



## EMPLOYMENT TRIBUNALS

**Claimant**

Mr A D Ramchurn

v

**Respondent**

University of Southampton

### Judgment on Costs

**Before: Employment Judge Rayner**

- 1. The Claimant will pay the respondent costs of £889.70 plus VAT at 20%.**
- 2. The Claimant must therefore pay the Respondent the total sum of £1067.64.**

#### Reasons

3. By an email dated 1 October 2021 the Respondent applied for both an unless order and for costs against the Claimant.
4. The Respondent set out in their letter that they had already made an application for an unless order on the 16 August 2021 in connection with the Claimant's failure to comply with the Tribunal's case management orders, including a failure by the Claimant to provide disclosure.
5. The Employment Tribunal responded to the parties on the 2 September 2021, making a further case management order for the exchange of documents by the 10 September 2021.
6. The Claimant was reminded of the need to comply with directions and was specifically told that the claim could be struck out, if a party fails to actively pursue it, amongst other reasons. The Claimant was also reminded that a costs order may be made if a party's conduct of litigation is considered to be unreasonable.
7. The Respondent repeated their application an unless order by their letter of 10 September 2021, on grounds that the Claimant had failed to comply with his disclosure obligations.
8. The Tribunal gave the Claimant a further opportunity to comply on 22 September 2021, ordering him to provide disclosure within a further seven days.
9. Again, the Claimant did not comply with the order, or reply to the Respondents and the Respondents confirm that at no point has the Claimant provided any disclosure, either in respect of any documents or in respect of his claim for

remedy. Nothing is provided in respect of loss of earnings or in respect of the £50,000 claimed as health compensation in respect of the dismissal, which the Claimant alleges had triggering depression and sickness.

10. For these reasons, and following the Respondents own steps to provide further disclosure, the Respondent repeated its application for an unless order and for costs.
11. A Strike Out Warning was issued on 11 November 2021, under rule 37 Employment Tribunal Rules of Procedure 2013, stating that *Employment Judge Dawson was considering striking out the claim because it had not been actively pursued*, and giving the claimant until 18 November 2021 to object to the proposal giving reasons in writing or to request a hearing at which to make them.
12. The claimant failed to respond or give reasons, or request any hearing, and the claim was struck out by a judgment dated 3 December 2021, sent to the parties on 23 December 2021.
13. By their email of 6 January 2022, the respondents have repeated their application for costs.
14. The costs application is made on the basis that the Claimant's conduct of the litigation has been unreasonable and in breach of the Tribunal's case management orders. The Respondent states that the Claimant has failed to cooperate at all in respect of preparation for the hearing. The Respondent points out that disclosure was originally ordered for 28 May 2021 with witness statements for 22 October 2021. The Claimant has, four months after the date ordered for disclosure and with only three weeks until witness statements are due for exchange, still not provided any disclosure.
15. The Respondent also refers to the nature of the Claimants correspondence which is alleged to include many personal remarks and insults .
16. The Respondent asserts that it has incurred wasted costs
17. The Respondent seeks a costs order that the Claimant make a payment in respect of costs incurred while legally represented in relation to the ongoing failure to comply with case management orders (Rule 75(1)(a)).
18. Costs have not been claimed in respect of time spent exploring the Claimant's requested disclosure, only that relating to the non-disclosure by the Claimant.
19. The Respondents schedule sets out that the emails and the dates sent and the amount of time spent on the email .
20. The Respondent has copied the Claimant into their application in accordance with Rules 30(2) and 92 of the Employment Tribunal rules, but no reply or comment on the application for costs has been received by the Tribunal from the Claimant.

21. In the circumstances it is appropriate for this matter to be determined on papers.

### **The legal provisions**

22. The tribunal may make a costs order and shall consider whether or not to do so where, amongst other things, it considers that a party or parties representative has acted vexatiously; abusively disruptively or otherwise unreasonably in either the bringing of the proceedings, or in the way that proceedings or part been conducted. ( see regulation 76(1)a ET Rules).

### **23. Consideration and determination**

24. The first question I have asked therefore is whether or not I find that the Claimant has acted vexatiously; abusively; disruptively or otherwise unreasonably. In this case I find that the Claimant's failure to cooperate with the Respondent and the failure to comply with the orders of the Tribunal on numerous occasions and despite being given extensions time, is unreasonable conduct. The Respondent has been put to the cost of having to constantly chase the Claimant and, when the Claimant fails to comply with orders of making reasoned and detailed applications for unless orders strike out orders and costs.

25. The Claimant has been reminded on a number of occasions that the orders made by the Employment Tribunal must be complied with in order to progress the case. He has simply failed to do so.

26. As a result of finding unreasonable conduct, I must consider whether or not to make a costs order, and if so, what any costs order should be. I may take into account any information I have about the claimants ability to pay.

27. I have borne in mind that the Employment Tribunal is primarily a costs free jurisdiction. This means that costs do not follow the event and that each party will expect to bear their own costs, both incurred during the course of preparing for hearing and the costs of attending at the hearing itself.

28. However, this does not mean that the party who consistently fails to comply with the orders of the court order and thus behaves in a manner which is unreasonable is exempt from any obligation to pay costs at all.

29. The claimant was on notice of the costs application and the amount being claimed and yet no response at all has been received in respect of the application. Despite a further letter being sent to the claimant on 12 January 2022 asking him to provide any further information he wanted considered in respect of the costs application, , explaining that the matter would be determined on the papers by myself, no response was received. I therefore have no explanation at all from the claimant as to why he has failed to comply with orders, or respond to the costs application.

30. In this case, I consider that it is appropriate to make costs order because I conclude that the claimants behavior has led directly to the responded being

unable to properly prepare a for the hearing, and has necessitated several applications to the tribunal. The claimant has not responded at all, the claim has been struck out because of these failures, and wasted costs have therefore been incurred.

31. One of the concerns in this case is that the claimant has not provided a schedule of loss. The only information I have about the claimant's ability to pay a cost award, is contained in the ET1. This states that he has found further employment but does not set out on the form, as required, the level of pay in his new employment. His job at the university paid in the region of £4000 per calendar month. I find, on balance that the claimant is likely to be able to afford to pay a limited costs order.
32. I have therefore reviewed the Respondents schedule of costs and determine as follows.
33. The Respondent claims a Total of 46 units in respect of emails and letters written. Of these 15 are incurred on or before the 10 September 2021. I award costs in respect of everything after 10 September 2021 as set out in the schedule on the basis that the Claimant was warned of the possibility of costs by the email from the tribunal, dated 10 September 2021, but failed to take any action to respond or to pursue his claim. It is for that reason that the costs have been incurred.

**Employment Judge Rayner**

Dated: 21 January 2022

Judgment & reasons sent to parties: 21 January 2022

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.