Case Numbers: 2300271/2021
2300665/2021
2301949/2021

EMPLOYMENT TRIBUNALS

Claimant: Mr A Chaudhuri

Respondents: R & S Records Ltd (R1)

Mr R Vandepapelier (R2)

Heard at: London South via CVP

On: 03 October 2022

Before: Employment Judge Wright

Representation:

Claimant: Mr J Ratledge – Counsel

Respondents: Mr J Samson – Counsel
Claimant's former Solicitor: Ms N Gyane - Counsel

COSTS HEARING JUDGMENT

Notwithstanding the Claimant's former solicitor had not made an application under Rule 35, the Respondent's written withdrawal of the wasted costs application was unequivocal.

The Tribunal was not persuaded to exercise its discretion under Rule 75 and the Respondents' costs application was unsuccessful.

The Claimant's costs application against the respondents was dismissed.

REASONS

1. The Respondents made a request for written reasons on 3/10/2022 and accordingly, those reasons are provided.

2. The Claimant's costs application was dismissed as he did not comply with the directions and provide a breakdown of the costs sought. The claimant was expressly directed to provide a breakdown within four weeks.

3. The Respondents' costs application was heard, and the claimant responded to it. Both parties provided written submissions which were considered.

4. The Respondents had withdrawn their application against the claimant's former solicitor Lawrence Davies under Rule 80 and so the application proceeded against the claimant under Rule 75.

   Law

5. The Employment Appeal Tribunal has recently set out relevant legal principles in paragraph 18 in J v K and L EA-2016-000663-VP:

> 'Rule 76(1)(a) of the Rules confers on a tribunal the power to make a costs order where "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". There are three stages to be considered. At stage one, the tribunal must decide whether the party in question has acted as set out in rule 76(1)(a). If so, the tribunal must consider whether it should exercise its discretion to make a costs order: Robinson v Hall Gregory Recruitment Ltd [2014] IRLR 761, EAT (stage two). Its discretion is broad but is to be exercised having regard to all the circumstances: AQ Ltd v Holden [2012] IRLR 648, EAT. In cases in which reliance is placed upon unreasonable conduct, "…the tribunal must have regard to the nature, gravity, and effect of the unreasonable

conduct as factors relevant to the exercise of the discretion, but that is not the same as requiring the receiving party to prove that specific unreasonable conduct by the paying party caused particular costs to be incurred": McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA [40], per Mummery LJ. In Yerrakalva v Barnsley MBC [2012] IRLR 78, CA [41], Mummery LJ said:

> *"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 my judgment in McPherson was to reject as erroneous the submissions to the court that, in deciding whether to make a costs order, the ET had to determine whether there was a precise causal link between the unreasonable conduct 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 to lose sight of the totality of the relevant circumstances."*

Should the tribunal decide to exercise its discretion, the final stage is to consider the sum which the paying party ought to be ordered to pay. That, too, is a discretionary exercise. Per rule 84 of the Rules, the tribunal may have regard to that party's ability to pay. Costs orders are compensatory and must not be punitive: Lodwick v Southwark London Borough Council [2004] IRLR 554, CA [23]. A summary assessment of costs is appropriate where the tribunal both considers itself able to make such an assessment and is satisfied that it would compensate the receiving party for the costs attributable to the vexatious, abusive, disruptive or unreasonable conduct which has led to the decision to make a costs order: Kovacs.'

Findings of fact

6. The claimant now accepts that his conduct on the 30/9/2020 was aggressive and wrong. Although the Tribunal takes an extremely dim view of that conduct and it agrees with R2 it amounted in essence to a threat of blackmail, it cannot form part of the conduct being considered as only conduct in the bringing of the proceedings or the conduct of them can be

considered. The element cannot therefore form part of the Tribunal's consideration.

7. The claimant then contacted Mr Davies on the 23/12/2020 and Mr Davies agreed to act for him on the 3/1/2021. As per the Judgement in March 2022 found, the first ET1 was presented on 21/1/2021 and reported in the media on 10/2/2021, so during the period when Mr Davies was acting.

8. It is accepted that the claimant is not responsible for the manner in which Mr Davies expressed himself in correspondence with the respondents' solicitors; that is a professional conduct matter for the SRA.

9. In respect of Mr Davies' correspondence, the Tribunal wishes to commend Ms Yates for her continued politeness and efforts to comply with the overriding objective. It is accepted that ligation can be robust, however Mr Davies went beyond representing his client's interest.

10. The extremely poor quality of the pleadings and the fact that Mr Davies seemed to think they were some sort of starting point which could be tidied up later, is not conduct by the claimant, although the Tribunal agrees with the respondents' criticism. If the pleadings were drafted in such a way as to make them interesting for the media, then again, that was down to Mr Davies. The Tribunal agrees with and echoes what Employment Judge Keogh said at the preliminary hearing on the 14/12/2021 about them.

11. The conduct in respect of the default application, the debacle over the providing copies of the pleadings and the subsequent preliminary hearing were down to Mr Davies' conduct, not the claimant's.

12. The claimant can be criticised for allowing Mr Davies to continue to act as he did, however, that is against a backdrop of Mr Davies's credentials, which he does not hesitate to set out and the claimant being a lay person who was relying on professional advice. It may have been that in view of the stance taken by R2 and the observations which were made of him in the March 2022 Judgment; that the claimant thought he needed to engage someone equally bullish to act for him.

13. The point about predatory litigation is made and again, that lies with Mr Davies. Clearly the claimant approached him and sought his advice, but it was Mr Davies who tried to squeeze the facts of the claimant's case into a claim under the Equality Act 2010 in this forum. An example is, that in the

March 2022 Judgement, reference was made to the publicity surrounding the Coronavirus Job Retention Scheme and the fact that to claim under that scheme, an individual had to be on PAYE on a certain date. That was contrasted with the Self-Employment Income Support Scheme. When the claimant provided evidence about his ability to pay any costs which were awarded, he confirmed that that he had received such a grant from HMRC. This indicates that rather than the case, which was presented, the claimant considered himself to be self-employment, presented himself as such to HMRC and was accordingly awarded a grant.

14. It is accepted there is some criticism of the claimant in respect of documentation which he did not provide, such as tax returns and missing invoices. The Tribunal was told the claimant was represented by Mr Davies until about a week ago and it cannot be said with any certainty that Mr Davies properly explained the disclosure obligations to him or that he explained what steps the claimant needed to take to produce that documentation.

15. In any event, those failures damaged the claimant's credibility and so, made it easier for the respondents to defend the claim against them.

16. It is concluded from Mr Davies' cavalier attitude to this litigation, that in the main, any delays were down to him.

17. The conduct of R2 during these proceedings is noted and it is observed that on occasion, he had acted immoderately. If the claimant is to be criticised, then so is R2.

Conclusion

18. The Tribunal does agree that the conduct of the proceedings has been exceptionally egregious, but it finds that Mr Davies is liable for that and not the claimant. The claimant's behaviour, although seriously concerning, did not cross the threshold to become unreasonable. The Tribunal's discretion was not therefore engaged under Rule 76 (1)(a); for those reasons, it declined to make a costs award against the claimant.

Employment Judge Wright

03 October 2022