



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr W Adelaja**

**v**

**Atalian Servest Group Ltd**

**Heard:** By CVP

**On:** 18 November 2020

**Before:** Employment Judge Andrew Clarke QC (sitting alone)

## Appearances

**For the Claimant:** No attendance

**For the Respondent:** Mr K McNerney, Counsel

## JUDGMENT

1. Pursuant to Rule 76(1) of the Employment Tribunal Rules of Procedure the claimant is ordered to pay to the respondent the sum of £2,000 in respect of costs, the claimant having acted unreasonably in pursuing his claims for unfair dismissal and unpaid wages.
2. Pursuant to Rule 39(5)(a) the deposit of £50 which the claimant paid pursuant to the Order of EJ Lewis of 9 May 2019 shall be paid to the respondent in part satisfaction of the costs ordered to be paid by him in 1. above.

## REASONS

1. Sufficient of the procedural history of these four cases appears in my two earlier Judgments with Reasons in these matters. These were sent to the parties on 19 November 2019. I dismissed all of the claimant's claims.
2. In May 2019 the matter had come before EJ Lewis. He had made a deposit order (in the sum of £50) in respect of the unfair dismissal claim. His

reasons appear with the Order sent to the parties on 9 May 2019. He considered that the respondent was likely to demonstrate that the reason for dismissal was the claimant's persistent refusal to attend work and that the decision to dismiss would be found to be both procedurally and substantively fair.

3. My Reasons sent to the parties on 19 November 2019 show that the claimant's claims failed for the reasons foreshadowed by EJ Lewis. Hence, in respect of any application for a costs order under Rule 76, Rule 39(5)(a) provides that the claimant is to be taken as having acted unreasonably in pursuing the claims the subject of the Deposit Order unless the contrary is shown.
4. By letter of 17 December 2019 the respondent made a detailed application for a costs order. It sought the sum of £10,000, which reflected the costs of counsel's attendance at what had been listed as a 6 day hearing. I indicated that this could be dealt with on paper, if the parties agreed.
5. The claimant responded on 25 February 2020. He complained of bullying and intimidation by the respondent in making the application and characterised me as a "biased judge" who "oversaw an unfair and sham hearing". He made no other comments on the merits of the application and no comment on his ability to pay such a sum. There was no agreement to this being dealt with on paper.
6. I then gave directions to lead to a hearing of the application. The claimant was to submit a witness statement responding to the respondent's application and providing details of his means. The respondent then had a period of time to serve a response. Each was to attach any relevant documents.
7. By email of 28 September 2020 the claimant referred to ongoing appeals, complained of scare tactics by the respondent (in making the application) and complained that I was a biased judge who should not sit on his cases. He made no effort otherwise to answer the application, or to give details of his means. He did not attend the hearing today.
8. I am unaware of any ongoing appeals in relation to this matter and nor was counsel for the respondent. In any event, I do not consider that such should prevent this hearing from proceeding. The interests of justice require this application to be resolved.
9. Rule 39(5) provides that the claimant's conduct in proceeding with the claim is to be regarded as unreasonable (for the purposes of Rule 76(1)) unless the contrary is shown. I do not consider that there is anything before me which even begins to show that this presumption should be displaced. I consider that the claimant's unfair dismissal claim was wholly without merit. The same is true of his claims for unpaid wages. In short, he was seeking payment for work in respect of periods when he had repeatedly been offered suitable work, but failed and/or refused to undertake it. He was

dismissed for that persistent refusal to work against a background of a careful and patient investigation and consideration by the respondent in which the claimant fully participated. The basis for his claim had been reviewed in detail by EJ Lewis and a deposit order made and he had been warned by the respondent that it would seek costs if and when he lost his claims. In those circumstances, I consider that I should make a costs order in the respondent's favour.

10. I then turn to the issues of the amount of any costs order and, in that context, the claimant's ability to pay. I consider it sensible for the respondent to limit its application to the costs of counsel's attendance at the hearing. Those costs were incurred after the deposit order was made and when the claimant had been given the opportunity of considering the respondent's detailed evidence. Before me, the respondent has limited that application to £4,000, thus scaling back the actual costs to those which would be likely to have been incurred for a 2 day hearing (the parties did not attend on the third day when I gave my reasoned judgment).
11. In considering the amount of any order, I have reminded myself of the provisions of Rule 84 and the role of the ability to pay. I have very limited information as to the claimant's means. He has not taken the opportunity provided to him to provide further information.
12. I note that his schedule of loss served shortly prior to the November 2019 hearings made no reference to his having got another job. I also note that EJ Lewis made a deposit order in the sum of only £50. I also note that this is a case involving an employee to whom the respondent was prepared to offer work and who appears to have performed it satisfactorily when he actually undertook it. I consider that he is a person who ought to have been able to obtain work had he applied himself diligently. I know nothing about any assets that he may own.
13. In all the circumstances, I consider that it is appropriate to make a costs order in the sum of £2000. This represents half the cost of counsel's attendance at a notional 2 day hearing and is a sum that the claimant ought to be able to pay, albeit perhaps not all at once.

## **Conclusion**

14. The claimant is ordered to pay £2,000 to the respondent by way of costs. The deposited sum of £50 should be paid to the respondent and set off against that sum of £2,000, leaving a further £1,950 for the claimant to pay.

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Employment Judge Andrew Clarke QC

Date: .....27/11/2020.....

**Case Number: 3303048/2018  
3307212/2018  
3330799/2018  
3335636/2018**

Sent to the parties on: .....

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For the Tribunal Office