, Paul Poppy said that would be to him, which is plainly unfair since he dismissed and said that he was not the employer.
13. All the witness statements were prepared by Paul Poppy, and it was doubtful that the 2nd and 3rd Respondents had ever seen them.
14. The Tribunal went to great lengths to explain that it was for the Respondents to challenge anything the Claimant said, and that if they did not it she was likely to win.
15. It is not correct that there was "*some provocation*" from the Claimant. The Judgment expressly so stated (paragraphs 49.5 and 50)
16. For all of these reasons the defence had no reasonable prospect of success, and the way the proceedings were conducted by the Respondents (by Paul Poppy in person, and by Sally and Brian Poppy ignoring them totally (paragraph 23 of the judgment) was unreasonable.
17. It follows that the Tribunal must consider making a costs order.
18. The Tribunal has considered all the circumstances. Without setting all of them out:
 - 18.1. It is not unreasonable to seek legal assistance for a disability discrimination and unfair dismissal claim.
 - 18.2. Given the attitude taken by the Respondents it was even more advisable for Ms Doddington to take legal advice.
 - 18.3. There is no reason why the Respondents could not have sought legal advice: the judgment has been paid in full (which is commendable), but it shows that they could have taken advice if they wished.
 - 18.4. There has never been any defence to the notice pay claim, but it was not paid.

- 18.5. The failures of the Respondent really are egregious. It is all very well (and welcome) that there is now an apology, but it is too late to affect the issue of costs, incurred long before.
19. The Tribunal takes no account of the statement by the Claimant's solicitor that there was a without prejudice offer to accept £9,500 which it is said the Respondent rejected, because it was not provided to the Tribunal.
20. The Tribunal decided that in these circumstances it should make an order that the Respondents pay costs.
21. The Tribunal considered the amount of the order for costs. It noted that a full timesheet had been provided, at a realistic hourly rate, showing that costs of over £12,000 were incurred, had the retainer been at an hourly rate. Sensibly, the solicitor and the client had agreed a fixed fee, of £8,500 plus vat. That was reasonable in advance for a 3 day case, and even if the time recorded was excessive it is most unlikely to have been less than the fixed fee agreed.
22. The receipt for the medical report was not provided, and it is not per se unreasonable to ask for medical evidence before conceding that a condition amounts to a disability (for example when a claimant is able to cope, but only because of the effect of medication). The Tribunal does not award that disbursement.
23. The Claimant is not able to recover vat.
24. Accordingly, the Tribunal orders the Respondents, jointly and severally, to pay to the Claimant £8,500 plus vat of £1,700, which is £10,200.

Employment Judge Housego

Date 19 July 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON
13 August 2021

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THY

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FOR THE TRIBUNAL OFFICE