



EMPLOYMENT TRIBUNALS

Claimant: Mr J Keen

Respondent: Ice Telecommunications Ltd

JUDGMENT

The claimant must pay a sum of **£292** towards the respondent's costs.

REASONS

1. This is a decision on costs, further to an application made on the respondent's behalf at the final hearing in Birmingham on 16 January 2020.
2. By way of background, I refer to the Judgment of 16 January 2020 and the oral reasons given for it on the day, and to the order of the same date. The claimant did not attend the hearing, without warning or explanation. He had previously failed to comply with case management orders that had been made. He had, in fact, not communicated with the Tribunal (nor, to the best of my knowledge, with the respondent) since presenting the claim form on 14 August 2019. The respondent's in-house solicitor wrote to the Tribunal complaining about the claimant's non-compliance in October and November 2019, but unfortunately his emails were not referred to an Employment Judge until shortly before the hearing, in January 2020. Although a strike-out warning letter was issued, and was not responded to by the claimant, the claim was not struck out before the hearing.
3. The respondent wrote to the claimant on 10 January 2020 warning him that they were proposing to apply for costs and detailing costs totalling £2,090.00. I refer to that letter, which is, essentially, the costs application made at the hearing. It is made pursuant to rules 76(1) and (2), on the basis of the claimant's alleged unreasonable conduct and non-compliance with Tribunal orders.
4. Although I think it would have been entirely permissible in accordance with the Rules for me to have dealt with the costs application there and then, I thought I would give the claimant a further chance, particularly (being mindful of rule 84) to tell me about his ability to pay. The order I made was:

any further submissions or information which either party wants the Tribunal to take into account in relation to the costs application, including any information from the claimant about his ability to pay any costs (see rule 84 of the Employment Tribunals Rules of Procedure:

*<https://www.gov.uk/government/publications/employment-Tribunal-procedure-rules>), must be provided to the Tribunal and the other party in writing by **30 January 2020**.*

5. I also directed that I would deal with the application without a further hearing.
6. A copy of the order was sent by the Tribunal to the claimant on 21 January 2020. Nothing further has been heard from the claimant to date (6 March 2020).
7. I can deal with this relatively briefly. It appears that after presenting his claim form, the claimant lost interest in his claim and decided he was not going to pursue it. Had he withdrawn his claim when or shortly after he made that decision, that would not have been unreasonable conduct. However, I think it was unreasonable conduct for him, having decided not to pursue his claim, to have failed to tell the respondent and the Tribunal, meaning the respondent felt constrained to prepare for and attend the hearing. That unreasonable conduct is compounded by his failure to comply with any of the Tribunal's case management orders, or to respond to any of the Tribunal's correspondence, or to attend the final hearing, or to explain his non-attendance, or to communicate with the Tribunal at all.
8. We are therefore in a situation where I may award costs under rule 76. My main reasons for exercising my discretion to award costs in the respondent's favour, but only doing so to the tune of £292, are:
 - 8.1 The claimant has chosen to make no submissions in relation to the respondent's costs application, not even to say that he opposes it.
 - 8.2 The claimant has chosen to provide no information as to his ability to pay.
 - 8.3 I have no information explaining or mitigating or excusing the claimant's unreasonable conduct and failure to comply with Tribunal orders.
 - 8.4 Although the claimant was claiming a relatively modest sum of £600 or so, it was reasonable for the respondent to use in-house lawyers to deal with it.
 - 8.5 However:
 - 8.5.1. costs of £2,090 are disproportionate, it was unreasonable for the respondent's in-house solicitor to devote as much time to this matter as he apparently did, and it would not be reasonable to engage a lawyer charging as much as £201 per hour to deal with a case like this;
 - 8.5.2. a significant portion of the costs claimed are costs that would still have been incurred even if the claimant had withdrawn at an early stage, e.g. reading the claim form and drafting the response form;
 - 8.5.3. the respondent made a counterclaim which was, to my mind, misconceived and which they did not abandon until the final hearing;

- 8.5.4. it is possible that had the claimant withdrawn his claim the respondent would have withdrawn its counterclaim too, but by no means certain;
- 8.5.5. potentially, then, even if the claimant had withdrawn his claim, the respondent would still have been preparing for and attending this hearing;
- 8.5.6. nevertheless, had the claimant withdrawn his claim, the respondent's costs would in all probability have been quite a lot less;
- 8.5.7. the respondent could have saved itself a considerable amount by engaging a local agent to attend the hearing on its behalf;
- 8.5.8. £292 is 2 hours of a grade C fee-earner's time at the guideline rate of £146 per hour, being the amount of time I am satisfied it was reasonable and proportionate to spend that was wasted by the claimant's unreasonable conduct in this case.

Employment Judge Camp

06/03/2020