



EMPLOYMENT TRIBUNALS

Claimant: Mrs Alison Owen

Respondent: Ashfield Effluent Services Ltd

Heard at: Nottingham on 24 June 2021

AT AN OPEN PRELIMINARY HEARING BY CVP

Before: Employment Judge M Butler (sitting alone)

Representation

Claimant: No attendance

Respondent: Mr T Wilkinson, Counsel

JUDGMENT

On wasted costs order

1. The Judgment of the Employment Judge is that the Claimant's representative, Mr Grant Egan, is ordered to pay wasted costs to the Respondent in the total sum of £2753.70.

REASONS

1. By an order dated 16 April 2021, and sent to the parties on 28 April 2021, Mr Egan was required to show cause why a wasted costs order should not be made against him personally under Rule 80 of the Employment Tribunals (Constitution Rules of Procedure, Regulations) 2013. This arose because, having confirmed that he would attend the hearing 9 April 2021, Mr Egan failed to do so. By way of explanation for missing yet another hearing in relation to claims made against this Respondent, by email dated 26 April 2021 he said he was extremely unwell and unable to attend. As evidence of this, he produced a negative Covid -19 test. He said that a new member of his team, Miss Warner, had called the Tribunal to explain his non-attendance and that he would send a copy of her telephone records by way of

confirmation on 27 April 2021.

2. No such records were submitted to the Tribunal and Mr Egan's explanation is the last in a long line of explanations for missing a number of hearings in relation to this and other cases brought by other Claimants against this Respondent, none of which I find to be remotely reasonable.

3. In compliance with the order made by me dated 16 April 2021, the Respondent had submitted its schedule of costs incurred in attending hearings which Mr Egan failed to attend.

4. Rule 80 of the Rules of Procedure provides: -

1) *A Tribunal may make a wasted costs order against a representative in favour of any party ("The Receiving Party") where that party has incurred costs: -*

a. *As a result of any improper, unreasonable or negligent act or omission on the part of the representative, or*

b. *Which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.*

5. Rule 82 of the Rules of Procedure provides: -

"A wasted costs order may be made by the Tribunal on its own initiative or on the application of any party. A party may apply for a wasted costs order at any stage up to 28 days after the date on which the Judgment finally determining the proceedings has against that party was sent to the parties. No such order shall be made unless the representative has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application or proposal. The Tribunal shall inform the representatives client in writing of any proceedings under this rule and of any order made against the representative".

6. The Respondent made a timely application for wasted costs incurred as a result of attending two previous hearings which Mr Egan failed to attend. The claims brought by the Claimant in this matter were struck out for failure to comply with the Unless Order contained within my order of 16 April 2021.

7. Mr Egan was copied in on the Respondent's application for wasted costs and was sent a schedule of those costs. He did not attend the hearing today and I instructed a member of the Tribunal staff to contact him by telephone. There was a recorded message on Mr Egan's number saying he was unable to take calls. In the circumstances, I was satisfied that he had received due notice of today's application and details of how to join the video hearing.

8. Accordingly, I continued with the hearing and, having heard from Mr Wilkinson, decided it was appropriate to make a wasted costs order. I have previously noted Mr Egan's discourtesy to this Tribunal in failing to attend hearings. His explanations that he, for example, could not get through to the Tribunal, put the wrong date in his diary, and was ill, have not been substantiated by any evidence nor do I find them credible.

I conclude, therefore, that Mr Egan's conduct of these proceedings has been completely unreasonable.

9. I have reviewed the schedule of costs produced to me. I consider them to be eminently reasonable and properly reflect the amount of work undertaken by the Respondent's solicitors and their Counsel, Mr Wilkinson.

10. The breakdown of those costs is as follows: -

- (i) Solicitors costs in the sum of £1471.20 (inclusive of VAT);
- (ii) Counsels fees of £1282.50 (inclusive of VAT) to include £180.00 (inclusive of VAT) for today's hearing.
- (iii) The total sum due in respect of wasted costs is therefore £2753.70 and Mr Egan is ordered to pay this amount to the Respondent.

Employment Judge M Butler

Date: 24 August 2021

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

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