Case Number: 3325658/2019

EMPLOYMENT TRIBUNALS

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals
"This has been a remote hearing not objected to by the parties. The form of remote hearing was V – by video: CVP. A face to face hearing was not held because it was not practicable and no-one requested the same."

Claimant		**Respondent**
Ms I Cetin	v	1. A Limited 2. Mr B.C.

OPEN PRELIMINARY HEARING

Heard at:	Watford Employment Tribunal by CVP	**On:**	21 June 2022

Before: Employment Judge George (sitting alone)

Appearances:

For the Claimant: In person
For the Respondents: Mr D.E., lay representative of R2 and director of R1

JUDGMENT

1. A preparation time order is made in favour of the respondents.

2. The claimant is to pay £874 to the respondents.

REASONS

1. The history of the litigation between the parties is set out in the reasons I gave for striking out the claims which were sent to the parties on 28 June 2021 to which I refer but which I do not repeat. That decision had been announced orally on 2 June 2021 and written reasons were requested by the claimant. The reasons incorrectly refer to the hearing date as having been 2 June 2020. Also on that date I decided applications by the respondents for anonymity and restrictive reporting orders under rule 50 and by the claimant for similar orders. I granted orders in favour of the respondent but refused the claimant's application for reasons which

were given orally and provided in writing. These were sent separately to the parties and as with the other reasons also sent on 21 June 2021 but again unfortunately they incorrectly referred to the hearing having taken place in 2020 when it in fact took place on 2 June 2021.

2. Following that hearing the claimant applied for the restrictive reporting order to be discharged and on 7 June 2021 applied for a reconsideration of my decisions. This was refused for reasons given in the judgment sent to the parties on 4 November 2021.

3. The respondents applied for a Preparation Time Order against the claimant on 12 July 2021. The bases on which the respondents argued the application were that

    a. that the claimant knew that her claims were out of time as she had submitted claims to at least two former employers;
    b. that the claim was vexatious, the claimant's main motivation being to create as much harm and disruption as possible to the family, and
    c. that Mr DE, as a contractor paid on an hourly basis, had incurred a loss of wages in having to take time off from work to defend the claim on behalf of his husband and his company. He estimated that the time of preparation and the time spent at the hearings to be a total of 23 hours which he claimed at the then statutory rate of £38 per hour.

4. By an order sent to the parties on 4 November 2021 the claimant was ordered to provide a schedule of her income and outgoings, her assets and liabilities and the parties were directed to provide any additional written submissions in relation to the application for a Preparation Time Order by 2 December 2021. At that time, I directed that the application would be determined on written submissions after that date in the absence of any prior application for a hearing.

5. The claimant's response to the Preparation Time Order application was sent on 18 November 2021. She declined to provide information about her income and expenditure and she argued that it was a breach of her Article 8 European Convention on Human Rights grant to a private life to have to provide it. Before me she argued that the respondents would share information about her income and outgoings with her former employer, who I refer to as Mrs Griffiths, and with whom she is still in litigation. She stated that any information would become publicly available on the Employment Tribunal Service website and so she was not willing to provide that information in order that it could be kept private. She has chosen not to provide it despite a Tribunal order to do so. However, that means that I will not be able to take her means into account if I conclude that the threshold is met for ordering a preparation time order. The reasons I do not take means into account are that I have not been asked to do so and that, despite the Tribunal requesting information from the claimant, I have not been provided with information about means to take into account.

6. The balance of her written submissions in respondent from 18 November 2021 tend to attack the decision that was made rather than engage with the arguments that were raised by the respondent in support of their application. The submission runs to six pages and 33 paragraphs. She does make the point that costs should not be used as a weapon to prevent employees from enforcing rights. Those are my words, not hers, but she clearly made that point and I accept it unreservedly.

In the Employment Tribunal costs do not follow the event as they do in many other courts in the United Kingdom. It is the exception rather than the rule that Costs Orders or Preparation Time Orders are made and the basis on which such orders can be made is circumscribed by the rules. As Ms Cetin argues, employers are frequently in the position of having greater power or greater resources and should not be able to use the unjustified threat of costs to deter valid claims.

The law relevant to the application

7. The power to order that one party pay the legal costs of the other is found in rule 76 of the Employment Tribunal Rules of Procedure 2013 (hereafter referred to as the Rules of Procedure). So far as is relevant, rule 76 reads as follows:

> "(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that –
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> (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
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> (b) any claim or response had no reasonable prospect of success; or
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> (c) a hearing has been postponed or adjourned on the application of a party made less than seven days before the date on which the relevant hearing begins.
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> (2) A tribunal may also make such an order where the party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of party."

8. There are therefore two stages to determining an application for preparation time order, following the procedure set out in rule 77. First the Tribunal must consider whether the grounds for making a preparation time order in rule 76(1) exist and secondly, if they do, then the Tribunal must consider whether or not to make one. In deciding whether or not to make a preparation order, and if so, in what amount, the Tribunal may have regard to the paying party's ability to pay: rule 84 Rules of Procedure. As I have already explained, I have decided not to have regard to the claimant's ability to pay because she has expressly declined to put me in a position where I can do so.

9. When deciding whether or not the litigant's conduct of the proceedings has been unreasonable, the words of the rule are the starting point, remembering that, in the employment tribunal, a costs or preparation time award is the exception, rather than the rule. As Mummery LJ said in Barnsley MBC v Yerrakalva [2012] I.R.L.R. 78 CA at para.41,

> "The vital point in exercising the discretion to order costs is to look at 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. The main thrust of the passages cited above [from Mummery LJ's judgment in McPherson v BNP Paribas [2004] EWCA Civ 586] was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the ET had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. In rejecting that submission I had no intention of giving

> birth to erroneous notions, such as that causation was irrelevant or that the circumstances had to be separated into sections and each section to be analysed separately so as to lose sight of the totality of the relevant circumstances."

10. Further guidance about the correct approach to whether a litigant in person has acted vexatiously, abusively, disruptively or otherwise unreasonably in the conduct of the litigation is found in AQ plc v Holden [2012] IRLR 648 in paragraphs 32 & 33,

> "The threshold tests in rule 40(3) are the same whether a litigant is or is not professionally represented. The application of those tests may, however, must take into account whether a litigant is professionally represented. A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals; and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As Mr Davies submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests in [what is now rule 76(1)]. Further, even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.
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> This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity. But the tribunal was entitled to take into account that Mr Holden represented himself; we see no error in its doing so; and we do not accept that it misdirected itself in any way."

11. The respondents complained in their written submissions that the claimant had failed to provide the detailed financial information that had been ordered and that she continues to be in breach of Tribunal orders. They argued that this was further unreasonable behaviour meriting a Costs Order. They also referred to a link to the claimant's claim against Islington City Council, published on 2 January 2020, in Case No. 3312742/2020 which they argue dealt with the claim being out of time and relied on that as further evidence that the claimant as an experienced litigant who was guilty of unreasonable or vexatious conduct in the present proceedings because, they argued, she knowingly presented them out of time. On receipt of those submissions I decided to vary my order and listed it for a hearing at which their application could be considered and the parties were given notice of it on 4 March 2022. The claimant in the meantime had requested it be listed as a remote hearing, as in fact all of the hearings before me have been successfully conducted.

12. I have heard oral submissions from both parties. In her response to the first point that was raised by the respondent - that the claimant knew her claims were out of time - the claimant argued that time limits may in appropriate cases be extended. She reminded me that there is a different test for the extension of time in discrimination claims and therefore, particularly in discrimination cases, a litigant might commence a claim that was relating to an act more than three months before

the date the claim started in the hope that an application for an extension of time on the just and equitable basis would be successful.

13. I refer back to the issues in the underlying case and to my decisions upon them. I concluded that it was reasonably practicable for the claims under the Employment Rights Act 1996 to be presented in time based upon the date of knowledge of the claimant of the matters that she required to claim. I did, in the course of that judgment, conclude that there was no reasonable prospects of the claim succeeding because I had made a finding about her date of knowledge of material matters that led to a conclusion about the Tribunal's jurisdiction. This was not the same as these being claims that were doomed from the start. A hearing was needed to decide at what point the claimant had all of the information that she reasonably needed that would enable her to present her claim.

14. Furthermore, there was, as is argued by Ms Cetin, a victimisation and discrimination claim. I agree with the claimant that it is not unreasonable conduct for proceedings to commence claims which on their face are potentially out of time. It is quite often the case that such claims will require a hearing to determine whether the Tribunal has jurisdiction. In this case, the consequence to the claimant was that the claims were struck out. So it seems to me that this is not a reason to conclude that those claims were, as I said, doomed from the start or that it was unreasonable conduct of the claimant to present such a claim in the beginning.

15. The second point raised by the respondents is essentially that the claims were brought and conducted in a way that caused distress and were vexatious. They argue that this is part of a piece with claims that the claimant initiated in the High Court which, as they put in their original application, ignored findings of "police social services, doctors and High Court itself" to create a platform within which the claimant can continue to assert that the children of the family are in danger or were in danger at the time that she was working for the family. The respondents also complain that the claimant posts matters on her website concerning this case alongside matters concerning the claim against Mr and Mrs Griffiths and that leads to potential identification of these respondents despite the Anonymisation and Restricted Reporting Orders that have been made. It is argued by the respondents that this shows that the claimant's approach to the litigation and to them is vexatious. The claimant argues that she is merely taking steps to defend herself when actions by these respondents taken because she says she reported them to the NSPCC have caused damage to her career and prospects.

16. Her response on 18 November 2021 contains a number of unsubstantiated accusations that the respondents have collaborated with other employers in the other litigation and her submissions to me today, despite my encouragement to her not to do so, repeated the same allegations. She persists in describing herself as being persecuted when it is she who brought this litigation. I take into account that a litigant in person cannot be expected to have the dispassionate and objective detachment of a professional qualified person in assessing a claim. Furthermore, a self-representing party may, understandably, be emotionally involved in the claim in a way that causes them to express themselves in heightened language and in a way that might be regarded as accusatory. However, for example, where the claimant says that the respondents want to be able to pursue her this, it seems to me, is quite the contrary to the actual position as would be obvious to anyone taking a rational and objective view of the evidence. The respondents want to be

left alone by the claimant. She persists in the view that these respondents are actively working within other litigation to her detriment and describe es their conduct as ongoing. There is no evidence that has been shown to me to support these accusations which are bald assertions.

17. Throughout the litigation, the claimant's applications and correspondence include allegations for which the claimant appears to have no reasonable evidential basis. Those are matters that she cites in paragraph 15 of her response to this application. Despite previous warnings, the accusations are repeated in that very response, accusations that the respondent kept her in terms of slavery and a description of the respondents as predatory employers. This is unreasonable and unjustified use of inflammatory and pejorative language.

18. The Court of Appeal in a case called Scott v Russell [2013] EWCA Civ 1432 cited the definition of vexatious given by Lord Bingham in Attorney General v Barker. According to Lord Bingham the hallmark of vexatious proceedings is that they have little or no discernible basis in law, that whatever the intention of the proceedings may be its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant and that it involves an abuse of the process of the Court, meaning by that a use of the Court process for a purpose or in a way which is significantly differently from the ordinary and proper use of the Court process. This suggests that where the effect of the conduct falls within that definition it can amount to vexatious conduct in respect of the motive behind it.

19. I also think it is necessary to draw a distinction between proceedings that have been brought in order to be vexatious and proceedings which have been conducted in a way which is vexatious. It seems to me that the claimant has a genuine sense of grievance that a letter was sent by these respondents that was of assistance to Mrs Griffiths. That had an impact on her and that was at the root of her starting this claim. It is the only claim that she has brought against these respondents. I do not think that she acted vexatiously in bringing the claim.

20. However, I do find that her conduct of the proceedings has been vexatious. There is no doubt that this litigation and her behaviour in it, her behaviour in connection with her activities online have caused an enormous amount of distress, anxiety and probably fear to the respondents. The case concerns their family relationships and their relationship with their children. The claimant uses the litigation and the correspondence and the hearings to repeat that she has concerns about the safety of the children, to allege that the respondents are conspiring against her and that the respondents behaved towards her during her employment in a way that she describes in the most exaggerated and disproportionate terms.

21. I am mindful that her conduct today would not found the basis of the power to make a Preparation Time Order. It is conduct of the proceedings prior to the application that I am considering. However, it seems to me that her conduct in the response and her conduct today is something that I can legitimately take into account once I am satisfied that the initial hurdle has been surmounted. I do accept the claimant's argument that an employee has the right to take action if they consider themselves to have been wronged. Had the claimant limited her conduct of the proceedings to the core allegations that would have been one thing. However, the respondents have been required to defend themselves against a Tribunal claim

which was argued with constant references to allegations of the most serious kind which were without substance and allegations which had been rejected by the appropriate authorities. I consider that the conduct of the proceedings has been vexatious because the conduct was out of all proportion to what is reasonable and the effect was very great distress to the respondents. By the term "the respondents" I mean the individual respondent and DE, who has been conducting the defence on behalf of his husband and the company.

22. Having decided that I go on to consider whether it is proportionate to award a Preparation Time Order. The response to the application shows that the claimant takes every opportunity to repeat her baseless accusations against the respondents and she should know, because it has been pointed out to her, that the Employment Tribunal is not to be used as a vehicle for vituperative comments. The fact that she continues to do so makes me think that, unusually, it is proportionate to make a Preparation Time Order in this case. I award 23 hours @ £38.00 per hour as has been requested. The hours claimed seem to me to be proportionate to the likely time expended and the rate claimed is the statutory rate.

23. I do wish to separately mention accusations that the claimant has made against the Tribunal and against the judiciary which are serious and without foundation. She alleges communications between judges in different Employment Tribunals about separate pieces of litigation. In particular, she alleges communication between judges and litigants and all their representatives of which she has not been made aware and other than for the proper processing of the litigation. I make clear that, in deciding this application, I distinguish between accusations which she has made against the Tribunal and accusations she has made against the respondent. The accusations directed against the Tribunal play no part in my decision making on this application. In the first place they are not matters that have been brought to my attention by the respondent so I have not been asked to consider them. In the second place the Tribunal administration and Employment Judges can be expected to have reasonably broad backs. I do make the point that such baseless accusations are not a proper use of correspondence. As I say they are not relied on by this respondent as grounds for an Order and I do not taken them into account. I do warn the claimant, should it become relevant in the future, that such allegations can found the basis of allegations of unreasonable conduct of proceedings.

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Employment Judge George

Date: 14 September 2022

Sent to the parties on:

16 September 2022

For the Tribunal: