



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mr H Slade

AND

Respondent
Kasteel Collection Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard: In chambers

On: 18 January 2022

By: Employment Judge Gray

RESPONDENT'S APPLICATION FOR COSTS

The judgment of the tribunal is that the Respondent's application for costs is refused.

REASONS

1. By judgment of the tribunal at a preliminary hearing dated 4 November 2021, which was sent to the parties on 30 November 2021, it was determined that:
 - a. The Claimant's claim is dismissed on withdrawal.
 - b. The Respondent's application for costs is still to be determined.
2. By way of background the preliminary hearing on the 4 November 2021 was listed following a telephone case management hearing before Employment Judge Cadney on the 3 June 2021.
3. It was listed to consider four claims 1404591/2020, 1404993/2020, 1405020/2020 and 1405048/2020; and for each decide:

- a. Whether all or any of the claims were brought out of time;
- b. If so whether time should be extended;
- c. Whether the tribunal has jurisdiction to hear all or any of the claims;
- d. Whether any claim should be struck out as having no reasonable prospect of success and/or whether a deposit should be ordered in respect of any claim having little reasonable prospect of success.
- e. To give any further case management directions and listing directions in respect of any of the claims.

4. Employment Judge Cadney noted about Mr Slade's claim:

"1405048/20 Harry Slade

15. By a claim form submitted on 22nd September 2020 arising from the termination of his employment on 25th June 2020 the claimant brought the following complaints

- a) Unfair Dismissal);
- b) Age Discrimination/Child Slavery;
- c) Harassment;
- d) Furlough Fraud;
- e) Unpaid holiday pay;
- f) Unpaid pension contribution

16. In his ET1 the claimant contends that he was employed from 23rd September 2016 until 25th June 2020. The respondent contends that his first employment ended on 24th November 2019 and he was employed again 5th February 2020. It follows that any claim relating to his first employment is out of time and that he has insufficient service to present a claim for unfair dismissal. In relation the age discrimination claim that appears to relate to a time in 2017 when the claimant was a minor and is out of time."

5. Case management orders were made by Employment Judge Cadney for requests for further information to be made and answered, witness statements to be prepared by those Claimants whose claims were

potentially out of time, and the Respondent to set out its position on the matters to be determined.

6. Mr Slade applied to withdraw his claim by email dated 3 November 2021. The Claimant wrote ... "I am writing to you to inform you of my withdrawal from the tribunal. I have been unable to complete the relevant tasks to be able to proceed and feel it's in my best best interest not to continue. I do apologise for the inconvenience but at this time my mental health has stopped me from pursuing this. I am not in the right place mentally and again apologise for wasted time. I would also like to add that another reason I wouldn't be necessarily happy to proceed is that I am not in a great state financially, being young, and therefore cannot afford a deposit fee as asked for by Matthew Parker in his previous email."
7. The Respondent made an application for costs against each Claimant at the preliminary hearing.
8. Mr Slade was not in attendance. It was therefore determined that Mr Slade's claim was dismissed following his express withdrawal by email dated 3 November 2021. In respect of the Respondent's costs application that it was still to be determined and pursuant to Rule 77 case management orders were made to enable Mr Slade to be given reasonable opportunity to make representations in response to the Respondent's application.
9. It was therefore directed that:
 - a. On or before 14 days of this case management order being sent to the parties the Respondent must write to the Claimant and the Tribunal setting out the details of its application for costs specific to this Claimant.
 - b. On or before 14 days from the above details being sent to the Claimant, the Claimant must write to the Respondent and the Tribunal with his representations in response to the Respondent's costs application.
 - c. It is anticipated that the costs application will then be determined on the papers submitted by the parties.
10. The Respondent confirmed the basis of its application for costs on 14 December 2021.
11. The Claimant submitted his written representations against the application on 14 December 2021.
12. Under rule 77 of the Rules a party may apply for a costs order at any stage up to 28 days after the date on which the judgment finally determining the

proceedings in respect of that party was sent to the parties. The Respondents' application was therefore received in time.

13. Further, no such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application.
14. The parties have not requested the matter be determined by a hearing, so it is therefore now determined on the papers as indicated it would be in the case management orders made on the 4 November 2021.

The Application for Costs

15. The Respondent makes its application on the basis that the Claimant's claim had no reasonable prospects of success and that it was frivolous and vexatious. In particular it submits that the complaints about Notice, Holiday and arrears of pay were frivolous due to a lack of particularisation. Also, that the complaints for Harassment, Furlough Fraud and Child Slavery were outside the Tribunal's jurisdiction.
16. The Respondent asserts, the Claimant could get information about his claims from ACAS, the CAB and various Government Websites.
17. It is asserted by the Respondent that it would have been apparent to the Claimant the length of service issue and time limit issues.
18. This though is mere assertion and the Claimant has not accepted he undertook such research or had such knowledge in his response to the application for costs. The Claimant instead asserts a very different position as to the difficulties he was under at the time in understanding matters.
19. The Respondent also points to the lack of particulars about the claim. However, I would note that this was the purpose of the case management orders made by Employment Judge Cadney to seek to clarify matters further. The Claimant explains that for reasons of his mental health he was unable to comply and instead withdrew his claim.
20. The Respondent makes assertions as to the motivations of the Claimant and the other claimants, in particular Mr Ramsden. This though is not something the Claimant has expressly agreed with in his response, and it is noted that evidence of Mr Slade's direct and complicit involvement in such matters has not been presented.
21. I note that at the point of withdrawal the Claimant was not subject to a deposit order or threat of strike out due to the prospects of his claim.

The Rules:

22. Of relevance are rules 74 to 84 of the Employment Tribunals Rules of Procedure (the “Rules”).
23. I note in particular in respect of the application for costs:
24. Rule 76(1) of the ET Rules provides that a Tribunal may make a costs order, and shall consider whether to do so, where it considers that:
- d. (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 that the proceedings (or part) have been conducted; or
 - e. (b) Any claim or response had no reasonable prospect of success.
25. That under Rule 76, there is a two-stage test, the Tribunal must consider (1) whether rule 76(1)(a) or (b) applies and, if so (2) whether to exercise its discretion to award costs.
26. An order for costs is the exception, and not the rule.

The Decision

27. Based on the above I do not find that it can be said, as submitted by the Respondent, that this claim had no real prospects of success from the outset, nor that it was a frivolous and vexatious claim without merit. To know this would require further determination of matters which has not happened.
28. I do not find that rule 76(1)(a) or (b) applies and therefore the Respondent’s application for costs is refused.
29. Even if I am wrong in that I do not find, for the same reasons, that it would be reasonable to exercise my discretion to award costs in this matter.

Employment Judge Gray
Dated: 18 January 2022

Judgment sent to parties: 21 January 2022

FOR THE TRIBUNAL OFFICE