



EMPLOYMENT TRIBUNALS

Claimant: Mr S Green

Respondent: Newbridge Primary School (1) & Bath & North East Somerset (2)

Heard at: Bristol

On: 15 August 2022

Before: EJ Christensen

Representation

Claimant: represented himself

Respondent: represented by Ms Winstone of Counsel

JUDGMENT having been sent to the parties on 30 August 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Respondents' application for costs

1. The respondent's application for costs is made under Rule 76(1)(b). It was made in writing on 21 March 2022 and appears at page A104 in the bundle.
2. I was presented with 2 bundles and referred to relevant documents in both of them when taken there by the parties.
3. At the outset of the hearing I had a discussion with the claimant regarding what reasonable adjustments he would like to have in place. He confirmed that he wanted regular breaks and was having problems with his medication given the current heatwave. I asked him whether he would like breaks at regular intervals and/or whether he would like to tell me when he wanted breaks. He asked to be given a break every 90 minutes and I confirmed that this would be accommodated. I asked the claimant's wife and Ms Winstone to remind me to give the claimant a break every 90 minutes. I also reassured the claimant that if he wanted a break at any other time to tell me.
4. The respondent's application for costs set out the chronology of events relied upon and refers to threats and intimidation, unreasonable tactics in conduct of proceedings. It is costed at a total of £11,450. I do not recite those various heads in these reasons in any detail.

5. The claimant has provided some written details of his income and I accept these at 174 in the bundle. He also told me orally about receipt of Personal Independence Payment (PIP) from DWP. These assist him in purchasing equipment to assist with his disabilities; such as specialist software and a mobility scooter. I have not taken the receipt of PIP into account under Rule 84, in determining the claimant's ability to pay, both in terms of whether to make a costs order and also in what amount.
6. I have been referred to the case of **Yarrakalva-v-Barnsley Metropolitan Council [2012] ICR 420** and the case of **Godwin-v-United Kingdom Atomic Energy Authority** which makes reference to Yarrakalva.
7. Yarrakalva assists in guiding me to look at the whole picture. I must ask myself whether there has been unreasonable conduct by the paying party in bringing, defending, or conducting the case and in so doing, identify the conduct and what was unreasonable about it and what effect it had. The use of the word unreasonable required a high threshold to be passed when a costs order is made.
8. By reference to the various heads of conduct identified by the respondent I have been satisfied that that high threshold has been met but only by reference to the costs incurred by the respondent by having to attend the hearing on 14 February. Those costs are in the sum of £2750, the conduct of the claimant that led to that hearing taking place was, in my judgment, unreasonable and meets the high threshold.
9. I make no order in relation to any of the earlier conduct of proceedings by the claimant. Whilst recognizing that the way in which the claimant has pursued his claim against the respondents has caused difficulties for the respondent's solicitors, staff and governors – when looking at the whole picture I am not satisfied that earlier conduct meets the threshold for an order to be made.
10. In reaching this conclusion I consider it relevant that that it is my judgment that the claimant holds a genuine sense of injustice regarding the events that led to the ending of his work contract. He has however struggled to advance his sense of injustice within the scope of a claim under the Equality Act. It is relevant that he is an unrepresented litigant with multiple complex disabilities that affect his communication and processing abilities. The complexities of his disabilities cannot be fully understood by the tribunal or the respondent, but I recognize they exist. They include dyslexia with associated memory problems and scotopic sensitive, clinical depression, general anxiety disorder and ADHD. The claimant is currently awaiting an autism assessment. I make reference to this in paragraph 18 of my judgment arising from the hearing in September 2021.
11. The respondent seeks to characterize the claimant's actions as a planned campaign of bullying against the respondent as a way of trying to force them into settlement. The information before me from the claimant's wife in her letter of 11 July 2022 sets out that in her view his behaviour in the litigation is influenced by his disabilities. Without more I note the different positions and accept that either could be right. However, given the high threshold required to make a costs order I have not been satisfied that I can conclude that threshold is met by reference to Rule 76(1)(b) when considering conduct of litigation prior to February 2022.
12. The chronology of events leading to the hearing in February are well documented and set out in my judgment of 14 February 2022. I recite them no further here. Suffice to say that I am satisfied that the claimant's

conduct on that occasion was unreasonable such that I am satisfied that the high threshold is met. I exercise my discretion to award the respondents the costs they incurred by reference to attending that hearing. It was listed to determine the preliminary issue of whether the claimant met the definition of employee within the Equality Act. If not an employee within the Equality Act the claimant would have no locus to pursue his claims; it was a determinative preliminary issue.

13. The hearing did not proceed to determine that issue. The claimant wrote to the tribunal on 7 January to withdraw his claim but at the same time requesting that his claim not be dismissed.
14. In and of itself I do not consider the decision to withdraw the claim unreasonable. It is the actions of the claimant in withdrawing and asking for the claim not to be dismissed that required that the hearing take place. His unusual request created a situation in which a forum was necessary to let him advance his application for non-dismissal. The claimant was told in clear terms by the Tribunal that the hearing listed on 14 February would no longer determine the preliminary status issue but would instead enable him to make his application for non-dismissal.
15. The claimant was offered the possibility of applying for a stay of proceedings by EJ Midgely but the claimant rejected that possibility.
16. The claimant failed to attend the hearing on 14 February at very short notice. The events surrounding that failure to attend are set out in my judgment of the same date.
17. From all of the information available to me I am not satisfied that the claimant had any proper reason not to attend the hearing to advance his application. His actions were unreasonable in that they put the respondents to cost in having to attend that hearing. His conduct meets the high threshold required for me to award the respondents the costs they incurred in attending that hearing.
18. Taking into account the claimant's ability to pay I am satisfied that it is appropriate to make a costs order against the claimant and in favour of the respondents in the sum of **£2750**.

Claimant's application for a Preparation Time Order (PTO)

1. The claimant's application for a PTO is made under Rule 76(1)(b). It was made in writing and appears in the bundle at pA123.
2. It sets out 8 areas in which the claimant argues that the conduct of the respondent was unreasonable such that a PTO order should be made in his favour. I do not recite them in any detail in these reasons.
3. These were considered in turn in the hearing.
4. Most of the events relied upon by the claimant do not however relate to the conduct of litigation but instead refer to the actions of the respondents in the work place. These are therefore not examples of conduct of proceedings that can support an application for a PTO.
5. The examples that did relate to the conduct of proceedings do not, in my judgment, get anywhere close to the threshold required to establish unreasonable conduct of proceedings by the respondents such that I consider it appropriate to exercise my discretion to order a PTO in the claimant's favour.
6. Of the examples given I focus on those that did relate to the conduct of proceedings by the respondent.
7. One is an example of directions being complied with a day late by the respondent, another is an error made by Ms Winstone in mistakenly sending an email to the claimant that was intended for her instructions

solicitor and another is the respondent not telling the claimant in advance of a hearing, in terms, who would be present at the hearing.

8. Such conduct by the respondent does not in my judgment meet the threshold required to establish unreasonable conduct of proceedings. That one party has complied with directions a day late, in any of itself, is not unreasonable conduct. Nothing appeared to flow from that late compliance. The mistaken email clearly confused the claimant but I accept it was a mistake by Ms Winstone and once she realised her mistake she took immediate steps to call back the email and confirmed to the claimant that it was sent to him in error. I accept that it is important for the claimant to have a good understanding of what was going to happen at each hearing, in light of his disabilities I accept that he becomes stressed when he does not know this in advance. However I am not satisfied that the actions of the respondent were in any sense unreasonable conduct in accordance with Rule 76(1) (a).

Employment Judge Christensen

Date: 21 September 2022

REASONS SENT TO THE PARTIES ON
26 September 2022 by Miss J Hopes

FOR THE TRIBUNAL OFFICE