



EMPLOYMENT TRIBUNALS

Claimant

Mr I Gasrini

v

Respondent

Metroline Travel Ltd

Heard at: Watford by video (CVP)

On: 7 May 2021

Before: Employment Judge R Lewis

Members: Mr W Dykes
Mrs I Sood

Appearances

For the Claimant: No attendance or representation

For the Respondent: Written submissions

JUDGMENT

1. The claimant is ordered to pay to the respondent costs of £1,200.00.
2. The sums paid by the claimant as deposits are to be released to the respondent in part satisfaction of this judgment.

REASONS

1. The tribunal gives these reasons of its own initiative. It is in the interests of justice to do so as neither party took part in this hearing.
2. This tribunal heard and dismissed the claimant's claims of discrimination on the grounds of religion on 28 to 30 October 2019, reasons sent on 29 November. The respondent applied for costs, and the hearing of the application has regrettably been delayed by a number of factors including the first national lockdown.
3. The respondent had informed the tribunal that it relied entirely on its written submissions and would not take part in this hearing.

4. Notice of this hearing date was sent on 14 February 2021, and by letter of 4 May 2021, the parties were informed that the hearing would proceed by CVP.
5. The tribunal had had no communication from the claimant since October 2019.
6. The claimant did not join the hearing. At 9:59 am the tribunal clerk telephoned him on the mobile number given on form ET1, and reported to the tribunal that the number was “not recognised”. We therefore proceeded in the absence of the parties. The claimant had not replied in writing to the costs application.
7. This costs application was made under Rules 74 to 80 of the Employment Tribunal Rules. There are three steps to be considered.
8. The first step was whether or not the claim has been conducted unreasonably.
9. We decide that question with reference to the Order of Employment Judge Tuck of 24 June 2019, sent to the parties on 22 July. At paragraphs 13.5 and 13.6, Judge Tuck set out her analysis. She alerted the claimant to the fundamental flaw in his case. It was that he had produced no evidence to make good the proposition that the events in the case, about which he felt passionately, were related to the protected characteristic of religion.
10. Para 13.6 of Judge Tuck’s order was thoughtful and prescient:

“Ordering a deposit order as a condition to proceed with these four allegations of discrimination, I hope, will cause the claimant to reflect on the difference between having a very real sense of having been treated badly, and the difference between that, and being able to prove a prima facie case that this is because of his protected characteristic relating to his religion”.
11. This tribunal, hearing the matter some months later, made substantially the same finding. We recognised the claimant’s convictions and strength of feeling, but could see nothing in evidence to justify the proposition that the events related to the protected characteristic of religion.
12. Rule 39(5) states the following:

“If the tribunal at any stage following the making of a deposit order decides the specific allegation or argument against the paying party for substantially the reasons given in the deposit order the paying party shall be treated as having acted unreasonably in pursuing that specific allegation or argument”
13. We find that that is what has happened in this case. The claimant has lost the case on substantially the grounds on which he was ordered to pay a deposit. It follows that he is deemed to have conducted the case unreasonably. That being so, we do not need to make any further finding as to unreasonable conduct.

14. The second step is for the tribunal to ask whether a costs award is in the interests of justice. The tribunal must balance the competing interests involved; it is right that claimants have access to work place justice; it is also right that we safeguard employers from unmeritorious claims, and ensure best use of the finite resource of the tribunal. In this case, we have no hesitation in finding that the latter two considerations far outweigh the former, particularly in a case where the claimant has, despite guidance and a deposit order, pursued a claim which is entirely without merit.
15. We therefore find that it is in the interests of justice that a costs award should be made.
16. At the third stage, we ask what is the amount of the award to be made. The respondent put forward a costs schedule of over £6,000. We do not doubt that that is a genuine calculation of costs actually incurred.
17. We had no information about the claimant's means. We noted that at paragraph 13.7 of her judgment, Judge Tuck set out the information available to her about the claimant's means. That information was 22 months out of date at the date of this hearing. It indicated that at that time, first that the claimant's means were very limited; secondly that he had significant debt; and thirdly that he was working in a sector (driving) which was likely shortly afterwards to have been badly affected by the pandemic and lockdown.
18. We note that at the date of this hearing the claimant is aged 37, and lives in London, with access to areas of future job opportunities and economic activity. We are confident that he has earning capacity, which will enable him in due course to satisfy a judgment. Equally, we are confident in principle that impecuniosity alone should not enable a claimant to pursue unmeritorious claims without risk.
19. Balancing those matters together, we set the award at £1,200.00, on the understanding that £200.00 of that sum will be met out of the deposit funds paid by the claimant.

Employment Judge R Lewis

Date: 18 May 2021..

Sent to the parties on: 28 May 2021...

THY

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For the Tribunal Office