



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** EMPLOYMENT JUDGE BALOGUN

**BETWEEN:**

EWA DYSON

**Claimant**

And

DEPARTMENT OF COFFEE AND SOCIAL AFFAIRS LIMITED (R1)  
CCL OO2 LIMITED (R2)  
COFFEESMITHS COLLECTIVE LIMITED (R3)  
ASHLEY LOPEZ (R4)  
MATTHEW GILL (R5)  
RACHEL HILLEL (R6)  
JAMES GRINNELL (R7)  
DARCY WILSON-RYMER (R8)  
STEFAN ALLESCCH-TAYLOR (R9)

**Respondents**

**ON:** 8 April 2022

**Appearances:**

**For the Claimant: Ms Lillian Caller, Solicitor**

**For the Respondents: David Gray-Jones, Counsel**

## **COSTS JUDGMENT AND REASONS**

The claimant is ordered to pay £1200 towards the respondents' costs

## REASONS

1. This hearing was to consider the respondents application for costs by the 6 individual respondents, dated 2 June 2021.
2. The application was made under rule 76(1)(a) and (b) of the Employment Tribunal Rules of Procedure 2013. Rule 76 provides that if a party against whom an application for costs is made is considered by the tribunal to have either, in bringing the proceedings or in conducting them, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the claim or response had no reasonable prospect of success, then the tribunal must consider making a costs order against that party.
3. It is important to state that costs do not follow the event in this jurisdiction and are still relatively unusual. Where they are awarded they are intended to be compensatory, not punitive. Hence, even if the threshold for a costs order is met, it doesn't follow that a costs order will be made or if it is, that it will be in the amount sought.
4. There are 2 stages to the task before me; i) whether the threshold for a costs order has been met ii) whether a costs order should be made.

### Has the threshold been met

5. The primary argument of the respondent is that the claim against the individual respondents had no reasonable prospects of success and was doomed to fail from the outset.
6. The test of whether a claim has reasonable prospects is an objective one. The claim was withdrawn before hearing and therefore no findings of fact were made or evidence considered. I can therefore only assess the prospects based on the pleadings and the relevant law.
7. The claimant was employed by the first respondent (R1) from 16.4.18 as a Store Manager at its branch in Kingston upon Thames until her termination on 7 July 2020. The claimant was 6 months pregnant at the time of her dismissal.
8. By a claim form presented on 17 July 2020, the claimant brought claims of unfair dismissal; sex and pregnancy discrimination; a claim for a redundancy payment; and various money claims. As the claimant was not employed by the individual respondents, the only claims that she could bring against them were the ones of sex discrimination and pregnancy discrimination.
9. On 7 July 2020, the store in which the claimant worked closed and she and her colleagues were served with notices of redundancy. The claimant's dismissal letter informed her that the reason for her dismissal was that the company was insolvent. That does not appear to be in dispute and the company has since been dissolved.
10. The claimant's discrimination claim is that 3 male comparators were offered alternative roles at other stores by the Operations Manager but no such offer was made to her. She contends that this was because of her sex and because she was pregnant.

11. To establish liability against the individual respondents, the Tribunal would have to be satisfied that they were instrumental in any decision not to offer her an alternative role and that their decision was because she was pregnant. It is clear from the claim form that the reason the individuals have been added as respondents is because they were statutory directors of the first respondent.
12. In her witness statement, presented for this hearing, the claimant contends that the individual respondents were involved in the decision to offer alternative employment to her comparators and not to her. The respondent's case in the ET3 is that none of her comparators were offered alternative employment at any of the respondents' other stores. If the individuals concerned were involved in the decision to dismiss the claimant, then that would be sufficient reason to add them as respondents. However, I do not have to decide whether or not the claimant's assertions are correct, only whether there were reasonable grounds for her believing them to be so. Scott v Commissioners of Inland Revenue [2004] ICR 1410
13. The claimant has provided a number of screenshots of whatsapp and text messages between individuals said to be about offers of alternative roles. However these do not advance her case at all. Firstly, they cannot be characterised as evidence of job offers but in any event, there is nothing linking the discussions to the individual directors. At best, the screenshots are speculative.
14. That fact that the respondents were statutory directors of the claimant's employer does not, of itself, make them personally liable for discriminatory acts. There has to be more. There is nothing in the pleaded case that suggests: i) that they were aware of the claimant's pregnancy; ii) that they were involved in any decision whether or not to offer her alternative employment at other associated companies or iii) if they were, whether it was because of her sex/pregnancy.
15. I am satisfied, based on the pleaded case, that the claimant would not have been able to discharge the initial burden of showing that the individual respondents had discriminated against her and in those circumstances, the claims against them had no reasonable prospect of success from the outset.
16. Further, in the claim form, the claimant makes serious allegations of fraud made against the Directors. Not only were these irrelevant to the claim, there was no factual basis for them. This was an unjustified personal smear on the reputations of the directors amounting to unreasonable conduct.
17. In all the circumstances, I am satisfied that the threshold for a costs order has been met.

Should a costs order be made

18. There was no reasonable basis for the claimant to believe that the directors had discriminated against her given the reason for dismissal set out in the dismissal letter. The claimant's pursuit of the claims has resulted in the respondents incurring legal costs, which they have had to settle personally. I consider it just that a costs order be made.

Amount of Costs

19. Rule 84 says that in deciding the amount of costs, I may take into account the claimant's means.
20. The claimant gave evidence as to her means, which I have taken into account. The claimant receives £600 per month statutory maternity allowance. She receives £850 per month rental income from a one bedroom apartment purchased in September 2019 for £160,000. The rental income is used to pay the mortgage on her main residence. The claimant's main residence is owned jointly with her husband, with her share being 10%. She has savings of £600. Her other monthly outgoings are: a minimum payment of £50 on a credit card debt of £1600; £43 phone bill; £350 child care and £100 car expenses.
21. I am satisfied that the claimant has the means to meet a costs order.
22. The respondent seeks costs of £1,150 for each individual respondent, making a total claim of £6,900.
23. In deciding the level of costs to award, I have taken into account that the claimant was not professionally represented prior to withdrawal and that the complexities of company law may have been lost on her. The claimant's dismissal letter was from "*Directors of Coffeesmiths Collective*". The entity to which this refers is unclear as R3, the group company, frequently created, dissolved and re-named its subsidiary organisations, many of which had common directors. However, what is clear from the letter is that the Directors were an integral part of the decision to place the relevant entity into formal insolvency. I can therefore see how, as a lay person, the claimant might have equated the consequential decision about her employment to be part of the same decision making process.
24. I also take into account that the claims were withdrawn promptly following a preliminary hearing on 1 April 2021. I note from the record of that hearing that there was a discussion about who the correct respondents should be. This was the first occasion that the position had been clarified at a hearing and the claimant withdrew her claims within 3 working days thereafter, by email on 6 April 2021. It was submitted on behalf of the respondents that the claimant could have withdrawn earlier. To that, I say that she may well have been persuaded to do so had a costs warning letter been sent to her, setting out the respondents' position and the cost consequences of her continuing with the claim. No such letter was sent.
25. In all the circumstances, and bearing in mind always that costs are discretionary in this jurisdiction, I make an award of costs in the total sum of £1200.

Employment Judge Balogun  
Date: 6 June 2022

