



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr B Ramanauskas

v

**Respondent**

Amazon UK Services Ltd

**Heard at:** Norwich

**On:** 25 February 2022

**Before:** Employment Judge Postle

**Members:** Ms J Costley and Ms L Gaywood

**Appearances**

**For the Claimant:** In person.

**For the Respondent:** Miss Ahmed (Counsel).

## JUDGMENT ON RESPONDENT'S APPLICATION FOR COSTS

The claimant is ordered to pay a contribution to the respondent's costs in the sum of £20,000.

### REASONS

1. This is an application by the respondent for a contribution towards their costs in connection with a claim presented to the Employment Tribunal on 7 November 2018. The issues of liability in the claim were heard by the tribunal at a final hearing over the 19-22 October 2020 inclusive and at a reconvened final hearing on 11 and 12 May 2021. On 27 July 2021 the parties were sent a Reserved Judgment dated 27 July 2021.
2. The respondent makes the application under rule 75(1)(a) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 asking the tribunal to exercise its discretion to make a costs order that the claimant makes a payment to the respondent (contribution in respect of the costs the respondent has incurred while legally representing the respondent).

3. The grounds of that application are two-fold, rule 76(1)(b) of the Employment Tribunal Rules the claims brought by the claimant had no reasonable prospect of success and rule 76(1)(a) of the Employment Tribunal Rules the claimant acted unreasonably in the bringing of the claim and/or in the way that the claim has been conducted. The basic reasons for the application are that the claimant had no reasonable prospect of success and the claimant had acted unreasonably in pursuing the claim against the respondent. The claimant they say should have been aware that the claim had no reasonable prospect of success because the respondent's representatives had sent two detailed costs warning letters explaining the reasons for them. Notwithstanding this, the claimant pursued and as the respondent has set out wasted substantial costs and resources of the respondent and indeed the tribunal.
4. The actual claims made against the respondent were denied in their entirety and were not upheld in their entirety by the tribunal. The claimant had brought claims of victimisation under s.27 of the Equality Act 2010 on the grounds of disability and alleged that the respondent had constructively dismissed the claimant. In particular the claimant alleged he was victimised as a result of various protected acts on behalf of a colleague who is allegedly disabled, Miss Jolanta Kostygoviene.
5. The claimant produced an extremely large list of protected acts and acts of detriment, these included thirteen protected acts as set out at paragraph 4 of the Judgment which the respondent accepted were capable of satisfying the definition of a protected act and no less than seventeen alleged detriments that fell to be considered at the final hearing.
6. The detriments are set out in detail in the Judgment and the claimant failed on all accounts. The tribunal found that the claimant's claims of victimisation under the Equality Act were not well founded and that the claimant was not constructively dismissed in relation to all matters as they were not withdrawn by the claimant. The tribunal set out in some detail each alleged detriment and the reason why the claimant was not successful.
7. The Judgment went on to conclude there clearly was no fundamental breach by the respondent of the implied term of trust and confidence or indeed any of what has been alleged by the claimant to support the suggestion the respondent in some way was in breach of the implied term of trust and confidence.
8. The tribunal went on to make comments in the Judgment about the claimant during the final hearing in particular:
  - a) That the claimant was evasive at times and would attempt to avoid answering simple straightforward questions particularly in relation to the lack of any evidence of the respondent's witnesses actual knowledge of the alleged protected acts;

- b) That the tribunal had to warn the claimant on numerous occasions if he failed to answer a question that had been put to him three times the tribunal could well draw its own inferences from the failure to answer a straightforward question;
  - c) That despite the tribunal prompting the claimant in cross examining the respondent's witnesses he failed to challenge much of the evidence on key issues including causation, the tribunal then listed examples of where the claimant had failed to challenge evidence on key issues given by every single one of the respondent's nine witnesses; and
  - d) That the claimant was intent on antagonising each and every manager he had dealings with and had an agenda throughout the process.
9. Dealing with the law and the framework, rule 76 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that a costs or time preparation order may be made and a tribunal 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 the proceedings (or part) have been conducted; or
  - b) any claim or response had no reasonable prospects of success."
10. The procedure for making a costs application is set out at rule 77, in particular:
- "A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order) in response to the application."
11. At today's hearing we have of course the claimant in person who has a written response to be found in the bundle at pages 46-48 and he has also had an opportunity to amplify his opposition to that application.
12. As to the amount of costs that a tribunal can order, rule 78 provides that we may:
- "(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
  - (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles; or, in

Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Fees of Solicitors in the Sheriff Court)(Amendment and Further Provisions) 1993, or by an Employment Judge applying the same principles;”

13. In this application this morning we understand the respondent is requesting a contribution towards their costs limited to £20,000.
14. Rule 84 provides that we may have regard to the paying party's ability to pay, it is put as follows:

“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.”
15. Unreasonable is to be attributed its ordinary and natural meaning (not to be interpreted as if it means something similar to vexatious). Vexatious is where an employee had brought a hopeless case without any expectation of recovering compensation out of spite to harass the employer or some other improper motive.
16. No reasonable prospects of success, the test for whether the case brought or the response had no reasonable prospects of success is objective, it matters not that claimants may generally believe themselves a victim of wrongdoing contrary to the law that they were acting on legal advice.
17. In relation to means, the tribunal has a discretion not an obligation to take into account a paying party's means.
18. In reaching their conclusion the tribunal have had regard to the way this matter was brought, the way the claimant conducted himself during the course of the liability hearing and his complete disregard for the fact that his claim clearly was doomed to fail at the outset, it had no reasonable prospect of success. It is not a case where a Judge should say at a preliminary hearing “You should withdraw this case” in circumstances where there has been no preliminary hearing. It is for a claimant whether represented or not to decide whether on the facts known to him he should proceed with the case.
19. In addition to this the claimant was warned on no less than two occasions, on 31 July 2020 and 9 October 2020 by the respondent in clear and precise terms why the claim would not succeed. He failed to take heed.
20. The tribunal during the course of this morning's hearing have listened to the claimant's means, he is in full time work and have seen his bank statements. In reaching our decision we have considered his means, it is a discretion and we take the view using the three-fold test that as the putative paying party namely the claimant behaved in the manner prescribed by the rules we are satisfied that the claimant has been unreasonable and vexatious in the bringing of these proceedings.

21. If so the tribunal then has to decide whether to exercise its discretion as to whether or not it is appropriate to make a costs order and it may take into account the ability to pay in making that decision. As we have said we have considered the claimant's means, we think the claimant is perhaps being economic with the truth regarding his means and his potential savings and therefore we have disregarded what is before us and have decided on the basis of how this case has been pursued to exercise its discretion. The final stage of the three-fold test is to decide what costs order should be made having regard to the total costs incurred in defending this action which run to over £180,000. We think it is right that the claimant should make the contribution that the respondent has requested in the sum of £20,000 and therefore order the claimant to make a contribution towards the respondent's costs limited to £20,000.

**Employment Judge Postle**

Date: 22 March 2022

Sent to the parties on: 05 April 2022

L.Omotoso  
For the Tribunal Office