



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

Case No: 4100059/2021

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Hearing on expenses  
held on the Cloud Video Platform on 23<sup>rd</sup> November 2022

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Employment Judge A Jones  
Tribunal Member Ms M Watt  
Tribunal Member Ms J Grier

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Ms A Harris

Claimant  
Not present and not  
represented

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Adecco UK Ltd

First Respondent  
Represented by:  
Mr Bacharach,  
Solicitor

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Amazon UK Services Ltd

Second Respondent  
Not present and not  
represented

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The claimant is ordered to pay the sum of £5000 to the first respondent by way of expenses in accordance with Rule 78(1)(a) Employment Tribunals (Rules of Procedure) Regulations 2013 Schedule 1

**REASONS**

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**Introduction**

1. The claimant had raised claims of disability discrimination and unpaid wages. Deposit orders were made in relation to the claimant's claim of direct disability discrimination and a failure to make reasonable adjustments in respect of the

first respondent in January 2022. The claim of unpaid wages was not pursued. A final hearing took place and a judgment dismissing all claims was promulgated on 29 June 2022. The first respondent made an application for expenses against the claimant on 15 July 2022. The first respondent's position was that the matter could be dealt with by way of written submissions. The claimant indicated in an email dated 27 July that she was of the view that a hearing was required to consider the application. The claimant then sent a further email to the Tribunal the following day stating "I find it bizarre a company is allowed or brass enough to pursue a mentally ill person they made 5 offers to because they done wrong before the hearing. I stand by the only reason justice has not been served here is because i was not legally represented and had no experience because base on evidence there would have been no other outcome. 2 quite serious bits of evidence of clear mistreatment I provided of being assaulted (thrown in a bin) during a 2 metre distance pandemic, and evidence of sexual harassment I'm going to pursue with criminal charges, so I do have closure I was awaiting the outcome of this. For these reasons, it will take a while for this to be settled as I'm going for criminal charges and it would be inappropriate to continue this whilst police do an investigation against 2 AMAZON employees. I would also like to highlight the reason an appeal has not been made even though an extension was requested is due to my own health. My Doctor will have no issues confirming this but I will not be bullied anymore by them whilst not employed there/'

2. Date listing letters were issued in order to set a hearing, but despite reminders, the claimant did not respond to this correspondence. A hearing was then set, although that was subsequently postponed to a further date. The second respondent indicated that it did not intend to take any part in the proceedings.

3. Efforts were made by the clerk to check that the claimant would be able to join the remote hearing. Those efforts were unsuccessful.

4. An email was then received from the claimant's mother at 15.42 on the day before the hearing indicating that the claimant 'did not wish to continue with

the appeal' and that the claimant was unable to attend the hearing the following day. The email was acknowledged, and correspondence sent to clarify that no appeal had been intimated on behalf of the claimant, that the hearing on 23 November was to consider the first respondent's application for expenses and that the hearing would proceed. No further correspondence was received from the claimant or anyone representing her. The claimant did not attempt to join the hearing or ask for a postponement of the hearing.

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5. The hearing on expenses therefore proceeded in the absence of the claimant. The first respondent was represented by Mr Bacharach, solicitor. He made reference to the detailed application which had already been made and elaborated on that application. The application submitted that the claimant's claims against the first respondent had been dismissed for substantially the same reasons as the deposit order which had been made. It also highlighted that various offers to settle the claimant's claims had been made to her with a final offer of £16,500 being made together with a contribution towards the claimant's legal expenses should a settlement be reached. It was said that the claimant's rejection of these offers was unreasonable. It was also said that as the claimant's loss of earnings would have been at most £3000 that the ultimate offer made was far in excess of anything the claimant would have been awarded had she been successful in her claims.

6. Finally, it was said that the claimant had made an allegation of disability discrimination against one of the first respondent's employees without producing any evidence to substantiate that allegation.

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7. As the Tribunal had no information regarding the claimant's ability to pay any award of expenses, she was ordered, by letter dated 7 December, to confirm within seven days whether she wished the Tribunal to take into account her ability to pay expenses and if so, provide information in that regard. No response was received from the claimant.

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8. The Tribunal therefore gave consideration to the application made by the first respondent. The first respondent sought an award of expenses in the sum of £15,827.21 and provided supporting documents in that regard.

## Discussion and decision

9. In the first instance, the Tribunal took into account that the claimant did not put forward any evidence to substantiate the serious claims she had made against the first respondent. She had alleged that there had been a failure to make a reasonable adjustment in relation to a failure to provide a named contact for her. In evidence however, she confirmed that she had been given the names of two individuals to contact if she felt unwell.
10. The Tribunal also found that the claimant had failed to put forward any evidence to demonstrate that she had been subject to any discriminatory treatment. While the Tribunal was mindful that the claimant was representing herself, although she did have her mother supporting her, it appeared to the Tribunal that the claimant's claims were hopeless. She had been ordered to lodge deposits albeit in very small sums in order to proceed with her claims. However, she was aware that she was at risk of expenses should her claims be unsuccessful. She was given numerous warnings by the respondents that an application for expenses would be made if she was unsuccessful.
11. The first respondent sent the claimant correspondence which carefully outlined why her claims were misconceived on a number of occasions. The claimant engaged with that correspondence by restating her position and making counter proposals.
12. 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:
- a. 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
  - b. Any claim or response had no reasonable prospects of success,

13. 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  
5 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.
14. 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  
10 the party who has unreasonably been put to expense (see for instance **Howman v Queen Elizabeth Hospital Kings Lynn EAT 0509/12**).
15. In the present case, the Tribunal has not been provided with information regarding the claimants ability to pay or her means. That said, the Tribunal noted that the claimant was not a high earner prior to her dismissal. The  
15 Tribunal also took into account that the claimant had suffered from ill health and had been out of work at the time of the final hearing.
16. The Tribunal took into account that the claimant was unrepresented during the proceedings. It was also mindful that a number of offers had been made to settle her claims and was of the view that given the nature of her claims,  
20 the final offer made was a very significant offer.
17. However, the most relevant issue for the Tribunal was that the claimant simply did not adduce any evidence in support of her claims. Indeed, to the contrary she gave evidence that she had been given a person of contact when her claim was that she had not. She did not withdraw the claim, despite the  
25 evidence she gave. The other claim against the first respondent, that they have discriminated against her because of her disability by dismissing her for having breached their policies, was entirely lacking in evidence. The Tribunal was therefore of the view that her claims had no reasonable prospects of success. In the alternative, her failure to accept an offer of more than she was  
30 likely to receive had she been successful in her claims was unreasonable conduct.

18. In these circumstances, the Tribunal was of the view that an award of expenses should be made.

19. As the Tribunal had no information regarding the claimant's means, it proceeded on the basis of the information available at the time of the original hearing, which was that the claimant had poor mental health and periods during which she was unable to work because of her health. The Tribunal was mindful that the claimant hadn't accepted previous generous offers from the respondents. Further, the Tribunal is not in a position to say whether the claimant is currently in work or what her finances are at present or might be in the future.

20. Taking all of these factors into account, the Tribunal concluded that an award of £5000 would be appropriate.

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| 15 | <b>Employment Judge:</b>     | <b>A Jones</b>          |
|    | <b>Date of Judgment:</b>     | <b>19 December 2022</b> |
|    | <b>Entered in register:</b>  | <b>23 December 2022</b> |
|    | <b>and copied to parties</b> |                         |

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