



EMPLOYMENT TRIBUNALS

Claimant: Ms B Tucker

Respondent: Rail Safety & Standards Board Limited

Before: Employment Judge Davidson

Decided on the papers:

COSTS JUDGMENT

The claimant is ordered to pay £8,500 contribution to the respondent's costs pursuant to rule 76(1) (b) of the Employment Tribunal Rules 2013.

REASONS

1. The claimant brought claims of unfair dismissal, pregnancy discrimination and pay claims against the respondent. The claim form was submitted 17 months out of time.
2. At a preliminary hearing on 13 January 2022, the tribunal found that the tribunal did not have jurisdiction to hear the claims as they had been presented out of time. The decision was confirmed by written reasons dated 20 January 2022.
3. By letter dated 14 February 2022, the respondent's solicitors made an application for costs under Rule 76 of the Employment Tribunal Rules of Procedure on the grounds that the claims had no reasonable prospect of success and/or by submitting her claims 17 months out of time and the way in which she conducted proceedings, the claimant had acted unreasonably.
4. The respondent relies on the following matters:
 - a. the claimant had the benefit of trade union support at the outset, from a legal qualified friend prior to issuing proceedings and had professional representation from specialist employment law solicitors from October 2021 and from experienced, specialist counsel at the hearing;
 - b. she disclosed no documentation whatsoever to explain her failure to file a claim in the 17 months after the termination of her employment;

- c. she exaggerated her evidence under oath (as found by the tribunal);
 - d. she declined to respond substantively to the costs application in correspondence.
5. The respondent claims the sum of £15,000.
6. The tribunal gave the claimant time to respond to the application, which was copied to the claimant pursuant to Rules 30(2) and 92 of the Tribunal Rules.
7. On 1 March 2022, in the absence of any representations from the claimant regarding the costs application, the tribunal wrote to the claimant's representatives, inviting representations regarding the claimant's ability to pay, to be submitted by 7 March 2022.
8. On 7 March 2022, the claimant's representatives wrote to the tribunal explaining the delay, asserting that a costs award should not be made and giving a breakdown of the claimant's finances.
9. The respondent's representative sent a letter in reply dated 8 March 2022 commenting on the claimant's position.
10. The Employment Tribunal Rules of Procedure 2013 (as subsequently amended) at rules 74 to 79 set out the principles and process that must be applied in relation to costs orders.
11. Rule 76 provides that a tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that
 - a. a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or
 - b. any claim or response had no reasonable prospect of success.
12. I have taken all relevant information into account, including the following:
 - a. the claimant's pregnancy discrimination claim was bound to fail as the redundancy selection had taken place before she became pregnant and certainly before she notified the respondent of her pregnancy;
 - b. her redundancy was part of a widespread redundancy process and she was not singled out;
 - c. she chose to pursue a claim which was bound to fail;
 - d. she presented that claim 17 months after the expiry of the limitation period and her application for an extension of time was bound to fail;
 - e. she had the benefit of trade union advice and legal advice;
 - f. the claimant received a payment on termination equivalent to about a year's salary.
13. I find that the claimant's claims had no reasonable prospect of success and

she has put the respondent to considerable expense in defending the claims.

14. I award costs in the sum of £8,500. The claimant has not given any details regarding what amount she has left from her termination payment. I have taken into account the authority of *Kovacs v Queen Mary and Westfield College and another* [2002] EWCA Civ 352 which allows me to make an award against the claimant notwithstanding her financial position as she has acted in a way which has put the respondent to unnecessary costs, and she should have had regard to that when pursuing her claim. The respondent put her on notice regarding costs in November 2021, subsequent to her instructing solicitors. I accept the respondent's submission that it would be unfair for the claimant's solicitors' costs to be prioritised over their costs when her solicitors were in a position to advise her on the merits of her claim and she chose to carry on with the claim. The respondent's had no choice about incurring its costs.

Employment Judge Davidson
Date 29 March 2022

JUDGMENT SENT TO THE PARTIES ON
29/03./2022.

FOR EMPLOYMENT TRIBUNALS

Notes

Public access to employment tribunal decisions: Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.