



EMPLOYMENT TRIBUNALS

Claimant: Miss. A Gircyte
Respondent: CDS Labour (Agriculture) Ltd
Heard at: Nottingham
On: 28th April 2022
Before: Employment Judge Heap (Sitting alone)

AT A COSTS HEARING CONDUCTED ON THE PAPERS

Representation

Claimant: Written representations
Respondent: Written representations

JUDGMENT ON COSTS

The Claimant is Ordered to pay to the Respondent the sum of £200.00 as a contribution to the costs incurred at the Preliminary hearing of 8th November 2021.

REASONS

BACKGROUND & THE ISSUES

1. This hearing was listed for the purposes of determining an application for costs which had been made by the Respondent at a Preliminary hearing on 8th November 2021 after I had struck out the Claimant's claim against them on the basis that it had no reasonable prospect of success. I determined that I would not deal with that application at the time because the Claimant was not represented, she was being assisted by an interpreter and had not had the time to process the application or take any advice in respect of it.
2. I therefore caused the Claimant to be sent a letter after the hearing setting out the basis of the costs application made by the Respondent and affording the Claimant a reasonable opportunity to make representations as to why no Order for costs should be made. That letter was dated 9th November 2021 and invited representations from the Claimant by no later than 6th December 2021.

3. The Claimant wrote to the Tribunal on 19th November 2021 saying this:

“I do not agree with the court’s decision, but I no longer have the money to get justice. If there were honest people, it would not be difficult to achieve justice, but there are many unscrupulous workers in the system who do not even want justice to be achieved, thus stopping the exploitation of people and the crimes they commit in the workplace”.
4. The Claimant asked if she could be given legal aid and an interpreter and attached a number of documents relevant to her means.
5. I caused a further letter to be sent to the Claimant in reply explaining how she could make an application for Reconsideration given her disagreement with my decision and providing her with details about how she might seek free legal advice. The Claimant did not make any application for Reconsideration nor, as far as I am aware, has she appealed my Judgment to the Employment Appeal Tribunal.
6. The Claimant did not provide any further representations prior to 6th December 2021 on the question of costs. She did, however, send a letter to the Respondent’s solicitors on 12th December 2021. It was a lengthy letter and so I have not set out the content here but in short terms it raised the following points:
 - (a) That her lawyer had filled in the documents. I assume by this that that is a reference to the ET1 Claim Form;
 - (b) That she did not agree that the Respondent had not committed acts of “*discrimination, manipulation, harassment, mobbing and physical violence*”. The Claimant made a number of sub-points as to why she believed that to be the case;
 - (c) That she did not agree with the Judgment that the Respondent was not liable for the acts of which she complained. Again, the Claimant made a number of sub-points as to why she believed that to be the case;
 - (d) That a request that she had made to the Respondent for a report on the hours that she had worked had been ignored; and
 - (e) That the Judgment was wrong because it had focused on a claim of sex discrimination when her claim had been for “*injury to feelings of discrimination on grounds of sex and other forms of discrimination (harassment, mobbing and even physical violence in the workplace and intentional manipulation*”.
7. The Claimant then sent a letter of objection to the Tribunal dated 13th December 2021. Again it was a lengthy letter but it made the following points:
 - (a) That she had informed the Tribunal at the Preliminary hearing that she had had to leave her lawyer due to their mistakes;
 - (b) That she told the Tribunal at the Preliminary hearing that she did not agree with the outcome because the wrong decision had been made;
 - (c) That she had continued with an investigation but had been ignored by the Respondent and by their end user client to whom she had been supplied;
 - (d) That there had been human trafficking and other crimes committed against her and that she had a number of cases which were very time consuming;
 - (e) That she was not fluent in English and could not afford to use a translation service and so was having to translate documents from the Tribunal which was time

consuming;

- (f) That she had not yet been able to obtain free legal advice from the advisers that she had called;
 - (g) That serious crimes had been committed and continued to be committed against her and that she had suffered damage to her health and finances and was having to work to pay off debts to her bank and lawyers and that the perpetrators had been acquitted by unscrupulous people; and
 - (h) That the Respondent had not taken responsibility for the damage done to her and she did not agree to pay their costs incurred for the Preliminary hearing.
8. Despite the fact that those documents were not received by the Tribunal until after 6th December 2021 I have nevertheless considered them and extended time under Rule 5 Employment Tribunals (Constitution & Rules of Procedure) Regulation 2013. I have also considered all of the documents that the Claimant has supplied as attachments to her representations.

THE LAW

9. Rules 74 to 84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“The Regulations”) deal with the question of whether an Employment Tribunal should make an Order for costs.
10. Rule 76 sets out the relevant circumstances in which an Employment Judge or Tribunal can exercise their discretion to make an Order for costs and the relevant parts of that Rule provide as follows:

“When a costs order or a preparation time order may or shall be made

76.— (1) *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.”*

11. In short, therefore, there is discretion to make an Order for costs where a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing or conducting of the proceedings. Equally, the discretion is engaged where a party pursues either a claim or defence which has no reasonable prospect of succeeding or, to put it as it was termed previously, where a claim or defence is being pursued which is “misconceived”. That latter issue is the only one that I am considering for the purposes of this Judgment.
12. It should be noted that merely because a party has been found to have acted vexatiously, abusively, disruptively or unreasonably or where a claim or response has no reasonable prospect of succeeding, it does not automatically follow that an Order for costs should be made. Once such conduct or issue has been found, a Tribunal must then go on to consider whether an Order should be made and, particularly, whether it is appropriate to make one. When deciding whether an Order should be made at all and, if so, in what terms, a Tribunal is required to take all relevant mitigating factors into account.

13. In accordance with Rule 84, a Tribunal is entitled to have regard to an individual's ability to pay any award of costs both in relation to the making of an Order at all, or the amount of any such Order. However, it is not a mandatory requirement that such consideration must automatically be given.

THE COSTS APPLICATION

14. The basis of the application of the Respondent is that the claim against them had no reasonable prospects of success given the conclusion that I reached at the Preliminary hearing. The Respondent's application is limited to the costs of Counsel's representation at the Preliminary hearing in the sum of £2,000.00.

CONCLUSIONS

15. I begin by considering whether the test contained within Rule 76(1)(b) Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 is met.
16. I can deal with that question in very short terms because the conclusion that I reached at the Preliminary hearing was to strike out the claim on precisely those grounds. The first strand of the test is therefore made out.
17. However, that is not the end of the matter and I must be satisfied that it is appropriate to make a costs Order. The Claimant has offered up nothing in response to the application from which I could discern any mitigating factors such that it would not be appropriate to make a costs Order. Her only real response is that my Judgment was wrong, but she has made no application for Reconsideration nor, as far as I am aware, has she appealed against my decision. I must also respectfully disagree with her assessment for the reasons that I gave to the parties at the Preliminary hearing.
18. There is reference also to her lawyer having made mistakes, but she had of course parted ways with that lawyer long before the Preliminary hearing at which she continued to maintain her claim. Nothing has been provided so as to suggest that any mistakes led her to either bring or continue with the claim when she would not otherwise have done so. I do not consider any mistakes in drafting the Claim Form to mitigate the fact that the claim as a whole had no reasonable prospect of success such that the Claimant was not able to articulate the basis upon which it was founded in law at the Preliminary hearing.
19. Other than those two matters, there are no further mitigating factors identified by the Claimant's representations. Ultimately, it is not for me to guess what response the Claimant may have or what, if any, mitigating factors there might be and I remind myself she has been given ample opportunity to make representations and to obtain legal advice.
20. For all of those reasons, it is appropriate to make a costs Order in favour of the First Respondent.

THE AMOUNT OF THE COSTS ORDER

21. The Claimant has not made any representations to suggest that the sums claimed are unreasonable.
22. However, this is a case where I consider that it is necessary to take the Claimant's means into account. Although the Respondent has limited its costs sought to £2,000.00 that is still a significant sum of money to many people and it would be to this Claimant. On the basis of the documents that I have to hand (albeit that they are not entirely up to date as a result of a delay in this hearing being able to be listed) the Claimant earns approximately £300.00 to £400.00 per week with the agency that she is now engaged with. From that she has to repay a sizeable loan that she has taken

out at a monthly repayment of over £300.00. In addition, she has rent to pay of between £85.00 to £95.00 per week. She also has outstanding legal fees to pay of circa £1,500.00. As at November 2021 she had just over £200.00 in the bank.

23. Without taking into account things like groceries and utilities (of which I have no details but which she would clearly have to find money for) the Claimant has a disposable income of between £500.00 to £900.00 per month depending upon how many hours she works for the agency. £2,000.00 therefore equates to somewhere between two to four months salary. The Claimant's means are not such that it would be appropriate to Order her to pay that. Instead, I consider it equitable that the Claimant should pay a proportion of that sum and in an amount that she is able to reasonably afford it taking into account her means. I consider that the sum of £200.00 is an appropriate sum to Order the Claimant to pay to the Respondent as a contribution to the costs incurred and taking into account her means and ability to pay.

Employment Judge Heap

Date: 29th April 2022

Notes:

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