EMPLOYMENT TRIBUNALS
London Central Region

Claimant: Mrs O Ajayi

Respondent: WGC Ltd

JUDGMENT

1. The Respondent must pay the total sum of £11760 costs to the Claimant by her solicitor by 18/11/2021.

Reasons

1. On 30/7/21 I gave judgment for the Claimant on her claims for £12477.03. On 4/8/21 the Claimant applied for costs against the Respondent in the sum of £15600 including VAT, being the amount incurred by the Claimant in prosecuting her claims, as per a Schedule of Costs signed by Mr R Magara, the Claimant's Solicitor.
2. Unfortunately, there was a significant delay before that application was referred to me, but when it was, I caused a message to be sent to the Respondent on 25/10/21 inviting it to respond to the cost's application. That response was received on 2/11/21.
3. In making the Claimant's application, Mr Magara suggested that a one-hour CVP hearing would be needed to dispose of the cost's application. The Respondent disagreed and suggested that there was no need to hold another hearing. I agree with the Respondent about this - both sides have made full submissions and I am satisfied that no useful purpose would be served by holding another hearing, which if held would also increase costs for both sides.
4. The costs application is made on the basis that the Response had no reasonable prospect of success regarding the claims for breach of contract/unlawful deduction from wages and a redundancy payment, and that the Respondent acted unreasonably in defending those claims.
5. The Claimant's main points are as follows: (i) that in December 2020 and again in March 2021 the Claimant's solicitors issued costs warnings to the Respondent (ii) Between March and 14 July 2021 the Respondent was confused and wrongly claiming that the Claimant had been overpaid, and provided her with an incorrect P45, whereas in fact the Claimant had been underpaid both holiday pay and salary. (iii) the BOC/salary claim in the sum of £1131.63 was conceded by the Respondent only on the day before the hearing and (iv) as I stated in the Reasons for the judgment in the Claimant's favour for her redundancy payment, the Respondent had "dressed up" a redundancy dismissal as something else.
6. The Respondent's main points in response are as follows: (i) that the Claimant was only partially successful - notably her unfair dismissal claim was dismissed - and the judgment for £12477 was for only 41% of the £30595 the Claimant had claimed in her updated Schedule of Loss before trial; (ii) the issue of causation of the dismissal was disputed and the fact that the Respondent lost on that issue does not mean that it was unreasonable to run its defence, because what may be obvious afterwards is not necessarily obvious beforehand; (iv) the Respondent made significant and partly successful attempts before trial to narrow the issues and to dispose of matters before the hearing (v) before trial the Respondent tried to settle the case - it offered without prejudice to re-engage the Claimant with her prior guaranteed contracted hours, and then having received a counteroffer that the Respondent should pay the Claimant £22800 including costs, the Respondent made a further offer of a payment of £4600 which was rejected; (vi) the Claimant should have applied for costs on the second day of the FMH after judgment had been given - instead of waiting and making a written application later - and she has thereby increased costs on

both sides; (vii) the Claimant's costs schedule shows that of the time spent on documents, £660 plus vat was spent on reviewing papers and pre-action correspondence rather than in the litigation itself, and £400 plus vat was spent on drafting the costs application - these elements should be disallowed; (viii) the trial preparation time claimed - 24 hours - is excessive for a simple and straightforward claim such as this - 8 hours preparation time should be allowed - and hence the starting point for assessment should be the discounted costs of £7060.

Conclusions

7. I find that the Respondent's defence of the redundancy payment claim and breach of contract/salary claim had no reasonable prospect of success, and that this was not something which should have been evident only with the benefit of hindsight after the trial. In my view it was obvious that the Claimant's minimum hours role was redundant, and it was unjust and unreasonable of the Respondent to deprive her of her redundancy payment and then force her to pursue her claim for it to trial.
8. I also find that the Respondent's defence up to the eve of the trial of the Claimant's salary/contract claim was unreasonable. The Respondent, which had the benefit of professional HR and legal advice, could and should have worked out what it owed the Claimant by way of salary and paid her without the lengthy delay and litigation.
9. While the Respondent did make without prejudice offers, it did not offer to pay her her redundancy payment and her outstanding salary and holiday pay. Had it done that, as it should have done, then it may well be the case that the tribunal proceedings would never have been issued.
10. The late offer of re-instatement when the Claimant had already been dismissed and had lost confidence in the Respondent, is not a matter which I give much weight to.
11. It is true that the unfair dismissal claim was dismissed. The Respondent can count itself lucky in that regard because another Tribunal might well have upheld the claim, at least on a procedural basis. However, accepting for present purposes that the Respondent succeeded in its defence of a substantial unfair dismissal claim, and can therefore be taken to have acted reasonably in defending it, that in itself does not detract from the unreasonableness of its defence to the other aspects in respect of which the Claimant succeeded.
12. I exercise my discretion in the Claimant's favour, and find that she is entitled to a costs award, for the reasons cited in her application.
13. In awarding costs, I am not obliged to try to apportion costs to the successful and unsuccessful claims, and in this case I do not think it is appropriate to try to do so. The claims were run together and the Claimant's claim for an unfair dismissal basic award was in the alternative to her claim for a redundancy payment. If the Respondent wanted to protect itself from paying costs it should have paid up early on the claims it had no reasonable prospect of defending. By not doing so it has forced unreasonably the Claimant, a lady of modest means, to incur substantial costs which exceed her judgment.
14. Turning to specific items in the cost's schedule:
15. I regard the pre-action review and correspondence as incidental to the litigation itself and the costs of this reasonably incurred, especially given the Respondent's muddle about how much, even on its own case, it owed the Claimant.
16. I agree that Mr Magara's preparation time for the trial (24 hours claimed at £4800 plus vat) is far too high, especially as junior counsel could have been briefed for less than half this cost. I allow £2000 plus vat under this head and deduct £2800 from the Schedule of work done on documents
17. Although the rules permit costs applications to be made up to 28 days after a judgment, I agree that it would have been more reasonable and cost-effective for the Claimant to have made her costs application orally after the judgment was handed down on the second day of the FMH. The Claimant's failure to do so has led to an unnecessary increase in costs on both sides. As a result, I am deducting £400 from the Claimant's Schedule of work done on documents being the amount claimed for drafting the Claimant's costs application.

18. After these deductions the costs which I award by way of summary assessment against the Respondent come to :

Attendance on Claimant, opponents and others	£2840
work done of documents	£5560
attendance at hearing	£1400
subtotal	£9800
Vat	£1960
TOTAL	£11760

J S Burns Employment Judge
London Central
3/11/2021
For Secretary of the Tribunals
Date sent to parties :04/11/2021