



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr. Victormills Iyieke

v

Bearing Point Limited

Heard at: In Chambers On: 1 March 2023

Before: Employment Judge Wedderspoon

**Members : Mrs. M. Howard
Mrs. R.**

Representation:

Claimant: In Person

Respondents: Mr. of Counsel

ORDER

1. The claimant is ordered to pay the respondent's costs summarily assessed at £10,000.

REASONS

1. On 23 November 2023 upon the application of the respondent, the Tribunal determined that the claimant had engaged in unreasonable conduct by (1) pursuing his discrimination claim after 9 December 2021 at which point he had received the respondent's documents and witness evidence from which it was apparent that the claimant could not establish the identified individuals were actual comparators within the meaning of section 23 of the Equality Act 2010 and (2) by rejecting the respondent's commercial offer of settlement of 10 December 2021 and increasing his own offer a settlement where there was no indication that the claimant was considering the deficiencies in his performance and negative feedback alerted to him by the respondents, disclosure, witness evidence or email dated 18 October 2021.
2. The Tribunal determined it was appropriate to make an order for costs because his unreasonable conduct caused the respondent to incur costs of a solicitor and counsel defending the claim at the final hearing.
3. At the costs hearing, the claimant submitted he was not able to pay any costs order but failed to provide any documentary evidence to support this contention. In oral evidence to the Tribunal, the claimant stated that he had no student loan but was sponsored. He stated he was not employed. He stated he had no savings currently. He stated that he had some debt on credit cards but was unsure as to the level of debt. He stated he had £50 at the moment in his current account. On the basis that the claimant's primary

submission was that he could not afford to make a cost order but had not provided any documentary evidence, the Tribunal determined it was in the interests of justice for the claimant to be given the opportunity to provide further evidence. The claimant was ordered to provide three months of bank statements and credit card statements. On 11 December 2022 the claimant provided bank statements from Barclays and Nationwide which covered a period of three months and credit card statements for two credit cards covering a period of two months. At the request of the respondent, the claimant provided a further month statement of one credit card and confirmed the three months of statements were not available.

4. The respondent disputes the claimant's primary submission that he is not in a position to pay a cost order. The respondent provided written submissions along with case law stating that the disclosure was incomplete about the claimant's financial situation. In particular, the respondent relied upon the low level of spending indicated on the documentary evidence available to the Tribunal. The respondent submitted that its schedule following 10 December 2021 amounted to some £19,000 but seeks an award of costs of £10,000.

The Law

5. Pursuant to rule 84 of the 2013 Employment Tribunal Rules, the Tribunal may have regard to the paying parties' ability to pay in deciding whether to make a cost order.
6. In **Benyon v Scadden (1999) IRLR 700** it was held there was no requirement that a Tribunal must look at an applicant's personal means before making an order for costs against him. In **Jilley v Birmingham and Solihull Mental Health NHS Trust (UKEAT/0584/06)** it was held in the tribunal retained a power to take account of ability to pay by for example capping the amount. In **Arrowsmith v Nottingham Trent University (2011) EWCA Civ 797** it was held that whether the making of an order for costs was justified on the particular facts of the case was a fact sensitive exercise and that the tribunal is not obliged to have regard to the claimant means. The fact that the claimant's ability to pay was limited did not require the tribunal to assess the sum confined to amount that she could pay and that the amount of the award was properly within the discretion of the tribunal. Lord Justice Rimer stated that the claimant's circumstances may well improve. In the case of **Vaughan v London Borough of Lewisham (2013) IRLR 713** it was held there was no reason why the question of affordability has to be decided once and for all by reference to a parties' means as at the moment the order is made. Affordability was not the sole criterion for the exercise of the discretion. Lord Justice Underhill stated if there was a realistic prospect that the appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a cost order in that amount so that the respondents would be able to make some recovery when and if that occurred.

Conclusions

7. The Tribunal determined that the claimant had provided incomplete disclosure about his financial situation. Accompanying the claimant's disclosure he stated *"I can also confirm for the purpose of the order from Judge Witherspoon the provided account statements and credit cards are the only relevant details I can remember that I have."* The Tribunal found the documentary evidence failed to provide a complete picture of the claimant's financial position. The Tribunal is mindful that the claimant was on sponsorship, taking into account that accommodation may well be paid for, nevertheless the claimant's spending indicated on the relevant training statements was at a low level.
8. In September between the 24 and 30 September the claimant spent £138.66 on a fluid credit card. In October the claimant used his credit card to the sum of £170 and he made approximately £19 of purchases on his bank account. For November the claimant spent approximately £93 on his fluid credit card. In December had a £350 funds transfer from nationwide bank account. He paid £5 by way of direct debit to capital one. There was a deposit into his Barclays bank account of £385. There was a forwarded credit switch balance of £338 on his nationwide bank account. He made a funds transfer on Barclays bank account of £350. The Tribunal notes that one account had a balance at the end of December of £892.
9. The Tribunal takes into account that the government offers maintenance loans of up to £9,488 per annum for students who live away from their parents outside London to cover living costs (not fees). If the Tribunal assumes that the claimant's accommodation costs and utility bills are paid for by the stipend, in the Tribunal's judgement the claimant's spending remains below what could reasonably be expected in terms of food, transport and mobile telephone costs. In November there is a record of less than £100 of expenditure. Individuals receiving jobseeker's allowance receive £77 per week. In November there were five occasions where the claimant appears to have spent money and there are no indications of cash withdrawals to cover expenditure in other periods. The claimant's capital one credit card shows receipts of £5 pounds by way of direct debit payments in October and November. The claimant has not provided the bank statements that record these direct debits. The £5 direct debit which the capital one credit card records as received in December can be traced to the nationwide bank account. This bank account appears to have been opened in December. On the balance of probabilities, it is unlikely to be the source of the October or November direct debit. The claimant provided statements for the nationwide bank account for the period 11 September 2022 to 11 December 2022; it could be reasonably expected to see direct debits for October and November on the statement if they were funded from this particular account. The claimant does appear to have opened the Nationwide account in December 2022 which is a reasonable inference from the £200 credit on 8 December 2022 "transfer from switching offer". The account appears to have been opened with £838.67 transfer on 7 December 2022 described as "forwarded credit switch pounds". This appears to be a transfer into the account rather than a cash deposit which appears elsewhere in the claimant's bank account statements.

10. Taking all these matters into account the tribunal found the documentary evidence to be unsatisfactory and failed to provide the Tribunal with the full picture of the claimant's financial situation. The reasonable inference to be drawn by the inadequate disclosure of material was that the claimant's financial situation is in a far better financial state than he wishes to portray.

11. The Tribunal noted that the claimant was employed by the respondent at an annual salary of £45,000. At present the claimant is studying for further qualifications. If he obtained his PhD it is likely he will have a greater earning capacity. His future means are a matter which the tribunal can take into account. Nevertheless, the Tribunal finds that the claimant's present financial position is far better than the claimant wishes the tribunal to consider.

12. The Tribunal notes that the respondent has served a schedule of costs showing that it incurred a total amount of costs of £49,561.40 comprising £45,634 of solicitors costs and £3,927.40 of counsel's costs. The function of orders for costs are set out in the case of **Benyon and Scadden** is to compensate the successful respondent for the expense to which it has unreasonably been put. Taking account, the relevant period of unreasonable conduct relates to a period from 9 December 2021 onwards, causing the respondent to incur costs of legal representation in defending the claimant the final tribunal the respondent incurred solicitors' costs of £19,082 and counsel costs of £3,700. The tribunal is only permitted to award costs up to £20,000.

13. The tribunal takes into account the respondent's request for £10,000. The Tribunal takes into account the claimant is likely to be at present a better financial state than he wishes to disclose. Significant costs have been incurred by the respondent as a result of the claimant's unreasonable behaviour from 9 December 2021. The Tribunal finds that the respondent incurred over £20,000 in costs for this period. The tribunal summarily assesses the costs of £10,000 and the claimant must pay the sum to the respondent.

Employment Judge Wedderspoon

1 March 2023