



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mrs S Bi

v Bradford Management Services LLP

Heard: In Chambers

On: 25 October 2021

Before:

Employment Judge JM Wade

Mr G Harker

Mr K Lannaman

Upon the respondent's costs application dated 3 August 2021 and the claimant's opposition to that application dated 4 August 2021:

JUDGMENT

The application is dismissed.

REASONS

- 1 The application was put on two bases: the claimant was unreasonable in bringing proceedings; and the claims had no reasonable prospects of success, being out of time or outside the jurisdiction as the Tribunal found. The Rules are 74 – 84.
- 2 The Tribunal's liability judgment and reasons must be read into these reasons, where the chronology and findings are set out – and indeed the substance of both application and response to it on the claimant's behalf.
- 3 As to the first basis, the question is whether the claimant acted unreasonably in bringing the second claim and in pursuing it after a late costs warning letter in May 2021, when the respondent instructed solicitors having previously represented itself.
- 4 We do not consider the claimant acted unreasonably in bringing the second claim in all the circumstances of this case. She was assisted by her friend Ms Messum, rather than lawyers; she was operating in a second or third language – which explained not attending the first case management hearing but waiting for an interpreter for the second; the respondent had not provided written confirmation of a dismissal to her in June of 2019 or subsequently and a June 2019 dismissal was not its defence to the second claim. The parties were not to know the Tribunal

would find a dismissal as asserted in the first claim. Furthermore, as to the money claims, the respondent's representative at the July case management hearing, at which the claimant did not attend, conceded sums were owing. Many litigants in person do not know that statutory sick pay is outside the jurisdiction of this Tribunal and that particular issue was not asserted by the respondent either in its defence or at the hearing.

- 5 As to the second basis – the claims having no reasonable prospects of success. The limitation issues all required hearing the evidence and making a decision on it. It could not overwhelmingly be said that the Tribunal would decide as it did – indeed the costs warning letter could not anticipate matters - the respondent was unaware of the first claim. As a lay/litigant in person, the claimant was also not reasonably to have understood the impact of that first claim.
- 6 Even if we were with the respondent on the threshold questions – and we are not – there are overwhelming justice and equity reasons to exercise our discretion against the respondent. The respondent employer does not come to the Tribunal with clean hands – Mr Nawaz shouted and swore at the claimant on 12 June 2019 and summarily dismissed her - the respondent then failed to pay what was owing until she brought the second claim. We have found she genuinely felt as she did in asserting sexual harassment, but we have not decided the case for the limitation reasons explained. The application is unanimously dismissed.

25 October 2021

Judgment sent to the parties on:

12 November 2021