



EMPLOYMENT TRIBUNALS

Claimant

Mr M A Ehsan

Respondent

Markaze Jamait Ahle-Hadith

Heard by CVP on 10 November 2021

Before: Employment Judge Rogerson

Appearances:

For the Claimant: in person

For the Respondent: Mr P Smith (Counsel)

RESERVED JUDGMENT

1. The complaint made by the claimant under section 15 of the Employment Rights Act 1996 is dismissed upon withdrawal by the claimant.
2. The respondent's application for a costs order succeeds and the claimant is ordered to pay the respondent costs in the sum of £3,710.

REASONS

1. The claimant's complaint was that his employer had received a payment of £5,800 from him during his employment in contravention of section 15 of the Employment Rights Act 1996.
2. The claimant had been employed by Markaze Jamait Ahle-Hadith ("the Mosque") as a Minister of Religion (Iman) from 4 September 2017 until his summary dismissal for gross misconduct on 6 July 2018.
3. The Mosque had sponsored the claimant (a Pakistani national) to work under a Tier 2 Migrant Visa. The application was granted by the Home Office based on the information provided by the claimant and the Mosque which confirmed the claimant's annual salary was £20,000.
4. There was no dispute that the claimant was paid the correct monthly salary (£1,407.16 net) by the respondent during his employment. The facts asserted by the claimant were that 'under duress' he paid £5,800 to the Mr. H Rehman, the Secretary of the Mosque. The claimant alleges he was blackmailed into making those cash payments to Mr. Rehman under threat that "his employment contract would be revoked" (see paragraph 8

Claimant's witness statement). He alleges that he withdrew cash from his bank account to make 3 monthly payments of £720 (October-December 2017) and then in January 2018 he informed Mr. Reman he could no longer afford to pay that amount. He said a reduced figure of £520 was agreed. For the remaining 7 months of employment the claimant withdrew £520 in cash to pay Mr. Rehman.

5. This case was remitted from the Employment Appeal Tribunal. The witness statements and bundle used at this hearing were the same documents used at the first liability hearing. Only the Section 15 complaint was remitted for a rehearing before a different Judge, following the decision of an Employment Appeal Tribunal.
6. I had not seen the earlier Employment Tribunal decision or the Employment Appeal Tribunal decision and was tasked with deciding the section 15 complaint. Helpfully the issues had been identified to them by Employment Judge Davies at a preliminary hearing on 21 June 2021. The parties had agreed the only additional evidence that would be added to the original hearing bundle were the bank statements of Mr. S Ali, the President of the Mosque. I was not referred to those statements at this hearing.
7. Before I heard any evidence and based upon my preliminary reading, I asked the claimant to confirm some agreed facts. He confirmed he had been paid the correct wage by his employer. His case was that he made payments of £5,800 personally to Mr. Rehman, not to the employer. He confirmed his case was that Mr. Rehman obtained payments from the claimant for his own personal benefit. In his witness statement the claimant accused Mr. Rehman of blackmail and harassment referring specifically to section 21 of the Theft Act 1968 and Section 4A of the Public Order Act 1986. I explained to the claimant that section 15 of the Employment Rights Act 1996 is about the right of an employee (or worker) not to make payments to an employer except in the permitted limited circumstances permitted which were not applicable to his complaint. The claimant was not alleging any payments had been made to his employer, the Mosque. He alleged the payments were made to Mr. Rehman who benefitted personally. Although those were the agreed facts the claimant wanted to continue with his section 15 complaint.
8. During cross examination under oath the claimant agreed that although very serious allegations of theft and blackmail were made in his claim those allegations were never reported to the Trustees of the Mosque, the Police or to the Home Office. He did not accept he had any obligation to inform the Home Office, if the circumstances under which his application for a visa had been granted, were not true. He knew of the alleged deception on 6 September 2017 (see paragraph 12 Claimant's witness statement).
9. The Claimant could not explain why he had not taken any of those steps or why his bank statements did not show any of the cash withdrawals he relies upon to support his complaint (see paragraphs 13 and 15). The only evidence the Claimant's had provided to support his assertion were handwritten notes he had made on his bank statement where he had written £720 or £520 next to dates when he said he made cash withdrawals to pay Mr. Rehman. The actual amounts withdrawn in cash did not support the claimant's account. His bank statements had also been redacted so as not to show the actual balances on the account on the dates cash withdrawals were made.
10. In contrast Mr. Rehman had fully disclosed his personal and business statements without any redaction. In cross examination the claimant could not explain the discrepancy and said he was 'unfamiliar' with the financial transactions on his personal bank statements. The claimant has greater knowledge than he lets on having a degree in Finance from the University of Durham. He had also had sight of the unredacted bank accounts for the Mosque early on in these proceedings so was familiar with their content which was not disputed.

11. In October 2017, the first salary payment was made by bank transfer. The claimant had the Mosque's bank details and his assertion that he did not know was untrue (see paragraph 10 Claimant's witness statement).
12. During the claimant's cross examination, he referred to a 'cash in hand second job' he had been doing while working for the respondent to explain why he did not need to withdraw cash when he made the first alleged payment to Mr. Rehman on 11 October 2017. The asserted facts were the claimant '*already had cash to pay him*' (paragraph 13 claimant's witness statement). Mr. Smith asked some follow up questions about the second employer and how much the claimant was earning in that employment. The claimant refused to answer any questions about his 'second' job. He also said he was '*not bothered about money because he had plenty of money*'.
13. Mr. Smith agreed that the claimant had presented as someone who had 'plenty of money' to support a tourist visa application made by his parents. The application refers to the claimant's means (pages 269) and states that the claimant can "easily afford" to financially support the application because of his job and his savings and refers to the claimant's family printing business in Pakistan to emphasis their financial wealth. The claimant is currently living in Pakistan with his family.
14. After cross examination, the claimant withdrew his claim explaining that in giving evidence he had been "careless in choosing his words".

Respondent's costs application.

15. Mr. Smith made a costs application on behalf of the respondent relying on 2 grounds under Rule 76 of the Employment Tribunals Procedure. The 'unreasonable conduct' of these proceedings by the claimant and that the complaint never had any reasonable prospects of success. The parties agreed the costs application should be dealt with in the hearing time remaining in 3 stages: firstly the grounds the respondent relied upon for a costs order: secondly the amount of costs sought and then finally any information the claimant wanted me to have regard to about his ability to pay. I had hoped to be able to give the parties my decision on the application at the end of the hearing, but the claimant could not stay beyond 4pm. It was therefore agreed that a reserved written judgment with reasons would be provided in due course.
16. In the respondent's amended response of 29 October 2018, the respondent alerted the claimant that the claim was unmeritorious based on the facts relied upon and the claimant was warned as to costs. The response notes that the claimant had made no mention of these allegations in his original claim and alerts the claimant to its position that the claimant had "*fabricated these allegations and that he is attempting to intentionally mislead the Tribunal*" (paragraphs 7 and 14 amended grounds of resistance).
17. While Mr. Smith acknowledges the claimant now relies on section 15 not section 13 of the 'Employment Rights Act 1996' he relies upon the same 'fabricated' facts to support that complaint. The first ground the respondent relies upon is that the complaint under section 15 had no reasonable prospects of success, because the claimant does not assert any facts or adduce any evidence to show his employer the respondent had received payments from the claimant. Section 15 is clear it refers to payments made to the 'employer' the legal entity that employed the claimant. That was the Mosque a registered charity not Mr. Rehman an individual. Section 15 does not create a claim where an individual who is not the employer can be liable. Only the employer is liable if there is a breach of the statutory provision. The claimant has not pleaded any facts to assert how he can bring this claim through any other route. The claimant case is that Mr.

Rehman received the payments for his personal benefit. Mr. Rehman vehemently denies that allegation as is made clear in his witness statement. On the undisputed facts the claimant has brought and continued to pursue a claim which had no reasonable prospects of success.

18. The second ground relied the respondent relies upon is the claimant's unreasonable conduct in these proceedings by continuing with spurious allegation and giving untruthful evidence under oath. Mr. Smith contends the claimant has made wild and wholly unsubstantiated false allegations against 2 individuals who are upstanding members of the community. His whole case is based on evidence that has been fabricated. Mr. Rehman has been accused of blackmail and extortion which are serious accusations to make. If the claimant was telling the truth and was being blackmailed to keep his job, when he lost that job, why did he not tell anyone at the Mosque or the Police? He did not even mention it in his claim brought in July 2018 the final month when he was allegedly blackmailed. He had no good reason to keep it to himself (if his allegations were true). The lack of transparency in the claimant's evidence, the contradictions, his steadfast refusal to answer questions, his evasiveness. Mr. Smith contends it is no wonder he has admitted to being 'careless' with the words. The reason he was careless was because he was giving a fabricated and untruthful account which supports the case pleaded in the response. The claimant has a doctorate in philosophy he has a finance degree from Durham university but has taken no steps to investigate the merits of his claim by reference to the statutory provisions he relies upon. The relevant provisions had been clearly identified to the claimant by EJ Davies in June 2021. He knew the evidence that would be relied upon at this hearing. He had seen the bank statements of the Mosque and Mr. Rehman. In contrast to the claimant lack of transparency, the respondent had made no attempt to hide any details. The claimant is an intelligent man and could have done his own research or sought advice from the Citizens Advice Bureau before continuing to pursue such a hopeless case to a final hearing. His unreasonable conduct has resulted in the respondent having to incur costs unnecessarily, in defending a false and unmeritorious claim since June 2021.
19. The claimant's submissions were brief. Several times, he repeated the words that "*Allah knows I have given the money to Mr. Rehman*". He denied unreasonable conduct because he has withdrawn his claim. He has been the victim of a 'double sword' by paying £5,800 and then being put at risk of costs. He has family responsibilities and helps his wife look after his son after work. His son has autism. He works full time so does not have the time to do any research. He is a litigant in person and did not understand the law or how section 15 applied to his case. He never consulted Citizens Advice Bureau. He had no reason to believe his claim would fail.
20. We had a break before I heard representations as to the amount of costs. I agreed to give the claimant the time he requested to consider the respondent's Schedule of Costs. It provides a detailed breakdown of the work done by way of attendances/correspondence/ telephone calls/attendance at the hearing in June 2021 (£220) work done on the bundle (£220) and in preparing for the case management hearing (£220). A total of £2,420 was claimed in solicitors fee for a Grade A solicitor at an hourly rate of £220. Additionally, disbursements for counsel's fees of £2,250 plus VAT of £934 are claimed. Mr. Smith confirmed the Mosque is a registered charity and cannot reclaim VAT.
21. The claimant's response to the schedule of costs was that the hourly rate of £220 was excessive. It should be reduced to the National Minimum Wage of £8.91 per hour. As to his means the only information he volunteered was a credit card debt of £9,000. When questioned about his means he told me he has a salary of £1,870 he lives with family

and pays a contribution of £300 towards the home and he pays £400 a month for his car. He said he had £1,000 in savings.

22. Mr. Smith asked the claimant how that information fit with his statement that “money was not a problem he had plenty of money”. The claimant denied saying that. He suggested that what he had actually said was that he had ‘enough money’. I checked my note of his evidence and confirmed he had used the words “money is no problem I have plenty of money”.
23. Mr. Smith suggested the claimant was being untruthful about his means and was not disclosing his true finances to avoid a costs order being made. As to the solicitor rate Mr. Smith confirmed having checked this that Band A rates for solicitors in Bradford was £220 and was correct. It has recently changed to £255. The Schedule of Costs has a statement completed by the respondent’s solicitor which confirms the costs claimed in the schedule are the costs the respondent is liable to pay.
24. I asked Mr. Smith what (if any) credit was given by the respondent for the withdrawal of the claim at this hearing. Mr. Smith referred to the fact that costs are not sought to punish the claimant but to compensate the respondent. It was the respondent’s position the claimant had fabricated the allegation and he ought to have known that his claim was bound to fail. The claimant should never have brought a complaint based on fabricated allegations. On his own case no payments were ever made by him to his employer. Mr. Smith reminds me the costs claimed are limited to those incurred from June 2021 to this hearing and are the costs unnecessarily incurred by the respondent no extra amounts have been claimed for any work done previously. They are reasonable and proportionate. The respondent should be compensated for the costs it will have to pay as a result of that unreasonable conduct.

Employment Tribunals Rules of Procedure Regulation 2013

25. Rule 71 provides that a party may apply for a costs order and that ‘*no such order may be, made unless the paying party has had a reasonable opportunity to make representations at a hearing or in writing*’.
26. Rule 76(1) provides that a Tribunal ‘*may make a costs order and shall consider whether to do so where it considers that (a) a party has acted vexatiously, abusively, disruptively, or otherwise unreasonably, in either the bringing of proceedings or part or the way that the proceedings (or part) have been conducted or (b) any claim or response had no reasonable prospects of success*’
27. Where a Tribunal exercises its discretion to make a costs order then the amount awarded should normally reflect the Tribunal’s assessment of what is both reasonable and proportionate, with any doubt to be resolved in the favour of the paying party. This is the standard and usual basis of assessment. In **Yerraklava-v- Barnsley Metropolitan Borough Council 2012 ICR420**, the Court of Appeal provided guidance that costs should be limited to those ‘*reasonably and necessary incurred*’ as a consequence of the unreasonable conduct. The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and in doing so, to identify the conduct, what was unreasonable about it and what effects it had.
28. ‘Costs’ means fees charges, disbursements or expenses incurred by or on behalf of the receiving party (Rule 74: Definitions)
29. Rule 84 provides that in deciding whether to make a costs order and in deciding the amount the Tribunal may have regard to the paying party’s ability to pay.
30. In assessing means, account must be taken of information (if it is provided) of capital as well as income and expenditure. In **Shields Automotive Ltd -v- Grieg** the EAT stated that “*assessing a*

person's ability to pay involves considering their whole means. Capital is highly relevant aspect of anyone's means. To look only at income where a person has capital is to ignore a relevant factor'.

31. A Tribunal is not required to limit the costs that the paying party can afford to pay - **Arrowsmith -v- Nottingham Trent University 2012 ICR 159 CA**. There is *"no reason why affordability has to be decided once and for all by reference to a party's means as to the moment the order falls to be made"*.
32. If a costs order is made, it would have to be enforced through the county court, which would itself take into account the individual's means from time to time in deciding payment methods and amounts. **Vaughan-v- London Borough of Lewisham and Others 2013 IRLR 713**.
33. The regulations do not mean that *"poor litigants may behave without impunity and without fear, that a significant costs order will be made against them, whereas wealthy ones must behave themselves otherwise a costs order will be made"* **Kovacs -v- Queen Mary and Westfield College (2002) IRLR 414**.

Conclusion

34. Unfortunately, for the claimant, I agree with the submissions made by Mr Smith. The claimant only withdrew the claim when he realised the impact of his 'careless' words on his claim. His untruthful account had been exposed during cross examination. I agree with Mr Smith's submission that *"The lack of transparency in the claimant's evidence the contradictions his steadfast refusal to answer questions and his admission that he was 'careless' with the words he used point to a fabricated and untruthful account which was the respondent's position from the outset of these proceedings. The claimant has a doctorate in philosophy he has a finance degree from Durham university but has taken no steps to investigate the claim he brought by reference to the statutory provisions clearly identified to him by EJ Davies in June 2021. He knew the evidence that would be relied upon the bank statements of the Mosque and Mr. Rehman which he has had for a long time. The respondent's evidence was transparent there was no attempt by them to hide any details. The claimant is an intelligent man and could have done his own research before continuing to pursue such a hopeless case to a final hearing causing the respondent to incur costs unnecessarily in having to defend this unmeritorious and false claim since June 2021"*.
35. I agree that both grounds have been shown by the respondent that the claimant has unreasonably conducted these proceedings and the claim had no reasonable prospects of success.
36. I considered the information the claimant provided about his ability to pay. I was equally skeptical about the information he provided to me as the claimant was in my view deliberately selective about the information he volunteered, to present himself as a poor litigant to defend the costs application. His reluctance to voluntarily and truthfully give full disclosure of his means, his general lack of transparency and his attempts to mislead ('plenty of money' to 'enough money') do not go to his credit or his credibility. He is working in permanent employment and earning a good salary. I was satisfied that the true position is that he does have the ability to pay a costs order. I am supported in that view by his closing comments to me that he would prefer to pay by instalments.
37. I considered whether, having been satisfied the grounds for awarding costs and having considered the claimant's ability to pay, I should exercise my discretion to make a costs order understanding that Employment Tribunals are not a costs regime in that costs are not awarded just because a party fails to prove his/her case. I considered all the representations made including the timing of the withdrawal (after the claimant realised the impact his answers would have on his credibility), the fact that the claimant was

aware of all of the relevant information well in advance of this hearing and that knew or ought to have known what he was required to prove for his claim to succeed. The respondent had made its position clear in the response- the claimant had fabricated the allegations and was attempting to deliberately mislead the Tribunal. That is in and of itself very serious misconduct by any party. The respondent is a registered charity which has had to defend itself against serious unsubstantiated allegations which the claimant chose to continue to pursue to a final hearing knowing they were false. His claim had no reasonable prospects of success. The claimant is an intelligent man and demonstrated his ability to conduct his own research when he wants referring to the Theft Act/Public Order Act. His unreasonable conduct has resulted the respondent unnecessarily incurring costs in defending the claim up to and including at the final hearing. In these circumstances I am persuaded that I should exercise my discretion and make a costs order.

38. As to the amount of costs the amount awarded should normally reflect the Tribunal's assessment of what is both reasonable and proportionate, with any doubt to be resolved in the favour of the paying party. This is the standard and usual basis of assessment. In **Yerraklava-v- Barnsley Metropolitan Borough Council 2012 ICR420**, the Court of Appeal provided guidance that costs should be limited to those '*reasonably and necessary incurred*' as a consequence of the unreasonable conduct. The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and in doing so, to identify the conduct, what was unreasonable about it and what effects it had. The respondent has provided a detailed schedule of costs which was not challenged by the claimant other than to suggest a substantially reduced hourly rate should be applied for all the work. The hourly rate claimed by the respondent's solicitor a band A solicitor is correct. The claimant's assertion that the respondent's solicitor should be paid at the national minimum wage rate is absurd.
39. As to what is reasonable and proportionate I consider it is appropriate to discount £220 for the respondent's solicitors attendance at the case management hearing, £220 for preparation for that hearing which was a consequence of remission of the case from the Employment Appeal Tribunal not the claimant's unreasonable conduct. Similarly, the work on the bundle of £220 should be discounted because it was the original hearing bundle (with a few additional) and that work had been done before the case was remitted. I have also discounted the VAT. I assess a reasonable and proportionate amount of costs is £1760 (£2420 less £660). To that I add £1950 for disbursements of Counsels fee giving total costs of **£3,710** which is a reasonable and proportionate sum of costs the claimant is ordered to pay to the respondent.

Date: 18 November 2021

Sent to the parties on:

Date: 19 November 2021