



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4105370/2022

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Preliminary hearing held on the Cloud Video Platform and by Telephone  
Conference Call  
on 19 December 2022

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Employment Judge A Jones

Mr G McKinlay

Claimant  
In person

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Royal Mail Group Ltd

Respondent  
Represented by  
Mr D Hay, of counsel  
Instructed by  
Morton Fraser LLP

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JUDGMENT AND ORDERS OF THE EMPLOYMENT TRIBUNAL

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1. The claimant's claim is struck out in terms of Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 Schedule 1 ('the Rules').
2. The claimant is ordered to pay to the respondent the sum of £500 in expenses in terms of Rules 78 of the Rules on the basis that his conduct in bringing the claim is vexatious and unreasonable in terms of Rule 76 of the Rules.

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REASONS

Introduction

1. The claimant lodged a claim on 2 October 2022 claiming unfair dismissal. The claimant indicated that his employment had terminated on 10 September 2018 in his claim form. The respondent lodged grounds of resistance on 12 October in which the history of claims brought by the claimant against the

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respondent was set out. In particular, the respondent indicated that this was the seventh claim raised by the claimant against it or its employees since the claimant entered into a COT3 agreement with the respondent in August 2019 in relation to the termination of his employment. The respondent made an application that the claim should be dismissed and expenses awarded in its favour.

2. On 14 October, the respondent made various applications including that the claim be struck out and a more detailed application for expenses.
3. On 17 October, the Tribunal wrote to the claimant indicating that consideration was being given to striking out his claim on the basis that it had no reasonable prospects of success as the matters outlined in his claim form had already been judicially determined and the claimant's claim was out of time. The claimant was asked to make submissions by 25 October on why the claim should not be struck out. He was also asked to confirm whether he wished a hearing to take place in relation to the respondent's application for expenses.
4. The claimant responded by email of 17 October indicating that he knew 'its 4 years but these men got away with it and now I'm struggling due to this.' He also requested a hearing in the matter.
5. A hearing was listed to take place on the Cloud Video Platform. The claimant indicated that he was having internet issues on the morning of the hearing and requested that the hearing be converted to a telephone conference hearing. The hearing proceeded with Mr Hay acting for the respondent appearing on video and the claimant participating by telephone.
6. At the outset of the hearing, I indicated that the claim had not as yet been struck out and invited the claimant to make any further submissions he wished to make in that regard. The claimant made reference to the application for expenses and reiterated the submissions he had previously made.
7. Having considered the matter, I indicated that his claim would be struck out with immediate effect on the basis that it had no reasonable prospects of success as he was seeking to relitigate matters which had already been

judicially determined and his employment had terminated some years before the claim was lodged.

8. Mr Hay then made a submission that the Tribunal should order the claimant to pay to the respondent the sum of £2010 in expenses. He went through the grounds of resistance lodged in response to the claim which summarised the previous claims made by the claimant against the respondent and its employees and submitted that from the point at which a judgment was issued setting out that there was a valid agreement reached through ACAS by way of COT3 between the parties, it would have been apparent to the claimant that the Tribunal had no jurisdiction to deal with any claim relating to the claimant's dismissal. It was said that the claimant's conduct was vexatious and abusive. Reference was made to a number of authorities on the meaning of vexatious and in particular *Marlow Ltd v Robertson* 1974 ICR 72 and *Scott v Russell* 2013 **EWCA** Civ 1432. Reference was also made to *Yerrakalva v Barnsley MBC* 2012 ICR 420. It was said whatever definition of vexatious was appropriate the claimant's conduct in relation to this case met that definition.
9. The sum sought was calculated on a broad basis being equivalent to five hours chargeable work of the solicitors instructing Mr Hay at a blended rate of £175 per hour plus vat and the cost of Mr Hay appearing at this hearing at a cost of £800 plus vat. If the Tribunal was not minded to grant an award of the full amount then the Tribunal was invited to make such award as though reasonable in the circumstances or have the account taxed by Sheriff Officers.
10. I asked the claimant to respond both in relation to the points made about the merits of the case and then regarding his ability to pay any award which might be made.
11. The claimant initially indicated that he would just pay any amount on his credit card. He said that he would stop going for his cancer treatment and work every hour available to pay any award. I sought to understand from the claimant why he had raised the claim when he had been in receipt of a number of judgments making clear that the Tribunal did not have any jurisdiction to

5 deal with a claim which had been resolved by way of COT3 agreement. The claimant's position appeared to be that he couldn't get over what had happened to him and that he was not able to access his pension. I explained to the claimant that the question of access to his pension was not a matter within the Tribunal's jurisdiction. The claimant said that he had mental health issues and cancer and that he was a hard working person. However he felt strongly about how he had been treated.

10 12. The claimant then variously said he would pay any award he had to pay and go to prison if necessary and that he had no money to pay any award. He said he was in a minimum pay job and had no capital. However he was willing to pay by credit card. He then said wanted to get the matter resolved amicably and would walk away and not bring any further claims.

15 13. The respondent's position was that it insisted on its application but that if it could reach an agreement with the claimant then it may not enforce any award of expenses. I explained that this was not an issue for the Tribunal. The claimant asked if I 'was going to send him to prison'. I explained the Tribunal had no such jurisdiction and if he was concerned in this regard he should take advice from the Citizens' Advice Bureau or other organisation.

20 14. Having already indicated that the claimant's claim would be struck out, I went on to consider the respondent's application for expenses. I was particularly inudful that the application for expenses was only in relation to the present claim and while the history of the litigation may be relevant to my determination of whether the claimant's conduct was vexatious in relation to this claim, I could only consider an award of expenses in so far as it related  
25' to this claim.

15. In terms of Rule 76 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2103, Schedule 1, a Tribunal may make an award of expenses where:

30 i. A party or its representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the

proceedings or the way in which the proceedings have been conducted, or

ii. Any claim or response had no reasonable prospects of success,

16. Even where one of these grounds is made out, the Tribunal still has a discretion whether or not to make an award. In addition, as has been made clear in the appellate courts, expenses are an exception and not a rule in the Employment Tribunal. Any award which is made should be in order to compensate the party who incurred the relevant costs, not to punish the party against whom an order is made. Any expenses sought should have been reasonably and necessarily incurred by the receiving party.

17. A Tribunal may have regard to a party's ability to pay any award of expenses and if doing so, should balance that factor against the need to compensate the party who has unreasonably been put to expense (see for instance *Howman v Queen Elizabeth Hospital Kings Lynn* EAT 0509/12).

18. I concluded that the claimant's conduct in pursuing the present claim against the respondent vexatious and/or unreasonable. The claimant had previously been in receipt of a judgment making clear that the Tribunal had no jurisdiction to consider the question of his dismissal as there was a valid COT3 agreement in place in relation to his dismissal. The claimant could be in no doubt that the Tribunal had no jurisdiction to consider his claim, yet he persisted in lodging a further claim in that regard. While the Tribunal appreciated that the claimant continued to feel strongly that he had been unfairly treated by the respondent, this did not detract from his conduct in pursuing a hopeless case against the respondent as amounting to vexatious conduct. It appeared that the claimant was unwilling to accept that the Tribunal had no jurisdiction in this matter. The Tribunal agreed with Mr Hay that the claimant's conduct was vexatious in the normal meaning of the word as well as the definitions considered by the courts. In the circumstances, the Tribunal was satisfied that an award in terms of Rule 76 could be made.

19. The Tribunal was also satisfied that it should exercise its discretion and make such an award, the Tribunal was mindful that the respondent incurred costs in

relation to the defence of this claim. They had to submit a Notice of Appearance. They had to deal with correspondence from the claimant and the Tribunal.

20. The Tribunal was of the view that it would be appropriate to take into account the claimant's ability to pay. The claimant suggested that he could pay an award on  
5 a credit card, although he also said that he was in a minimum wage job and had no capital. The Tribunal did not find the information from the claimant regarding his means likely to be reliable. He did not seek to produce any documentation to substantiate his position. That said, the Tribunal was of the view that the claimant was unlikely to have significant disposable income.
- io21. While the Tribunal was satisfied that the sum sought by the respondent was reasonable, given in the round that it appeared to be a reasonable estimate of dealing with a claim and appearing at this hearing, the Tribunal was also mindful that any award should be capable of being paid. In these circumstances, the Tribunal was of the view that the sum of £500 was appropriate in the  
15 circumstances as this figure took into account the costs incurred by the respondent and the likelihood of the claimant being able to pay such an award. Therefore the claimant is ordered to pay to the respondent the sum of £500 as expenses in relation to its costs in defending the claim brought by him under number 4105370/2022.

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<b>Employment Judge:</b>	<b>A Jones</b>
<b>Date of Judgment:</b>	<b>20 December 2022</b>
<b>Entered in register:</b>	<b>23 December 2022</b>
<b>and copied to parties</b>	

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