



EMPLOYMENT TRIBUNALS

Claimants: Ms J Vidgen
Mrs H Hudson
Ms L Payne

Respondent: K2 Smiles Limited

JUDGMENT

The Claimants' application dated 7 October 2021 for reconsideration of the Costs Judgment sent to the parties on 24 September 2021 on the basis that the Application for a preparation time order for Laura Payne should have been granted is refused.

The Claimants' application dated 7 October 2021 for reconsideration of the Costs Judgment sent to the parties on 24 September 2021 on the basis that the preparation time order was insufficient is refused.

The Claimants' application dated 7 October 2021 for reconsideration of the Costs Judgment sent to the parties on 24 September 2021 in relation to the refusal to award a wasted costs order against the Respondent's representative is refused.

REASONS

There is no reasonable prospect of the original decision being varied or revoked.

The Application for a preparation time order for Laura Payne on the basis this should have been granted.

- 1 The matter was carefully considered, and the Tribunal concluded that the necessary grounds for a preparation time order did not exist in relation to Laura Payne. The fact that the Claimants and Mr Wrigley consider otherwise is not a basis for reconsideration.

The Application for reconsideration of the amount of the preparation time orders that were made in favour of Ms Vidgen and Ms Hudson

- 2 The Claimants argue these orders should be reconsidered on the basis that the parties were not given the opportunity to make oral or written submissions during the Hearing and wrongly state that Rule 77 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, requires the parties to be given the opportunity to make oral and written representations to the Tribunal. The Claimants argue this was not done as no time was available to do so during the hearing on 12 August. There is no requirement for the parties to be allowed to make oral and written submissions.
- 3 Rule 77 states that 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 determined the proceedings in respect of that party was sent to the parties. The Claimant made an application which was set out in writing and submitted to the Tribunal at the remedy hearing.
- 4 Rule 77 provides:

“No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.”
- 5 The Respondent in this case is the paying party. The Respondent had an opportunity to make representations as to why no preparation time order should be made. The Claimants’ written submissions on costs ran to over 23 pages and set out the total hours which the Claimant were seeking by way of preparation time.
- 6 Rule 79 provides:

“The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of:
(a) information provided by the receiving party on time spent falling within rule 75 (2) above, and
(b) the Tribunal’s own assessment of what it considers to be a reasonable and proportionate amount of time to be spent on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and the documentation required.”
- 7 The Tribunal considered whether to make a preparation time order and considered the paying party’s representations. The Tribunal also took evidence from the paying party about its ability to pay. Thereafter, the Tribunal undertook the assessment of the number of hours it would award having considered the Claimants’ very lengthy written submissions and reached a conclusion as to what it considered to be a reasonable and proportionate amount of time to be spent on such preparatory work. The fact that the Claimants did not provide a breakdown as part of those submissions is not a matter which justifies a reconsideration.

- 8 Additionally, the Claimants are mistaken as to the extent of the matters for which the Tribunal will consider an award of preparation time. The time assessed related to the Employment Tribunal proceedings and not to any matters prior to the issue of proceedings or relating to the Claimants' efforts to exercise their data protection rights or the Information Commissioner's regime which is entirely separate from any employment procedure.
- 9 The Claimants also submit that the time they did request were transposed by the Tribunal, However the preparation time was assessed by the Tribunal overall as a total figure. The transposition made no difference. In the circumstances the interests of justice would not be served by any reconsideration.

The Application for reconsideration of the Costs Judgment sent to the parties on 24 September 2021 in relation to the refusal to award a wasted costs order against the Respondent's representative

- 10 The Claimants argue that the Respondent's representatives bear some responsibility for their conduct in relation to the proceedings and ask that they be held partially responsible for contributing towards the Claimants' preparation time orders.
- 11 While the Tribunal has jurisdiction to make a costs order against representative in favour of any party in relation to a conclusion that the receiving party has incurred costs as a result of any improper, unreasonable or negligent act or omission on the part of the representative, or which in the light of such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay, I do not consider that this applies to time spent during the disciplinary process that led to the dispute before proceedings were issued. As regards matters which took place during the proceedings, I have awarded preparation time. The interests of justice are not served by any reconsideration of this matter.
- 12 The Respondents were not given the benefit of the doubt as suggested by the Claimants. All other matters raised by the Claimants in relation to the preparation time order and wasted costs have been considered and do not justify a reconsideration in the interests of justice.

Employment Judge N Walker
Date: 23 October 2021