



# EMPLOYMENT TRIBUNALS

## Claimant

Mr P Baker

v

## Respondents

Mr N Morgan & Others

**Heard at:** Cambridge (by CVP)

**On:** 29 June 2022

**Before:** Employment Judge Tynan (sitting alone)

## Appearances

**For the Claimant:** Mr L Varnam, Counsel

**For the Respondents:** Mr N Morgan, Fourth Respondent

## COSTS JUDGMENT

The Tribunal Orders the Respondents to pay the Claimant's costs of the Remedy Hearing on 29 June 2022, including his costs incurred in preparing for the hearing, assessed in the sum of **£6,240**.

## REASONS

1. At the hearing on 29 June 2022, I made a Costs Order, those costs to be assessed if they could not be agreed. I allowed the parties a further 21 days from 19 July 2022 (the date on which the Costs Judgment was sent to them) in which to make any further written submissions in the matter. The Claimant's written submissions were received on 9 August 2022. Having applied for reconsideration of the Tribunal's Costs Judgement on 21 July 2022, the Respondents subsequently requested on 9 August 2022 that the period of 21 days to provide written submissions should be suspended. Their request was not granted, but I allowed them a further 21 days in which to provide submissions. No submissions have been received from them, their only comments being in their 21 July 2022 reconsideration application before they had sight of the Claimant's submissions as to the amounts being claimed and the justification for these.
2. The Respondents have copied the Tribunal into an email to the Claimant's

solicitors dated 16 December 2022 in which they continue to make allegations of professional misconduct against them, as well as adverse comments about the Employment Tribunals. However, the email is silent on the question of costs.

3. The Claimant's costs are to be assessed on the standard basis. Rule 78(1)(b) of the Tribunals Rules of Procedure states that Employment Judges should apply the principles in the Civil Procedure Rules 1998 ("CPR") when undertaking detailed assessments of costs. Whilst the Order I made was for a summary assessment, nevertheless I have found it helpful in this matter to have regard to the CPR and to the 2021 Edition of the Guide to the Summary Assessment of Costs which is available to Judges, Parties and Practitioners in the Civil Courts.
4. Rules 44.3(1) and (2) of the CPR provide that where the court assesses the amount of costs on the standard basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.
5. The Guide states that costs will be proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings (b) the value of any non-monetary relief in issue in the proceedings (c) the complexity of the litigation (d) any additional work generated by the conduct of the paying party (e) any wider factors involved in the proceedings, such as reputation or public importance and (f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.
6. Rule 44.4(3) sets out the factors to be taken into account in deciding the amount of costs. Those factors include: the conduct of the parties, including conduct before as well as during the proceedings; the efforts made, if any, before and during the proceedings in order to try to resolve the dispute; the value involved in the proceedings; the importance of the matter to the parties; the complexity of the proceedings; the skill and specialised knowledge of the lawyers; the place where the work was done; and the receiving party's last approved or agreed budget (this is not relevant in Employment Tribunals).
7. In my Reasons for the Costs Judgement I identified the conduct of the Respondents that led to the Costs Order being made. I described their conduct, through Mr Morgan, as serious and deliberate. I have not been told what, if any, efforts have been made to settle the dispute, though noted in my Reasons that the Respondents had sought to use the cloak of privilege to threaten the Claimant and abuse his legal advisors. Their conduct in that regard and the fact the Tribunal's Judgement dated 21 August 2020 remained unpaid when the matter came before me on 29 June 2022, together with the general tenor of the Respondents' correspondence

indicates to me that they have a settled intention to avoid discharging their liabilities to the Claimant. The matter is clearly important to the Claimant, since it concerns the recovery of long outstanding wages and holiday pay in connection with work performed by him, together with compensation to reflect financial losses he has suffered as a result of the First Respondent's unfair treatment of him. Whilst I accept that the Claimant has inevitably had to rely upon his legal advisors more than might otherwise have been the case had the Respondents not conducted the proceedings as they have, I cannot identify that the issues are especially difficult or unusual such as to warrant a higher hourly charge rate; in any event, I agree with Mr Varnam's submission that £150 per hour for a Grade C fee earner is, if anything, low.

8. As regards the claimed solicitors' costs:
  - a. The Claimant's statement for the Remedy Hearing comprises of seven short numbered paragraphs extending to little more than a single page of evidence in total. I shall allow 2 hours rather than 2.5 hours claimed for preparing the statement.
  - b. I consider 0.8 hours for preparing a revised schedule of loss to be reasonable and proportionate.
  - c. The Remedy Bundle comprised of 40 pages of documents. Whilst I accept that the documents available for the August 2020 Hearing would need to have been updated and a revised Index produced, I consider it unreasonable to expect the Respondent to pay 4.1 hours of time spent on the matter. Instead, I shall allow 2.5 hours.
  - d. The costs schedule relates to the Claimant's entire costs rather than the costs that the Respondents were Ordered to pay. I shall allow 0.7 hours.
  - e. No longer pursued by the Claimant.
  - f. I take on board what Mr Varnam says about the period of time that the work covers and the Respondents' conduct, both of which are entirely valid points. As he acknowledges elsewhere in his submissions, the hearings in June 2021 and February 2022 were postponed as a result of judicial decisions rather than because of the Respondents' unreasonable conduct. They should not bear the costs of correspondence that may have resulted from those decisions. I consider that a reasonable and proportionate amount of time to allow is 12 hours.

I therefore allow a total of 18 hours. That equates to £2,700 plus VAT using the charge rate of £150 plus VAT per hour.

9. I am satisfied that Mr Varnam's brief fee of £2,500 plus VAT (which covered both his preparation for the Remedy Hearing, nearly two years on from the Hearing at which liability was established, and his attendance at the hearing itself) was reasonable and proportionate to the issues to be determined at the Hearing, including factoring in the additional work generated by the Respondents' conduct and the importance of the matter to the Claimant given the Respondent's ongoing attacks upon his and his advisors' honesty and integrity. In my judgement it is reasonable and proportionate for the

Respondents to meet those costs in full.

10. The total sum that I shall therefore Order the Respondents to pay in respect of the Claimant's costs of and associated with the Remedy Hearing is £5,200 plus VAT.

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Employment Judge Tynan

Date: 7 March 2023

Sent to the parties on: 9/3/2023

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For the Tribunal Office