



EMPLOYMENT TRIBUNALS

Claimant: Mr. E. Mullen

Respondent: Omnes Healthcare Limited

Heard at: London Central

On: 30 May 2022

Before: Employment Judge J Galbraith-Marten

Representation:

Claimant: Did not attend, on the papers

Respondent: Did not attend, on the papers

JUDGMENT ON COSTS

The Claimant is ordered to pay the Respondent's costs in the sum of £1,680.00.

REASONS

Background

1. The Claimant submitted a claim for Wrongful Dismissal on 21 December 2021. The Respondent denied the claim and asserted the Claimant received 1 week's pay in lieu of notice.
2. At a preliminary hearing on 9 March 2022, the Claimant accepted that he had received 1 week's pay in lieu of notice. However, he submitted that he intended to apply to amend his claim and he was ordered to submit any application by 28 March 2022.

3. A second Preliminary Hearing was listed to take place on 22 April 2022 to determine the amendment application and to list the case for a final hearing.
4. The Claimant failed to apply to amend and by letter dated 6 April 2022, the Tribunal informed the parties that it would determine whether the claim should be struck out on the basis it had no reasonable prospects of success at the hearing on 22 April 2022.
5. The Claimant stopped engaging with the Respondent's representative and failed to attend the preliminary hearing on 22 April 2022. The Tribunal proceeded in his absence and the claim was struck out on the basis it had not been actively pursued and it had no reasonable prospect of success.
6. After giving Judgment on 22 April 2022, the Respondent applied on 5 May 2022 for its costs to be paid by the Claimant. The Respondent's position is the Claimant's claim had no reasonable prospects of success given he accepted his notice had been received. The Respondent requested its application be dealt with on paper.
7. On 9 May 2022 the Respondent's costs application was sent to the Claimant and he was required to respond by no later than 20 May 2022. The Claimant failed to respond.

The Law

8. The Employment Tribunal's power to award costs is contained in rule 76 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1: -

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 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 prospects of success.*

9. In deciding whether to make a costs order the Tribunal may have regard to the paying party's ability to pay in accordance with rule 84.
10. The Court of Appeal stated in Yerrakalva v Barnsley Metropolitan Borough Council 2012 ICR 420, CA, that costs in the Employment Tribunal are the exception rather than the rule.
11. In Oni v UNISON UKEAT/0370/14/LA the Employment Appeal Tribunal confirmed that rule 76 imposes a two-stage test on the Tribunal. The first stage being whether the circumstances of Rule 76 are engaged and if so secondly, the Tribunal must determine whether to make the award of costs.

12. Further guidance is provided by the Employment Appeal Tribunal in Keskar v Governors of All Saints Church England School and Another [1991] ICR 493. The Employment Appeal Tribunal held.

“The question whether a person against whom an order for costs is proposed to be made ought to have known that the claims he was making had no substance, is plainly something which is, at the lowest capable of being relevant, and we are quite satisfied from the decision itself, in the paragraph which I have read and need not repeat, that the industrial tribunal did have before it the relevant material, namely that there was virtually nothing to support the allegations that the applicant made, from which they drew the conclusion that he had acted unreasonably in bringing the complaint.

That in our view, does involve an assessment of the reasonableness of bringing the proceedings, in the light of the non-existence of any significant material in support of them, and to that extent there is necessarily involved a consideration of the question whether the applicant ought to have known that there was virtually nothing to support his allegations.”

Conclusions

13. The Tribunal decided the Claimant’s case had no reasonable prospects of success and the claim was accordingly struck out. Therefore, rule 76(1)(b) is engaged.
14. The costs sought by the Respondent include all its costs in defending the claim. The Respondent seeks a total of 28 hours at a chargeable hourly rate of £60. This included reviewing the pleadings, preparing disclosure, bundles, and witness statements, and taking part in two hearings.
15. As the Claimant failed to respond to the Respondent’s costs application, no submissions have been made in relation to the Claimant’s means and the Tribunal has not taken the Claimant’s means into account.
16. In the circumstances, the claim had no reasonable prospects of success from the outset and an award of costs is made of £1,680.00 payable by the Claimant to the Respondent.

Employment Judge J Galbraith-Marten

30th May 2022

REASONS SENT TO THE PARTIES ON

30/05/2022.

FOR THE TRIBUNAL OFFICE