



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms T Brangman

**Respondent:** Jewel Home Support Ltd

## JUDGMENT ON COSTS

The claimant is ordered to pay to the respondent a contribution to costs of £1506.

## REASONS

### Introduction

1. This is a decision made on the basis of a written application and written representations. Neither party requested a hearing to deal with the costs application and I considered that the application could properly be dealt with on the papers.

2. The costs application followed a decision made on 10 October 2022 to dismiss the claim because of the claimant's failure to attend the hearing on that day. The Tribunal's judgment and reasons were sent to the parties on 13 October 2022.

3. The application was made by letter dated 28 October 2022, copied to the claimant. The claimant responded briefly on 1 November 2022.

4. The Tribunal wrote to the parties on 8 November 2022 giving the claimant a further opportunity to respond to the costs application and to provide information about her financial means, if she wished the judge to take these into account when deciding on whether to award costs and, if so, how much to award. The Tribunal gave both parties an opportunity to express a view on whether the costs application should be dealt with on the basis of the written application and response or whether there should be a costs hearing.

5. The claimant wrote again on 9 November 2022 and the respondent wrote on 22 November 2022.

6. The respondent requested that the matter be dealt with on the papers, without a hearing. The claimant did not express a view as to whether there should be a hearing on costs.

### **The application**

7. The respondent made an application for costs in writing on 28 October 2022. The application was made on the grounds that:

7.1. The claimant had acted unreasonably in the way in which the proceedings had been conducted.

7.2. The claimant had no reasonable prospect of success.

7.3. The claimant acted unreasonably and/or in breach of the Tribunal's case management orders in the complete lack of cooperation in the preparation for the hearings.

7.4. The claimant failed to attend two in-person hearings.

7.5. The claimant had repeatedly misled the Tribunal and the respondent with regards to information provided and in complying with the case management orders.

7.6. The claimant's conduct had been unreasonable and vexatious throughout proceedings.

8. The respondent did not, in its written application, explain why it said these grounds were established, although it made comments on the claimant's letter of 17 October 2022. The comments on this letter included: that it made another baseless request for default judgment; and that the claimant claimed she had requested to attend the hearing on 10 October by CVP, contradicting her email of 7 October in which she stated "there is no hearing listed for the 10<sup>th</sup> of October 2022 as there is no requirement for a hearing". The respondent also asserted that it had incurred substantial costs in defending the claim, attending two hearings which the claimant failed to attend and dealing with a disproportionately large volume of correspondence and applications from the claimant.

9. The respondent sought a costs order that the claimant make a payment in respect of: all legal costs incurred in defending the claim; the costs of preparing for and attendance at the Tribunal; and costs of dealing with "the barrage of communication (as evidenced in the Bundle prepared for the Preliminary Hearing)".

10. The respondent provided a statement of costs for work done on the case, totalling £8,283.01 excluding VAT.

11. The respondent's letter of 22 November 2022 included a statement that the respondent had incurred significant costs in defending a claim which at best had no reasonable prospects of success and at worst, has been a waste of resources for both parties as well as the Tribunal. The respondent wrote that they had faced a barrage of unfounded claims and applications to seek judgment in default and

the claimant had shown a complete disregard for the Tribunal process. The respondent set out the grounds for their application as being:

- 11.1. The claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing of these proceedings;
- 11.2. The way that the proceedings had been conducted;
- 11.3. The claim or response [sic] had no reasonable prospect of success;
- 11.4. The claimant had been in breach of orders, e.g. to provide information and witness evidence;
- 11.5. The claimant had failed to attend two hearings and sought to rely on contradictory explanations by way of justification.

12. No further explanation of why these grounds were established was set out in the letter.

13. The respondent requested the Tribunal deal with the costs application on the basis of the written application and response.

#### **The claimant's response to the application**

14. In her email dated 1 November 2022, the claimant wrote:

“I would like to confirm that the Judge has already stated that the costs application will not be granted in the correspondence sent on the 13<sup>th</sup> of October 2022.

“The claimant also has objected to any cost applications for the reasons stated when Martin Broomhead suggested a cost order prior as the case is lawfully and fairly appropriate for a Default Judgement with no response and contest from the respondent. Therefore, the cost application is not applicable by law.”

15. The claimant's letter sent 9 November 2022 (but dated 9 October 2022) repeated, in large part, points made on previous occasions as to why the claimant considered a “default judgment” should have been issued. She asserted that she should have been allowed to attend the hearings by CVP. The claimant asserted that she had complied with all requests and orders. She wrote:

“Any time limits are out of the question as the Claimant has provide the reason by law of the claims being within time which does not have to be provided within a witness statement. All documentation was provided prior to questioning any time limits to delay the case.”

16. The claimant provided no information about her financial means.

17. The claimant gave no information as to why, if this was the case, she was unable to attend the hearings in person, as distinct from asserting that she should have been allowed to attend by CVP.

## **The background to the application**

18. The claimant's claim was dismissed at the hearing on 10 October 2022, pursuant to rule 47 of the Employment Tribunals (Rules of Procedure) 2013, because of the claimant's failure to attend the hearing.

19. I gave written reasons for my decision. These should be read with this decision, to understand the history of these proceedings. I rely on matters set out in those reasons and will refer to these in my conclusions.

20. The time limits jurisdictional issues which were to have been considered at that hearing were not considered, due to the claimant's failure to attend the hearing.

21. The merits of the claimant's complaints have not been considered at any hearing.

## **Law**

22. Rule 76(1) of the Employment Tribunals (Rules of Procedure) 2013 provides:

"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 have been conducted; or
- (b) any claim or response has no reasonable prospect of success; or
- (c) [not relevant in this case]."

23. To make a costs order, at least one of these grounds must apply. If it does, the Tribunal has the power to make an order, but also has a discretion as to whether to make an order and, if so, for how much.

24. In accordance with rule 75(1)(a), a costs order is an order to make a payment to a party in respect of costs that the receiving party has incurred while legally represented or while represented by a lay representative.

25. "Costs" are defined in rule 74(1) as "fees, charges, disbursement or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing).

26. Rule 84 provides that, in deciding whether to make a costs order and, if so, in what amount, the Tribunal may have regard to the paying party's ability to pay.

## **Conclusions**

27. The application for costs is made on both the grounds set out in rule 76(1) (a) and (b).

## Whether I have power to award costs

28. I will consider first whether either of these grounds apply, which would give me the power to award costs.

29. I consider first whether any award could or should be made relying on 76(1)(b) i.e. whether the claim had no reasonable prospect of success. The merits of the claimant's claims have not been considered at any hearing. The complaints, as they can be understood from the claim form and further information provided by the claimant, are far from clear. The time limit issues were not considered at the hearings on 9 May 2022 or 10 October 2022 due to the non-attendance of the claimant, although I note that the claimant failed to address time limit issues in the witness statement she wanted to rely on at the preliminary hearing.

30. I consider that I should exercise caution in concluding that the claims had no reasonable prospects of success where the claims are not clear and the claimant has not provided any explanation as to why the claim was not presented earlier. The respondent has not set out in its application for costs why the respondent says the Tribunal should conclude that the claim had no reasonable prospect of success.

31. I consider that I cannot safely conclude, in these circumstances, that the claim had no reasonable prospect of success (although this statement should not be taken as being any conclusion that the claim did have a reasonable prospect of success). Since I cannot be satisfied that I have the power, under rule 76(1)(b) to make an award for costs, I do not make any order relying on this ground in the rules.

32. I turn next to whether I have the power, under rule 76(1)(a) to make an order for costs i.e. that the claimant 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.

33. For the same reasons as I decided I would not make an order for costs on the basis of the claim having no reasonable prospect of success, I do not make an order on the basis that the claimant acted in any of the listed ways in the bringing of the proceedings. This is distinct from the way the proceedings have been conducted, which I now examine.

34. The respondent has not explained in detail in its application how it considers this ground is made out. However, it is clear the respondent relies on the claimant's failure to attend the hearings on 9 May and 10 October 2022 and the claimant's continued correspondence seeking a "default judgment". The respondent also refers to the claimant misleading the Tribunal. I will consider whether the specific matters the respondent has referred to give me power to make an order for costs. If there is any other conduct by the claimant which might fall within the description in rule 76(1)(a), I do not consider it incumbent on me to try to identify it for myself, without the respondent having identified it in relation to specific acts or failures to act, and do not consider it would be fair for me to base a decision on conduct without a specific allegation about that conduct having been put to the claimant for comment in the respondent's application.

35. The history leading up to the claimant's non-attendance at the hearing on 10

October 2022, including the claimant's non-attendance at the hearing on 9 May 2022, have been set out in detail in the reasons for my decision to dismiss the claim. Employment Judge Ross also sets out in some detail, in the order sent to the parties on 27 May 2022, the circumstances surrounding the claimant's non-attendance at the hearing on 9 May 2022. I note that Employment Judge Ross records that it was tempting, in the circumstances, to strike out the claimant's claim on that occasion, but gives reasons as to why she did not. The reasons do not include any finding that it was reasonable for the claimant not to attend the hearing in person. The judge noted a lack of clarity as to why the claimant was unable to attend.

36. I conclude, based on the events described in the reasons from each hearing, that the claimant acted unreasonably in not attending the hearings on 9 May and 10 October 2022. The claimant has still given no explanation as to why, if this was the case, she could not attend. Her email of 7 October 2022, quoted at paragraph 20 of the reasons for my decision to dismiss the claim, asserted that there was "no hearing...as there is no requirement for a hearing", going on to repeat again her assertion that a default judgment should be issued. It did not explain why she could not attend the hearing on 10 October 2022. The claimant has never provided a proper explanation as to why she could not attend the hearing on 9 May 2022. The respondent incurred unnecessary costs in preparing for and attending the two hearings. I conclude that I have power, based on this unreasonable conduct of proceedings, to make an award of costs.

37. As noted in paragraph 18 of the reasons for my judgment, the claimant made a number of applications for what she described as a default judgment, and continued to do so despite being informed on many occasions by the Tribunal that this application was unsuccessful. At paragraph 19 I record that the claimant had been informed by letter dated 26 September 2022 that Regional Employment Judge Franey considered her repeated applications for a default judgment were unreasonable, the point had been addressed in February 2022 and the Tribunal would not respond to any further applications on this point.

38. Despite the various occasions on which the claimant has been told that no default judgment will be made, the claimant has persisted with requests, including in the letter of 7 October 2022 saying why she would not attend the hearing on 10 October 2022 and in her response to the application for costs sent on 9 November 2022. I conclude that the claimant has acted unreasonably in the conduct of these proceedings by persisting in these applications. I conclude that I have power, based on this unreasonable conduct of proceedings, to make an award of costs.

39. The respondent refers to the claimant misleading the Tribunal and the respondent with regards to information provided and in complying with the case management orders. The respondent does not identify specifically what it relies on in this respect, other than the claimant claiming in her letter dated 17 October 2022 that she had requested to attend the hearing on 10 October 2022 by CVP, contradicting her email dated 7 October 2022 in which she states: "There is no hearing listed for the 10<sup>th</sup> October 2022 as there is no requirement for a hearing." The claimant asserted in her letter dated 17 October 2022 that she had requested by email on 23 September 2022 to attend the hearing by CVP. As noted in the reasons for my judgment refusing the application for reconsideration, sent to the parties on 8 November 2022, the Tribunal has no record of a request dated 23

September 2022 to attend the hearing on 10 October 2022 by CVP. I agree with the respondent that there appears to be a contradiction between having made a request to attend by CVP and the letter of 7 October 2022. It may be possible that the claimant sent, or thought she had sent, an email on 23 September 2022, although there is no record of this being received. I do not conclude that, in this respect, the claimant acted unreasonably in the conduct of proceedings so do not base any award of costs on the claimant misleading the Tribunal and respondent.

Whether I should exercise my discretion to order costs and, if so, the amount to be paid

40. I have concluded there was unreasonable conduct of proceedings by the claimant in not attending the hearings on 9 May and 10 October 2022 and in persisting in correspondence about a default judgment. I, therefore, have the power to award costs and must consider whether to exercise my discretion to do so. If I do order costs to be paid, I must consider the appropriate amount to be paid.

41. The claimant was given an opportunity to provide information about her financial means but has not done so. I have no reason, therefore, relating to financial means not to make an award.

42. I conclude it would be appropriate to make an award of costs. The claimant has engaged in unreasonable conduct of proceedings on a number of occasions and, as a result, the respondent's costs have been greater than they would have been, had the claimant conducted proceedings in a reasonable manner.

43. The respondent prepared for, and attended, two hearings where the claimant unreasonably failed to attend. Had the claimant acted reasonably, there would only have been the need for one of the two hearings, which the claimant and the respondent would have attended. I consider it appropriate to award costs representing the expense of the respondent preparing for, and attending, the second hearing. This was the attendance of Mr Timol. The schedule of costs shows his attendance at hearings as 7 hours, with separately listed time of 2 hours for travel and waiting. The hearing on 10 October 2022 was 45 minutes long. It appears that the time shown as attendance at hearing for Mr Timol cannot all relate to the hearing on 10 October. The respondent was represented at the hearing on 9 May by Mr Broomhead. It may be that some of the time of waiting at the Tribunal is included in the attendance at hearings, rather than this all being included in "travel and waiting". There would also have been time spent in preparing for the hearing on 10 October. One hour is noted in the schedule of costs for Mr Timol preparing for the preliminary hearing. I exercise my discretion to order the claimant to pay costs equivalent to 4 hours of Mr Timol's time i.e.  $4 \times \text{£}251 = \text{£}1004$ , in respect of the claimant's unreasonable conduct in not attending the hearings.

44. The respondent was put to additional expense by reason of the claimant's unreasonable conduct in making repeated applications to the Tribunal for a default judgment. The respondent's representative needed to read this correspondence, to see if there was anything they needed to respond to, and sometimes write to the Tribunal with comments. I cannot tell from the schedule of costs how much time was spent on this, but consider it appropriate to order the claimant to pay the equivalent of two hours' work for this matter i.e.  $2 \times \text{£}251 = \text{£}502$ .

45. I order the claimant, in total, to pay the respondent a contribution to costs of £1506.

46. I assume the respondent is registered for VAT so it would not be appropriate to award an additional sum representing VAT on the legal costs.

Employment Judge Slater  
Date: 6 December 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON  
15 December 2022

FOR THE TRIBUNAL OFFICE

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