



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Ms Carmella Martin

Respondent
Roger Wallube

COSTS HEARING

HELD AT London South (By Cloud Video Platform) ON21 December 2021

Employment Judge P Britton (sitting alone)

Appearances

For Claimant: Mr Nazeem Shah, Solicitor of OH Parson LLP
For Respondent: Mr Richard Weyman, Counsel

JUDGMENT

1. I hereby make a wasted costs order against the Claimant's solicitors pursuant to Rule 80 of the Employment Tribunals Constitution and Rules of Procedure Regulations 2001, Schedule 1 (the Rules). This is on the basis that I have concluded that it has acted in relation to the conduct of the matter for the purposes of today in relation to events post 9 March 2021 negligently and otherwise unreasonably for reasons as set out hereinafter.
2. The issue of assessment of those wasted costs and the issue which is yet to be determined as to whether or not in any event the Claimant has acted unreasonably and should pay the costs thrown away in relation to this matter up to the 9 March 2021 is hereby reserved to the next hearing.

3. The hearing to determine the above matters will take place before this Judge by way of Cloud Video Platform on **Monday, 7 March 2022** commencing at **10.00am**.
4. Orders thereto are hereinafter set out.

REASONS

1. In terms of the wasted costs issue, the Respondent made application to the Tribunal on circa, 9 March 2021 for a costs order against the Claimant in relation to the withdrawal of this claim.
2. On 13 August 2021 the matter was accordingly listed by another Judge to take place today.
3. Suffice to say that crucial to determination of the issue, and it has become quite apparent today, was the inter-face of OH Parsons involvement in this claim both prior thereto and most certainly from 9 March 2021 onward. Late in this hearing today, disclosed by Mr Shah, was the most material evidence on the said issues. I go further and say that it is highly probable that if that documentation had been provided to the Respondent's solicitors at the earliest opportunity, then much of the costs application against the Claimant in relation to the withdrawal might well have been not pursued.
4. As it is, that documentation was not disclosed well in advance and it should have been. The net result of that has meant that today eventually had to be adjourned. It follows that given that the Claimant's solicitors clearly had all the material documentation available on file, that it was acting unreasonably or negligently in failing to disclose all of that well before today and it follows that I am making a wasted costs order therefore in relation to matters post 9 March 2021 and including today's proceedings.
5. In that respect I am going to make orders in relation to the provision of a further schedule of costs in relation to costs thrown away and in respect of which I shall want details including time recordings. Much of it may overlap the second cost schedule before me which deals with matters from the 9 March onwards but which does not have the time recording details that I require.
6. As to whether or not the Claimant acted unreasonably in proceeding with this claim prior to its withdrawal because of the inter-face to what I will refer as being the 'Aspire claim', I will further deliberate, if necessary, on that issue at the next hearing of this matter. Suffice to say, prima facie, given the documentation now before me, and in particular the hearing before Employment Judge Housego on 4 March 2021 preceded by the application of the respondent's solicitors on 16 June 2020, that it may be that that issue may fall away. That is only a preliminary observation.
7. Against that background, I therefore come to my orders.

ORDERS

1. There will be a resumed open hearing before me to be held by Cloud Video Platform on **Monday, 7 March 2022** at **10.00am** with a time estimate of three hours.
2. For the purposes of that hearing, the following orders apply.
3. The Respondent will serve its revised schedule to deal with the wasted costs issue with a detailed breakdown of all costs expended, upon the Claimant's solicitors, OH Parsons, by **Friday, 21 January 2022**.
4. If it does intend to proceed with the costs application in relation to what I will call the 'withdrawal issue', then the current schedule of costs in relation thereto will need further substantiating in terms of details of time expended, in particular.
5. On both fronts, there will accompany the costs schedule, a statement from a fee earner by way of explanation.
6. The Claimant's solicitors will then reply thereto by **Friday, 11 February 2022**. They also have liberty to file a statement dealing with the matters as per the statement, for instance, which has been supplied by the Respondent's solicitor. If there remains an issue relating to the withdrawal issue, then there will be a supplementary index and therefore a bundle relating to all communications such as Mr Shah has disclosed today whether it be with other parties or with the Tribunal; and this will have been agreed between the parties so that a copy of the same together with the additional costs schedules that I have referred to, the reply and the statements thereto is with the Tribunal **not later than three days before the next hearing**.

Employment Judge Britton

Date: 10 January 2022