



EMPLOYMENT TRIBUNALS

Claimant: Mr M Ibeziako

Respondents: 1. Kerri Milner
2. Staff Call UK Ltd

Heard on 21 September 2021

Before: Employment Judge D N Jones

JUDGMENT ON APPLICATIONS FOR COSTS/PREPARATION TIME ORDERS

1. The application of the claimant for costs or a preparation time order against the respondents is dismissed.
2. The application of the respondents for costs against the claimant is dismissed.

REASONS

The Law

1. The jurisdiction of the Tribunal to make an order for costs or a preparation time order is contained in rules 74 to 84 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
2. The relevant provisions are:

Definitions

74:(1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing). In Scotland all references to costs (except when used in the expression "wasted costs") shall be read as references to expenses.

*(2) "Legally represented" means having the assistance of a person (including where that person is the receiving party's employee) who—
(a) has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in*

county courts or magistrates' courts;(b) is an advocate or solicitor in Scotland; or (c)is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

(3) "Represented by a lay representative" means having the assistance of a person who does not satisfy any of the criteria in paragraph (2) and who charges for representation in the proceedings.

Costs orders and preparation time orders

75(1) A costs order is an order that a party ("the paying party") make a payment to—

(a) another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;

(b) the receiving party in respect of a Tribunal fee paid by the receiving party; or

(c) another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal.

(2) A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing.

(3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings. A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

When a costs order or a preparation time order may or shall be made

76 (1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success; or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins].

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

Procedure

77 *A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.*

Ability to pay

84 *In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.*

The Applications

3 By an email to the Tribunal of 7 July 2021 the claimant made an application for costs against the respondents. The representatives of the respondents replied by email of 22 July 2021. They made an application for costs against the claimant.

4 The Tribunal informed the parties on 26 July 2021 that it would consider the applications by written representations and without a hearing and allowed both parties to submit further representations by 14 August 2021. The Tribunal permitted the claimant's application for an extension of time to submit written representations to 24 August 2021. Further written representations were made by both parties up to and including on the day of the hearing.

5 A notice of hearing was sent parties on 21 August 2021. That stated that the application made against the claimant for a costs order in favour of respondent would take place today. An amended notice of hearing was sent on 1 September 2021 to inform the parties that the application made against the respondent for costs in favour of the claimant would be considered today.

The history of the proceedings

6 The claim was issued on 8 January 2021. On 25 February 2021 Employment Judge Buckley identified the legal claims at a preliminary hearing and ordered a further preliminary hearing in public to consider [i] whether this and claim 1801093/2021 should be heard together, [ii] the application of the respondent to strike out the claim on the ground it was vexatious and/or had no reasonable prospect of success and [iii] whether the first respondent should be removed as a party from the proceedings.

7 On 15 April 2021 the claimant made a cross application for strike out of the response or alternatively a deposit order. On 20 April 2021 the Tribunal informed the parties that would be considered at the forthcoming hearing.

8 On 30 April 2021 the Tribunal dismissed the applications to strike out and the application of the claimant that the respondents should pay a deposit as a condition of being permitted to defend the proceedings. It allowed applications of the respondents for

deposit orders to be made against the claimant in respect of each of the seven legal complaints in the sum of £20 per claim.

9 The claimant withdrew four of the complaints by email of 8 May 2021 and these were dismissed on withdrawal 14 May 2021. The claimant paid the deposit in respect of the other three complaints. By email of the 22 June 2021 the claimant withdrew those three remaining complaints. Those claims were dismissed upon withdrawal by judgment issued on 25 June 2021. The deposits were refunded to him, albeit correspondence suggests the claimant does not wish to encash the cheque for £60.

The application of the claimant for costs

10. The Tribunal has no jurisdiction to make an order for costs in favour of the claimant because he was neither legally represented nor represented by a lay representative. The only jurisdiction relates to a preparation time order. The application is considered in that context.

11. The claimant alleges that the respondent unreasonably and vexatiously conducted the proceedings by applying to strike out his claims with a view to harassing him and in circumstances in which a high threshold is imposed in discrimination cases. In addition, he complained that the respondent had sought to defer the proceedings pending an application for a civil restraint order which was not proceeded with. The Tribunal did not postpone the hearing. The claimant says the respondent withheld disclosure and names of witnesses. In his recent written submission, he complained that the respondent breached data protection and confidentiality. He alleges there was a lack of evidence in support of the response and application of the respondent. He refutes issues raised in the response and says a witness was threatened. He complained about reliance in the pleaded response upon earlier litigation the claimant had been involved and when a costs order had been made against him. He complains that the respondent did not settle his claim when he made an offer through ACAS.

12 I do not accept that the respondents acted unreasonably or vexatiously in their conduct of the proceedings or in bringing an application to strike out the claims. The fact an application is not successful does not mean it was unreasonably pursued. (The claimant's own application to strike out and deposit orders were unsuccessful). The claims were inherently weak, and it was appropriate for a hearing to be listed to consider whether they should be struck out, the order made by Employment Judge Buckley. She could have rejected those applications without a hearing but chose not to do so; in my view appropriately. The claimant withdrew all of these claims and chose not to pursue them, notwithstanding he had initially paid a deposit in respect of three. That indicates that the interlocutory process was appropriate and proportionate. It avoided these weak claims proceeding to a final hearing.

13 I reject the suggestion that there was inappropriate conduct in seeking to defer the claim pending an application for a civil restraint order which, in any event, did not delay the proceedings. The claimant has pursued many unsuccessful claims in the Employment Tribunal in the past and the representatives of the respondents were entitled to pursue all reasonable avenues to protect their clients from unmeritorious claims. There was no unreasonable failure to disclose documentation at this stage of the claim. Offers to settle claims are covered by the without prejudice rule and discussions to settle the claim should not be referred to unless a party has expressly reserved the right to do so in a cost's

application. In any event, I could not find it unreasonable of the respondent to refuse the offer of the claimant in the light of the fact his claims have been withdrawn. The suggestion of misuse of data and breaches of confidentiality, threatening of a witness and comments about factual issues remain allegations which have not been determined.

14 There are no grounds to make a preparation time order under rule 76.

The application of the respondents for costs against the claimant

15 Although the claimant says this application was out of time, it was made on the 22 July 2021 which is within 28 days of the judgment dismissing the remaining claims, on 25 June 2021. It is in time.

16 The respondents say the claims had no merit, and the claimant subjected them to a lengthy campaign of harassment by way of vexatious conduct in these proceedings, was personally abusive and sent voluminous unnecessary correspondence, leading to legal costs of over £71,000 in the first instance and a further sum in excess of £18,000 in respect of these applications.

17 Whilst I accept there is force in the argument that the claimant has conducted the proceedings unreasonably, I am not satisfied that a costs order should be made against the claimant having regard to his ability to pay, or rather inability to pay one. That is a factor I may take into account under rule 84 and, in this case, I consider it appropriate to do so. By email of 15 September 2021, the claimant has submitted circumstances relating his indebtedness, which it is unnecessary to recite in these reasons. I do not consider it proportionate to conduct a further enquiry into those circumstances.

Application for recusal

18 At the very conclusion of his email of 17 September 2021, which is a witness statement to support his application, the claimant states that he renews an application to recuse me from considering these proceedings. It does not contain any particulars for the application but is stated to be a renewal of an application sent to Regional Employment Judge Robertson which was refused and communicated to the parties by letter of 20 August 2021. Regional Employment Judge Robertson refused a request for reconsideration of that application on 15 September 2021. The application is refused for the same reasons set out by Regional Employment Judge Robertson.

Employment Judge D N Jones
Date: 21 September 2021
Judgment and reasons sent to the
parties on:
Date: 22 September 2021