



EMPLOYMENT TRIBUNALS

Claimant: Mr B Kainth

Respondent: British Airways Limited

Heard at: Watford CVP

On: 22 December 2021

Before: Judge Bartlett, Mr N Ramgolam and Mr P Miller

Representation

Decided in chambers on the papers

COSTS JUDGMENT

1. The claimant is ordered to pay the respondent costs in the amount of £2,040.

REASONS

Background

1. In a full reasoned oral decision on 11 June 2021 the Employment Tribunal dismissed the claimant's claims for unfair dismissal and race discrimination in their entirety. A request for written reasons was made and these were provided.
2. On 16 June 2021 the respondent made an application for a costs order under rule 76(1)(a) and (b) on the basis that the claimant's claims had had no reasonable prospects of success. The respondent requested that the application be considered without a hearing.
3. The claimant responded on 29 June 2021 opposing the respondent's application.
4. The application and response were not sent to Judge Bartlett until 1 November 2021 which has led to the delay in deciding the application.

The Tribunal Rules relating to costs

5. The Employment Tribunal's Rules of Procedure 2013 as subsequently amended at rules 74 to 78 set out the principles and processes that must be applied in relation to costs orders.
6. Paragraph 77 sets out "A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgement finally determine the proceedings in respect of that party were sent to the parties."
7. Paragraph 76 sets out:

When a costs order or a preparation time order may or shall be made

76.—(1) 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 that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

(2) A 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 a party.

Decision

8. We find that the race discrimination claim had no reasonable prospects of success. The claim was extremely weak. The claimant had not raised race discrimination during the internal procedures with the respondent. The employees involved in the facts of the case including witnesses and others who were disciplined included a mixture of races. The claims of differential treatment could not be supported by the facts as taken at their highest.
9. We are not satisfied that it can be said that there were no reasonable prospects of success of the unfair dismissal claim. The Tribunal needed to carefully consider the evidence in coming to its conclusions. The claimant challenged several aspects of the dismissal including the procedure the respondent followed. The Tribunal found that the investigation was reasonable but this is not the same as there being no reasonable prospects of success of that line of argument. The Tribunal found that one of the respondent's policies, the Travel Policy was somewhat vague and open to interpretation. Overall we do not find that there were no reasonable prospects of success of the unfair dismissal claim.
10. The respondent's application sets out that it applies for costs in the amount of £1700 +VAT in respect of the race discrimination part of the claim.

11. The claimant's response sets out that he has spent his life savings on bringing the claim and has not found work. No detailed information about his financial circumstances have been provided but we accept that he has limited financial means and it would not be easy for him to pay a costs award.
12. We have considered all the circumstances and have decided to exercise our discretion and make a costs award in the amount of £1700 +VAT which is £2040.

Employment Judge **Bartlett**

Date 22 December 2021

JUDGMENT SENT TO THE PARTIES ON

21/1/2022

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