



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

Mr A Al-Shekhlie

IBC TV Limited

Heard at: London Central

On: 24 January 2022

Before: Employment Judge Stout

Representations

For the claimant: No appearance or representation

For the respondent: Christopher Jacobs

JUDGMENT

The judgment of the Tribunal is that:

- (1) The Claimant must pay the Respondent **£12,167** in respect of loans made to him that, in breach of contract, he has not repaid; and,
- (2) The Claimant must pay the Respondent **£5,000** in respect of its costs of these proceedings.

The Claimant must pay both sums within 14 days of the date this judgment is sent to the parties.

REASONS

The type of hearing

1. This has been a remote electronic hearing by video under Rule 46 which has been consented to by the parties. The public was invited to observe via a notice on Courtserve.net. No members of the public joined.
2. The participants were told that it is an offence to record the proceedings.

The Claimant's postponement application

3. The Claimant emailed the Tribunal as follows in advance of the hearing, in response to receiving the joining instructions for the hearing:

-----Original Message-----

From: ahmed mahmood <ahmedsh973@gmail.com>

Sent: 22 January 2022 13:09

To: LONDONCENTRALET <londoncentralet@Justice.gov.uk>

Subject: 2204749/20Mr A Al-Shekhlie v IBC TV Limited

welcome .. First, I was informed yesterday via e-mail that I have a hearing. I would like to know why? Note that the session that was supposed to take place on 12/24/2021 did not materialize, and I did not know the reason, and you did not send me anything about it. Secondly, I inform you that I work in another country, and the time difference and holidays are different, as I received the email from you on a Friday at night and it is a weekend, so either I am not ready to attend the session I didn't know any details until two days ago Third, you know that I do not speak English, and therefore there must be an interpreter so that I can talk and question about that session, which I do not know what is required of me at all. So I want to postpone the meeting and notify me well in advance so that I can prepare for it with respect.

Note that the first email I received from you after the last session, which was on 11/25/2021, after which it was decided to hold a session on 24/12/2021, in which I did not receive anything, and I do not know whether it was canceled or postponed. Next Monday's session and before the weekend, and the email will be sent at the end of the official work Friday

4. The Claimant appeared to try to join the hearing at the appointed time as his name appeared in the virtual waiting room, but it was not possible to see or hear him. The Tribunal did not have a telephone number for him, but the Respondent did have four numbers and all the numbers were tried with the help of the Arabic interpreter who was present for the Claimant, but without success. The Tribunal also emailed the Claimant at least twice to provide him with the joining instructions and ask him to provide a telephone number, but by 10.30am he had not replied.
5. I heard submissions from Mr Jacobs for the Respondent as to whether I should proceed in the Claimant's absence. He submitted that I should proceed in the Claimant's absence.

6. I took the Claimant's email of 22 January 2022 to amount to a postponement application. As such, Rule 30A of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (SI 2013/1237) (the Rules) applied. Pursuant to Rule 30A(2) where an application to postpone a hearing is made less than 7 days before the hearing, I may only order a postponement of the hearing if (so far as as relevant to this case) there are 'exceptional circumstances'.
7. I find that there are no exceptional circumstances. The Claimant was at the hearing on 25 November 2021, assisted by an able interpreter. At that hearing the date for this hearing was agreed to be 24 January 2022 and the Claimant confirmed he was available on that date.
8. The Tribunal's Case Management Order and Notice of Hearing was sent to the parties on 29 November 2021 and went to the Claimant at the same email address as he has been using for contacting the Tribunal. The Tribunal received no 'bounce back' or other indication that those documents had not been received.
9. My Case Management Order required the parties to do various things between the 25 November 2021 hearing and this one. The Claimant has not complied with the orders made at the last hearing on 25 November 2021, set out in the Case Management Order. He has not provided a statement in relation to the counterclaim, or any response or statement in relation to the costs application.
10. In compliance with my orders, the Respondent did send the Claimant a statement by Ms Albazzaz on 16 December 2021 relating to the counterclaim and also a letter from Mr Cal Harding setting out the Respondent's costs application in compliance with that order. A statement from Ms Albazzaz of 12 January 2022 indicates that the documents emailed to the Claimant on 16 December 2021 'bounced back' (notwithstanding being sent to the email address which the Claimant is still using for correspondence). The Respondent therefore also sent the documents by post, but they were returned to sender on 18 December 2021 marked that 'the recipient refused to accept it'.
11. In the circumstances, notwithstanding the Claimant's assertions to the contrary in his email of 22 January 2022, I am satisfied that the Claimant knew or ought to have known this hearing was taking place today, that he had had adequate notice of it and that there were no exceptional circumstances as at 22 January 2022 justifying his application of that date. I therefore refused his postponement application.
12. I also considered of my own motion, and apart from Rule 30A, whether it was fair to proceed in the Claimant's absence today given that he had unsuccessfully attempted to join the hearing. I was satisfied that it was fair because the Claimant had in my judgment had a reasonable opportunity to attend the hearing. He was aware of the hearing, and reasonable efforts were

made to contact him to facilitate his joining the hearing, but he did not respond to those efforts or otherwise seek to contact the Tribunal or the Respondent to gain access to the hearing.

13. In any event, I was satisfied that the two issues that were before me today were issues that could fairly be resolved without hearing from the Claimant. This is because the counterclaim has been admitted by the Claimant in correspondence, while the Claimant was ordered to set out his response to the costs application in writing (and provide information as to his financial means), but had failed to comply with those orders. He had therefore had an opportunity to make submissions on the issues before me, and had acted in breach of the Tribunal's order in failing to do so.

Respondent's Counterclaim

14. The Claimant was, at his request, provided by the Respondent with an interest-free loan of £3,767 in May 2019 and £10,000 in December 2019, the terms of which (signed by him) included that the loans were repayable in full at any time on demand. There is a dispute as to whether £600 or £1,600 of that has been repaid, but the Respondent has decided only to claim the amount agreed by the Claimant (pp 179 and 200) which is £12,167. I therefore find that the Claimant has, in breach of contract, failed to repay £12,167 of the loans on demand and must therefore do so within 14 days of the date of this judgment being sent to the parties.

Costs Application

15. By written application of 16 December 2021, and further written and oral submissions from Mr Jacobs today, the Respondent seeks its costs of the proceedings on the ground that the Claimant's claim stood no reasonable prospect of success.

16. Rules 76 and 84 provide so far as relevant as follows:

76.— When a costs order or a preparation time order may or shall be made

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

...

84. Ability to pay

In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

17. At the hearing on 25 November 2021 I struck out the whole of the Claimant's claim on the ground that it stood no reasonable prospect of success. The threshold for making a costs award under Rule 76(1)(b) is therefore met.

18. The issue for me is whether I should exercise my discretion to make an award of costs against the Claimant and, if so, in what amount. At both stages I may, but am not bound, to take account of the Claimant's means. The Claimant was given an opportunity to provide evidence as to his means in the Order made on 25 November 2021, but did not do so. In those circumstances, I decline to take his means into account. Although there are assertions at various points in his documents that he is in financial difficulties and that the job he has obtained since leaving the Respondent is on lower pay than he received from the Respondent, I cannot make any sensible assessment of his means without the statement that he was ordered to provide and I decline to do so.
19. I have considered carefully whether it is appropriate to make an award of costs against the Claimant. Costs do not 'follow the event' in the Tribunal, but this was a claim that clearly stood no reasonable prospect of success. The Claimant had been treated leniently by the Respondent in respect of the allegation made against him that he had harassed a female co-presenter, and there was nothing to suggest that his age, sex or sexual orientation had anything to do with the decisions made by the Respondent in his case. The evidence before the Respondent regarding the allegation (including social media posts from the Claimant and his wife in terms that echoed what he was alleged to have said to the co-presenter) provided more than reasonable grounds for believing the female co-presenter in relation to the allegation. There was absolutely nothing from which it could be inferred that age, sex or sexual orientation played a part in the decision-making. The Claimant was represented by solicitors when commencing proceedings and thus has had the benefit of legal advice in relation to his claims. In those circumstances, I do consider this to be an appropriate case for an award of costs.
20. The next issue is as to the amount of costs.
21. The Respondent has provided a statement of costs. It is not verified by a statement of truth, but I am satisfied, based on what I am told by Mr Jacobs, that the costs claimed represent costs genuinely incurred by the Respondent. Costs have been incurred in respect of counsel's fees and also fees for Mr Harding, who is an external lawyer but not a solicitor or barrister. He is a lay representative who charges for representation within the meaning of Rule 74(3). The total sum claimed for counsel is £9,600 not including VAT. Mr Harding's hourly rate is £350, but his fees are capped at £8,500 for all the work done on the case.
22. Given that the claim stood no reasonable prospect of success, I have jurisdiction in principle (and subject to summary assessment) to award the full amount claimed by the Respondent, which is some £18,000. However, I do not consider it would be appropriate to award the full amount. Costs do not follow the event in Tribunal even where a claim is unmeritorious. I have to consider fairness and the interests of justice. In this case, the Claimant has been unrepresented since some time before the hearing on 10 September 2021 at which the Respondent first raised orally its intention to make a strike-

out application. As such I consider that fairness requires that he only be required to pay the Respondent's costs from the point at which, as a litigant in person, he had had a reasonable opportunity to consider the strike-out application and to take further legal advice if he wished. The Claimant had oral notice of the strike-out application on 10 September 2021, but there was no interpreter at that hearing, so I consider that he could not fairly have been expected to consider his position until he received the written application on 23 September 2021. The costs incurred since the written strike-out application of 23 September 2021 have been £5,000 by way of counsel's fees. There have also been costs incurred by Mr Harding since that point, although those are not itemised on the statement of costs and I therefore decline to take them into account. I am satisfied, however, that the £5,000 by way of counsel's fees is reasonable for the work done and that appears to me to be a reasonable and proportionate figure to award by way of costs against the Claimant. It is a very small proportion of the costs that the Respondent has incurred in defending this hopeless claim, but it is still a significant sum to award in respect of a Tribunal claim that involved few papers and did not reach a full hearing. As such, it properly marks the hopeless nature of the claim and in my judgment strikes the right balance in this particular case.

23. Further, while I have formally declined to take the Claimant's means into account for the reasons set out above, I am satisfied in general terms that £5,000 is a sum that an employed professional such as the Claimant is likely to be able to repay over time (if not immediately) without undue hardship.
24. I therefore order the sum of £5,000 by way of costs to be paid to the Respondent within 14 days of this judgment being sent to the parties. (For the avoidance of doubt, the Tribunal does not have jurisdiction to make any other order in relation to payment: it is a matter for the parties to agree alternative repayment arrangements if they wish, or use the County Court enforcement mechanisms in default of agreement.)

Employment Judge Stout

Date 24 January 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

21/02/2022.

FOR THE TRIBUNAL OFFICE