



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**MR E TOMPKINSON**

**v**

**NEWTON FARMS**

**Heard at:** Watford (by CVP)

**On:** 14 July 2021

**Before:** Employment Judge Skehan

## **Appearances**

**For the Claimant:** Ms Beech, Pupil barrister (second six)

**For the Respondent:** Mr Isaacs, counsel

## **Costs Application**

1. The respondent's application for costs in accordance with Rule 75 to 79 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, Schedule 1 is unsuccessful and dismissed.

## **REASONS**

2. The respondent made an application for costs to be awarded against the claimant on the grounds of unreasonable conduct of the proceeding by the claimant (Rule 76(1)(a)). The respondent's application for costs related to those costs incurred after 1 July 2021. The respondent submitted that the claimant acted unreasonably in relation to negotiations between the parties where the claimant requested a settlement amount that exceeded the statutory cap. In particular:
  - a. On 1 July 2021 the claimant rejected an offer of £15,000 and requested a settlement figure of £32,000. The respondent calculated the maximum potential value of the claimant's claim was £24,275, based on the claimant's own figures and a sum of £32,000 was more than a tribunal could possibly award in the event of a successful outcome. The claimant did not negotiate in good faith.
  - b. On 2 July 2021 the claimant's solicitors described the claimant as 'super angry' and put forward a counter offer of £30,000. Again, the respondent says that this is substantially higher than the claimant could hope to recover in the event of a successful outcome, by reference to the statutory cap.

- c. On 2 July 2021, the respondent put forward a final revised offer of £20,000.
3. Ms Beech submitted on behalf of the claimant that this is the case where the claimant's earnings fluctuated. There were errors in compiling the schedule of loss however there were reasons for these errors. On her calculation, the maximum value of the claim was in excess of £28,000 but there was also significant value to the claimant in having this matter determined openly by an independent tribunal. The claimant considered that he had not had a fair hearing within his employment and there was substantial value to him in an employment tribunal judgement. There was no bad faith on the part of the claimant. Ms Beech acknowledged the outcome of the litigation but submitted that this was not a case where it could be said, nor was it argued, that there were little reasonable prospects of success. Further, these were last-minute offers of settlement, only two weeks before the final hearing, when the claimant had endured months of stress in preparing for hearing that have negatively impacted his mental health.
4. The tribunal has considered the respondent's application for a costs order under Rule 76 of the Employment Tribunal Rules. This is a two-stage process: Did the claimant act unreasonably in conducting the proceedings as alleged? While the respondent puts this application on the basis of unreasonable conduct by the claimant in putting forward a potential settlement figure in excess of that which could be awarded, this is a hypothetical scenario as the respondent did not put forward an offer stated to be the statutory maximum award. The respondent put forward a final offer of £20,000 and acknowledges that the statutory cap was at least £4000 in excess of this amount. Further I note that there is often genuine value to parties in having a public finding by the tribunal that a claim for unfair dismissal is 'well-founded'. I consider that the correct focus in considering the reasonableness of otherwise of the claimant's behaviour is to assess the claimant's conduct in relation to the offers put forward by the respondent. The offer of £20,000 was a reasonable one and it would have been reasonable for the claimant to accept it. However, this does not necessarily mean that it was unreasonable conduct of the litigation for the claimant to refuse this offer. This figure is at least £4000 and possibly as much as £8000 below the maximum compensatory award imposed by the statutory cap. I also accept that there may have been considerable value to the claimant in having an open public determination of his claim. In viewing the entirety of the information available, I do not consider that the claimant's actions can be described as unreasonable conduct of the litigation. For this reason, I do not consider that the employment tribunal has jurisdiction to make a costs order against the claimant.

5. For the sake of completeness, should I be wrong in relation to the above, taking the entirety of the circumstances of this matter, including the value of a hearing to the claimant and the late timing of the offers made, I conclude that that this is not the case where I should exercise discretion to make a costs awarded against the claimant.
  
6. These written reasons were requested by the respondent at the conclusion of the hearing.

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Employment Judge Skehan

Date: 28 July 2021

Sent to the parties on: ..18/8/2021..

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For the Tribunal Office