



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mr Jonas Moagi

v

BMI Three Shires Hospital

**Heard at:** Cambridge

**On:** 31 May 2022

**Before:** Employment Judge Ord

**Appearances**

**For the Claimants:** In person

**For the Respondent:** Mr S Sudra, Counsel

## JUDGMENT on COSTS

No Order is made on the Respondent's Application for Costs.

## REASONS

1. This is an Application for Costs made by the Respondent following strike out of the Claimant's complaints on 16 July 2021.
2. The Claimant presented his claim form to the Tribunal on 8 March 2020 complaining of unlawful deductions from wages and breach of contract. Part of the dispute related to unpaid sick pay which the Claimant says was withheld during his notice period. He resigned with effect from 29 February 2020 because, he says, of the conduct of the Respondent, having been employed for approximately three and a half months. He engaged in Early Conciliation through ACAS between 28 February and 2 March 2020 and presented his claim form to the Tribunal on 8 March 2020.
3. In the claim form he accepted that he had been paid the outstanding sick pay on 6 March 2020, but complained about treatment from the Respondent. He stated that he found conditions unfavourable and suffered stress as well as complaining about the delay in receiving his pay. He referred to his Terms and Conditions being breached with respect to sick pay, i.e. that it was not paid on time.

4. The Respondent resisted the claim and presented an Employer's Contract Claim in response, saying that the Claimant had failed to comply with the terms of his notice period.
5. Thereafter, there was some difficulty with the Claimant's progress of the case. In particular, matters proceeded as follows:
  - 5.1 On 2 March 2020, the Tribunal issued directions which included the requirement of the Claimant to set out the remedy he was seeking by 21 December 2020 and listing the Final Hearing for 27 July 2021;
  - 5.2 On 19 January 2021, the Respondent withdrew its Employer's Contract Claim;
  - 5.3 On 11 February 2021, a Judgment was issued dismissing that Employer's Contract Claim;
  - 5.4 On 5 March 2021, the Claimant was sent a Strike Out Warning by the Tribunal because he had not complied with the Orders of 2 November 2020 and also because the claim was not being actively pursued, with reference to the Claimant possibly acting vexatiously, disruptively or otherwise contrary to the Rules of the Tribunal;
  - 5.5 On 25 April 2021, Employment Judge Quill required compliance with the Orders previously issued and confirmation that such compliance had been made by 27 May 2021. That was in reply to a Response from the Claimant of 24 March 2021 and the Claimant again replied to the Tribunal on 13 May 2021;
  - 5.6 On the same day, 13 May 2021, the Respondent applied for Strike Out and that Application was repeated again on 25 May 2021; and
  - 5.7 On 16 July 2021, the case was struck out. It was struck out by me because the Claimant had not complied with the directions of 2 November 2020, he had not responded to the Strike Out Warning of 5 March 2021, nor had he replied to the Tribunal's directions of 25 April 2021. There was no appeal against that strike out, nor was there any request for reconsideration.
6. It is submitted on behalf of the Respondent that by failing to engage with the Tribunal and failing to reply to the Tribunal's Orders and Strike Out Warning, the Claimant acted unreasonably in the conduct of the proceedings as set out in Rule 76(1). I accept that that point is made out, it was unreasonable for the Claimant not to respond to the various instructions, Orders and directions from the Tribunal.
7. On that basis I must consider whether or not to make a Order for costs.

8. I take all matters into account. In particular, the fact that the Claimant is a litigant in person, that he was acting without legal advice, his current means as described to me today and the costs warnings sent by the Respondent and the Strike Out Warnings sent by the Employment Tribunal. I also reflect upon the fact that costs remain the exception rather than the rule in the Tribunal.
9. I have decided on balance today not to make an Order for costs. I can sympathise with the Claimant's position regarding his resignation from the Respondent's employment and the fact that whilst the Respondent eventually paid his outstanding sick pay, this was after his complaints to ACAS and just before his presentation of his claim. That led him to have, as I see it, a genuine sense of grievance that he felt the Employment Tribunal could assist with. Whilst that was not the case, I can fully understand the Claimant's feeling that due to the treatment he says he received in his employment and because of the delay in making payment to him, the Employment Tribunal could intervene.
10. Whilst the Claimant's failure to respond to the Tribunal was inappropriate, he referred to receiving an excessive number of emails from the Respondent and certainly I consider that the tone of the costs warnings made by the Respondent to border on the aggressive. The amounts being claimed by the Solicitors on behalf of the Respondent were, at the time and now, wholly excessive for what is a simple and straight forward issue. Indeed, Counsel for the Respondent did not contest that when I put it to him today and accepted that the costs of preparing for and attending today totalling £2,000 of themselves, would be an appropriate sum to award by way of costs.
11. That is to be compared to the costs Application in the sum of £13,497.72 which does not include Counsel's own costs of attending today in the sum of £921.00. In other words, a total of over £14,300 for dealing with what is a simple and straight forward claim.
12. For those reasons, the Claimant's misunderstanding of the powers of the Employment Tribunal, his position as a litigant in person and the tone and excessive nature of the Respondent's costs warnings as set out in their letters which I consider to be tantamount to borderline unreasonable conduct in themselves, I decline to make a Costs Order in this case.

20 July 2022

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Employment Judge Ord

Sent to the parties on: 26 July 2022  
For the Tribunal Office