



EMPLOYMENT TRIBUNALS

Claimant: Mrs. A. Lukasik

Respondent: North West Anglia NHS Foundation Trust

Heard at: Cambridge

On: 7th July 2021

Before: Employment Judge: Mr. A. Spencer (sitting alone)

Representation:

Claimant: None (written submissions)
Respondent: None (written submissions)

JUDGMENT

1. The respondent's application for costs made on 30th September 2020 is refused for the reasons given below.

REASONS

2. The respondent applied for a costs order against the claimant following the claimant's withdrawal of the claim on 3rd September 2020.
3. The respondent's application was made by letter dated 30th September 2020.
4. The claimant's representatives have made written submissions in response to the application on 4th March 2021.
5. The parties agreed that the application should be determined on the papers and without a hearing.

6. The power to make a costs order and the circumstances in which a tribunal may make a costs order are set out in Rules 75(1) and 76 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The Tribunal must consider two issues:

6.1 Is the appropriate ground for awarding costs made out: and

6.2 If so, is it appropriate for the Tribunal to exercise the discretion to make a costs order.

7. The respondent relies on two distinct grounds under Rule 76(1)(a):

Conduct

8. The respondent asserts that the claimant and her legal representative acted vexatious, abusively, disruptively or otherwise unreasonably in the bringing of the proceedings and in their conduct of the proceedings.

9. The specific conduct relied on by the respondent is unclear. A respondent making such an application should clearly identify the specific conduct or behavior that is said to justify an order for costs. The respondent has failed to adequately do so.

10. The respondent raises the allegation that “there was a severe lack of engagement from the Claimant’s representative”. However, insufficient particulars of the conduct concerned are given.

11. The respondent also appears to assert that the claimant behaved unreasonably by withdrawing the claim the day before the preliminary hearing listed on 4th September 2020. The claim was withdrawn the day before the hearing. However, the tribunal does not accept that the claimant’s conduct was unreasonable in this regard having taken into account the claimant’s explanation as to why the claim was withdrawn and why the withdrawal took place when it did. It is clear from the claimant’s submissions that the claim was withdrawn upon advice. Whilst it is disappointing that the withdrawal was made at a late stage the tribunal does not find that the claimant’s conduct in so doing was vexatious, abusive, disruptive or otherwise unreasonable.

No reasonable prospect of success

12. The respondent asserts that the claimant had no reasonable prospect of successfully persuading the tribunal to allow her claims out of time.

13. The claims appear to be presented out of time. However, the Tribunal retains a discretion to entertain late claims in certain circumstances and must make decisions on the facts of each case as to whether those circumstances are made out on the evidence. Such decisions are fact sensitive. The tribunal has not seen the evidence on the issue. The tribunal notes that the nature of the claims was such that the tribunal would have had to apply both the applicable tests for allowing a late claim (i.e. the “not reasonably practicable” test and the “just and equitable” test). The tribunal

also notes that the Respondent accepted that the claimant was a disabled person at all material times by reason of a psychiatric/neurological disorder. This was a factor that was likely to be taken into account when applying those tests. The tribunal does not accept the respondent's submission that the claimant had no reasonable prospect of success.

14. In the circumstances, the Tribunal is not satisfied that the grounds for making a costs order are made out and the application is refused.

Employment Judge: Mr. A. Spencer

Date: 7th July 2021

JUDGMENT SENT TO THE PARTIES ON
15 October 2021

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FOR THE TRIBUNAL OFFICE

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