



EMPLOYMENT TRIBUNALS

London South Employment Tribunal on 12th January 2023

Claimant

Between

Respondent

Ms Emma Crouch

&

Without Exceptions Ltd

Before

Judge M Aspinall (sitting as an Employment Judge)

Appearances

Ms E Crouch (in person);
Ms J Veimou (for the Respondent)

APPLICATION FOR COSTS Judgment

Background and original Judgment

1. I deal herein with the application for costs made in writing by the Respondent on 17 January 2023 (sent by email to the Tribunal and the Claimant on 19 January 2023). This application followed the full merits hearing, in respect of the Claimant's claims, held before me on 12 January 2023.
2. In her claim of 18 May 2022, the Claimant brought claims of unfair dismissal, breach of contract (for notice pay), unpaid holiday pay, and failure to provide [adequate] pay statements.
3. In a judgment dated 30 September 2022, EJ Corrigan struck out the claim for unfair dismissal on the basis that the Claimant, having less than 2 years' service, had not made representations in writing, or failed to make any sufficient representations, why that should not be done or to request a hearing.
4. By the time the claim came before me on 12 January 2023, only the claims for holiday pay, breach of contract (notice pay) and pay statements remained.
5. In the intervening period, in relation to the money claims (holiday and notice), the Respondent made payments to the Claimant which settled all but £476.39 of those claims. It was accepted by the Respondent that this additional sum was due and on 22 December 2023, they made an offer to the Claimant, accompanied by costs warnings, to pay that amount to her.
6. The Claimant did not accept that offer and, with both the money claims and the pay statements claim still live, decided to proceed to the final hearing. At that stage, the final hearing was already listed and less than a month away.
7. Early on during the hearing before me, the Respondent confirmed its concession in relation to the £476.39 and accepted that it needed to be paid.
8. I heard evidence on the pay statements claim and, having taken time to consider and evaluate the evidence, the statutes and caselaw, found that the Respondent had done all that was reasonable, in the circumstances, in order to issue pay statements to the Claimant. I dismissed that part of the claim.
9. I issued Judgment allowing the claims for unpaid monies and ordering the payment of the conceded £476.39, by the Respondent, within 14 days. The same judgment dismissed the remaining claims whilst noting that the Respondent had agreed to send copies of all payslips, P60 etc to the Claimant. My

judgment was sent to the parties on 13 January 2023.

The application for costs

10. The application made by the Respondent is brought pursuant to Rule 76(1)(a) of the Employment Tribunals Rules of Procedure 2013:

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) have been conducted...
11. In their grounds for the award of costs, the Respondent states that the Claimant acted unreasonably in not accepting their offer pay £476.39 to settle the money claims on 22 December 2022; which the Claimant agreed before me was the correct amount and agreed that this would settle the money claims.
12. They also noted that I dismissed the other claims related to the provision of [adequate] pay statements to the Claimant.
13. Both of these factors, along with the need to best utilise scarce judicial and Tribunal resources and the need for parties to act in helping the Tribunal to deal with cases in proportion to their complexity and issues and saving unnecessary expense.
14. The costs schedule, attached to the application, is for the single element of 23.83 hours at £43 per hour. A total of £1,024.69.
15. The Respondent also asked that the application be dealt with on paper – i.e. without a hearing – so that further preparation and potential costs might be avoided.

Response from the Claimant

16. By email of 23 January 2023, the Claimant objected to the application on two bases that I will set out below.
17. In that same email the Claimant raised no question or issue with the application being decided without a hearing.
18. The first basis for objection raised by the Claimant was that she believed that, at the conclusion of the hearing, I had prohibited the Respondent from making any application for costs or any counter claim and that I had said that any such application or claim would not be considered.
19. The second was that had her former employer paid her correctly to begin with, then no claim would have arisen – it was only because of the Tribunal process that she was able to achieve those payments; she needed, in her view, a judgment to bind the Respondent to their promise.

Discussion

20. With the greatest of respect to the Claimant, she has incorrectly remembered what was said as to costs and any other applications. In fact, I made clear to the Respondent that I would not entertain any applications – including for costs – “*at that stage*” (i.e. at the end of the hearing) but that they were at liberty to go away, consider such applications and to make them in writing following the hearing.
21. It would be neither lawful nor proper, in the circumstances of this case, for a Judge to say, without hearing argument, that a party could not seek to recover their costs. The Respondent had a legal right to make its application for costs and it is right and proper that I will consider that application.
22. Neither party having sought a hearing and on considering the grounds and the lack of complexity, I am satisfied that a further hearing is not necessary for me to decide this application. The costs sought are relatively modest and the arguments for and against are not such that further evidence would be likely to assist me in reaching a decision.
23. Turning back to the grounds relied upon by the Respondent in seeking their costs, I do not think it can be said that the Claimant has acted either vexatiously, abusively, or disruptively in bringing and proceeding with her claims. The question, from the application, that remains relates to whether she acted reasonably (or unreasonably) in pursuing her claims to a final hearing before me when the Respondent had offered to settle the money claims for the amount which the Claimant, ultimately, agreed was correct and which I, ultimately, awarded in my judgment?

24. In December 2022, the Respondent offered to settle the money claims for the amount sought by the Claimant. They had, previously, made two payments to the Claimant in part settlement of those claims and the remaining £476.39 was the remaining balance. With those earlier payments, the Respondent had paid the sums to the Claimant notwithstanding her agreement. This, it may have seemed to them, was the correct course of action to take – minimising their exposure to any formal judgment that the Tribunal might make.
25. Had the Respondent paid the balance of £476.36 to the Claimant in December 2022 and we had been in the position where, despite that, the Claimant had still proceeded to a full hearing, I consider that she would then have been acting unreasonably.
26. In this case, the sum due was still outstanding by the time the hearing commenced before me in January 2023 – and had been so for many months (whether alone or as part of the larger sum which had been partly settled in two payments previously). I do not consider it unreasonable for the Claimant to crave the assurance and certainty provided by a judgment to secure her position.
27. By 22 December 2022, when the Respondent offered to pay the remaining £476.36, a period of 9 months and 9 days had elapsed since the employment contract between the parties ended on 13 March 2022. It was accepted that the Claimant was due to receive a total of £2,363.69 (detail set out in my judgment of 12 January 2023) on termination. The Respondent had paid £1,330.06 and then £557.27 towards that sum on two separate occasions in the 9 months period.
28. The Claimant also had an outstanding claim in respect of pay statements. I ultimately dismissed this claim because the Respondent's evidence satisfied me that they had issued such advices but that the Claimant had not accessed the Sage system to collect them, I did so only having heard live oral testimony from both the Respondent and the Claimant.
29. In all the circumstances of this case, I do not find that the Claimant behaved unreasonably in bringing or pursuing her claims. It follows that I refuse the Respondent's application for costs.

Judge M Aspinall on Monday, 20th February 2023

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