



# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr Saidali Khakimov

Nikko Asset Management Europe Limited

## JUDGMENT ON COSTS APPLICATION

The Claimant is ordered to pay the Respondent £7,500 in costs in respect of the Interim Relief Hearing that took place on 26 April 2021. Payment is to be made within 28 days of the date this Judgment is sent to the parties.

## REASONS

### Background

1. At paragraphs 64-73 of my Judgment on the Claimant's Application for Interim Relief dated 26 April 2021 I decided that the Claimant had conducted himself unreasonably in relation to that hearing and that this had "*resulted in the Respondent having to prepare, at speed and considerable cost, for an interim relief hearing, in order to defend itself against an application that stood no reasonable prospect of success*". I therefore found the threshold test for the making of a costs order against the Claimant to be satisfied, subject to consideration of his means. I gave case management directions as follows:-

- (5) The Claimant must within 7 days of the date that this judgment is sent to the parties:
  - a. provide a witness statement setting out details of his financial means, including any income, savings or property; or

b. if he does not wish his means to be taken into account in determining whether to make a costs order and, if so, in what amount, then he must within the same timeframe confirm that to the tribunal; and,

c. whether or not he provides information as to his financial means, he may set out any further submissions that he wishes to make, in the light of the matters already determined in this judgment, regarding the question of whether a costs order should be made against him and, if so, in what amount.

(6) The Respondent may provide any response that it wishes to the Claimant's submissions within 7 days of receipt of the Claimant's submissions/statement.

(7) The costs application will then be finally determined on the papers by Employment Judge Stout.

2. By email of 6 May 2021 the Claimant indicated that he would be applying for reconsideration as well as appealing against my judgment on the Interim Relief application. He nonetheless indicated that he was 'hereby' providing his "*witness statement as a private and confidential document strictly to be used for the forementioned assessment and with NO permission to be released to public, neither by the Tribunal nor by the Respondent*". His email contained some details about his financial means, but no witness statement was attached to it.
3. By email of 12 May 2021, the Respondent provided submissions regarding the Claimant's email.
4. By a judgment dated 1 July 2021 I determined that the Claimant's application for reconsideration should be refused. I further ordered as follows:-
  - (1) The Claimant's witness statement that he intended to send in response to paragraph (5) of the Order sent to the parties on 29 April 2021 did not reach the Tribunal. The Claimant must re-send it within 7 days of the sending of this judgment to the parties. If he does not do so, the costs application will be finally determined without reference to it.
5. The Claimant did not send anything further in response to that Order.
6. By email of 15 July 2021, the Respondent re-sent the comments it had provided previously on 12 May 2021.
7. I apologise to both parties for my delay in dealing with this matter which is a result of the summer vacation.
8. On revisiting the file, it seems to me that I may have misunderstood the Claimant's email of 6 May 2021 and that he in fact intended that email to constitute his 'witness statement'. It is on the basis that it is his 'witness statement' (or in any event that it is the only submission that the Claimant has made in response to my order of 26 April 2021) that I now complete my consideration of the Respondent's cost application.

**Rule 50**

9. I am mindful of the Claimant's request that his 'witness statement' should be kept confidential, which is in effect a request for a Rule 50 order to be made in respect of that statement and its contents. The statement itself is not yet a public document having not been submitted as part of a public hearing. This is, however, a public judgment and I therefore consider whether a Rule 50 order should be made in respect of any part of this judgment.
10. I do not consider that it is necessary in the interests of justice or in order to protect the Claimant's Convention right to private and family life under Article 8 of the European Convention on Human Rights to avoid all reference to the content of that witness statement in this public judgment.
11. In this respect, I accept that information about the Claimant's finances is personal to him and that disclosure of it to the public may engage his rights under Article 8. This is because that information in my judgment constitutes his 'personal data' under the *General Data Protection Regulation 2016/679 (GDPR)* and the *Data Protection Act 2018 (DPA 2018)* (compare *Rechnungshof and ors v Österreichischer Rundfunk and ors* (C-465/00, ECR 2003 I-04989) where the CJEU held that information about a person's pay was their personal data (ibid, at [64])). The purpose of the data protection regime is to protect the rights of individuals under Article 8 of the Convention: see *Criminal Proceedings against Lindqvist* [2004] 2 WLR 1385, Case C-101/01 at [7]. It does not follow that everything that constitutes someone's 'personal data' will inevitably engage their rights under Article 8 since personal data of which someone has no reasonable expectation of privacy will not engage Article 8 (cf *Campbell v MGN Ltd* [2004] 2 AC 457, as explained in *Khuja v Times Newspapers Ltd and ors* [2017] UKSC 49, [2019] AC 161 at [21]-[22]), but in this case I accept that the Claimant reasonably expects in the light of his request for confidentiality that the information he has provided in an email sent to the Tribunal outside a public hearing will remain confidential. His Article 8 rights are therefore engaged, albeit that the information in question is not particularly sensitive and the consequences for him of it being made public would be fairly minimal, so that.
12. However, I must as required by Rule 50(2) give full weight to the principle of open justice and the Convention right to freedom of expression. The principle of open justice includes that the reasons for judgments be made available to the public. In this case, that requires that I include in this public judgment some limited elements of the information that the Claimant provided in his email in order to explain my reasons for the decision that I have reached on the Respondent's costs application. That public interest outweighs in this case the Claimant's Article 8 rights.

**Further consideration of the costs application**

13. Further to my Judgment of 26 April 2021, the issues on the costs application remaining for me to decide are: (1) whether I should order costs to be paid in the light of the Claimant's unreasonable conduct as I found it to be previously; and (2) if so, in what amount.
14. In the Claimant's email of 6 May 2021 he says that he has not earned anything since October 2019 and is in receipt of Universal Credit. He bought a house in 2018 with an 85% mortgage, on which he says he "*was only 10 month in repayments when I fell ill in Apr 2019*", which I take to mean that he has fallen behind with the mortgage payments. He says he is "*about to loose my house too*". He has provided no documentary evidence in support of these statements, but nor has the Respondent provided any documentary evidence in support of its assertion that the Claimant's property is valued at £750,000 such that a 15% stake in it is likely to be worth in the region of £112,500. The Claimant has not declared what savings he has, but I infer from the Claimant's statement that he has fallen behind on his mortgage payments that he does not have much in the way of savings.
15. While the information provided by the Claimant is not supported by documentary evidence, nor verified by a statement of truth, I am prepared to accept that in broad terms it reflects his financial means and that he is currently living on benefits, and has minimal savings albeit that he is currently still in possession of a house in respect of which he has some equity.
16. Given the extent of the Claimant's unreasonable conduct as I previously found it to be, and the very significant costs that caused the Respondent to incur, the information about the Claimant's financial means does not persuade me that I should not make a costs order in the Respondent's favour, but it does persuade me that I should keep the amount of that costs order modest.
17. So far as the amount of costs, the Claimant has not taken the opportunity given to him to make submissions about the amount of costs claimed by the Respondent. In my judgment the costs claimed are reasonably incurred and reasonable in their amount for the work that was done to prepare for the interim relief hearing, and particularly given that only a proportion of those costs have been claimed because the Respondent has accepted that the £20,000 cap for summarily assessed costs should apply. However, I nonetheless consider that costs of more than £20,000 for an interim relief hearing in the employment tribunal are disproportionate to the issues at stake and the nature of the claim, especially given that this is normally a jurisdiction in which each side bears its own costs. Unlike an interim relief application in a restraint of trade claim in the High Court where the grant of relief may in fact render a full trial otiose, in the Employment Tribunal the grant of interim relief (although a significant step because the Respondent may then be liable to pay the Claimant until trial) is only ever a staging post on the way to a full hearing. In jurisdictional terms, it is the inverse of a strike out: a summary assessment of the merits of the claim.

18. In the circumstances, I am not going to order the Claimant to pay the full £20,000. This is for three reasons: first, because I consider for the reasons set out above that the costs incurred are disproportionate to the issues at stake; secondly, because of the Claimant's limited financial means; and, thirdly, because the costs relate to an interim relief application which, although it was unreasonably pursued, nonetheless only represents the first stage in this litigation in which the Claimant may yet ultimately be successful and the level of costs awarded should not be such as would serve to stifle his claim altogether.
19. This is necessarily a rough-and-ready exercise, but I consider that the appropriate and proportionate amount is £7,500. I am satisfied on the basis of the limited evidence provided that this is an amount that the Claimant should be able to find the means to pay (from his property or any savings or on a longer-term arrangement through his benefit payments) so that it is unlikely of itself to stifle his claim. I also consider that it is a large enough amount to reflect the extent of the unreasonable conduct and provide the Respondent with some (albeit limited) recompense for the costs that it had to incur because of the Claimant's unreasonable conduct.
20. I will order that sum to be paid within 28 days, which is two weeks' longer than the norm to allow the Claimant a reasonable period to pay without undue further delay given the delay there has already been in concluding this judgment.

---

Employment Judge Stout

14 September 2021

JUDGMENT & REASONS SENT TO THE PARTIES ON

14/09/2021

FOR THE TRIBUNAL OFFICE