



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Craven

Respondent: Wirksworth Swimming Pool

Heard at: Nottingham On: 4 July 2022

Before: Employment Judge M Butler

Members: Mr S Connor and Mr C Tansley

This judgment was made on the papers

JUDGMENT

The unanimous judgment of the Tribunal is that the Claimant is ordered to pay costs to the Respondent in the sum of £1,000.

REASONS

Background

1. This case was heard before the Tribunal on 7 and 8 March 2022. The Claimant's claims for unfair dismissal and pregnancy and sex discrimination were dismissed. The Claimant did not attend the hearing.
2. At the close of the hearing, the Respondent indicated it wished to apply for costs against the Claimant. An order was made on 30 March 2022 requiring the Respondent to provide to the Tribunal and serve on the Claimant a schedule of costs. The Claimant was ordered to respond to the application and provide evidence of her financial means. These orders were complied with.

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013

3. Rule 75 provides:

(1) A costs order is an order that a party (“the paying party”) make a payment to

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(a) another party (“the receiving party”) in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;

(b);

(c) another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual’s attendance as a witness at the Tribunal.

(2) A preparation time order is an order that a party (“the paying party”) make a payment to another party (“the receiving party”) in respect of the receiving party’s preparation time while not legally represented. “Preparation time” means time spent by the receiving party (including by any employees or advisers) in working on the case, except for any time spent at the final hearing.

(3)

Rule 76 provides:

(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:

(c)

Format of this hearing

4. The parties were asked to confirm whether they wanted the costs application to be determined at a hearing or on the papers. The Respondent confirmed it was content for the application to be determined on the papers. The Claimant did not reply to this question.

The Claimant’s conduct

5. The Claimant’s conduct in this case was fully discussed in the Judgment sent to the parties on 4 April 2022. The Tribunal found that she had relied on forged documents during the disciplinary process and continued this conduct by submitting to the Tribunal a letter from University Hospitals of Leicester Early Pregnancy Assessment Clinic which she had quite clearly altered in an attempt to deceive the Tribunal as to the date of her miscarriage.

6. It is abundantly clear to the Tribunal, therefore, that the Claimant acted vexatiously and unreasonably in both bringing and conducting these proceedings. Throughout this case, the Claimant has quite deliberately attempted

to deceive both the Respondent and the Tribunal by relying on documents which she has fabricated to support her claims. An order for costs is, therefore, appropriate.

The Respondent's Costs Application

7. Whilst we consider this application to be appropriate, we bear in mind two relevant factors. Firstly, whether to award costs is at the discretion of the Tribunal and, secondly, the Claimant's ability to pay any such award may be taken into account.

8. The main issue with the Respondent's schedule of costs, as ultimately, relied on by the Respondent, raises significant issues. The Respondent was initially advised by a firm of solicitors. Their work is evidenced by an invoice for £7,921.20 with no information as to how the work is broken down or the level of fee earner who carried out the work.

9. For the most part, the Respondent was represented by an HR company. That company provided personnel to conduct various hearings involving the Claimant and conducted the litigation. Those personnel included Ms Asprey who conducted the hearing for the Respondent. The issue is that the company charges a fixed fee for each stage of the proceedings which is not related to the hourly preparation time rate set periodically for non-legal representatives in relation to Tribunal work. The total costs are £11,701 (including vat not sought to be recovered) which includes £1,800 for the three personnel involved in attending the hearing (see rule 75(2) above).

10. It is not for the Tribunal to make calculations on behalf of a party to ascertain whether the claimed costs fall within the guidelines for preparation time. In this case, we have taken the view that it is appropriate to order costs which appear to us to be reasonable as we cannot discern from the information provided precisely how the claimed costs are calculated in accordance with the rules.

The Claimant's Means

11. Given the Claimant's conduct before and during the proceedings, we view anything she says with some circumspection. She provided three payslips to show she is working but two of the payslips are a duplicate of each other and the third is for a different employer but covering part of the same tax period as the others. Consequently, the Claimant's earnings are unclear. She claims to have debts of £15,000 but has produced no evidence of these apart from standing orders paying £20 per month to a firm of solicitors and £20 per month to another company which appears to be a debt collecting company. No information has been provided in relation to rent or mortgage payments or any other household expenses.

Conclusion

12. Taking into account the matters above, we decided that an appropriate award of costs is £1,000. Although the Respondent has not provided a proper breakdown of costs and has included charges which are not recoverable, the Tribunal is satisfied that at least this amount would have been incurred in defending these proceedings. It also takes into account the Claimant's means.

Whilst we do not consider we can rely on her financial disclosure to any great extent, we accept that she is making payments in respect of other debts of which she has given no evidence.

Employment Judge Butler

Date 4 July 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE