



EMPLOYMENT TRIBUNALS

Claimant: Ms Nadia Hafeez

Respondent: Jorada Limited t/a Bluebird Care (Medway)

In person at Ashford Employment Tribunal

On: 16 September 2022

Before: Employment Judge Martin

Representation

Claimant: In person

Respondent: Ms Grech - Director

RESERVED JUDGMENT

The judgment of the Tribunal is that the Respondent's application for a preparation time order is dismissed

RESERVED REASONS

1. This hearing was listed to consider the Respondent's application for a preparation time order against the Claimant following the judgment dismissing the Claimant's claim. At the final hearing and throughout the proceedings the Claimant had been represented by Mr Saeed from Legal Eagles Solicitors. She is now representing herself.
2. The application for costs was made in time but not referred to me for some time. It then took a while for it to be listed. The basis of the Respondent's application was that the Claimant had acted unreasonably in the conduct of the proceedings and the claim for race discrimination had no reasonable prospects of success. The Claimant provided a written response to the application. Both the application and response were considered in coming to my decision.
3. The power to award costs is contained rule 76 of the Employment Tribunal Rules of Procedure 2013:

When a costs order or a preparation time order may or shall be made

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.

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

Ability to pay

84. In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party’s (or, where a wasted costs order is made, the representative’s) ability to pay.

4. The Respondent had claimed for all costs incurred in the proceedings including attendance and travel to hearings and when it was legally represented. I explained to the Respondent the limits to a preparation time costs order, in that it only is recoverable when a party is not represented, the hourly rate applicable at the relevant times, and that it did not cover travel to or attendance at hearings.
5. The Respondent said that the Claimant’s claim for race discrimination had no reasonable prospect of success. There was never a live claim for race discrimination. The original claim form was for unfair dismissal only. There was an application to amend to add race discrimination which was heard by EJ Harrington on 17 May 2019 and was refused. The Respondent was legally represented at this time.

6. Preliminary hearings

There have been many preliminary hearings in this case. The following is a summary of the hearings. All matters included come directly from the various case management orders.

1	25 January 2019	EJ Harrington - Preliminary hearing	Case management and listing hearing for application to amend claim Respondent represented by Mr Gillett – Solicitor Order identifies difficulties in the professional relationship between the representatives
2	17 May 2019	Preliminary hearing	Application to amend refused by EJ Harrington Respondent represented by Mr Gillett – Solicitor
3	14 February 2020	EJ Mason – preliminary hearing.	No attendance by the Claimant Respondent represented by Mr

			Gillett – Solicitor
4	9 March 2020	AREJ Davies - Telephone case management discussion	No attendance by the Claimant Respondent represented by Mr Gillett – Solicitor
5	16 March 2020	EJ Corrigan - Case management discussion	9 day full merits hearing Respondent represented by Mr Gillett – Solicitor Respondent application for postponement as Ms Grech unavailable on medical grounds. Key witness Witness statements not exchanged, no agreement about the bundle Order identifies difficulties in the professional relationship between the representatives” continuing. Both parties advised to cooperate.
6	26 March 2020	EJ Corrigan - Preliminary hearing	Listed hearing 7 days commencing 14 September 2020. Noted parties appeared to be cooperating and close to agreement about the bundle. Respondent represented by Mr Gillett – Solicitor Hearing postponed due to lack of judicial resource
7	9 October 2020	EJ Sage – telephone case management hearing	Case relisted for 2 August 2021 for 7 days. Respondent not legally represented
8	25 January 2021	EJ Fowell – Case management	Noted disproportionate amount of tribunal time over three years since claim presented. Application by Respondent to strike out claim on basis the Claimant had failed to comply with directions. Application dismissed. The Claimant said that the Respondent had also failed to comply with all orders. Parties reminded to co-

			<p>operate in preparing for the hearing.</p> <p>EJ Fowell comments about the Claimant’s immigration status. It is recorded that her representative Mr Saeed said she had made an application for indefinite leave to remain in the UK and has leave to remain while that is pending. EJ Fowell expresses concern that the proceedings have been strung out unnecessarily in order to assist with the claimant’s immigration status.</p> <p>Respondent not legally represented</p>
9	14 June 2021	EJ Wright – Preliminary hearing	<p>Discussion on conduct of the hearing. Recorded that preparation has stalled. Further directions given. Bundle “not quite” finalised and served, witness statements not done. Emphasises that the hearing must be ready for the hearing in August 2021.</p> <p>Respondent not legally represented</p>
10	5 July 2021	EJ Ferguson – Preliminary hearing.	<p>Further case management orders: Service of witness statements Bundle of documents Remedy documents</p> <p>Respondent not legally represented</p>
11	3 August 2021	EJ Martin – full hearing converted to case management hearing	<p>Claimant self isolating and had problems with her computer so could not attend.</p> <p>Large screen in Tribunal room not working so could not do a hybrid hearing.</p> <p>Difficulties in discussing matters with Mr Saeed by video link.</p> <p>Refining of the issues – revised time estimate three days commencing 6 September 2021</p> <p>Further orders regarding revied</p>

			witness statement to deal only with the revised issues Respondent not legally represented
	6-8 and 12 September 2021	Final hearing	Claim dismissed Respondent not legally represented

7. The parties provided some documentation for this hearing, and I also took time to consider the Tribunal file. The Tribunal file is very large and contains numerous copies of correspondence passing between the parties. The hostility between the parties is evident from these communications. There are acrimonious allegations about compliance and non-compliance with the numerous orders made against each other.
8. The Respondent was represented by Mr Gillet by his firm Hawkbridge and Company initially. As recorded in my final judgment, Mr Gillett and Ms Grech were formerly personal partners and he had an interest in the business. This relationship broke down at some point and their professional relationship also suffered in that Ms Grech said that for some time she had difficulties in getting the paperwork from Mr Gillett.
9. The Claimant explained her difficulties in communicating with Mr Saeed. She told me that she was unaware of many of the various preliminary hearings when they took place and that for example, in the hearing before EJ Fowell he misrepresented her immigration status as by then she already had indefinite leave to remain in the UK. The difficulties in communicating with Mr Saeed appear to be the same for both the Claimant and the Respondent.
10. Judge Harrington said in her order: *“This case has a complex history, most particularly caused by difficulties with the Claimant’s legal representation and the considerable delay experienced with the Tribunal processing correspondence received by the parties.”*
11. Having listened to the parties, considered the various case management orders and reviewed the tribunal file, I find that a lot of the problems have been caused by the Claimant’s former legal representative but that this was not the only reason that the proceedings have taken so long and had so many hearings. In some cases, it is difficult to establish who was to blame for the failures to agree a bundle or prepare and exchange witness statements. I note that there were several hearings when Mr Saeed failed to attend on behalf of his client. These are detailed above. I have heard Ms Gretch say that she complied with all directions, I have read the counter argument by the Claimant’s representative. The ill feeling between the parties undoubtedly contributed to a large extent to the difficulties in preparation for the hearing. This is troubling especially as up until around March 2020, both parties were legally represented. By this time the tone of the communications between the parties had been set and did not improve.
12. The application made is for a preparation time order. This can only be made for a party who is not legally represented. Therefore, the time in which the Respondent was represented by Mr Gillett can not be claimed for. The Respondent was without legal representation from 26 March 2020. Therefore, any liability for costs would arise from this date. The application to amend to include a claim of race discrimination was before this date. Therefore, the basis of the application before

me today is whether the Claimant acted unreasonably in the way her case was conducted. There was no argument that her claim for unfair dismissal had no reasonable prospect of success, and in view of the comments I made about how the disciplinary process was conducted such an argument would have been untenable.

13. Having spent some time going through the Tribunal's file I find it very difficult to establish who was to blame for the communication between the parties which no doubt hindered the party's preparation for this matter to be finally heard. Ms Grech says that the Claimant conducted the proceedings unreasonably. The test for me to apply is the range of reasonable responses test rather than by substituting my own view (Solomon v University of Hertfordshire UKEAT/0258/18).
14. I do not find that the correspondence between the parties (both when the Claimant was legally represented and after) was reasonable. I understand that there were frustrations but from the correspondence I have seen it is evident that the parties were not able to work together proactively as required by the overriding objective contained in the Employment Tribunal Rules of Procedure 2013.
15. I have also taken account of the Claimant's ability to pay should I make a preparation time order against her. She has no income or funds and is wholly financially dependent on her partner. Her partner who is not a party to these proceedings has declined to provide details of household income. The Claimant has no assets or income of her own.
16. In all the circumstances, I have concluded that a preparation time order against the Claimant should not be made. It is impossible to disentangle who has been at fault in the period when the Respondent was not represented (this being the only period I can look at for a preparation time order). The times when there was no attendance by the Claimant at a preliminary hearing were when the Respondent was legally represented and therefore falls outside the time I can consider.
17. The Respondent's application for a preparation time order is dismissed.

Employment Judge Martin

Date: 24 October 2022