



**Case No. 3332461/2018  
3332462/2018**

## **EMPLOYMENT TRIBUNALS**

### **BETWEEN**

**Applicant**  
Chess ICT Ltd

**Respondents**  
1 Mr J Hunt

and

2 Mr D Hurst

3 Mr S Ryan

**Held by CVP on 8 February 2022**

**Representation**

**Applicant:** Mrs K Hodson, Solicitor  
**Respondents:** 1 & 2 Mr K Aggrey-Orleans,  
Counsel

3 In Person

Reasons for the  
**JUDGMENT ON COSTS**

given on 8 February 2022,  
provided at the request of the Applicant

1. This judgement should be read in conjunction with the earlier judgement on liability. The Applicant was the second Respondent to that case. The first and second Respondents were the Claimants. Mr Ryan was the first Claimant's McKenzie friend at trial.
2. The second Respondent, the above Applicant, by a letter dated 7 September 2021, within time, made an application for costs against the Claimants and for cost and/or wasted costs against the first Claimants McKenzie friend Mr Ryan.
3. At the start of the hearing I made enquiries of the parties and asked the Applicant to take instructions on whether she wished to pursue the application for wasted costs against Mr Ryan. Following an adjournment to consider her position she indicated that she did not wish to do so.
4. The hearing has therefore proceeded as an application for a costs order against the Respondents and/or Mr Ryan as the first Claimant's representative.



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5. I have read the documents that were in the bundle for this hearing, as well as a large part of the original bundle, and I have to express my thanks to Mrs Hudson and to Mr Aggrey-Orleans for the clarity of the submissions I have received from them.
6. The issue of costs is dealt with in the Employment Tribunal Rules Of Procedure 2013. As far as I am aware there has been no failure to comply with the relevant provisions.
7. The fundamental basis on which the Applicant seeks an order for costs in its favour is that the Claimants and/or their representative behaved unreasonably in the conduct of the litigation.
8. This case was the subject of two preliminary hearings before experienced Employment Judges. The first was on the 2 August 2019 before EJ Postle. He granted the Claimants' application that the second Respondent, then identified as Chess Limited, be joined as a party. He gave further directions consequent upon that. At that stage the second Respondent had not had an opportunity to make any representations on the question of joinder, and it did not seek at any time to set aside that order on the basis that it was not a proper party to the proceedings. At a further preliminary hearing on 8 November 2019 before EJ Ord the issues in the case were defined.
9. One central question was whether or not there had been a TUPE transfer of the first Respondent's business to the second Respondent. I did not accept the submissions today that that had been conceded by the second Respondent in its pleadings or in its response.
10. I also note that despite the long time-gap between those two hearings the second Respondent took no steps to set aside the application for joinder; to seek an order for strikeout or a deposit on the basis that the Claimants' claims had no or little reasonable prospect of success. I also thought it significant that despite the directions given for exchange of witness statements, the parties did not (as is so often the case) comply with them. They did not exchange until 27 July 2021, that is the Thursday before the full hearing started.
11. In those circumstances, bearing in mind Peninsula had come off the record as late as 29 June 2021 for the first Respondent, the Claimants would not have been aware that:
  - 11.1. no evidence would have been proffered by any of the relevant witnesses for the first Respondent; and
  - 11.2. it would not have an opportunity to cross examine them on the Claimants' suspicions that there had been covert negotiations between the first and second Respondents prior to the resignation; and that those discussions might have included the possibility of effectively offloading the Claimants (who were high earners) from the payroll before any transfer.
12. At the full merits hearing I heard the evidence of the Claimants and a single witness on behalf of the Respondent, whose only evidence went to the date on which the discussions regarding the potential acquisition of the first Respondents business by the second Respondent first took place before any alleged TUPE transfer. I found as a fact it took place in about September 2018.
13. Against that background I could not have made the findings I did on whether or not claims were in or out of time and/or whether or not a TUPE transfer took place without hearing evidence. Having heard that evidence I came to my conclusions, which cast no aspersions



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concerning the viability or otherwise of the claim at the time it was presented or at any time before I gave my judgement.

14. In my view the Applicant has wholly failed to establish any conduct on the part of the Claimants or the representative that could be described as unreasonable.
15. In all the above circumstances I consider this to be no different to any other case in which judgement is given where Claimants fail and I can see no reason to depart from the usual order in a no costs jurisdiction.

Employment Judge Kurrein  
26 September 2022

Entered in the register and sent  
to the parties on:  
27 September 2022

For the Tribunal