



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107832/2019 and 4110393/2019

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Held in Glasgow on 2 December 2019

Employment Judge R Gall

10 **Miss V Pikturnaite**

**Claimant
No appearance and
No representation**

15 **FMIC Limited**

**Respondent
Represented by:
Mr A Maxwell -
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claimant is ordered to pay expenses to the respondents in terms of Rule 76 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013. The sum awarded by way of expenses is £1000.

25 As stated at the hearing, in terms of Rule 62 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, written reasons will not be provided unless they are asked for by any party at the hearing itself or by written request presented by any party within 14 days of the sending of the written record of the decision. No request for written reasons was made at the hearing. The
30 following sets out what was said, after adjournment, at the conclusion of the hearing. It is provided for the convenience of parties.

REASONS

1. This case called on 2 December 2019. The hearing was set down to consider the application for expenses made by the respondents. It followed upon a
35 hearing in the claim and employer contract claim. That hearing took place on **E.T. Z4 (WR)**

9 October 2019 and resulted in Judgment being delivered that day and being sent to parties on 22 October 2019.

2. In course of that Judgment the fact that the respondents sought expenses was detailed. The hearing on expenses set down for 2 December was
5 intimated. The possibility of information being provided by the claimant as to ability to pay was highlighted. It was set out that ability to pay could be taken into account by the Tribunal in determining whether any award of expenses would be made and if so what any sum awarded by way of expenses would be. The claimant was requested to lodge any paperwork supporting her
10 income and outgoings at least 7 days prior to the hearing on 2 December. That Judgment was followed up by the notice of hearing being sent to parties.
3. The claim in this case was presented by solicitors on behalf of the claimant on 25 July 2019. It was answered. The respondents lodged an Employer Contract Claim. That was not answered by the claimant.
- 15 4. There was no contact from the claimant with the Tribunal during the duration of the claim. Her solicitors withdrew from acting on her behalf, intimating that to the Tribunal on 19 September. The reason for withdrawing was stated as being that they were unable to obtain instructions from the claimant.
5. The claimant did not appear when the case was scheduled to proceed to
20 hearing on 9 October. There been no contact from her prior to that hearing and indeed has been no contact from her after that hearing. On the day of the hearing on 9 October the Tribunal Clerk attempt to speak to the claimant. The telephone number provided by the claimant was dialled. There was however no reply.
- 25 6. Judgment was sent to the claimant. That Judgment awarded the respondents sums which they had sought in terms of the Contract Claim. There was no response by the claimant to this Judgment.
7. As stated, the hearing on expenses was intimated to the claimant both in terms of the Judgment in the terms of the hearing notice. There has been no

contact from the claimant with the Tribunal. There has also been no contact by the claimant with the respondents.

8. There was no appearance by the claimant on 2 December. The Tribunal Clerk again tried to contact the claimant with there being no reply at the telephone number. A voicemail was left. There was no contact by the claimant with the Tribunal office and no appearance by her in the time when the case was being heard, when adjournment took place to allow deliberation and when the Tribunal reconvened to deliver the Judgment.
9. In course of the period of litigation the respondents had contacted the claimant by letter to suggest possible resolution of the case. They had given the claimant a warning as to costs. This occurred on 23 September. There was no reply by the claimant to that letter.
10. In terms of rule 76, one possible ground on which expenses can be awarded is that of the claim having had no reasonable prospect of success.
11. I did not regard that as being the case in this instance. It was not obvious from the claim form that the claim had no reasonable prospect of success. Solicitors had been involved in preparation of the claim and presumably were content from what the claimant told them that there was a potential basis of claim. The merits of the claim were not tested. It cannot be presumed that as the claimant did not appear and as the claim was not prosecuted that there were no reasonable prospects.
12. Another ground on which expenses may be awarded by the Tribunal in terms of Rule 76 is where a claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing of the claim or in the way in which the proceedings or part thereof were conducted.
13. In my view the conduct of the claimant did not fall into the category of being vexatious, abusive or disruptive.
14. It seemed to me however that the conduct of the claimant was potentially unreasonable. That conduct was the absence of contact from the claimant

from the time of lodging of the claim, including non-appearance at both hearings.

- 5 15. I was satisfied that the failure to respond to correspondence, to participate in the Tribunal process by appearing, submitting any documents or by making contact with the Tribunal did amount to unreasonable conduct. It is unreasonable in my view to initiate a claim and then to play no further part in the proceedings. The option is there from the claimant's perspective of withdrawing the claim and thereby avoiding further expense in relation to the claim. The claimant was also on notice in this case of the possibility of expenses arising. It is her prerogative to disregard any such warning. There is however a risk in so doing.
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- 15 16. I had no information as to the ability to pay of the claimant other than in the claim form where it is said that she had obtained alternative employment. The claimant was alerted in the Judgment to the possible relevance of ability to pay in relation to whether an award of expenses was made and if so what amount was to be involved. It was highlighted to her that she should supply information as to her income and expenditure for the hearing on expenses if she intended to appear and to make any submission in relation to ability to pay. No documentation was received. I have therefore not taken any ability to pay into account.
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17. Expenses were sought from 23 September, the start of involvement of solicitors for the respondents. The sum involved, to include attendance and conduct of the hearing of expenses was £2702.50 + vat.
- 25 18. Any costs to be awarded are to be compensatory rather than punitive. Costs should be limited to those reasonably and necessarily incurred. An award of costs remains the exception rather than the rule. There is always an element of broad-brush approach by a Tribunal in this scenario.
- 30 19. Looking at the account of expenses produced, there are elements of time spent in meeting initially with the client, in completion of the bundle for instance and in preparation for hearing which, though no doubt genuinely incurred, might in my view properly be restricted to an extent.

20. I also keep in mind that some costs would have been involved in preparing the employer contract claim and in pursuing that. That indeed was the claim which ultimately proceeded to hearing. It was appropriate that evidence was heard. The preparation costs and time spent at the Tribunal were not affected
5 by the absence of appearance by the claimant. They were also not incurred due to the unreasonable conduct of the claimant. Whilst there does not require to be a precise causal link between unreasonable conduct and the particular costs, it is a relevant factor which the Tribunal can competently consider. Ultimately, however, it is the nature, gravity and effect of the unreasonable
10 conduct which is of importance.
21. A further factor of which I was conscious was that the claimant was unrepresented. That did not however bear upon the unreasonable conduct given that the major element of unreasonable conduct of the claimant was the absence of contact with the Tribunal and respondents. No legal
15 representation or ability was required for that to be avoided.
22. Applying the Tribunal's discretion, that broad-brush approach and those principles mentioned, I have concluded that it would be appropriate to award expenses in the sum of £1000. The claimant is ordered to pay that amount to the respondents.

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Employment Judge: R Gall
Date of Judgment: 2 December 2019
Entered in register: 3 December 2019
25 and copied to parties

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