EMPLOYMENT TRIBUNALS

Claimant: Mr J Anderson

Respondent: Indigo Accounting (UK) Ltd

Heard at: Leeds **On: 23 January 2023**

Before: Employment Judge Shepherd

Appearances:
For the claimant: In person
For the respondent: Ms Page, solicitor.

Judgment having been given on 20 January2023 and the written judgment having been sent to the parties on 25 January 2023. Written reasons have been requested by the respondent in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant represented himself and the respondent was represented by Ms Page.

2. I heard evidence from James Anderson, the claimant. I heard submissions from Ms Page on behalf of the respondent and the claimant.

3. I had sight of a bundle of documents which was numbered up to page 54. I considered those documents to which I was referred by the parties.

4. Both parties agreed there was a contract formed between the parties on 19 May 2022. The claimant accepted the offer of employment for 30 hours per week commencing on 6 June 2022 at a salary of £32,250.
5. The offer of employment was withdrawn by the respondent on 1 June 2022.
6. There was an unconditional contract. The terms and conditions had not yet been set out with regard to termination.
7. The claimant brought a claim for breach of contract. He indicated he had lost out a lot financially coupled with the large inconvenience that this last-minute withdrawal had caused coupled with turning down two contracts for his business. He was concerned about the unethical practice of the respondent.

8. In the first instance case of **McCann v Snozone Ltd ET/3402068/2015**, an Employment Tribunal found that a verbal offer of employment had been made and accepted. Even though no notice period or salary had been agreed, the Tribunal found that the claimant was entitled to reasonable contractual notice.

9. If the claimant had commenced employment the respondent could have ended the contract by giving a reasonable period of notice. There was no notice period agreed in this case and I am of the view that a reasonable amount of notice would be one week.

10. The parties agreed this would be £620.20 gross pay. The claimant cannot recover damages for the manner of dismissal. I understand the claimant was very upset and he said it was unprofessional and negligent. That may well be but I have to do with the contractual situation.

11. The respondent made an application for costs. They have provided a "Calderbank" letter to the claimant indicating that they would make an application for costs if he did not accept an offer of £620.20.

12.

The rule in **Calderbank v Calderbank 1975 3 All ER 333** applies where a claimant, having succeeded on the issue of liability in the civil courts, obtains an award of damages equivalent to or less than an earlier settlement offer. The rule states that, in such circumstances the claimant will bear the costs incurred by the respondent from the date on which the offer was rejected. In **Kopel v Safeway Stores plc 2003 IRLR 753,** the EAT held that the ruling Calderbank v Calderbank has no place in Employment Tribunal jurisdiction.

13. The Employment Tribunal is a completely different jurisdiction to the County Court or High Court, where the normal principle is that "costs follow the event", or in other words the loser pays the winner's costs. The Employment Tribunal is a creature of statute, those procedure is governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Any application for costs must be made pursuant to those rules.

14. Rule 76 states:-

> 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 the bringing of the proceedings (or part) or the way that the proceedings (or part) had been conducted; or
> >
> > (b) any claim or response had no reasonable prospect of success.

15. The fact that a party is unrepresented is a relevant consideration. The threshold tests may be the same whether a party is represented or not, but the application of those tests should take account of whether a litigant has been professionally represented or not (**Omi v Unison UKEAT/0370/14/LA**). A litigant in person should not be judged by the same standards as a professional representative as lay people may lack the objectivity of law and practice brought to bear by a

professional adviser and this is a relevant factor that should be considered by the Tribunal.

16. I do not accept that the claimant had acted unreasonably in bringing the proceedings or in the way in which they were conducted. He had a valid claim which was defended by the respondent and it was necessary for me to hear evidence to determine the issues and the amount of reasonable notice.

17. Lord Justice Sedley in the case of **Gee v Shell UK Limited (2002) IRLR 82** stated that it is:

> "A very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that – in sharp distinction from ordinary litigation in the United Kingdom – losing does not ordinarily mean paying the other side's costs".

18. That remains the case today. Costs are still the exception rather than the rule. I am not satisfied that this case was exceptional. I am not satisfied that the claimant acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings or the way in which the proceedings were conducted. I am also not satisfied that the claim had no reasonable prospect of success and in those circumstances the respondent's application for costs is refused.

Employment Judge Shepherd

8 February 2023