



EMPLOYMENT TRIBUNALS

Claimant: Ms M Jilley

Respondent: Cornerstone Healthcare Group Ltd

Dealt with by way of written submissions **On:** 9 September 2021

By: Employment Judge C H O'Rourke

COSTS JUDGMENT

The Claimant is ordered to pay the Respondent's costs, in the sum of £8,978.00

REASONS

Background and Issues

1. Following a preliminary hearing on 6 July 2021, the Claimant's claim was struck out and she was ordered to pay the Respondent's costs, in a sum to be assessed.
2. In order for the amount of costs to be determined, the parties were ordered to do the following:
 - 2.1 By no later than 27 July 2021, the Respondent to provide a copy of its costs schedule and any related documents to the Claimant and the Tribunal, with which it complied;
 - 2.2 By no later than 17 August 2021, the Claimant to provide a response, or challenge to the amount of costs claimed and also documentary evidence as to her ability to pay any such order (Rule 84), to include recent bank and pay statements and evidence of outgoings and debt repayments, copied to the Tribunal and the Respondent, with which she did not comply in any way, no correspondence being received from her.
 - 2.3 The Tribunal considered, applying the Overriding Objective (Rule 2) that it would be both proportionate and avoid delay and further expense, for this matter to be dealt with by way of written submissions only. Both parties were invited to confirm whether or not they agreed with that proposal.

While the Respondent confirmed that they did agree, no response (as stated above) was received from the Claimant.

3. I consider, therefore that applying Rule 77 of the Tribunal's Rules of Procedure 2013, the Claimant has had reasonable opportunity to make representations in response to both the original costs application (having been provided with a copy of such application in advance of the previous hearing) and now the assessment of such costs, as set out in the Respondent's schedule of costs, but has not availed herself of that opportunity.

Amount of Costs

4. The Respondent seeks legal costs in the total sum of £8978 (exclusive of VAT), in respect of the fees paid to its advisors, as well as '*internal costs*' incurred by itself, in respect of time spent by various officers and managers in dealing with this matter, in the sum of £4836.31.
5. Dealing briefly with that latter demand, Rule 75 distinguishes between costs orders and preparation time orders, the former being (as defined in Rule 74) in relation to '*fees, charges, disbursements or expenses*' incurred by the receiving party (in this case, the Respondent) '*while legally represented*'. Preparation time orders can be made in respect of time spent by employees of the receiving party in working on the case '*while not legally represented*'. Crucially, however, Rule 75(3) states that a costs order and a preparation time order may not both be made in favour of the same party in the same proceedings. I therefore confine my consideration of this matter to the legal costs incurred by the Respondent.
6. The schedule of costs sets out the following:
 - 6.1 The relevant fee-earner's hourly rate was £120, which is, I consider, an entirely routine rate for such matters.
 - 6.2 Consideration of emails in from the Claimant, Tribunal and counsel amounted to £1476, in a total of 123 emails (12.3 hours at £120 per hour).
 - 6.3 Composition of emails out to the same recipients amounted to £984, based on 82 emails.
 - 6.4 Perusal of documents/correspondence incurred costs of £732.
 - 6.5 Phone calls were assessed at a total of £96.
 - 6.6 Preparation time of 21 hours, in the total sum of £2520.
 - 6.7 Counsel's fees of £2750.
7. I consider these costs as reasonable in the circumstances, for the following reasons:

- 7.1 There have been three case management/preliminary hearings in this matter, requiring both preparation for and attendance by the Respondent's representatives at each, easily explaining both the amount of preparation time claimed, as well as counsel's fees (for attendance at least two hearings), which are well within the range for attendance at such hearings.
 - 7.2 The Claimant made voluminous and often unfocussed written submissions, one example being the document attached to her claim form and another being her 'request for review', which, while largely of limited relevance to her claim, nonetheless had to be read and assessed by the Respondent.
 - 7.3 I have no reason to doubt the amount of correspondence claimed for, which would seem routine in a case such as this, extending well over a year.
 - 7.4 The Claimant has had an opportunity to challenge the contents of the schedule, but has not done so. I note, particularly in this case that she has past experience of costs applications, having appealed a costs order in a previous claim, to the Employment Appeal Tribunal.
8. Applying Rule 84, I would have had regard to the Claimant's ability to pay any such order, but as she had provided no submissions or evidence on this matter, despite being invited to, I was unable to assess her ability in this respect.
 9. Conclusion. Accordingly, therefore, I order the Claimant to pay the Respondent's costs, in the sum of £8978.00.

Employment Judge O'Rourke
Date: 9 September 2021

Judgment sent to parties: 11 October 2021

For the Tribunal Office: