



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms. C. Bishop-Matthews

v

Rockford's 24/7 Limited

Heard at: Birmingham (on papers) On: 28 January 2022

Before: Employment Judge Wedderspoon

Representation:

Claimant: In Person

Respondents: Mr. Lincoln Bhebe, Director

JUDGMENT

1. The claimant is awarded a preparation time order of £266.50.
2. The award is payable by 11 February 2022.

REASONS

1. By Judgment dated 22 October 2021 the claimant succeeded in her claim for holiday pay against the respondent. By letter dated 8 November 2021 the claimant made an application for a preparation time order. The parties were given an opportunity to make written representations and agreed for the application to be dealt with on the papers. The respondent resists the application.

The Law

2. A preparation order is defined in Rule 75 (2) of the Schedule of the Employment Tribunal (Constitution & Rules of Procedure) Regulations 2013 as *“an order that a party (“the paying party”) make a payment to another party (“the receiving party”) in respect of the receiving party’s preparation time while not legally represented”. “Preparation time” means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing.”*
3. The criteria for making a preparation order is set out at Rule 76 (1) which states *“A Tribunal may make a preparation time order and shall consider whether to do so where it considers that (a) a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way the proceedings (or part) have been conducted; (b) any claim or response had not reasonable prospect of success..”*
4. Further pursuant to Rule 76 (2) an order may also be made where a party is in breach of any order or practice direction.

5. The amount of the order is determined by the number of hours in respect of which a preparation time order should be made on the basis of the information provided by the receiving party on time spent falling within rule 75 (2) and the Tribunal's assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation. At present the hourly rate is £41.
6. Further pursuant to rule 84 of the Rules in deciding to make a preparation time order and the amount the Tribunal may have regard to the paying party's ability to pay.
7. Mrs. Justice Simler in the case of **Haydar v Pennine Acute NHS Trust (UKEAT/0141/17)** set out the general principles when making a costs order pursuant to rules 74 to 78. At paragraph 25 of the Judgment it was stated

“The words of the Rules are clear and require no gloss as the Court of Appeal has emphasised. They make clear (as is common ground) that there is in effect a three stage process to awarding costs. The first stage- stage one- is to ask whether the trigger for making a costs order has been established either because a party or his representative has behaved unreasonably, abusively, disruptively or vexatiously in bringing or conducting the proceedings or part of them or because the claim had no reasonable prospect of success. The trigger if it is satisfied is a necessary but not sufficient condition for an award of costs. Simply because the costs jurisdiction is engaged does not mean that costs will automatically follow. This is because at the second stage – stage two – the tribunal must consider whether to exercise its discretion to make an award of costs. The discretion is broad and unfettered. The third stage – stage three – only arises if the tribunal decides to exercise its discretion to make an award of costs and involves assessing the amount of costs to be ordered in accordance with Rule 78. Ability to pay may be considered both at the stage two exercise of discretion and at stage three when determining the amount of costs that should be paid.”

Submissions

8. By letter dated 8 November 2021 the claimant made an application for a preparation time order. The basis of her application was that the respondent failed to comply with orders of the tribunal in a timely manner and that the respondent's defence had no reasonable prospect of success. The claimant stated that the respondent failed to comply with the case management order dated 13 May 2021 by failing to prepare a full written statement containing all of the evidence intended to be given at the final hearing; the respondent failed to supply documentation to the claimant. The claimant received the ET3 on 18 October 2021 4 days prior to the hearing. The claimant said that the ET3 was incorrect. The claimant spent time preparing the bundle of some 8 hours and amended the bundle of some 2 hours. The claimant sought £410 at a rate of £41 per hour. As a direct consequence the claimant said she had to amend her bundle. By email dated 20 December 2021 the claimant provided a breakdown of the time she alleged to have taken to prepare the case. In the claimant's schedule the claimant estimated 3 hours of preparation time on 1 June 2021

namely research on employment law and tribunal information; checking through old rotas for shifts in March; locating relevant pay slips, preparing of a schedule of loss; printing; scanning; emails and posting the schedule. On 25 July 2021 the claimant claims 4.5 hours of preparation time for gathering documents together; printing the documents; arranging the documents in order; creating a contents page; writing a statement referencing documents; printing and signing the documents; scanning statement and documents to create a PDF; send PDF to the tribunal and respondent and printing the delivery of receipts. On 20 October 2021 the claimant claims 2 hours of preparation time for printing the original case; printing the ET3 supplied by the respondent; putting the bundle together following the directions from the court (which required additional documents not previously submitted, including ACAS certificate and the ET30; numbering pages and scanning all document to a PDF format and submitting the PDF to the court and the respondent. The claimant also claims for 30 minutes on 21 October 2021 to prepare responses to queries raised by the respondent in the ET3 to enable her to ask relevant questions at the tribunal and prepare a response to the respondent's questions at the tribunal.

9. By email dated 12 November 2021 Mr. Bhebe, on behalf, of the respondent disputed the claimant's entitlement to claim and amount claimed. Mr. Bhebe first submitted that the Judge had rejected the claimant's preparation time order so how could the claimant believe she was entitled to payment. Initially the claimant had sought £72 and now £410 was sought. Mr. Bhebe disputed 8 hours of preparation time sought; what had the claimant spent 8 hours on. He also disputed the rate claimed; the claimant was earning £9.50 per hour whilst employed by the respondent so how could the claimant now claim £41. The respondent continued to dispute that the claimant was entitled to sleep ins. By further email on 15 December 2021 Mr. Bhebe enquired why the claimant was claiming more than what was rejected at the previous hearing and sought justification for the time claimed spent on documents.

Conclusion

10. The claimant did not make a preparation time order at the final hearing on 22 October 2021. The claimant sought expenses which was rejected. The claimant made an application for a preparation time order by email dated 8 November 2021 within the time limit provided in the rules (Rule 77). The Tribunal finds that it is entitled to consider the claimant's application for a preparation time order.
11. The starting point is whether any of the grounds set out in Rule 76 (1) or (2) are made out.
12. The respondent was in breach of a tribunal order by failing to provide a witness statement by 13 May 2021 (pursuant to Rule 76 (2)). The respondent was permitted by the Tribunal at the final hearing to confirm the contents of the ET3. The failure to serve a witness statement was a breach of the Tribunal orders. However, the final hearing was able to take place with this adjustment to the process.

13. The claimant says that the respondent failed to provide any documents save for the ET3 only, received four days prior to the hearing. The duty upon the parties is to disclose relevant documents within their possession or control. The expectation would be that the ET3 should have been sent on to the claimant by the Tribunal once received from the respondent. The Tribunal is unclear here whether this actually occurred and there is no further information about this. There is insufficient information to find a breach here.
14. The claimant's claim was about a shortfall of holiday pay at the time of the termination of her employment namely a failure to pay her sleep ins. The claimant's pay slip dated 30 October 2020 demonstrated that the custom and practice was that the respondent paid the claimant for sleep ins when she was on holiday. The respondent continued to dispute this issue at final hearing and to date. The Tribunal finds that position unsustainable and the respondent's defence to the claim had no reasonable prospect of success pursuant to Rule 76 (1)(b).
15. The Tribunal finds that the criteria to make a preparation time order is satisfied.
16. Next the tribunal considers whether to exercise its discretion to make an award and this discretion is broad and unfettered. The Tribunal concludes that in the circumstances that the respondent maintained an unsustainable defence to this claim which has caused the claimant to have to bring and prepare such a claim at Tribunal, it is appropriate to make a preparation time order. The Tribunal does not find that the breach of the order to provide a witness statement caused any real expense; the hearing did not need to be postponed and there is insufficient information to establish whether the claimant received the ET3 from the Tribunal prior to the respondent providing this 4 days before.
17. On the basis that there was no reasonable prospect of successfully defending the claim, the Tribunal considers the amount to award by considering the time spent by the claimant in preparing the case, taking account of proportionality. There is no evidence here that the respondent has an inability to pay. The hourly rate is fixed at £41 by the rule 79 of the 2013 Rules (the claimant's work rate per hour is irrelevant).
18. The Tribunal takes into account that the claimant is a litigant in person and that some legal research would have been required and preparing a bundle is likely to be unfamiliar to the claimant. The claimant gave evidence as did Mr. Bhebe for the respondent. The bundle of documents was modest at 44 pages. The Tribunal concludes that a proportionate amount of time to prepare the case for a hearing is 6.5 hours; namely 3 hours for 1 June 2021; 3 hours for 25 July 2021 and 30 minutes for 20 October 2021. The tribunal does not award the time for 20 October 2021 because it is not clear if the Tribunal had provided the ET3 to the claimant and there appears to be some duplication/exaggeration here.
19. The claimant is awarded £266.50 (6.5 x £41).

Case Number: 1301407/2021

Employment Judge Wedderspoon

Date 28th January 2022