



# EMPLOYMENT TRIBUNALS

**Claimant: Mr M Ibeziako**

**Respondent: Staff Call UK Ltd**

**4 March 2022**

**Before: Employment Judge Shepherd**  
**Members: Ms J Lancaster**  
**Mr S Carter**

## JUDGMENT ON RECONSIDERTION

The unanimous judgment of the Tribunal is that:

The judgment that the claimant was ordered to pay the sum of £2,000 costs to the respondent pursuant to rule 76 as the Tribunal considered that the claimant had acted abusively, disruptively and unreasonably in the way that the proceedings had been conducted by him is varied so that the judgement is that the claimant should pay the sum of £1,800 to the respondent.

## REASONS

1. By a judgment sent to the parties on 16 December 2020 the Tribunal ordered, among other things, that the claimant to pay the sum of £2,000 costs to the respondent pursuant to rule 76 as the Tribunal considered that the claimant had acted abusively, disruptively and unreasonably in the way that the proceedings had been conducted by him.
2. On 31 August 2021 the Employment Judge refused the claimant's application for reconsideration of the judgment to strike out his claims and the application for costs or preparation order against the respondent as there was no reasonable prospect of the original decision being varied or revoked.

3. The claimant's application for reconsideration of the order that the claimant pay the sum of £2,000 costs was not refused and the respondent was requested to provide a response and both parties were to provide their views on whether this application could be considered without the need for a hearing.

4. On 17 September 2021 the respondent provided a response to the claimant's application. It was stated that the Tribunal's decision whether to take account of the paying party's ability to pay when making an order for costs against it is entirely discretionary.

5. It was stated by the respondent's representatives that the claimant's conduct was such that there were strong grounds for the Tribunal to refuse to revoke or vary the costs order without consideration of the claimant's ability to pay. It was also stated that the claimant describes himself as a discrimination activist and it is clear that he is a serial litigator. However, the respondent submits that the claimant is not someone who is prepared to accept any responsibility whatsoever for the consequences of his own actions.

6. The respondent indicated that if there is to be any variation at all, it should be to increase the costs awarded against the claimant. It was stated that, since the December 2020 hearing, the claimant's conduct had not changed or improved in any way.

"... He continues to take umbrage frequently over the most irrelevant issues and he continues at every turn to be obstructive, unreasonable and dismissive of any decision point which is not in his favour. In addition, he regularly deluges the respondent and the Tribunal with reams of correspondence, much of which is duplicatory and most of which only serves to further increase the respondent's costs out of all proportion. As the Tribunal is aware, those costs are in the region of £63,000 (including VAT) at the hearing in December 2020. Now they are approaching £95,000 (including VAT).

Sadly, based on bitter experience, the respondent believes it is highly unlikely that the claimant will accept any decision made by the Tribunal in any event. If that decision is to uphold or increase the costs order in the respondent's favour, to discourage the claimant from further prolix and expensive applications and correspondence, the respondent invites the Tribunal to consider whether it has jurisdiction to order that the claimant is not permitted to pursue any existing or new litigation against the respondent or any of its directors and employees unless and until the costs order was discharged in full. The respondent respectfully submits that such an order would be fair, proportionate and justifiable in all the circumstances of this case."

7. The Tribunal has no jurisdiction to make an order that the claimant cannot pursue any litigation until the costs order is discharged.

8. The claimant has provided a lot of information, much of which is not relevant to the reconsideration of the costs order.

9. On 17 November 2021 the Tribunal wrote to the parties indicating that the Employment Judge had ordered that the reconsideration of the order that the claimant pays £2,000 towards the respondent costs would be determined by the Tribunal. A hearing involving the parties was not necessary or in the interests of justice. It would incur a disproportionate amount of Tribunal time and costs for the parties. As rule 72(2) provides that if the reconsideration proceeds without a hearing the parties shall be given a reasonable opportunity to make further written representations and they were asked to do so within seven days.

10. The claimant continued to provide a great deal of correspondence to the Tribunal. On 4 January 2022 he was informed that the only live issue before the Tribunal was the application for reconsideration of the costs order and that the Employment Judge had exercised his discretion to determine that matter without a hearing.

11. Due to the amount of work the Tribunal has to deal with and the difficulties of listing, it has taken some time to arrange this reconsideration with the full Tribunal panel.

12. The Tribunal has given careful consideration to the information with regard to the claimant's means. He provided some details of his income, outgoings and expenditure. This showed that he continues to work. He puts his weekly wages at £241.58 and, when his weekly outgoings are taken into account, he is left with £16.83 per week. He has substantial debts, in excess of £40,000.

13. The Tribunal has considered the case of **Arrowsmith v Nottingham Trent University [2011] EWCA Civ 797** in which it was held that a costs order need not be confined to the sums the party could pay as it might well be that the party's circumstances would improve in the future. The exercise of the Tribunal's discretion is not dependent upon the existence of any causal nexus between the conduct relied upon and the costs incurred.

14. In **Vaughan v London Borough of Lewisham and others [2013]** it was held by Underhill J that:

“The starting point is that even though the Tribunal thought it right to “have regard to” the Appellant's means that it did not require it to make a firm finding as to the maximum that it believed she could pay, either forthwith or within some specified timescale, and to the limit the award to that amount. That is not what the rule says (and it would be particularly surprising if it were the case, given that there is no absolute obligation to have regard to means at all). If there was a realistic prospect that the Appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so the respondents would be able to make some recovery when and if that occurred. That seems to us right in principle: there is no reason why the question of affordability has to be decided once and for all by reference to the party's means as at the moment the order falls to be made. And it is in any event the basis on which the Court of Appeal proceeded in *Arrowsmith*, albeit that the relevant reasoning is extremely shortly expressed. It is necessary to remember that whatever order was made would have to be enforced through the County Court, which would itself take into account the Appellant's means

from time to time in deciding whether to require payment by instalments, and if so in what amount.”

15. In this case the Tribunal reached a conclusion that the claimant should pay a relatively modest contribution towards the respondent’s costs in view of his abusive and disruptive conduct in the two days prior to the commencement of the hearing. The reasons for which are set out in the reasons for the judgment sent to the parties on 16 December 2020.

16. The claimant remains in employment and there are reasonable prospects of his financial situation improving at some point. It is just and equitable to order him to pay costs in respect of his unreasonable behaviour.

17. In view of claimant’s current financial position, debts and lack of assets, the Tribunal has considered the position carefully and is satisfied that there should be a small reduction to the already modest costs order and the unanimous judgment of the Tribunal is that the claimant is ordered to pay the sum of £1,800.

**Employment Judge Shepherd**

**7 March 2022**

**Sent to the parties on:**