



EMPLOYMENT TRIBUNALS

Claimant: Miss P Labana

Respondent: Celerity LS Ltd

Heard at: London South ET (by CVP)

On: 19 April 2022

Before: Employment Judge Abbott

Representation

Claimant: not present

Respondent: Ms G Rezaie, counsel, instructed by SW19Lawyers LLP

JUDGMENT ON COSTS

The Claimant is ordered to pay the Respondent the sum of £10,200 in respect of costs pursuant to Rule 76 of the Employment Tribunal Rules 2013.

REASONS

1. Further to the dismissal of the claim as a consequence of the Claimant's non-compliance with an Unless Order made by EJ Balogun on 8 October 2021, the Respondent applied for costs under Rule 76 by a letter dated 2 November 2021. This hearing was listed, further to instructions given by EJ Khalil, to determine this application (as well as to consider the Respondent's counterclaim, which is the subject of a separate judgment).
2. The Claimant applied, after hours on the penultimate working day prior to the hearing, for a postponement. I refused that application for reasons sent, by email, to the parties this morning. When the application came on for hearing at 2pm the Claimant was not present. The clerk attempted to make contact by telephone but was unable to get through. In the circumstances I considered it was in the interests of justice to proceed in the Claimant's absence. The hearing commenced at around 2.20pm. I heard submissions from Ms Rezaie for the Respondent.

3. The Respondent originally applied for its costs from the date upon which the Claimant fell into non-compliance with orders made by EJ Ferguson following a preliminary hearing in July 2021: that being 12 August 2021 when the Claimant was required to provide certain further information and a schedule of loss (paragraphs 9 and 10 of the Order). The Claimant's failure to comply with these orders is reinforced by the fact that she was subsequently required by EJ Balogun to comply with those orders under an Unless Order dated 8 October 2021. As noted above, the Claimant still did not comply, and the claim was automatically dismissed (as also recorded in a Judgment of EJ Khalil dated 19 January 2022). In such circumstances, Rule 76(2) of the ET Rules is plainly engaged:

(2) A Tribunal may [make a costs order] where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

4. At the hearing, the Respondent sought to widen its application to cover all costs incurred in the action, on the basis of the Claimant's unreasonable behaviour, arguing that Rule 76(1)(a) applies:

(1) A Tribunal may make a costs 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, [...]

5. I did not accept the Respondent's submissions on this point. I accept that failure to comply with orders and unreasonable behaviour go hand-in-hand, but I am not satisfied that the entire action was brought unreasonably. Notably the Claimant did participate in the previous preliminary hearing before EJ Ferguson so was, to some extent, engaged in the process.

6. However, I am satisfied that it is appropriate to make a costs order in respect of costs incurred by the Respondent since 12 August 2021. I have jurisdiction under Rule 76 to do so, and I am satisfied that (even though not present at the hearing) the Claimant has had a reasonable opportunity to make representations in response to the costs application, which was made several months ago, but has failed to do so. The Claimant's failures to comply with orders of the Tribunal, and general lack of engagement since the hearing before EJ Ferguson, have caused the Respondent to incur costs unnecessarily.

7. In determining the amount to be awarded, I have considered the schedule of costs provided by the Respondent in the hearing bundle (pages 19-20). This breaks the Respondent's costs down into 6 categories. As in any costs assessment, I must take a broad-brush approach. Considering each in turn:

(1) ET3/Grounds of Resistance/correspondence with Claimant and Tribunal: these are costs incurred prior to 12 August 2021, so are not allowed under the scope of the order I have decided to make.

(2) *Discussions / review of documents / correspondence with Claimant and Tribunal*: the figure claimed here (£3,536 + VAT) is considerably greater than the equivalent figure in the original schedule dated 2 November 2021 (£1,976 + VAT). Whilst I accept there will have been some additions under this category since the original schedule was prepared, the increase seems excessive (and may reflect some pre-12 August 2021 time being added in).

(3) *Preparation of costs warning letter*: again, the figure claimed here (£3,042 + VAT) is considerably greater than the equivalent figure in the original schedule dated 2 November 2021 (£1,560 + VAT). Whilst I accept there will have been some additions under this category since the original schedule was prepared, the increase seems excessive.

(4) *Preparation for costs hearing*: the figure claimed here (£1,624 plus VAT) seems a little excessive given the limited nature of the hearing.

(5) *Attendance at costs hearing*: I accept it was appropriate for both Ms Eriksson and Ms Hennessey to attend the hearing and the figure claimed (£900 + VAT) is properly incurred and recoverable.

(6) *Counsel's brief fees*: In view of the scope of order I have decided to make, I will allow only counsel's brief fee for today's hearing (£1,250 plus VAT per page 27 of the bundle) and not for the July 2021 hearing.

8. I am unable to factor in the Claimant's ability to pay as she has provided no evidence or submissions in that respect.
9. Looking at the figures in the round, I am satisfied that an award of £8,500 plus VAT (= £10,200) is appropriate and just. This fairly reflects the exclusion of costs incurred prior to 12 August 2021, and a limited degree of reductions for excessive costs incurred.

Employment Judge Abbott

Dated: 19 April 2022