



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

D Vickery-Kiff

Kane Haulage Limited

Heard at: Watford by CVP
Before: Employment Judge Anderson
L Hoey
I Middleton

On: 4 November 2022

Appearances

For the Claimant: M Raffell (solicitor)

For the Respondent: A Kane (Director of Respondent)

JUDGMENT

1. The respondent's application for an award of costs against the claimant is dismissed.

REASONS

1. Further to the decision of this tribunal on 19 May 2022 dismissing the claimant's claim of sexual orientation discrimination and constructive dismissal the respondent applied for an order for costs against the claimant in the sum of £27,812.50. The respondent alleges that the bringing of the claim was vexatious and unreasonable, and that the conduct of the claimant in the proceedings was vexatious and unreasonable. It relies on the findings of this tribunal and also its two costs warning letters to the claimant in December 2021 and January 2022.
2. The claimant in response states that the claimant's claim was neither vexatious nor unreasonable, that the respondent's behaviour in the workplace was criticised by the tribunal and notes that at the time of the costs warning letters the respondent was denying that any abusive language had been used in the workplace. Admissions on language were only made at a later stage.

3. The tribunal's authority to make a costs order is set out at Rule 76 of the tribunal's rules of procedure:

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.

4. The tribunal needs first to decide if the conduct of the claimant falls within the rule. If the tribunal finds that it does it then needs to go on to decide whether it is appropriate to exercise its discretion to award costs against the claimant.
5. The tribunal is largely a 'no costs' regime and an award of costs is the exception rather than the rule.
6. The tribunal has considered the submissions of both parties and has found that the actions of the claimant do not amount to either vexatious or unreasonable conduct.
7. The tribunal finds that the claimant's conduct in refusing to withdraw his claim on receipt of the respondent's costs letters was not unreasonable as to his knowledge the respondent was at that time denying any use of abusive language in the workplace. It is not clear how or why the respondent believes that the actual conduct of the proceedings was vexatious and the tribunal does not find that it was.
8. The tribunal has considered whether the claimant acted vexatiously or unreasonably in bringing the proceedings. In *ET Marler Ltd v Robertson 1974 ICR 72, NIRC* the court defined vexatiousness as the bringing of a claim for reasons of spite, to harass an employer or for some other improper motive. In *Attorney General v Barker 2000 1 FLR 759, QBD (Div Ct)* the court said that whatever the intention of proceedings may be, if the effect was to subject the (in that case) 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 court process this can amount to vexatious conduct. The tribunal has considered whether the claimant's conduct could be considered vexatious in applying either of those definitions. It is the view of the tribunal that notwithstanding its findings against the claimant his conduct does not meet the criteria to be defined as vexatious. It does not find that the claim was brought out of spite or with the intention to harass, but was misguided. The tribunal notes that much of the behaviour in relation to discriminatory language that the claimant set out in his claim was admitted by the respondent and where the tribunal found that some of the evidence provided by the claimant in relation to record keeping of abuse

was unconvincing, this played a part in the wider decision making process of the tribunal and was not singularly determinative.

9. The respondent has not distinguished in its application between unreasonable conduct and vexatious conduct but for the same reasons as set out in paragraph 8 it does not find that he acted unreasonably in bringing the claim.

10. For the reasons given the tribunal does not find that the conduct complained of falls within that described in rule 76(1)(a) and the application for costs is dismissed.

Employment Judge Anderson

Date: 4 November 2022.....

Sent to the parties on: 10/12/2022

N Gotecha

For the Tribunal Office

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.