



EMPLOYMENT TRIBUNALS

Claimant

Mr RS Pandey

v

Respondent

Rolta UK Limited

Heard at: Bury St Edmunds (by CVP)

On: 05 August 2021

Before: Employment Judge KJ Palmer

Appearances

For the Claimant: Mr D Jones (Counsel).

For the Respondent: Mr J Sadler (Solicitor).

JUDGMENT PURSUANT TO AN APPLICATION FOR COSTS

It is the Tribunal's Judgment pursuant to the claimant's application for costs in this matter that the application succeeds. The Tribunal makes an award of costs in the sum of £20,000 payable by the respondent to the claimant.

REASONS

1. This is an application for costs made by the claimant pursuant to a claim by the claimant which resulted in a Judgment in the claimant's favour. The full merits hearing on liability took place on the 14 & 15 December 2020 and subsequently there was a remedy hearing which took place on the 29 March 2021. The claimant seeks an order for costs against the respondent based on the rules set out in the Employment Tribunal Constitution and Rules of Procedure Regulations 2013 Schedule 1 and in particular rule 76.

2. Rule 76 says that the Tribunal may make a costs order or a preparation time order and shall consider whether to do so where it considers that 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.
3. The claimant asks me to find that the behaviour of the respondent in these proceedings was both vexatious and unreasonable thus falling into two of the descriptions in rule 76(1)(a). The claimant made that application in writing pursuant to the issue of the remedy judgment and that application was made and sent to the Tribunal in a letter dated 7 May 2021. The respondent resists that application and as a result the matter was referred to me and I caused the matter to be set down for a hearing which is why we are here today.
4. I had before me Mr Jones of counsel representing the claimant and Mr Sadler who is a solicitor representing the respondent. I heard submissions from both Mr Jones and Mr Sadler, and I had before me a very helpful bundle which included a copy of the full written reasons of my liability judgment and a copy of the summary of the remedy hearing judgment together with this application and the refutation in writing and various other documents passing between the parties during the course of these proceedings including some without prejudice documents. I also had in front of me a costs schedule which was produced by those instructed by the claimant and that showed that costs incurred in this matter ran to some £37,700 including counsel's fees and other disbursements and VAT.
5. I should point out that the claimant is not seeking an order for costs for the whole amount of that schedule as that exceeds the maximum that I am entitled to award under rule 78 of the Employment Tribunal Rules of Procedure. Under 78(1)(a) I can make an award of up to and not exceeding £20,000. There is a facility for costs to be referred to be determined by way of detailed assessment under rule 78(1)(b) but the claimant is not seeking that, they are seeking an order up to the maximum I am empowered to award under 78(1)(a) albeit that the schedule goes to over £37,000.
6. Mr Jones asked me to consider that this is a case which is exceptional, he accepts and indicates that on the authorities and under the principles that govern Employment Tribunals it is exceptional for costs to be awarded. He asked me to consider that this is an exceptional case. There is a plethora of authorities dealing with costs cases. Under rule 76 there is essentially a three-stage test which a Tribunal has to go through and this was the test that was set out in the case of Millin v Capsticks Solicitors LLP and Justice Langstaff set out the three-stage test and it is as follows:
 - 6.1 Has the putative paying party behaved in the manner prescribed by the rules?

- 6.2 If so, the Tribunal must then exercise its discretion as to whether or not it is appropriate to make a costs order.
- 6.3 If it decides that a costs order should be made it must decide what amount the costs order should be.
7. So that is the three-stage test before me. I am referred in the application and also in submissions by Mr Jones to passages and paragraphs of my Judgment given in December 2020 on liability and he directs me to various passages of my Judgment. I have been able to read my Judgment again today as well so I am well able to recall those passages and to recall the hearing on 14 & 15 December.
8. Mr Sadler on behalf of the respondent asks me to consider that this is not a case where the threshold for rule 76 has been crossed. He says that there were plenty of reasons for the respondent to believe that they had a viable case to defend. He accepts that at the time that the hearing took place in December the respondent had only produced one witness and that was a Mr Roy, who as I have indicated in my Judgment could give little or no cogent evidence as to the events which led to the dismissal. The respondent was proposing to at one point to call three witnesses to give evidence, a Mr Garg, a Miss Pulusani and potentially a Mr Singh who is the overarching boss of the respondent's group but ultimately only Mr Roy gave evidence. The others chose not to attend or even give a proper witness statement.
9. Mr Sadler entreats me to accept that it was not really within the respondent's ken to determine that this was a case they could not win until such time as the hearing took place and Mr Roy was under cross examination and admitted certain issues. He also says that the respondent was ready and willing to get on with the hearing at a previously adjourned hearing in November 2019 but that that hearing was converted to a preliminary hearing for case management discussion when the claimant sought to add in a further respondent.
10. We were also able to dissect and discuss the process whereby witness statements were exchanged and they were exchanged on three separate occasions and I have been asked to consider whether in the circumstances of considering an amount of costs should I make an award of costs over the whole period of time that those representing the claimant were instructed in this matter or only a part of it. It has been suggested that costs post the exchange of witness statements might be a reasonable consideration and that was a suggestion put forward by Mr Jones and of course Mr Sadler has said that the postponement of the hearing on 29 November falls at the claimant's door and therefore arguably there are costs there that would not otherwise have been incurred but for the claimant's behaviour.
11. Well I have considered very carefully what both Mr Jones and Mr Sadler have said and I have re-read my Judgment, and I am in no doubt that this is very much an exceptional case.

12. It is very clear that those who controlled the Rolta Group and that includes Rolta UK Limited take a very flamboyant and flippant view of these proceedings. I made a comment in my original Judgment that the style of management of Mr Singh, who is the ultimate boss of the Rolta Group, was dictatorial and in fact Mr Sadler agreed with that today and said that that was probably an accurate description. He said that management style in India was perhaps somewhat different to English companies and he gave an explanation as to why ultimately when proceeding with this case the respondent produced only Mr Roy who had very little cogent evidence to give and chose not to produce by CVP to give evidence Mr Garg, Miss Pulusani and Mr Singh. In fact Miss Pulusani and Mr Singh gave simply one line witness statements which were or no value at all to the respondent and were akin to producing no evidence at all.
13. Mr Singh was the individual who conducted the dismissal. It was essential for Mr Singh to give evidence in these proceedings if the respondents were to have any realistic hope. The fact that they chose not to do so was really just indicative of the way in which these proceedings have been considered by the respondent and the way in which they have been dealt with in such a flippant manner and disrespectful manner. That reflects the way in which the dismissal was dealt with and the way in which Mr Pandey was treated by the respondent and so therefore I have absolutely no doubt that the unusual step of making an award for costs in these proceedings is justified and that the respondent certainly acted vexatiously and unreasonably in the conduct of these proceedings.
14. The respondent knew from the outset that this was a case that they could not win. Mr Singh conducted the dismissal and went through absolutely no process whatsoever in the conduct of those proceedings. I must say that absolutely no blame must be attached to those who have represented the respondent in this case and that includes the solicitors who were instructed and of course Mr Self, counsel who appeared at the first two hearings. I have absolutely no doubt that they did all they could to properly advise those instructing them but it is very clear from the processes that I have seen in this case and from what Mr Sadler has said today that there was a dictatorial chain of command from Mr Singh and very little was forthcoming. This is not an application against those representing the respondent, this is an application for costs against the respondent themselves and it seems clear to me right from the very outset that the respondent could have dealt with these proceedings in a very different way.
15. So, I conclude that the respondent did behave vexatiously and otherwise unreasonably. Further I do decide to exercise my discretion in this case. I do think it is a very unusual case. Mr Pandey was put to great expense and to a great amount of time, effort and trouble in pursuing this case and that extended over a considerable period of time. I do believe that the respondent could have dealt with this very differently.

16. In deciding to exercise my discretion I have considered the fact that the claimant costs are to some extent covered by legal expense insurance and albeit that I have no doubt he will end up having to pay some part of the bill, the vast majority of the fees will be covered by legal expense insurers and I have considered that but I do not think that that changes the picture in this case significantly.
17. I then have to consider what the amount of the award of costs should be in this case and that is where it has been more difficult for me to reach a conclusion. The question is should I make an award for costs from the start to the very end of the process and that includes the preliminary skirmishes that always take place between parties when solicitors are instructed and they send letters before action usually straight to the respondent and then ultimately at some point in the future proceedings are issued and in this case it was after proceedings were issued that the respondent's solicitors were instructed.
18. There are circumstances where one can pick apart the process throughout the period of time from the beginning of instruction of the claimant's lawyers through to the terminus of the proceedings where both parties perhaps could have managed matters somewhat better and costs could have been saved, but I think it is clear in this case that the fault lies with the respondent throughout this whole process.
19. Mr Pandey clearly pursued his legitimate claims for compensation due to the wholly unmerited dismissal of him by Rolta and throughout the respondent has done everything they could to obfuscate and frustrate his efforts including the fact that they have still not paid the claimant the amount that I awarded at the remedy hearing on 29 March this year. That obfuscation clearly continues.
20. I do not accept Mr Sadler's argument that the failure of the hearing on 19 November 2019 to proceed as a full merits hearing falls at the door of the claimant. In fact quite the opposite appears to be the case to me and that is that the respondent had advanced what turned out to be an entirely bogus and unmerited argument that the claimant was not employed by Rolta UK Limited but was employed by one of the Rolta Group companies and it was that that caused the claimant to have to join in a second respondent thus causing the adjournment of that hearing on 19 November. When the matter came finally before me at the full merits hearing Mr Self barely advanced an argument against the assertion that jurisdictionally this Tribunal was able to hear the claim against Rolta UK Limited and very little opposition was put up by the respondent on that jurisdictional point. So in my Judgment that is just further evidence of the respondent attempting to drag this case out and avoid facing the music with respect to the way in which the claimant was treated.

21. So for those reasons I have absolutely no hesitation in awarding the claimant the costs that he seeks today and I therefore make a costs order in the sum of £20,000 to be payable by the respondent to the claimant.

Employment Judge KJ Palmer

Date: 06 August 2021

Sent to the parties on:

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For the Tribunal Office