



EMPLOYMENT TRIBUNALS

Claimant:

1. Mr N J Bambridge
2. Mr A Hides
3. Mr S Barrett
4. Mr T Shead
5. Mr C Wootton
6. Mr G Bunnage

Respondent:

1. In Tandem Resources Limited (in compulsory liquidation)
2. Ashwood Capital limited
3. Roger Warnes Transport Limited

Heard at: Cambridge

On: 27 June 2022

Before: Employment Judge Tynan

Appearances

For the Claimants: Ms J Ball, Counsel

For the First Respondent: Did not attend and was not represented

For the Second Respondent: Did not attend and was not represented

For the Third Respondent: Ms L Quigley, Counsel

COSTS JUDGMENT

The Tribunal Orders the First, Second, Fourth, Fifth and Sixth Claimants to pay the Third Respondent's costs of the Hearing on 27 June 2022, to include its costs incurred in preparing for the hearing, summarily assessed in the sum of **£2,998.60**. The First, Second, Fourth, Fifth and Sixth Claimants' liability in the matter is joint and several.

REASONS

1. The Third Claimant withdrew his claims against the Third Respondent. The question is whether the Tribunal should make a costs order against

the other Claimants (referred to hereafter as “the Claimants”), their claims against the Third Respondent having been struck out on 27 June 2022 on the basis they had no reasonable prospect of success.

2. Rule 76 of the Employment Tribunals Rules of Procedure sets out the circumstances in which a costs order may or shall be made. As the claims against the Third Respondent were struck out, the threshold test has been met under Rule 76(1)(b) of the Rules of Procedure, namely that the claims had no reasonable prospect of success and accordingly the Tribunal is required to consider whether to make a costs order. It does not automatically follow that a costs order will be made, it remains a matter of judicial discretion.
3. In my judgement, the threshold test has also been met under Rule 76(1)(a) in so far as the Claimants failed to put forward any evidence as to why it was not reasonably practicable for their TUPE related claims against the Third Respondent to be presented in time (even assuming that their Claims included complaints pursuant to the TUPE Regulations 2006 in respect of an alleged failure to inform and consult in respect of the TUPE transfer of their employment in 2013 from the Third Respondent to the First Respondent). Ms Ball was effectively without instructions on the point, and as to the other factors to which Tribunals should have regard under the *Selkent* principles if the Tribunal was required to consider the point within the context of an application to amend. The Claimants had been on notice since 15 May 2022 that the Tribunal was giving consideration to whether their claims should be struck out, but had seemingly failed to address their minds to why their claims might lack any prospect of success. It should not have come as any surprise to them since the Third Respondent’s Grounds of Response, filed as long ago as 12 October 2018 had highlighted that any claims against it were substantially out of time.
4. It does not automatically follow that because a party has behaved unreasonably and/or the claim had no prospect of success that the Tribunal should make a Costs Order. The Tribunal retains a discretion in the matter and in the exercise of that discretion should have regard to the nature, gravity and effect of the conduct, though on the latter issue it is not necessary for the Tribunal to determine whether or not there was a precise causal link between the conduct in question and the specific costs being claimed. A Costs Order is not intended to be punitive.
5. The Third Respondent issued a costs warning letter to the Claimants on 17 June 2022. In any event, the Claimants have been professionally represented throughout. The Third Respondent has been put to the wasted expense of defending claims against it that either had no legal basis or which were brought approximately five years out of time in circumstances where the facts and matters supporting the claims and the Claimants’ failure to pursue them in time were not indicated. That amounts to a significant omission on their part. I agree with Ms Quigley when she said that the Claimants saw the Third Respondent as the “last

man standing”. I find that they continued to pursue the Third Respondent because it was solvent and they believed it might settle their claims, without giving proper thought to whether they had arguable, timeous claims against it. I consider that the hearing on 27 June 2022 might have been avoided had the Claimants given that necessary, overdue thought to the merits of their claims, not least against the backdrop of a costs warning and pending hearing to strike out their claims. In the exercise of my discretion I shall make a costs order against the Claimants in respect of the Respondent’s costs both of the Hearing on 27 June 2022 and in preparing for that Hearing. Before exercising that discretion, I afforded the Claimants a reasonable opportunity to make representations regarding their ability to pay (Rule 84), but they have failed to place any information before the Tribunal.

6. In the event that I was minded to make a costs order, I provisionally assessed the Respondent’s costs on 27 June 2022 at £2,998.60 plus VAT. As the Respondent will be able to reclaim the VAT element, I assess that the costs they might otherwise reasonably look to the Claimant to pay are £2,998.60 and that is the amount I shall order them to pay.

Employment Judge Tynan

Date: 10 January 2023

Sent to the parties on: 19 January 2023

For the Tribunal Office