



EMPLOYMENT TRIBUNALS

Claimant: Mrs N Carr
Respondent: GeoAmey PECS Limited

Heard at: London Central

Date: 31 October 2022

Before: Tribunal Judge McGrade acting as an Employment Judge (sitting alone)

JUDGMENT

The Respondent's application for a preparation time order is granted and the Claimant is ordered to pay to the Respondent the sum of £246.00.

REASONS

Background

1. This hearing has proceeded on the papers to consider an application for a preparation time order by the Respondent following the dismissal of the Claimant's claim at a hearing on 5 April 2022. The claim was dismissed under Rule 47 to Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 as a result of the non-attendance of the Claimant at the full merits hearing.
2. The Respondent has sought a preparation time order on the basis that the Claimant has acted disruptively and/or otherwise unreasonably in respect of her late notification of intention not to proceed with the claim and failing to notify the tribunal of this. I gave the Claimant an opportunity to make representations as to why a preparation time order should not be made and to provide details of her financial circumstances. No information has been provided by the Claimant.

The Law

3. Rules 74 to 84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“The Regulations”) deal with the question of whether an Employment Tribunal should make a preparation time order.
4. Rule 76 sets out the relevant circumstances in which an Employment Judge or Tribunal can exercise their discretion to make such an Order, which are as follows:

76.(1) 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; or
- (b) any claim or response had no reasonable prospect of success.
- (c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

(2) A Tribunal may also make such an order where a party has been in breach of an order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the Respondent to pay the costs incurred as a result of the postponement or adjournment if—

- (a) the Claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the Respondent not less than 7 days before the hearing; and
- (b) the postponement or adjournment of that hearing has been caused by the Respondent’s failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the Claimant was dismissed or of comparable or suitable employment.

(4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer’s contract claim or application and that claim, counterclaim or application is decided in whole, or in part, in favour of that party.

(5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.”

5. I recognise the need to consider “the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had.” (**Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78**)
6. If I am satisfied that there has been unreasonable conduct, I must still consider whether an Order should be made and, particularly, whether it is appropriate to make one. In deciding whether an Order should be made and, if so, in what terms, I am required to take all relevant mitigating factors into account.
7. I am entitled to have regard to an individual’s ability to pay any award of costs both in relation to the making of an Order at all, and the amount of any such Order.#

Conclusions

8. The Respondent’s representative emailed the Claimant on 29 March 2022, reminding her of the need to exchange statements, and asking whether she intended to withdraw her claim. He explained that if she did not wish to proceed, she should advise the Respondent and the tribunal. He also warned her of the risks of costs if she failed to confirm the position. She replied on 29 March 2022 with the words “Yes, please proceed.” However, she failed to exchange statements, despite repeated requests to do so. She then advised the Respondent late on the afternoon of 4 April 2022, the day before the first day of a two day hearing, that she would not be proceeding. She failed to advise the tribunal of the position.
9. I am satisfied that advising the Respondent on 29 March 2022 that she intended to proceed, only to advise him late on the afternoon of 4 April 2022, without any further explanation, that she was not proceeding, combined with her failure to advise the tribunal of the position, was unreasonable conduct.
10. I have considered whether I should exercise my discretion in the particular circumstances of this case to make a preparation time order. The Claimant has failed to provide any explanation as to why she took this course of action, despite being given the opportunity to do so. She has also failed to provide information regarding her financial circumstances.
11. The Respondent has sought 37 hours pre-hearing preparation and has lodged a schedule showing how this sum has been calculated. This schedule details the work carried out by the Respondent and his witnesses from the date of preparing the ET3 on 4 October 2021 until the hearing on 5 April 2022.
12. I am not satisfied it is appropriate to grant a preparation time order in respect of any work carried out prior to 29 March 2022, as the unreasonable conduct upon which the Respondent relies began on that date.
13. The schedule discloses the Respondent undertook 363 minutes work between 29 March and 4 April 2022. I am willing to grant a preparation time order in favour of the Respondent in the sum of £246, representing six hours pre-hearing preparation time.

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I am unable to take into account the Claimant's means, as she has provided no information on her means, despite being asked to do so.

Tribunal Judge McGrade

Date 31 October 2022

JUDGMENT SENT TO THE PARTIES ON
31/10/2022

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