



EMPLOYMENT TRIBUNALS

Claimant: Ms J R Jones

Respondent: The Chief Constable of North Wales Police

Heard at: Cardiff Employment Tribunal (by CVP) **On:** 07/09/2022

Before: Tribunal Judge Lloyd-Lawrie, acting as an Employment Judge

Representation

Claimant: Ms N Murray

Respondent: Mr R Lassey

RESERVED JUDGMENT

The Claimant is ordered to pay the Respondent's costs of £3672 under rules 76 (1) and (2) of the Employment Tribunal Regulations 2013.

REASONS

Summary of the Case

1. The Respondent first made an application for costs on 22nd April 2022. That application was finally heard during the hearing on 07/09/2022, following judgment being delivered on the jurisdictional points.
2. The Respondent asks for costs to be awarded in respect of the 2 abortive hearings only, those being the hearings of 18 March 2022 and the hearing on 25th July 2022. They make the application on the basis that they state that the Claimant has acted unreasonably in seeking to postpone the preliminary hearing of 18th March due to having failed to serve relevant documents and on 25th July 2022 by failing to prove that she was too ill to proceed with the hearing on 25th July.
3. The Claimant submitted an ET1, by email to the Cardiff Employment Tribunal on 2/2/2021. This is not an accepted method of service. The

Claimant then sent a copy of the ET1 by post, to the correct Employment Tribunal general address, which was received on 29/03/2021. This was out of time. The parties agreed that the last date of the limitation period, as extended by Early Conciliation, was 18th February 2021.

4. I found that none of the reason for extending time were present and all claims, those being constructive unfair dismissal, automatic unfair dismissal (whistleblowing), indirect sex discrimination and “whistleblowing” detriment claims, were therefore struck out as the Tribunal had no jurisdiction to hear the claim.
5. The matter first came in front of an Employment Judge for a Preliminary Hearing on 15/10/2021. At that hearing, Employment Judge Ryan set directions for a substantive preliminary hearing on the issue of whether the claims were presented in time and if not, in relation to all claims, bar the indirect sex discrimination claim, whether it was reasonably practicable for those claims to have been presented in time. If that as the case, did the Claimant present her claims within a further reasonable time. With regards to the indirect sex discrimination claim, the issues were whether that as in time and if not, whether it would be just and equitable to extend time.
6. At the hearing on 15/10/2021 very clear directions were given. Amongst these directions, the parties were to exchange documents by 03/12/2021 and the Claimant was to prepare a witness statement dealing with the submitting of the claim and why, if it was not in time, time should be extended. Details were given of what this was to contain. The only document the Claimant supplied to the Respondent was a screenshot of an email. She did not produce a witness statement at any stage prior to the Preliminary Hearing set for 18/03/2022.
7. The Claimant during the hearing on 18/03/2022 advised that she had further, undisclosed email correspondence that she wished to rely upon. She also wished to call a previously undisclosed witness. She also did not deal with the issues that she was to deal with in her witness statement of why she could not serve her claim in time. The Claimant’s failure to comply directly caused the hearing on 18/03/2022 to be postponed. That hearing was then re-listed for 25/07/2022.
8. The hearing of the 25/07/2022 was adjourned at the request of the Claimant as she stated she was too distressed too continue. Employment Judge Ward granted the application stating in the Case Management Order that she “granted the adjournment as I considered that it would not be in the interests of justice to proceed today, given the need for the claimant to give evidence”.

The Law

9. The power to award costs is set out in rule 76 of the Employment Tribunal Rules of Procedure 2013 (as amended). Rule 71 (1) provides that:

“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".

Rule 76 (2) provides that:

"A Tribunal may also make such an 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".

10. The procedure by which the costs application should be considered is set out in rule 77.
11. I have dealt with this costs application by applying by mind to a 3-stage process, I have first considered whether or not any of the circumstances in rules 76 (1) or 76 (2) are engaged. To do this I will look at the history of the case as it relates to the conduct of the Claimant. If I decide that one or more of the circumstances are met, I will then consider whether or not to exercise my discretion to award costs. This means that it does not automatically follow that simply because one of the circumstances are met, that costs will be awarded. If I decide to order costs at this stage, I will then consider how much to order.
12. I have considered the guidance in the cases of **Gee v Shell UK Limited** [2003] IRLR 82 CA and **Barnsley Metropolitan Borough Council v Yerrakalva** [2012] IRLR 78 CA amongst others.

Findings

13. I find that the Claimant behaved unreasonably in failing to comply with the Tribunal directions of Employment Judge Vincent, which were so very clear, in providing all relevant documents and a detailed witness statement for the hearing on 18/03/2022. I find that her failure to do this and her insistence that she had further relevant evidence, was the cause of the hearing being adjourned on that date. I find that therefore, Rules 71 (1) and (2) are satisfied. In finding this I have directed my mind to the fact that the Claimant was a litigant in person during that hearing.
14. In relation to the hearing on 25/07/2022, I find that the Claimant again had acted unreasonably as she had still failed to disclose the documents the hearing on the 18/03/2022 was postponed to allow her to serve and had still failed to provide a full witness statement dealing with the issues that at that point had been explained to her at 2 previous preliminary hearings. I find that the Claimant cannot be held to have been unreasonable for saying she felt too distressed to continue. The Employment Judge made the decision to postpone on that basis. However, in any event the hearing could not have gone ahead due to the failure of the Claimant. The Tribunal had the inbox searched of the Tribunal and around 20 pages of documents were provided to the parties which the Claimant should have, but had not, provided. Again, I find that this was unreasonable conduct and I find that again, the Claimant had breached a Tribunal order.

15. I therefore find that the test is satisfied for potentially making an order of costs. I now consider my discretion. In doing so I consider the Claimant's conduct generally, particularly in front of me when giving evidence. As stated in my oral judgment in relation to the jurisdictional issues, I found that the Claimant and her mother, who was her witness, were disingenuous in their giving of evidence to me. It clearly was the case that the Claimant had posted her ET1 to the Tribunal, after being told the ET1 served by email was rejected, despite her claims that she never had done so and that her ET1 had only ever been served by email and thus was in time. I find that the Claimant in taking such a position, combined with her failure to follow Tribunal orders, shows a disregard for the proper procedures of the Employment Tribunal and sought to hamper the Respondent's right to a fair hearing. For those reasons, I have decided that it is right and proper to exercise my discretion to award costs.
16. I now move to consider how much the Claimant should be ordered to pay. In doing so I direct myself to consider the means of the Claimant. The Claimant gave evidence as to her means. She is employed and after essential bills and living expenses she has around £250 a month disposable income. She owns her own property and a car. She also has an ISA which the Claimant claimed was opened since she was 16 but that she has no idea how much the balance is. She explained that she has never taken money out and last put money into it in her previous job, which was after her employment with the Respondent. She explained that she was, on average, putting £20-300 a month into her ISA and that she had started doing that at around age 23-24. I find that the Claimant therefore is likely to have in excess of £10000 in that account, taking an average of what she paid in for 7 years.
17. The Respondent is asking for a modest amount of costs only, which are their costs in respect of the 2 abortive hearings. I find that these costs are in line with the years of experience of the in-house solicitor and it is appropriate that the Respondent is reimbursed for their costs of the same. The figure in relation to the hearing on 25/07/2022 is £1882.50 and for the hearing on 18/03/2022 is £1789.50.
18. I therefore order costs of £3672 to be paid by the Claimant to the Respondent.

A. N. Lloyd-Lawrie

Tribunal Judge Lloyd-Lawrie
Acting as an Employment Judge

Date – 26 September 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON 26 September 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche