



EMPLOYMENT TRIBUNALS

Claimant
Mrs H Tavner

v

Respondent
Mr S Zhou T/A Mei kitchen

Judgment on costs with reasons.

Heard at: Southampton

On: 1 September 2021

Before: Employment Judge Rayner

Appearances

For the Claimant: Ms J Linford counsel

For the Respondent: Mr. A Williams, solicitor

1. The hearing was conducted by the parties attending by telephone and was heard in private.
2. The Claimant's application for costs of £500.00 to be paid by the Respondent to the Claimant is granted.

Reasons

1. The application for costs was made during a preliminary case management hearing on 1 September 2021. The Claimant's application for costs of £500 against the Respondent was granted and verbal reasons were given to the parties at that hearing.
2. Following receipt of the case management order. The Respondent has requested written reasons for the costs order.

The Claimant's application for costs

3. The Claimant's claim was originally case managed at a hearing before Employment Judge Livesey on the 8 April 2021. At that hearing the Claimant was set down for a final hearing of two days on the 29 and 30th of July 2021.
4. Orders were made for the steps up to final hearing and the issues in the claim were defined and set out. They were agreed by the parties at that hearing.
5. On 16 July 2021 Peninsular came on record for the Respondent. On the 21 July a week before the hearing was due to start. The Respondent's new

representatives made an application to amend their response. This was opposed by the Claimant.

6. The Respondent also wrote to the Tribunal, stating that they did not consider that a two-day hearing would be sufficient given the number of issues raised in the amended response. At that point witness statements had not been exchanged.
7. A decision was taken to postpone the hearing and to convert it to a three-hour case management hearing to take place on the 30 July 2021.
8. The hearing was to determine the Respondent's application to amend; the Respondent's alleged failure to comply with case management directions; the costs of /associated with the postponement and any further case management and listing directions.
9. A letter notifying the parties of the three-hour hearing was sent to the parties on the 26 July 2021. That notice stated there would be a three-hour hearing; that it would take place by telephone and provided the dial in details to the parties.
10. This type of notice of hearing is a standard letter which Respondent representatives be familiar with.
11. The hearing on the 30 July 2021 took place before Employment Judge Livesey, the Claimant was represented by Mrs Linford of counsel, but the Respondent did not attend and did not provide an explanation for non-attendance.
12. The case management order from that hearing records that the matter was set down for final hearing for four days in December 2021.
13. The Judge also issued an unless order that, unless by the 13 August 2021, the Respondent provide an explanation for non-attendance at the hearing that his response would be struck out.
14. The hearing of the Respondent's application to amend its response was postponed.
15. The Claimant was ordered to serve on the Respondent and the tribunal any schedule of costs in support of any costs application on or before the 25 August 2021.
16. In addition, a further case management hearing by telephone for one hour was listed for the 1 September 2021.

The Respondent's explanation

17. On the 12 August 2021, the Respondent representative, Mr Peter Maratos, wrote to the Employment Tribunal sincerely apologising for arriving late to the hearing. He stated in his email the writer had *mistakenly organised a room at home for a three-hour CVP hearing that he believed was to commence at 10.30. Once it was realised that it was a telephone hearing getting a reasonable mobile*

phone signal connection from home proved difficult. Aware that it was a hearing listed for three hours, having connected to the telephone conference the writer did stay in the conference lobby from 10.28 until around 12 PM, during which time. Whilst waiting in the lobby the tribunal was called and emailed also a number of emails and telephone calls were made to the Claimant's representative at around 12 PM it was confirmed that the hearing had taken place, and the writer was able to leave the lobby. Again, the Respondent apologises for the oversight and connection difficulties.

18. I did not hear any evidence from Mr Maratos at all. He did not attend at this hearing and therefore he was unable to offer any explanation as to why he had made the mistake about the format of the hearing. Whilst it was submitted on his behalf that he had made a mistake, and whilst this is self-evident, no explanation has been given as to why the mistake was made.
19. Whilst it is accepted that the Respondent's representative intended to attend at the hearing, and did attempt to join the hearing , he attempted to join at the wrong time , half an hour after the stated start time , and he initially attempted to join a hearing format that was not live .
20. The Respondent representative mistakenly attempted to join a CVP hearing. He was unable to do so, because the hearing was not an active hearing, having been converted to the telephone hearing.
21. I accept the submission from the Respondent before me today that Mr Maratos had that he tried to join the hearing at 10:30 rather than 10 AM, and I accept that this was because he had made a genuine error about the format of the hearing.
22. I am told by Mr Williams, that the rep on that day had tried to contact the ET but did not get a response.
23. On the basis of the information that I have before I find that the Respondent representative ought to have been aware of both the format of the hearing; the start time of the hearing and the process for joining the hearing. I conclude that the only reason that he did not join the hearing was because of his own mistake.
24. Mr Maratos is a professional representative. He is described in his email as a senior litigation consultant. It is expected that he would take reasonable steps to ensure that knows the details of any hearing. This hearing, in particular, had been listed to deal with the Respondent's late application to amend the ET3, and was necessary because the original listed final hearing had been adjourned. The reason for that adjournment was in part, because of the late instructions to Peninsular, and the late application to amend the ET3 as well as the failure to exchange witness statements.

The relevant legal provisions,

25. Whilst the Employment Tribunal is primarily a costs free jurisdiction, the tribunal has power to make a costs order as set out in regulations 74-84 of the Employment Tribunal (Constitution and rules of Procedure) Regulations 2013.

26. Regulation 26 provides that a tribunal may make a costs order, or a preparation time order , and shall consider whether to do so, where it considers that a party or that party's representative has acted vexatiously; abusively; disruptively or otherwise unreasonably in either bringing the proceedings...or the way that the proceedings (or part) have been conducted, or, a hearing has been postponed or adjourned on the application of the party made less than seven days before the date on which the relevant hearing begins.
27. The tribunal may also make such an order, where a party has been in breach of any order, or practice direction or where a hearing has been postponed or adjourned on the application of the party
28. The amount of costs order can be any amount not exceeding £20,000.
29. A wasted costs order may be made against a representative in favour of any party where that 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 any such act or omission occurring after they were incurred, the tribunal considers it unreasonable to expect the receiving party to pay. Costs so incurred are described as wasted costs.

Submissions and conclusions

30. Ms Linford, for the Claimant makes a claim for costs for £500 plus vat. She argues that these are the wasted costs of the hearing of 30 July 2021 which have necessitated today's further hearing.
31. The Respondent asserts that despite the Respondent's non-attendance at the hearing on the 30 July 2021, progress was still made and that therefore the costs were not entirely wasted.
32. I have considered whether or not it is appropriate for me to make a costs order under rule 76 of the Employment Tribunal (Constitution and Rules of Procedure) Rules 2013.
33. I accept that there was not a deliberate failure and that this was a mistake, but whilst I accept that the Respondents representative intended to join the hearing , I note that he is a professional representative and that notice of hearing had been sent and received by the Respondent . The hearing was listed for three hours and it would have been possible and appropriate for the Respondent to have checked the file; retrieved the correct start time and joining instructions and joined the conference. He did not do this. No reasonable explanation for this failing is given.
34. The only reason why the application to amend was not dealt with and case management orders were not given in respect of it and therefore today's hearing was necessary was because of the Respondent's unreasonable failure to correctly join the previous hearing.
35. Because I consider that the Respondents representative's behaviour has been unreasonable in the way the proceedings have been conducted, and because I

consider that the failure to properly check the arrangements for attending amounts to an unreasonable act on the part of the representative within the meaning of regulation 80 (1)a of the ET regulations 2013, I have considered whether there is a basis for making a costs order against the Respondent and if so what that order should be.

36. Whilst the employment tribunal is primarily a costs free jurisdiction, it is expected that a professional representative will ensure that they have the correct information for joining any tribunal hearing and join the hearing at the appropriate time in the appropriate manner
37. This is of particular importance in order to ensure that cases are date dealt with within a reasonable time, and to avoid delay.
38. Here the Claimant has incurred additional unnecessary costs and the only reason for those costs being incurred is unreasonable error by the Respondent representative.
39. On that basis, I make order, the Respondent to pay the Claimant. The wasted costs of £500 plus VAT.

Employment Judge Rayner

Dated: 19 November 2021

Reasons sent to the parties: 9 December 2021

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.