



EMPLOYMENT TRIBUNALS

Claimant: Mr M Holmes

Respondent: Crown Packaging UK Limited

JUDGMENT

The Respondent's application dated **5 January 2022** for reconsideration of the judgment sent to the parties on **5 January 2022** is refused.

REASONS

1. There is no reasonable prospect of the original decision being varied or revoked for the reasons set out below.

2. This case was heard over 3 days on 2, 3 and 4 June 2021. At the conclusion of the hearing, I found that the Claimant's claim was not well-founded and I dismissed it. I gave an extempore judgment giving detailed reasons for my decision. Neither party asked for written reasons. On 15 June 2021, the Respondent applied for costs under rule 75(1)(a). The application was copied to the Claimant on the same date. Detailed reasons for the application were set out in the Respondent's application. On 5 July 2021, the Claimant provided a detailed response to the costs application and set out his current financial position.

3. On 9 July 2021, I wrote to the parties and noted that no schedule of costs had been sent to the Tribunal. I asked whether a costs schedule had been sent to the Claimant and whether the parties wished the application to be heard at an attended hearing or be dealt with on the papers. At this point, the conduct of the case on behalf of the Respondent was with Ms Scaffell of Eversheds Sutherland. She replied to the Tribunal on 14 July 2021 and, inter alia, requested documentation from the Claimant as to when he had returned to England from Spain. I am at a loss to understand the relevance of this request as costs incurred up to the end of the hearing could have been assessed without further information. Nonetheless, the Claimant gave a detailed summary of his travel from Spain to England together with supporting documents by email dated 27 July 2021. Both parties agreed the application could be dealt with on the papers.

4. The Tribunal heard nothing further from the parties until 1 September 2021 when

the Respondent's solicitors emailed to say Ms Scaffell had gone on maternity leave and conduct of the matter had been assumed by Mr Taylor.

5. Quite what, if anything, occurred at the Respondent thereafter is something of a mystery because nothing further was heard from Mr Taylor. In particular, no schedule of costs was provided to the Claimant or the Tribunal.

6. Accordingly, since the application was not being pursued, I dismissed it by a judgment sent to the parties on 5 January 2022.

7. This prompted Mr Taylor to apply for a reconsideration of that judgment and he did so by email dated 5 January 2022. In that email, he set out the reasons for that application some 7 months after the hearing and quoting a scenario that I did not recognise. He rightly confirmed that on 14 July 2021 Ms Scaffell had confirmed the Respondent would be able to provide a schedule of costs upon receiving the further information about the Claimant's travel from Spain to England. As this was provided, I do not understand why that schedule was not then provided. Mr Taylor said in his email, "... it is unclear whether the Tribunal requires a schedule of costs to determine the application". He went on, "For the reasons above, we were of the understanding that the Tribunal would notify us if it required further information to determine the costs application. We have not corresponded with the Tribunal or Claimant since September 2021 so as to avoid disproportionate costs". He then set out the Respondent's costs without a schedule as being £15,962 plus vat making a total of £27,434.40, which is obviously incorrect. By email of 24 January 2022, Mr Taylor acknowledged his error noting he had omitted disbursements of £6,900 including counsel's fees.

8. I confess to being totally bemused by Mr Taylor's apparent assumption that a costs application can be determined without a schedule of costs, especially when this has been queried by me and a schedule promised by Ms Scaffell back in July 2021.

9. I regret that this application bears all the hallmarks of a file being ignored for many months and only actioned by the Respondent when prompted by the Tribunal's correspondence. It is unfair and unrealistic for this to result in a costs application being heard 8 months after the hearing when the Respondent's solicitors have not actively pursued it and sought to blame the Tribunal for not making an order to provide a schedule when it is quite clear that the application cannot proceed without one.

10. I remind myself of two salient points in relation to the reconsideration application. Firstly, whether to grant the application is at my discretion. Secondly, nothing has changed since my original judgment on the costs application itself. It has still not been actively pursued. It is not in the interests of justice to grant this application.

11. For the above reasons, the application for a reconsideration is refused and dismissed.

Employment Judge **Butler**

Date 14 February 2022

