



EMPLOYMENT TRIBUNALS

Claimant: Mr Bright Ampomah
Respondent: Just Build UK Limited
Heard at: Cardiff Employment Tribunal (By CVP)
On: 22 March 2022
Before: Judge of the First-Tier Tribunal Lloyd-Lawrie, acting as an Employment Judge

Representation

Claimant: In person
Respondent: Mr C Howells (Counsel)

JUDGMENT having been sent to the parties on 23 March 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. I will deal with the reconsideration point first. I find that the reconsideration does not pass the first hurdle in that I find that that it is not in the interest of justice to reconsider the decision. I find that there is no reasonable prospect of me changing my mind as I find that my reasoning was sound as to why the Claimant's case should be struck out. It is right and proper that there is a finality to litigation and I find that my previous decision stands. That concludes the reconsideration process.
2. I dealt with the issue of costs by way of a 3 stage process. I advised that I would firstly consider whether any of the circumstances set out in rules 76 (1) or (2) are made out. In doing so I explained that that is where I would look at the Claimant's conduct. As there was also a counter costs claim against the Respondent, I would also look at the Respondent's conduct. I explained that if I found that stage to be met, the next stage is that I would consider whether or not to exercise my discretion to award costs. I reminded both parties that this is a discretion and it does not automatically follow that if I find that the

Claimant or indeed the Respondent has acted in a vexatious, abusive, disruptive or unreasonable manner that costs would be awarded. The final stage I explained, if I decided to exercise my discretion is how much I order the paying party to pay.

3. My findings in relation to costs are set out below.
4. I find that the conduct of the Claimant in providing different figures for his wages claims both in the disclosure that followed the unless order and during the hearing, to be unreasonable conduct. At the preliminary hearing regarding jurisdiction, I was very clear that the claims that were still active needed to be set out clearly. I explained that the claims for wages and expenses should be dealt with separately. I stated that the Claimant must set out exactly what was claimed under each head and that that must be submitted to the Respondent and Tribunal by 4pm on 6/12/2021. The Claimant therefore should have been able to know what his claim was for and provide the Tribunal and the Respondent that figure at least by the hearing to discuss the possible striking out of his claim. Instead, he provided different figures again during the hearing.
5. I find that the Claimant had been told that he must copy the Respondent into all correspondence on 9/11/2021 but has failed to do so on 3/12/2021 and 4/12/2021, causing the Respondent to then make unnecessary applications to the Tribunal. Following this the Claimant also failed to copy the Respondent into his emails of 11/12/2021. I find that this failure is unreasonable conduct.
6. I find that the Claimant in continuing to send large, largely unexplained documents, that are sometimes contradictory in nature, to the Respondent to be further acts of unreasonable conduct. I find that the failure to stop sending duplications of these documents to be unreasonable conduct.
7. I find that the actions of the Claimant in continuing at the hearing in January to assert he was still employed and entitled to wages on an ongoing basis to be unreasonable when on 22/11/2021, I gave a clear judgment that his employment ended on 30/10/2020.
8. I find that the Claimant's threat to keep adding spurious claims when the Respondent seeks to set out their case to be unreasonable conduct.
9. In conclusion I find that the unreasonable conduct of the Claimant is deliberate, persistent and rendered a fair trial impossible.
10. I find that in relation to the Claimant, the Respondent has satisfied me that Rule 76 is engaged.
11. I now move on to consider the Claimant's application. I am afraid that I find that his application for costs is entirely without merit. In relation to the suggestion that the Respondent presented a number of claims that were vexatious, I find that the Respondent in fact did not present any claims. They were told that they could not submit a counter claim and

did not do so. They did no more than respond to the Claimant's claim. That allegation therefore is not made out.

12. The Claimant sought to allege that the Respondent's conduct was disruptive and unreasonable. In oral submissions he claimed that various actions of the Respondent were to be categorised as "abuse". I find that that is not the case. Whilst I find that it was unwise of the Respondent to request the Claimant's passport, post litigation, without explanation, I find that the motivation of the Respondent was not to attempt to harass or abuse the Claimant as claimed, but to establish if the Tribunal had jurisdiction to hear the claim, as claimed by Counsel for the Respondent. I find that this was not unreasonable or abusive conduct.
13. I find that the Claimant's claim that the Respondent failed to comply with unless orders to be simply wrong; there have never been any unless orders made against the Respondent. I further find that the Respondent's applications to the Tribunal for strike outs were not acts of abuse but were actions of a party who were properly conducting litigation. The fact that the Claimant does not agree with the position of the Respondent in defending the live claims against them does not mean that they are unreasonable in pursuing matters.
14. I find that there are no grounds upon which it can be said that rule 76 is engaged against the Respondent.
15. I will now move on to consider whether I should exercise my discretion to award costs against the Claimant.
16. Before I do, there are points that were raised by the Claimant in submission that I think I must respond to. The Tribunal has never concluded that the Claimant is owed money by the Respondent. The case has been struck out before the matter could be heard. That means that there has been no finding that the Claimant is owed any money and the Claimant does not have a judgment against the Respondent.
17. Following hearing submissions from both parties as to whether or not I should exercise my discretion and if so, what amount of costs I should award, my findings were as follows:-
18. I set out again the fundamental principle in relation to costs which is that they the exception, rather than the rule and that costs do not generally follow the event. However, there are provisions set out in the rules for a party to be awarded costs in certain instances.
19. I find that the Respondent's was correct in their assertion that the Claimant acted unreasonably and that therefore, in line with rule 76 of the Employment Tribunal Rules, the Tribunal may make a costs order.
20. As I have found rule 76 to be engaged, I have considered whether or not I should use my discretion to award costs against the Claimant. I accept that the nature of the unreasonable conduct, in particular

sending copious emails attaching duplication of documents, has caused the Respondent to incur unnecessary time and cost in reviewing those documents to see if they include any new information. Further, I find that failing to copy the Respondent into emails sent on 3rd and 4th December 2021 caused the Respondent to consider that there had been a failure to comply with the unless order and to make an application to the Tribunal. This again put the Respondent to additional cost.

21. The Claimant declined repeated offers to give evidence as to his finances so that I could take that into consideration when deciding whether or not to exercise my discretion. As he has failed to give evidence, I find that I am unaware of whether or not he has means.
22. As the Claimant's unreasonable conduct has put the Respondent to unnecessary expense by causing additional work, I find that this is a case where it is appropriate to exercise my discretion to award costs.
23. As I have found at both previous stages that the answer to each question is in the affirmative, I therefore lastly must decide what costs to award.
24. I thank Mr. Howells for his clear acceptance that not all of the Respondent's costs could be attributable to the Claimant's conduct. I fully agree. The Claimant brought claims in relation to unpaid wages and expenses. He was entitled to bring those claims. Further, I find that the costs in relation to the first preliminary hearing, preparing the ET3 and preparing the witness statements that dealt with the central issues in the case are all things that the Respondent would have normally had to incur costs for.
25. I accept that costs can include the costs of an in-house lawyer. The case of **Ladak v DRC Locums [2014] IRLR 851 EAT** confirms that and tells me that I should assess either rates as on a par with like qualified lawyers in private practice.
26. As Mr. Ampomah declined to give evidence, as is of course his right, I must find that he has an ability to pay costs as he has not provided me with evidence to conclude otherwise.
27. I find that the costs schedule is excessive in relation to reviewing documents. With respect, I find that documents could be simply "flicked through" to check if they were duplications or not and that the in-house lawyers with conduct, would have been aware, without scrutinising each and every page of each document, whether or not they had been seen before. I also do not accept that it is necessary for the Respondent to have brought members of their in-house legal team to hearings where they have instructed counsel.
28. I find that it would be appropriate in this case to award the costs of £3200 towards the Respondent's costs. This represents what appears to be the brief fee of Mr. Howells for drafting the costs application, attending the hearing to discuss possibly striking out the Claimant's

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claims and the attendance at the costs hearing. I find these costs are directly attributable to the Claimant's unreasonable behaviour and I find that it reasonable that the Respondent incurred the cost of counsel in dealing with the same. I find that it would be disproportionate to allow any other costs when the Claimant was not vexatious when first issuing proceedings, remembering this was a case for unpaid wages and thus, case preparation would have occurred in any event.

Judge of the First-Tier Tribunal Lloyd-Lawrie, acting as an Employment Judge

Date 18/04/2022

REASONS SENT TO THE PARTIES ON 19 April 2022

FOR THE TRIBUNAL OFFICE Mr N Roche