

RM



EMPLOYMENT TRIBUNALS

Claimant: Mr B Uddin

Respondents: (1) BGC Technology International Limited
(2) Ms D Patel
(3) Mr A Agosta

COSTS JUDGMENT

1. The Claimant is ordered to pay £7,706 legal costs to the Respondent, pursuant to Rules 74-84 Tribunal Rules 2013 because (a) the Claimant acted vexatiously or otherwise unreasonably within Rule 76(1)(a) in the way he has conducted his claim (or part) and (b) certain claims had no reasonable prospect of success within Rule 76(1)(b).
2. The date the Claimant must pay this amount is 14 days from the date of this judgment, under Rule 66 of the Tribunal Rules 2013.

REASONS

1. Following the Tribunal's judgment dated 28th January 2021 (unchanged on reconsideration) the Respondents made an application for costs under Rule 76(1) of the Tribunal Rules 2013 by letter dated 4th March 2021. The Claimant resisted that application in emails dated 10th March 2021 and 25th March 2021. He was given the opportunity to make raise any further points by letter from the Tribunal dated 1st April 2021 including any updated information in relation to his ability to pay a costs order (with any relevant supporting documents), given the previous information about his finances dated back to the hearing on the first claim in October 2020.
2. The Claimant responded with four emails, two of which were not copied in to the Respondents (one of these was however copied to the ICO).
3. The two emails copied to the Respondents were dated 8th April 2021 at 23.40 and 23.45 and attached the Claimant's response to the costs application (dated 8th April 2021), three 'extract' audio files and a 186 page bundle.

4. Of the two emails not copied to the Respondents, the first email was dated 8th April 2021 at 23.48 and attached three 'audio-complete' files and a 'private bundle' (which bundle the Claimant referred to in his response to the costs application). The second email (without any attachments) not copied to the Respondent was dated 11th April 2021 at 12.18 referring to the Respondents' failure to engage in mediation, including via ACAS.
5. I have not opened or read or taken into account the attachments to the emails which were not copied to the Respondents. The reason for this has already been explained to the Claimant – see Reconsideration judgment (paras 2-4) dated 8th April 2021.
6. The Respondents claimed £12,565 being Counsel's fees for dealing with the claim between 30th September 2020 and up to and including the brief fee for the hearing on 28th January 2021. The Respondents did not claim any internal legal costs incurred by the First Respondent's in-house solicitor.

Relevant law

7. The relevant Tribunal Rules are Rules 74-84 of the Tribunal Rules 2013. Costs in the Employment Tribunal are the exception rather than the rule and there is a high threshold.
8. There is a two stage test, to consider firstly whether the relevant ground under Rule 76 is made out and then if it is, secondly whether the Tribunal should exercise its discretion to award costs.
9. The Tribunal may (but is not required to) take into account the paying party's ability to pay in deciding whether to make a costs order and if so in what amount (Rule 84).
10. *Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420* requires the Tribunal to consider all the circumstances as a whole. and *McPherson v BNP Paribas [2004] IRLR 558* establishes the need to consider the nature, gravity and effect of the claimed unreasonable conduct.
11. In *AQ Ltd v Holden 2012 IRLR 648* the EAT stated that the threshold tests governing the award of costs are the same whether a litigant is or is not professionally represented, but that the application of those tests should take this factor into account. However, a litigant in person can be found to have behaved unreasonably even when proper allowance is made for their inexperience and lack of objectivity.
12. There is also Presidential Guidance on costs (Presidential Guidance; General Case management – Guidance Note 7 Costs) which I have taken into account.

Findings relevant to costs application

13. I find the following to be vexatious or unreasonable behaviour by the Claimant in the way the proceedings (or part) have been conducted; the claims which had no reasonable prospect of success are also identified:

- Behaviour at the hearing on 28th January 2021 inconsistent with the duty to cooperate with the Tribunal under Rule 2 (judgment paras 6-7)
- Including a claim about events at the end of 2016 and 2017 when these were clearly out of time by some three years by the time this claim was presented and in circumstances where there was a clear gap of around two years until the next events complained of meaning that any argument as to a continuing act was highly unlikely to succeed (judgment paras 13,16, 36.1,36.2) (also no reasonable prospect of success)
- Claiming a policy amounting to harassment by the First Respondent after March 2017 (which policy he said was to block any further work by him for the First Respondent) when in fact Mr Lewis contacted the Claimant about further work in October 2017 (judgment para 15) (also no reasonable prospect of success)
- Claiming inconsistently that he was willing to work for the First Respondent again when he was contacted in October 2017 despite the degree of upset and distress he claimed from the events at the end of 2016 and in March 2017 (judgment para 15)
- Claiming he was inhibited due to his mental health from being able to bring this claim in time when he was able to start and continue to conduct multiple County Court proceedings, present his first Tribunal claim in time and continue to work (judgment paras 18,24, 36.4)
- Not including these claims (to the extent they had arisen, which on his account the majority had by December 2019) in his first Tribunal claim presented on 10th December 2019 (judgment para 18) and then delaying between February 2020 when the County Court defence made it clear as to where any discrimination claim should be brought and August 2020 when he presented this claim (judgment para 18, 36.5)
- The only event claim potentially in time was in May 2020 (judgment para 19.6) which lacked substance and was struck out (para 38)
- The “to present’ technique as a way of keeping his claim alive (judgment para 20,36.6)
- His production of partial documents as his medical evidence (judgment paras 23, 36.3 reconsideration paras 6-12) when he had and was able to produce the full document
- His redacting approach to emails (judgment para 25-26) leading to disclosure compliance concerns (para 27)
- Making two amendment applications as a way to reinvigorate the claims due to the time limit issue (judgment para 53) (and amending these applications further on the day of the hearing)
- Again using the ‘to present’ technique in the amendment applications (judgment para 55)

- Including claims in the amendment applications which were misconceived (judgment para 43.1, 43.5,44.1, 44.2,44.3,44.4, 44.5).

Whether to make a costs award

14. I have taken into account the following factors in deciding whether to award costs under Rule 76(1)(a) and/or Rule 76(1)(b):
- The above matters amount to vexatious and/or unreasonable behaviour within Rule 76(1)(a) in the way the claim (or part) has been conducted
 - As identified above certain of the claims additionally had no reasonable prospect of success within Rule 76(1)(b)
 - The Claimant was not legally represented at this hearing but produced two detailed amendment applications, a skeleton argument and a witness statement from which it was evident he had some legal help; he is also an experienced litigator
 - The Claimant was aware he was already putting the Respondents to significant legal costs in dealing with his County Court claims and the first Tribunal claim, meaning he was also therefore aware legal costs would accrue on this claim and that due to the multiplicity of his claims and their overlapping factual nature the costs on this Tribunal claim were likely to be higher because of the need to also consider those other claims when dealing with this claim.
15. As to whether I should exercise my discretion to award costs I have taken into account the Claimant's ability to pay. In his response to the costs application (para 40) the Claimant provided some limited further details of his finances as follows: he says he earns £6,000-£8,000 per month when working full time but says he is currently working reduced hours (unspecified as to how many and to what this reduces his earnings to and without producing supporting documents). He says he has no debts apart from the costs award in the County Court which is under appeal; he does not refer to any dependent partner or children but only rather vaguely to other family members who are 'in some ways' (unspecified) dependent on him (unspecified as to extent). He confirmed the information provided in the first claim (28th January hearing bundle page 79) as to having savings of £100,000-£150,000 when he also said he has a half share in a property worth £200,000 (though he confirms now he has no mortgage). He referred in his initial response to the costs application (email dated 10th March 2021) to having himself incurred £50,000 in legal costs since the 28th January 2021 hearing which does not however appear to have reduced his savings or created a debt. He has given a range of £100,000 to £150,000 for his savings and given he can check what he has, I assume that his saving are the higher figure.
16. The Claimant refers to his charitable giving (para 41). This is not relevant to whether to make a cost award or, if making one, how much it should be for.
17. The Claimant clearly has the means to meet a costs order and does not himself say he cannot.

18. The Claimant refers to various settlement discussions (paras 11-19) but these all predate the presentation of this claim. The only discussion after presentation of this claim he specifically refers to is in October 2020 (para 19) but refers to both parties unable to agree on the other terms, even if the amount was considered acceptable to the Claimant. I do not consider that the Respondents have therefore accrued legal costs unreasonably or excessively in defending this claim or been unwilling to explore alternatives.
19. Weighing it up I conclude that the high threshold is met for a costs award to be made and that I should exercise my discretion to award costs against the Claimant and in favour of the Respondents.

Amount of costs award

20. I award 75% of the costs incurred from and including 4th December 2020 amounting to £7,706 (ie 75% of £525 plus brief fee £9,750). The costs are awarded from this date because this was the date of the Claimant's first amendment application which was designed to try and keep his claim alive and which was followed by the second amendment application. Whilst there were multiple relevant behaviours (see above) this was the point in particular it is just to award costs from because it is the point at which the costs were going to go up steeply in preparation for and in attending the hearing, which costs were significantly exacerbated by the Claimant's approach to this claim. The percentage of 75% is to take into account that had the Claimant not taken the approach he had, some costs would still have been incurred.
21. I have taken into account that Counsel's fees on this claim will be higher because of the need to factor in and cross reference to the other claims the Claimant has brought, involving a multiplicity of other relevant documents. However that is a consequence of other claims the Claimant had already brought by the time of presentation of this claim and were part and parcel of the way the Respondents had to approach this claim.
22. I also take into account the Claimant's ability to pay. He has the means to meet an order of this amount.
23. The costs are payable by the Claimant within 14 days of this judgment.

Employment Judge Reid
Date: 19 April 2021