



EMPLOYMENT TRIBUNALS

Claimant: Mr L Smith

Respondent: Network Rail Infrastructure Limited

JUDGMENT

On Claimant's application for costs

The Respondent shall pay the Claimant's costs as set out in the Claimant's Schedule of Costs in the sum of **£2,825.00** plus VAT of **£565**.

REASONS

1. I have been provided with the following documents:
 - (i) The Claimant's costs application (17.2.2022);
 - (ii) The Respondent's Response to the costs application (17.3.2022);
 - (iii) A Bundle of Documents provided by the Claimant together with the Claimant's revised Schedule of Costs.
2. This is a claim by the Claimant for costs thrown away by the adjournment of the remedy hearing held on 18 March 2021. The reason for the adjournment was that the Respondent had sought to raise a new ground to resist to the Claimant's application for reinstatement which had only been notified to the Claimant's Counsel, Ms Palmer, on the previous day and was unsupported by the necessary disclosures which were required for the Claimant and Tribunal to understand the new ground on which the Respondent intended to rely.
3. I was concerned to ensure that the Tribunal would be provided with a full explanation of the status of Sentinel and its Scheme and its relationship with the Respondent. I was informed by the Respondent's Counsel that Sentinel was either a statutory, or regulatory, body entirely independent of the Respondent.
4. It was necessary to grant the Claimant's application for a postponement and agree directions with Counsel for the Respondent to provide full disclosure in

respect of the case it was now pursuing against the Claimant's application for reinstatement/re-employment.

5. The Claimant's costs application prepared by Ms Palmer who had represented the Claimant at the merits hearing and attending the hearing on 18 March provides an accurate summary of the course of events and information explained to me at the hearing.
6. The Respondent was ordered to provide full disclosure to the Claimant of the establishment of Sentinel, its purpose, its legal status, its relationship, corporate or otherwise, with the Respondent and its working arrangements.
7. The remedy hearing was relisted to be heard on 30 June 2021 after which due to unforeseen circumstances, the promulgation of the Reserved Judgment was delayed until 19 November 2021.
8. At the remedy hearing Mrs Carder's evidence made it clear that Sentinel was not, as had been advised by the Respondent's Counsel at the hearing on 18 March, a statutory or regulatory body independent of the Respondent but was part of the Respondent's business.
9. The Judgment states at paragraph 18 as follows:

"Mrs Carder was able to set out a helpful and clear explanation of the Sentinel Scheme. NR had developed the Sentinel Scheme which provided a voluntary passport scheme for employers working in the rail industry. It is not, contrary to previous explanations received by the Tribunal, a statutory or regulatory body independent of NR. It is part of NR's business which operates independently within it. NR and the other employers, who are members of the Sentinel Scheme, make their own decisions as to who to employ and the criteria they will require for the jobs they require within their business."

10. Furthermore, as stated at paragraphs 33 and 34 of my Reasons I found that the submissions that the Respondent's Drink and Drugs Policy was one of strict liability which could result in the dismissal of an employee regardless of the principles of fairness and natural justice (which had not been advanced at the liability hearing) was misconceived and that the Sentinel Scheme presented no barrier to the Claimant's return to work.
11. I am satisfied that the Respondent conduct of the proceedings unreasonable for the reasons set out in the Claimant's costs application. The unreasonable conduct comprises the Respondent raising a new argument without due notice to the Claimant in the absence of necessary, and relevant, disclosure, which in due course demonstrated that the status of the Sentinel Scheme relied upon was inaccurately described and that the argument pursued by the Respondent was misconceived and unsustainable.
12. Therefore, I award costs to the Claimant in the sum which has been claimed. I

make this costs Order within the terms of Rule 76(1)(a) of the Employment Tribunals Rules of Procedure 2013 (as amended). This is because I have concluded that the Respondent acted unreasonably in the conduct of the proceedings relating to the Claimant's claim for reinstatement/re-employment. I have also considered the Respondent's representations as to the amount of costs claimed on behalf of the Claimant. After doing so I have concluded that these costs were reasonably incurred and are properly claimed as a result of the Respondent's unreasonable conduct.

Employment Judge Craft

Date: 01 February 2023

JUDGMENT SENT TO THE PARTIES ON

17 February 2023 By Mr J McCormick

For Tribunal Office