



EMPLOYMENT TRIBUNALS

Claimant:

Sheri Chaloner

v

Respondent:

Crown Hotel Blockley Ltd

Heard at: Bristol (on paper)

On: 31 October 2022

Before: Employment Judge Hastie

Appearances

For the claimant: Not represented

For the respondent: Not represented

JUDGMENT

The respondent's application for costs is dismissed.

REASONS

Introduction

1. The claimants ET1 for unlawful deductions from wages was received by the Tribunal on 13 November 2021.
2. On the 31 December 2021, the final hearing was listed for 24 June 2022. Case management directions required a response from the Respondent by 28 January 2022. The order of 31 December 2021 incorrectly stated that the final hearing would be on the 24 July 2022.

3. The respondent complied with this order.
4. On 12 April 2022 an offer to settle was made by the respondent. This was chased with ACAS on 4 May. On the 12 May, ACAS said they would contact the claimant. Nothing further was heard.
5. On 15 June 2022, the respondent wrote to the claimant stating that the claimant had not complied with orders and enclosed the respondent's statements together with the correct final hearing date. This letter was signed for by the claimant on 17 June 2022.
6. On 21 June 2022 the respondent wrote to the claimant stating that they had not heard from her. The respondent enclosed an index and again enclosed the statements. The correct date of the final hearing was in this letter. This letter was signed for by the claimant on 22 June 2022.
7. A further order was issued by the tribunal that the bundle, statements and a calculation of claim be submitted on various dates in July 2022. The hearing was listed for 24 June but the original notice (December 2021) stated 24 July in error.
8. On 24 June 2022 the case came before EJ Hay. The claimant did not attend. The respondent did attend and applied for the hearing to proceed.
9. The claimant was contacted by email to enquire why she was not in attendance at the hearing. The claimant responded by return that she had been unable to access her emails but now could. The hearing was adjourned, in summary, on the basis that the claimant appeared to have an arguable case, the tribunal notices contained incorrect dates for the hearing, the claimant had responded quickly to the tribunals email, unless orders could be made, and there was an opportunity for negotiation and settlement.
10. Case management orders were made requiring a schedule of loss and statement from the claimant and a response and updated bundle. The final hearing was fixed

for 3 August 2022. The respondent complied with this order. Nothing further was heard from the claimant.

11. On 24 July 2022 the respondent submitted a claim for costs. The claimant was directed to respond by 16 August 2022.

12. On 27 July 2022, the tribunal directed that the claimant was to confirm by return if she was pursuing the claim.

13. On 2 August 2022, nothing having been heard from the claimant, the claim was struck out due to the claimant's non-compliance with the order of 24 June 2022.

14. The claimant emailed the tribunal on 2 August, 'cant it go to court now? I was supposed to get an email but I never received the email about what to do.' This response was considered by a judge on 3 August 2022. It was determined that the issue should be considered at the costs hearing.

15. No response to the costs application was received from the claimant.

16. On 19 August 2022, the tribunal directed a schedule of costs and a statement from the respondent by 9 September and a response from the claimant by 23 September.

17. A paper hearing was listed for 28 October 2022.

18. On 27 September, the claimant was ordered to respond to the costs application by 4 October.

19. On 27 September, the claimant emailed, in summary, that she has health problems, has no legal advice, she opposes the costs application, is in debt and she did not get paid for her work.

20. On 10 October the respondent submitted further documents, refuted any suggestion that the respondent was lying, pointed out that no evidence had been submitted of the claimant's wellbeing or debt. That the claimant knew about the hearing of 24 June 2022, the respondent had tried to settle, and the claimant had, in their view, abused the court process.

21. The respondent submits, in summary, that the claimant did not follow procedures, was vexatious, did not behave reasonably and abused the court process to disrupt the respondent.

22. The hearing of 28 October was relisted to 31 October owing to administrative issues within the tribunal.

Hearing

23. The application for costs proceeded on a paper basis in the absence of the parties.

24. Neither party was legally represented.

25. The papers submitted were considered in their entirety. References to the papers here are a summary of the documents submitted to the tribunal.

Decision

26. The substantive claim having been struck out on 2 August 2022; the respondent makes a claim for costs. The costs schedule provides a figure of £1580.

27. The rules under consideration are The Employment Tribunals Rules of Procedure 2013.

Rule 75

The relevant part of rule 75 –

(1) A costs order is an order that a party (“the paying party”) make payment to –

(a) Another party (“the receiving party”) in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;

- (b) The receiving party in respect of a Tribunal fee paid by the receiving party;
- (c) Another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal

(2) A preparation time order is an order that a party ("the paying party") make payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by her receiving party (including by any employees or advisors) working on the case, except for time spent at any final hearing.

Rule 76

The relevant part of rule 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 bringing the proceeding (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; or

(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.

Rule 84

The relevant part of rule 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 ability to pay.

28. I note here that the respondent was not legally represented. In accordance with rule 75(2), the award being sought appears to be for a preparation time order albeit the respondent refers to costs. If, however, Ms Powell, who appeared at the hearing of 24 June and has submitted some of the documentation in the case, can be said to be a lay representative, the application is correctly one for costs.

29. It is the case that rules 76 and 84 are equally applicable to preparation time orders as they are for costs orders and I proceed on the basis that the test to be applied is the same for both types of award.

30. The test to be considered is firstly to decide whether any of the categories in rule 76 apply, and secondly, to decide whether to exercise the tribunals discretion to make an award and if so, the amount.
31. The fact that the claimant was not legally represented may be relevant both to whether the categories in rule 76 apply, and whether an award ought in the circumstances to be made.
32. It may be relevant that a person representing herself is likely to lack the objectivity and knowledge of law and practice bought by a professional legal adviser. However, parties are not immune from costs just because they are representing themselves (AQ Ltd v Holden 2012).
33. The respondents schedule of costs appears at page 3 of the bundle and is in the sum of £1580.
34. The email from the claimant of 27 September is the only response to the costs application that has been received. In summary, the claimant says she opposes the application, has health issues, has debts and has been struggling to face up to these, was not paid and has had no legal advice. The claimant states that she does not feel comfortable replying to correspondence without advice.
35. The respondent's position in relation to the claimant is at page 43 of the bundle. In summary, the respondent disputes the claimant's position. The respondent asserts that the claimant has been vexatious and knowingly abused the court process in order to cause the maximum amount of business disruption possible to the respondent.
36. It is indicated in this statement that English is not the respondents first language. The proprietors appear to have been assisted by Ms Powell and I note here that the respondents have complied throughout with the orders made in these proceedings. No applications were made in relation to any language issues.

37. In determining whether any of the categories in rule 76 apply, the tribunal finds that the claimant has not acted vexatiously, abusively or disruptively or otherwise unreasonably (rule 76(1)).
38. The claimant submitted her ET1 in November 2021. Directions were made in the proceedings on 31 December 2021. These directions included an erroneous date for the final hearing, 24 July 2022. The final hearing was in fact listed on 24 June 2022. Little, if anything was then heard from the claimant for almost 6 months.
39. The claimant did not attend the hearing on 24 June 2022. On receiving an email that day, the claimant responded that she had been unable to receive emails but that the issue had been resolved.
40. The case management order of 24 June 2022 was emailed to the parties on 6 July 2022.
41. The only further contacts from the claimant were firstly, on 2 August in response to her claim being struck out. The claimant indicated that she had been waiting for further contact from the tribunal but had not received any. Secondly, on 27 September on being required to respond to the costs application. It is in this email that she indicates health issues and that she had not had any legal advice.
42. The claimant did not bring a claim that had no reasonable prospect of success. It appeared to the tribunal on 24 June that the claimant had an arguable case, attempts had been made to settle the matter and it was hoped that the adjournment to 3 August might provide an opportunity for further negotiation and settlement.
43. The first part of the test is made out however on the basis that the claimant was in breach of orders made by the tribunal (Rule 76(2)).
44. Case management orders were made on several occasions both at the outset in December 2021 and subsequently in the summer of 2022.

45. The failure of the claimant to comply with the tribunal's orders led to her claim being struck out on 2 August 2022.
46. The second part of the test is to decide whether to exercise my discretion to make an award and if so, the amount.
47. In the circumstances of this case, I am not satisfied that it is appropriate to make a costs or preparation time order. The vital point in exercising the discretion is to look at the whole picture of what happened in the case.
48. The claimant was not represented in the proceedings, and this is relevant to both whether the rule 76 categories apply and whether a costs order should be made. It is not the case that the test is different for an unrepresented claimant, the test is the same whether represented or not. The fact that the claimant was unrepresented is a factor to be taken into account in considering the application.
49. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.
50. I cannot be satisfied that the claimant consistently received emails exchanged in the proceedings. On 24 June and 2 August 2022, she immediately responded to the tribunals email correspondence yet failed to do so on other occasions, for example 31 December 2021 and 27 July 2022.
51. The claimant has indicated that she has debts. I have not considered this to be a relevant factor in my decision. I have determined that, in considering the claimants noncompliance and the reasons for the same, together with the impact on the proceedings as a whole, that an award is not appropriate in this case.
52. I find that the claimant was likely to lack the objectivity and knowledge of law and practice that a legal adviser would bring. The claimant indicates her discomfort at having to reply without having had advice in her email of 27 September and I am

satisfied that she did not appreciate how to proceed once the proceedings were ongoing.

53. Allowing for the claimant's inexperience, lack of professional representation, her inconsistent access to emails and her indication of her health issues, I do not consider that it would be proportionate or appropriate to make a costs or preparation time order in these proceedings.

54. The application is dismissed.

Employment Judge Hastie
Date: 31 October 2022

Reasons sent to the parties: 22 December 2022

For the Tribunal Office: