



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant

MR B FERNANDES

AND

Respondent

ROYAL MAIL GROUP LTD (R1)  
MR N RANA (R2)

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL      ON:    20<sup>TH</sup> DECEMBER 2021

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:    MR J SHAH MBE  
                  MS J KAYE

### APPEARANCES:-

FOR THE CLAIMANT:-      MR P O'CALLAGHAN (COUNSEL)

FOR THE RESPONDENT:-    MR S PEACOCK (SOLICITOR)

### COSTS JUDGMENT

The unanimous judgment of the tribunal is that:

- i) The claimant is ordered to the respondent costs in the sum of £10,404.00

### Reasons

1. After a hearing held between 11<sup>th</sup> and 19<sup>th</sup> October 2021 the tribunal dismissed the claimant's claims of race discrimination, victimisation and unfair dismissal; but upheld the claim of failing to be accompanied by a representative of his choice at a disciplinary meeting (although no award of compensation was made. The respondent has made an application for its costs which has been heard today.

### Basis of the Application / Respondent's Submissions

2. The legal principles are not in dispute but for completeness sake the respondent relies on the power to make a costs order contained in r76 (ET Rules 2013), as set out in greater detail below. The following principles apply:
  - i) The ET is under an obligation to consider whether to make an order where the relevant ground is made out; but
  - ii) The ET has a wide and unfettered discretion; and
  - iii) Does not have to establish a causal link between the conduct and the costs claimed or awarded.
3. The respondent asserts that bringing the claim was vexatious and/or otherwise unreasonable (r76(1)(a) as it consisted of and was part of a continued campaign against Mr Rana (R2) the basis of which were racist and discriminatory assumptions about him based on the perception that he was "Pakistani", which was upheld by the tribunal (para 62). In addition as was upheld by the tribunal many of the claims had no reasonable prospect of success as there was no evidence to support the factual allegations (r76 (1)(b)).
4. The respondents initial application was for an order that claimant pay all of its costs, of £23,508 plus VAT. On 28<sup>th</sup> September 2021 it sent a costs warning letter to the claimant setting why it contended the claims were misconceived and had no reasonable prospects of success. Had the claimant withdrawn by 1<sup>st</sup> October 2021 the letter set out that it would make no application for costs. In the course of the hearing Mr Peacock limited the costs application to costs incurred after 1<sup>st</sup> October 2021 of £10,404.00.
5. No Reasonable Prospect of Success (r76 (1) (b)) – Dealing first basis for the application is that the claims had no reasonable prospects of success, which the claimant either knew or should have known (Radia v Jeffries International Ltd). It relies on the fact that following the exchange of witness statements at the very latest the claimant must, or at least should have appreciated, that he had no evidence to contradict many if not all of the respondent's factual assertions and/or no evidence from which the tribunal could properly draw any inference that any conduct was because of or related to race. Put simply both in its costs warning letter, which sets out its position in detail, and in its submissions to the tribunal today, the respondent asserts that the claimant should have appreciated that evidentially his claims were bound to fail at least from that point.
6. Acting unreasonably in the bringing of or conduct of proceedings (r76(1)(a)) – The respondent contends that as it asserted, and as was found by the tribunal, that the proceedings were the culmination of a long campaign against Mr Rana, which was wholly unjustified and in support of which there was no evidence. Moreover, again as it asserted and as the tribunal found, the basis of this campaign was a number of discriminatory assumptions made by the claimant about Mr Rana because he

perceived him to be “Pakistani”. It submits that to use litigation to pursue a vendetta against Mr Rana with no evidence to support it and which was based on discriminatory assumptions is necessarily unreasonable conduct. The respondent relies on the fact that as is set out in para 62 of the reasons we accepted the respondent’s analysis of the basis of the claim:-

*“In our judgement the respondent is correct to identify this as asserting stereotypical and fundamentally racist assumptions about Mr Rana. Mr Rana has in our judgement wholly unfairly and unreasonably been forced to defend himself both internally and in this tribunal against allegations for which there is simply no evidence and to do so on the basis of allegations about him which are themselves clearly themselves racist.”*

### Claimant’s Submissions

7. The claimant makes a number of submissions. Firstly that a costs order is exceptional and that the employment tribunal is not a forum in which costs ordinarily follow the event. Secondly that the fact that the claimant lost does not in and of itself displace that basic principle, and thirdly that that which may appear clear to the tribunal, or clear to the parties, once the fog of battle dissipates will not necessarily appear clear prior to the hearing; and whatever the tribunal’s view of the evidential basis of the claims there can be little doubt that the claimant himself believed implicitly that his allegations were true. This is not a case in which allegations were made in bad faith (in the sense that the claimant did not himself believe them to be true). Moreover the claimant called a number of witnesses many of whom shared and expressed the same underlying belief in the allegations as the claimant. Whilst the tribunal may of rejected the claimant’s claims, as viewed by the claimant it was a valid claim in which his evidence was supported by corroborating witnesses. In those circumstances this case should follow the ordinary course and the tribunal should not exercise its discretion to make any order of costs
8. Means – The information provided by the claimant shows monthly income of £1400 with outgoings of £1250, and £60 remaining after essential monthly outgoings are taken into account. Accordingly the claimant submits that he is not in a position to meet any order for costs, or at very least that he should be ordered to pay a minimal amount to reflect his financial circumstances.
9. The respondent submits that firstly the tribunal is not obliged to limit the amount of any costs awarded to that which the claimant can in his current circumstances pay; and that the conduct in this case was so egregious that an award should be made as a matter of principle in any event. Moreover they note that the claimant has been professionally represented throughout and has been able to obtain something in excess of £13,000 to pay for representation. The amount that they are seeking is less than he has already found to pay for his own representation and in those circumstances there is no reason to suppose that he would not be able to find a source of funding from which to pay any order for costs.

## Conclusions

10. In broad terms we have concluded that we accept the respondent's submissions as to both bases of the respondent's application and that the threshold for making an order for costs has been crossed on both grounds. Put simply we accept that at least from the point of exchange of witness statements that the claimant should have appreciated that there was no basis evidentially to challenge the respondent's factual assertions; and even more fundamentally that to bring a claim which relies on the tribunal accepting stereotypical and discriminatory assumptions about an individual based no more than his perceived nationality or national origin is necessarily unreasonable conduct. Similarly in principle there is nothing other than the claimant's means which would lead us to conclude that we should not exercise our discretion to make a costs order in the amount sought.
11. In terms of the claimant's means we are obliged to consider whether to take them into account but are not limited to making order in an amount which corresponds to a figure which can be paid immediately or in a reasonable time thereafter. If however we decide not to take the claimant's means into account we must explain why.
12. In our judgement there are good reasons for not taking the claimant's means into account in this case. Firstly the respondent's costs are not excessive and are limited to the period after which in our judgement on any reasonable analysis the claimant should have appreciated that the primary claims had no reasonable prospect of success, but then ploughed on regardless. Secondly we accept that to present a claim to the tribunal and compel a party to defend a claim which is itself discriminatory is a good reason for making an order for costs irrespective of means..
13. Alternatively and even if we had decided to take into account the claimant's means we accept the respondent's submission that given that the claimant was able to obtain funds, despite his apparently limited means, for his own representation, that there is no reason to suppose that he could not do so to pay an order for costs.
14. Our conclusions are therefore that this is a case which falls into the unusual category in which we have decided not to take into account the claimant's means, but that if we had we would have made the same order.
15. As a result the claimant is ordered to pay the respondent's costs of £10,404.

Employment Judge Cadney  
Date: 6 January 2022  
Judgment & reasons sent to parties: 14 January 2022

FOR THE TRIBUNAL OFFICE