



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms Grubic-Andvari

v

Refugee Therapy Centre

Heard at: Watford via CVP
2021

On: 6 October

Before: Employment Judge Bartlett, Mr Sutton and Mr Bhatti

Decided on the papers

JUDGMENT

1. The claimant is ordered to pay the respondent costs in the amount of £1,000.

REASONS

Background

1. A substantive hearing took place between 9 and 13 November 2020. In a decision promulgated on 1 December 2021 all the claimant's claims were dismissed except in relation to unlawful deductions from wages and holiday pay. The claimant had alleged that he she suffered race discrimination and related claims stemming from the respondent's handling of a client complaint.
2. Prior to the substantive hearing a number of preliminary hearings took place on 22 November 2019 and 2 September 2020.
3. On 18 December 2020 the respondent made an application for costs.
4. On 26 December 2020 the claimant objected to the respondent's directions.
5. The costs correspondence was sent to me on 8 January 2021 and I signed directions on 11 January 2021. Unfortunately these directions were not actioned and directions were finally sent to the parties around the end of March/start of April 2021.

6. The claimant submitted a detailed written response to the costs application dated 9 April 2021 and several brief emails.
7. Both parties stated that they wished for the application to be decided on the papers.
8. In the circumstances the tribunal considered that it was in the interests of overriding objective to determine the application on the papers.

The Tribunal Rules relating to costs

9. The Employment Tribunal's Rules of Procedure 2013 as subsequently amended up to 8 October 2020 at rules 74 to 78 set out the principles and processes that must be applied in relation to costs orders.
10. Paragraph 77 sets out "*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 judgement finally determine the proceedings in respect of that party were sent to the parties.*"
11. Paragraph 76 sets out:

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.

(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.

Decision

12. Costs awards are exceptional.
13. The tribunal has a discretion as to whether or not to make a costs award.
14. The claimant's responses did not provide any information about her financial situation.
15. We note that the respondent made an application for strike out which was refused in a preliminary hearing on 4 September 2020 on the basis that taking the claimant's claim at its highest it could not be said to have no prospects of

success. We consider that though this case is marginal it cannot be said that the case had no prospects of success.

16. We find that the claimant was unreasonable in bringing the proceedings and pursuing the claims to a final hearing:

16.1 the claimant's claims arose from the way a client complaint had been dealt with. The difficulty with the claimant's claims in this respect was that no detrimental action could reasonably be said to have been taken against the claimant. The claimant was not criticised. The claimant's conduct was not investigated. The respondent at all times said that the issue lied within a different level in the organisation to the claimant. The claimant's complaint was focused on what the respondent communicated to the client which itself was a standard apology. The claimant's claims had no reasonable prospect of success;

16.2 the claimant made a number of other claims including relating to the redundancy. The redundancy arose from the closure of the respondent's centre and in light of the claimant's role pursuing a claim that her dismissal was related to other reasons was unreasonable;

16.3 the claimant also claimed unpaid holiday and unlawful deductions from wages. Well in advance of the substantive hearing the respondent twice sent a cheque to the claimant and she sent the cheques back. She has also refused to accept the payment made by the respondent pursuant to the tribunal's order of these sums. These issues could have been resolved without a hearing and the respondent attempted to do so. Pursuing part of this claim to a hearing was completely unnecessary and unreasonable. The other claims related to comments by other individuals which were connected to the dispute;

16.4 the respondent repeatedly stated the claims had no merit. An objective assessment of the claim would have shown the claimant that it had very limited prospects of success. The claimant's singlemindedness in pursuing the claim to the final hearing was unreasonable conduct.

17. The award may have been higher if there had been a costs warning however one was not given. We recognise the respondent's reasons for not giving a costs warning were said to be associated with the claimant's anxiety and allegations of bullying. However, it was open to the respondent to give a cost's warning. Their reasons for not doing are not particularly strong.

18. In conclusion we have decided to make a costs award in the amount of, £1,000.

Employment Judge Bartlett

Date: 6 October 2021

Sent to the parties on:

For the Tribunal Office