



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss T Baverstock

**Respondent:** Medichem Manufacturing Limited

## JUDGMENT

The Respondent's application for a costs/preparation time order is refused.

## REASONS

1. The Claimant's claims of pregnancy discrimination, detriment by reason of pregnancy and failure to permit time off for ante-natal appointments were dismissed after a hearing taking place before a full Tribunal on 9, 10 and 11 October 2019. Oral reasons were given at the conclusion of the hearing. Neither party requested written reasons. Judgment was sent to the parties on 30 November 2019.
2. By letter dated 18 October 2019, the Respondent made an application under Rule 75 of the Employment Tribunal Rules of Procedure 2013 for an order that the Claimant pay costs/preparation time in the sum of £2,111.38.
3. That application was forwarded to me on 29 November 2019. On 16 December 2019, I gave instructions for a letter to be sent to the parties to enquire whether they were content for the application to be considered on the papers without a hearing and, if so, to invite the Claimant to make written representations in response to the application. It was not until 10 November 2020 that such a letter was sent to the parties, no doubt delayed because of administrative difficulties caused by the lockdown and the Covid-19 pandemic.
4. On the same day, the Respondent replied to say that it was content for the application to be considered on the papers without the requirement for a hearing. There appears to have been no reply from the Claimant.
5. Having been conducting hearings remotely, it has been a considerable time since I have attended the Ashford Employment Tribunal. However, I had cause to do so in November 2021 when I discovered that this matter remained outstanding. It is unfortunate that it had not been referred to me so I could consider the application remotely. Nevertheless, I am able to do so now.

6. Rule 76(1) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 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) a party, (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way the proceedings (or part) have been conducted; or
  - (b) any claim or response had no reasonable prospects of success.
7. Thus, the Rules provide that a Tribunal must apply a two-stage test: firstly, to determine whether the circumstances set out in paragraphs (a) or (b) of Rule 76(1) apply; if so, secondly the Tribunal must exercise its discretion as to whether a costs or preparation time order should be made and, if so, for how much.
8. The thrust of the Respondent's application is that the "claim had no basis" as evidenced in the Tribunal. The application therefore appears to have been made under section 76(1)(b).
9. Costs do not "follow the event" in the Employment Tribunal. The fact that the Claimant did not succeed is not, by itself, sufficient to show that her claim had no reasonable prospects of success. As noted in Gee v Shell UK Ltd 2003 IRLR 82, costs remain the exception rather than the rule.
10. The Claimant made claims of discrimination. It is well recognised that obtaining evidence of discrimination is often difficult and that a Claimant will often rely on being able to show, through cross examination of witnesses, that the employer's stated reasons for the treatment complained of were not in fact the true reasons; see London Borough of Lewisham v Oko-Jaja EAT 417/00; also Saka v Fitzroy Robinson Ltd EAT 0241/00.
11. I have had regard to the written record of the reasons for the Tribunal's decision. They record the Tribunal's view that the Claimant was confused in certain respects, such as the amount of time she was permitted to take as paid leave and the documents she was required to produce. The Claimant was unrepresented. The Tribunal may properly have regard to the fact that the party against whom a costs order is made is a litigant in person. In AQ Ltd v Holden UKEAT/0021/12/CEA His Honour Judge Richardson stated that a Tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Justice requires that Tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. Tribunals must bear this in mind when assessing the threshold tests. Even if the threshold tests for an order for costs are met, the Tribunal must exercise its discretion having regard to all the circumstances and it is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help or advice.
12. In Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78, a case decided in the Court of Appeal, Lord Justice Mummery said that the vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and ask whether there was unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, identify the conduct, what was unreasonable about it and what effects it had. That case also decided that although there was no requirement for the Tribunal to

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determine whether there is a precise causal link between the unreasonable conduct in question and the specific costs being claimed, that did not mean that causation is irrelevant.

13. Having regard to the whole picture and in accordance with the case law referred to above, even if I were able to conclude that the Claimant's claim had no reasonable prospects of success, I would not exercise my discretion to award costs/preparation time in this case.

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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Employment Judge Pritchard

Date: 26 November 2021