



EMPLOYMENT TRIBUNALS

Claimant: Mrs Louise Holmes
Respondent: Kingston upon hull City Council

AT A COSTS HEARING ON THE PAPERS IN PRIVATE

Heard at: Leeds , by CVP video conferencing
On: 6th June 2022 (rescheduled from 7th June 2022)

Before: Employment Judge Lancaster
Members Mr M Weller JP
Mr K Lannaman

The unanimous decision of the Tribunal is:-

JUDGMENT

The Respondent's application for costs dated 1st November 2021 is refused.

REASONS

1. The Claimant withdrew the entirety of her claim, which was for unfair dismissal and for various complaints of disability discrimination, on day 2 of the listed 8 day hearing.
2. Having indicated its probable intention to do so at the conclusion of that hearing, the Respondent subsequently made a written application for costs dated 1st November 2021. The Claimant responded in writing as directed on 27th December 2021. It was then ordered, neither party having requested a further hearing, that the application be decided by the full tribunal on the basis of the written representations only, without either side being required to attend.
3. This costs application is not concerned with the substantive merits, or otherwise, of the claim that was brought, nor with the circumstances of late withdrawal.
4. The application is limited to an allegation that the Claimant acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that part of the

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proceedings have been conducted: rule 76 (1) (a) of the Employment Tribunals Rules of Procedure 2013, as applicable.

5. The Claimant had pleaded in her original ET1 that she had “suffered from a series of instances of what she classed as bullying and harassment by the person involved in the restructure and ensuing redundancy process”. That person was her manager Mr R.
6. The motivation of the decision maker was always at least a potential issue in determining whether the Respondent had established the reason, or principal reason for dismissal, and was also potentially a relevant matter to be taken into consideration when deciding if the Respondent had acted reasonably in dismissing the Claimant.
7. The Respondent says that the objectionable part of the Claimant’s conduct of proceedings was principally her inclusion upon disclosure of her typed up diary entries, and her subsequent referencing at some length in her witness statement of allegations about Mr R’ s conduct which predated the restructuring process that ultimately led to dismissal.
8. The quantified claim for costs in the sum of £2,647.00 is said, therefore, to be the direct or indirect additional expense incurred in countering these allegations and in being prepared to deal with them at the final hearing.
9. Whilst the allegations include, as well as “bullying”, implications of inappropriate sexual behaviours it is to be noted that these are hearsay, somewhat vague and expressly do not amount to actual assault or overtly improper comments of a sexual nature.
10. The Claimant had already raised these alleged matters at the time they came to her attention, and upon investigation the woman said to be involved had not made any complaint against Mr R, and had also denied making the statements to the Claimant in the terms which she had then reported, hearsay, as the basis for her concerns. Mr R therefore knew that he had been exonerated of any wrongdoing after an enquiry by the Respondent’s Director of Human Resources.
11. The fact that the Claimant also knew the outcome of this internal investigation, does not, however, mean, as the Respondent contends in its application, that this reiteration of her concerns is misleading or malicious. The Claimant’s witness statement clearly explains that the primary significance of this history is that she believed that Mr R had been advised that it was she who had made the initial report that led to his being investigated, with the implication that he would therefore have been antagonistic towards her.
12. At the start of the Claimant’s evidence the Tribunal made it clear, having read the papers in the case, that it would not be concerned with the substance of any possible allegations of sexual impropriety against Mr R, and that the Respondent would not therefore be required to address these issues in cross-examination on the Claimant’s witness statement. The Claimant accepted this direction. Indeed had these matters been gone into the Tribunal would have been embarrassed as the Director of Human Resources is a lay member of the panel in Hull, so the case would have had to be postponed to a different region.

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13. Whilst we acknowledge the inevitable upset to Mr R as a result of these matters being repeated, he had already successfully countered any allegation of impropriety at an internal investigation. These were not new accusations.
14. In the circumstances we do not consider that the raising of these matters in evidence, even if at most only peripheral to the direct issues in the case, by an unrepresented party amounts to vexatious, abusive, disruptive or otherwise unreasonable conduct so as to found a potential claim in costs.
15. A secondary limb to the application is that the Claimant in her witness statement had denied that she ever suggested that Ms B's alleged comment about "things being mental" (an allegation of harassment related to disability) was in connection with traffic conditions. Therefore when Ms B, in response to the substantive accusation, gave her own account of the incident specifically by reference to her having allegedly commented that "the traffic was mental out there", or words to that effect, the Claimant says that this is a lie and an attempt to "gaslight" her.
16. It was in fact very quickly established both in cross-examination and in questions from the Judge that the Claimant had in fact herself made the connection between the alleged comment and traffic conditions. It is in her ET1. The Claimant had to acknowledge therefore that her witness statement was simply wrong. This necessarily damaged her credibility. It does not, however, mean that by including evidence that was easily contradicted she was acting vexatiously, abusively, disruptively or otherwise unreasonably.
17. We do not therefore need to consider hypothetically whether or not we would, in any event, have exercised our discretion to award costs. However we note that having regard to the Claimant's apparent inability to pay we may well have declined to make any order, and that an additional cost of over £2500 to defend already unsubstantiated and peripheral allegations would have been subject to intense scrutiny.

EMPLOYMENT JUDGE LANCASTER

DATE 6th June 2022

JUDGMENT SENT TO THE PARTIES ON

8 June 2022

AND ENTERED IN THE REGISTER

FOR SECRETARY OF THE TRIBUNALS

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