



# EMPLOYMENT TRIBUNALS

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**Claimant:** Ms N K Dhillon

**Respondent:** Leeds Teaching Hospitals NHS Trust

## AT A COSTS HEARING

**HELD AT:** Leeds      **ON:** 30<sup>th</sup> August 2022

**BEFORE:** Employment Judge Lancaster

**Members:** Mr R Webb  
Mr K Lannaman

### **Representation**

**Claimant:** Was not required to attend, having made written representations for consideration.

**Respondent:** Was not required to attend, having made written representations for consideration.

## JUDGMENT

The Claimant is ordered to pay the Respondent's costs to be assessed, in respect of the period from 11<sup>th</sup> December 2019 to 1<sup>st</sup> April 2022, but excluding the cost of actual attendance at the hearings on 2<sup>nd</sup> and 3<sup>rd</sup> September 2020, 30<sup>th</sup> November 2020, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> March 2021 and on 21<sup>st</sup> July 2021. Taking into account the Claimant's ability to pay any such assessed costs are however to be limited to a maximum amount of £17,000.00 if not agreed.

## REASONS

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1. We have concluded that the victimisation claim which we decided at the final hearing between 28<sup>th</sup> March and 1<sup>st</sup> April 2022 had no reasonable prospect of success. The precondition for making a costs order against the Claimant under rule 76 (b) of the Employment Tribunals Rules of Procedure 2013 is therefore satisfied.  
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2. The determination of whether or not the Claimant had done a protected act was something which could only properly be determined after hearing evidence. Although we decided on that evidence that neither of the matters relied upon did in fact constitute an express or implied breach of the Equality Act under section 27, it cannot be said that that element of a victimisation complaint had no reasonable prospect of success from the outset. It is noted that, for essentially the same reason, neither Employment Judge Deeley at the case management hearing on 20<sup>th</sup> November 2020 nor Employment Judge Licorish's tribunal on 9<sup>th</sup> March 2021 considered that this question was properly determinable as a preliminary issue.
3. The issue of whether or not the Claimant had been subjected to a detriment was similarly not one which could be said to have had no reasonable prospect of success. Although we decided that neither the alleged failure adequately to investigate the Dignity at Work complaint nor the failure to advise the Claimant of her right to appeal the outcome of that investigation did constitute any actual detriment to her, it is not disputed that certain witnesses were not interviewed nor that the outcome letter itself did not expressly refer to any right to appeal. In any event the third alleged detriment, the dismissal, was conceded to be such.
4. However, as set out in the Reasons for the initial judgment, there was no reasonable prospect of the Claimant establishing any causal link between any putative doing of a protected act and any of these three possible detriments. The fact of the Claimant having raised the Dignity at Work complaint was clearly not the reason why witnesses, whose evidence was not in any event at all crucial to the issues, were not in the event interviewed. Nor was it the reason why a reference to a possible appeal against the informal resolution, which would in practice have been effected by the submission of a fresh formal grievance, was omitted from the outcome letter. Indeed, no facts or arguments were ever advanced by the Claimant in the course of the hearing to even suggest that this might have been the reason for her having been subjected to these alleged detriments.
5. Similarly, there was never any reasonable prospect of the Claimant establishing, and nor did she establish any facts from which we might have concluded even that she could have been dismissed because she had made a Dignity at Work complaint. The Claimant was undoubtedly dismissed for having committed a number of proven acts of misconduct whilst a final written warning for similar matters was still current.
6. Having concluded that the claim therefore had no reasonable prospect of success we further consider that we ought to exercise our discretion to award costs under rule 76.
7. It was not until after the preliminary hearing before Employment Judge Rogerson, on 10<sup>th</sup> December 2019, where the Claimant was found not to have been disabled, that the issues on the sole remaining claim of victimisation could be finally identified. Unfortunately, all subsequent conduct of the proceedings suggests that the Claimant has still refused or been somehow unable to acknowledge the very limited scope of her

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subsisting victimisation complaints. Nor, therefore, does she appear to have engaged properly with the insurmountable evidential difficulties she faced in pursuing this claim. It has however been brought to her attention in three costs warning letters, dated 16<sup>th</sup> January 202, 16<sup>th</sup> September 2020 and 25<sup>th</sup> February 2021 that the Respondent considered her victimisation claim to have no reasonable prospect of success and that it reserved the right to apply for costs and to refer to that without prejudice correspondent when doing so. Given the Claimant's failure to heed those repeated warnings, even though they did not in terms spell out the precise deficiencies in the claim as now brought, and her persistence in bringing a claim which objectively had no reasonable prospect of success, we consider that she ought to pay a proportion of the Respondent's costs, as sought, in its continuing to defend this claim after the end of the disability hearing.

8. The prolonged nature of these tribunal procedures has not, however, been solely due to the Claimant's stance. The initial hearing on 2<sup>nd</sup> and 3<sup>rd</sup> September 2020 was adjourned part-heard because of technical difficulties in the CVP hearing and the Claimant's reported ill-health. That adjournment directly necessitated the further preliminary hearing on 30<sup>th</sup> November 2020. The resumed hearing on 8<sup>th</sup> to 10<sup>th</sup> March 2021 then had to be further adjourned, again because there were technical issues but also because the tribunal itself had identified a good potential ground for the Claimant applying for further reconsideration of the strike out of her unfair dismissal claim as being out of time, when it now transpired that it had in fact been brought within 3 months of the actual effective date of termination. The reconsideration hearing on 21<sup>st</sup> July 2021 was effectively therefore at the instigation of the tribunal. The matter then had to be remitted to an entirely new panel, rather than continue part-heard before Employment Judge Licorish's tribunal, but again that is no fault of the Claimant.
9. It would not, therefore, be just and equitable to make the Claimant bear the Respondent's costs of attending at these further hearings, although she should still be liable for all preparation costs after 11<sup>th</sup> December 2019 up to the eventual conclusion of the unmeritorious claim, and for the costs of the re-arranged 5-day final hearing.
10. Also under rule 84 we may have regard to the Claimant's ability to pay in deciding the amount of any costs order. Because the Claimant is presently out of work, and has been since 31<sup>st</sup> March 2022, and reports limited assets, and because the expectation of her coming into any future inheritance is merely speculative on the part of the Respondent, we conclude, notwithstanding the fact that she does still have a potential earning capacity and has only limited outgoings whilst continuing to live with her parents and grandmother, that her immediate inability to pay a substantial sum should be taken not account.
11. The maximum sum claimed, subject to taxation in the County Court, but presumably including the hearing costs which we have discounted, is £69,831.20. The total cost over the entire history of this case will, of course, be appreciably higher. Whatever the taxed figure actually is, it still likely therefore to be well in excess of the £20,000.00 limit upon summary assessment, had we been invited to approach the application in this way rather than to remit it for detailed assessment. Taking account of ability to pay we consider that an order of this magnitude would not be appropriate. Although we are prepared to mitigate the impact upon the Claimant, the Respondent has nonetheless incurred significant costs. We therefor cap the total amount of any assessed costs at £17,000.00, whether or not that sum can be immediately recovered in any enforcement

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proceedings. It may be, therefore that it is not necessary actually to refer this matter for assessment.

EMPLOYMENT JU DGE LANCASTER

DATE 30<sup>th</sup> August 2022

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