



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Regina Quartey

**Respondent:** G4S Secure Solutions (UK) Limited

**Heard at:** London South Tribunal

**Final Hearing On:** 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> February 2023

**by:** CVP

**Costs Application:** Paper determination

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

**Representation**  
Claimant: Mr C. Mannan (Counsel)  
Respondent: Ms Beech (Counsel)

## **JUDGMENT**

- (1) The Claimant's claim for costs in relation to the preparation of a hard copy bundle is refused.

## **REASONS**

### ***Background***

1. Following the conclusion of the final hearing on 24<sup>th</sup> February 2023, the Claimant made an application for costs in relation to the preparation and provision of a hard copy bundle to the Claimant on the evening of 23<sup>rd</sup> February 2023 (in the middle of her evidence).

2. As there was insufficient time to hear and determine the costs application, both parties submitted representations in respect of the claim for costs by e-mail and consented to the application being dealt with on the basis of those written submissions alone.

### ***Submissions***

3. The Claimant's application is made on the basis that the Respondent was required, by paragraph 16 of the case management order dated 3<sup>rd</sup> December 2021, to send the Claimant a hard copy of the bundle and failed to do so. The application states that it is for:
  - “1. Costs for Solicitors extra time (2 hours) spent in preparing the bundles as the Respondent's addition and omission the documents in their bundle. Please see attached email.
  2. Courier costs to send the bundles.
  3. Due to lack of the hard copy the Claimant struggled to find the bundle during the hearing causing inconvenience and stress for the Claimant. The Respondent included all documents and sent in the last moment.
  4. The Claimant travelled to her Solicitors' office to collect a printed copy of the bundle the Respondent sent by email only.
  5. The Claimant Solicitors spent additional time (2hours) to print and prepare a bundle for the Claimant from 5pm to 7pm. It was out of office hours. (Solicitor's current hourly rate is £282).”
4. No legal basis on which the costs are sought is specified and the only “costs” for which an amount is specified are 2 hours of solicitors' time at £282.00 per hour namely a total of £564.00.
5. The Respondent objects to the costs order claimed. In summary, it accepts that a hard copy of the bundle was not provided to the Claimant as required by the case management direction. However, it notes that the Claimant's disclosure documents were not provided until 13<sup>th</sup> February 2023 which resulted in the Respondent being unable to produce the bundle until 17<sup>th</sup> February 2023 and that even then the contents remained in dispute. This resulted in the Claimant producing her own bundle for the Tribunal hearing (which ultimately proved to be unnecessary and was never used). It further submits that despite urgently requesting on 17<sup>th</sup> February whether the Claimant or her solicitor required a hard copy, no response was received until the evening of Sunday 19<sup>th</sup> February when the Claimant's solicitors requested only that the hard copy be sent to the Claimant's Counsel rather than the Claimant's solicitors or the Claimant herself. Copies of e-mail correspondence passing between the Claimant's and Respondent's representatives were provided. The Respondent further submitted that there had been breaches of the case management orders by both parties and that both parties were professionally represented.
6. The Claimant then provided further submissions providing an explanation for the late disclosure to the effect that the documents were available to the

Respondent from their records and no documents were new.

**Law**

7. Tribunal Rules 75 and 76 provide that a Tribunal may make an order requiring one party to pay to another party a payment in respect of the costs or expenses incurred by that party while legally represented, or represented by a lay representative, where it considers that a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing the proceedings (or part) or in the way that the proceedings (or part) have been conducted, where a party has been in breach of any order or practice direction, or in other circumstances which are not relevant to the current application.
8. Tribunal Rules 77 and 78 set out the procedure to be adopted and the amount of any costs order.
9. Even if a party has breached an order or practice direction or acted vexatiously, abusively, disruptively or otherwise unreasonably, the Tribunal retains a discretion as to whether to make a costs order. It must first establish whether the power to make a costs order exists and, if so, go on to decide whether to exercise its discretion to award costs and the amount of any award – **Lewald-Jeziarska -v- Solicitors in Law Ltd & Others EAT 0165/06**.
10. Vexatious conduct is conduct is something significantly different from the ordinary and proper use of the court process but involves an abuse of the court – **Scott -v- Russell [2013] EWCA Civ 1432, CA**.
11. In assessing whether a party has acted unreasonably, the Tribunal must look at the whole picture – **Yerrakalva -v- Barnsley Metropolitan Borough Council & another 2012 ICR 420**.
12. Costs in the Employment Tribunal are the exception and not the rule, but this does not import an additional general test of exceptionality.
13. Tribunal Rule 80 gives the Tribunal a power to make a wasted costs order against a representative in favour of any party where that party has incurred costs as a result of any improper, unreasonable or negligent act or omission on the part of the representative, or which in light of such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay. Tribunal Rules 81 to 82 provide further direction about the procedure to be adopted and the effect of a wasted costs order.
14. Tribunal Rule 84 permits a Tribunal to take into account the paying party's (or representatives) ability to pay when deciding whether, and in what amount, to make a costs order or wasted costs order.
15. In determining the amount of any costs order, the award of costs should be compensatory not punitive and should be limited to those costs "reasonably

and necessarily” incurred and must reflect the actual costs incurred. The conduct of the receiving party is also relevant to the amount of any costs order.

***Findings of Fact and Conclusions***

16. The final hearing was a remote hearing held over 3 days via CVP. The preparation and provision of the hard copy bundle to the Claimant on 23<sup>rd</sup> February 2023 arose from the Claimant’s difficulties during cross-examination on 23<sup>rd</sup> February 2023 in managing to open and use electronic documents whilst connecting to the hearing remotely from home and being alone and unassisted. Her difficulties resulted in a significant loss of time whilst Claimant’s Counsel and Tribunal staff sought to assist the Claimant remotely. The Claimant’s cross-examination was not concluded as expected on 23<sup>rd</sup> February 2023 as a result.
17. In view of the difficulties experienced by the Claimant and the time taken to resolve them, and in order to ensure that the hearing on 24<sup>th</sup> February 2023 could proceed without further difficulties and delay, on 23<sup>rd</sup> February 2023 I directed that the Claimant and/or her solicitors must take appropriate steps to ensure the situation could not recur by either:
  - (i) the Claimant appearing via CVP from her solicitor’s office or elsewhere where there would be assistance from someone experienced and competent to manage the digital bundle and the CVP link; and/or
  - (ii) the Claimant’s solicitors providing the Claimant with a hard copy of the bundle prior to the recommencement of the hearing on 24<sup>th</sup> February 2023; or
  - (iii) the Claimant attending the Tribunal in person on 24<sup>th</sup> February 2023.
18. When the hearing resumed on 24<sup>th</sup> February 2023 the Claimant connected to the CVP link from her home and had a hard copy of the bundle available to her which had been printed and provided to the Claimant by the Claimant’s solicitors.
19. The Respondent was required, by paragraph 16 of the Case Management Order of 3<sup>rd</sup> December 2021 to provide the Claimant with a hard copy bundle. It did not provide a hard copy bundle to the Claimant directly, to her solicitors or to her Counsel.
20. Both parties were in breach of the case management order. The Claimant did not provide copies of all documents referred to in her witness statement in the course of her disclosure and was therefore herself in breach of paragraph 13 of the Case Management Order of 3<sup>rd</sup> December 2021 which required copy documents to be sent. Some of the Claimant’s documents referred to at the hearing were not provided to the Respondent until 12:10 on 13<sup>th</sup> February 2023.

21. There were a number of reasons why no hard copy bundle was provided by the Respondent.
22. The parties continued to be in dispute over the contents of the bundle until at least 20<sup>th</sup> February 2023. The hearing commenced on 22<sup>nd</sup> February 2023.
23. There may not thereafter have reliably been sufficient time to post a copy of the bundle to the Claimant or her representatives using standard Royal Mail delivery options, but a hard copy of the bundle could have been couriered to the Claimant or her representatives within the available time. Indeed, hard copies were provided to the Tribunal prior to the commencement of the hearing.
24. The Respondent had enquired on 17<sup>th</sup> February 2023 as to the necessity of provision of a hard copy bundle and had only been requested to send a hard copy to the Claimant's Counsel, not to the Claimant herself. There is no suggestion that the hard copy would have been forwarded by Counsel to the Claimant and that would not be part of Counsel's usual role in relation to proceedings.
25. Even if the Claimant's Counsel been in possession of a hard copy, it would not have resolved the issues which arose on 23<sup>rd</sup> February 2023 and, had the bundle been marked by Counsel in any way, it could not have then been provided to the Claimant for her use on 24<sup>th</sup> February 2023.
26. The Claimant and her solicitors bore responsibility for ensuring that the Claimant was able to adequately manage the hearing by video link and, if not, to either put in place appropriate support or documentation to enable her to do so, or to request that the hearing take place in person.
27. There were hard copies of the Tribunal bundle provided by the Respondent to the Tribunal and available at the Tribunal for the Claimant's use. The parties were offered the opportunity to attend the Tribunal for an in person hearing on days 2 and 3 of the hearing (23<sup>rd</sup> February 2023 and 24<sup>th</sup> February 2023) prior to the Claimant giving evidence but the Claimant herself requested that the hearing continue to take place remotely.
28. Having considered the submissions of the parties, all the circumstances and my powers under Tribunal Rules 75, 76 and 80, I find that the Respondent breached the case management order.
29. The breach of the case management order gives me the power to make a costs order but having considered whether to exercise my discretion to do so, I decline to do so for the following reasons.
30. There were breaches of that order by both parties and the Claimant's breach in failing to provide disclosure until shortly before the hearing date contributed to the Respondent's breach.
31. Further, the Claimant's solicitors requested a hard copy bundle to be sent solely to Claimant's counsel, not to the Claimant herself despite the express

- enquiry of the Respondent. Had the Respondent sent a hard copy to Claimant's Counsel as requested, it would have been compliant with the case management order notwithstanding that they did not also send a hard copy to the Claimant herself. For the reasons at paragraphs 24 and 25 above, it was not the Respondent's failure to provide a hard copy of the bundle to Claimant's Counsel which caused the Claimant's solicitors to prepare a paper bundle on 23<sup>rd</sup> February 2023.
32. Although there was a failure to comply with the case management order, I do not find that the Respondent's conduct of the case was vexatious, abusive, disruptive, improper, unreasonable or negligent in all the circumstances.
  33. Further, and in any event, the costs claimed were not necessarily incurred. When the problems arose during the hearing on 23<sup>rd</sup> February 2023, the Claimant's solicitors were not **required** to provide a hard copy bundle to the Claimant. That was merely one of 3 available options to ensure that no further disruption to the hearing was caused as a result of the Claimant's lack of prowess with technology. The costs incurred in producing a hard copy bundle could have been avoided by the Claimant attending the Tribunal and/or attending the hearing from her solicitors' office (an option proposed by her Counsel).
  34. Nor are the claimed costs reasonable.
  35. The costs sought by the Claimant are inconsistent. Courier costs (unspecified) and attendance by the Claimant at the solicitors' office to collect the bundle (amount unspecified) are both sought.
  36. Further, the claimed costs are excessive. All that was required was printing and binding of the 355 page electronic bundle, which could have been undertaken by a low grade fee earner at a more reasonable hourly rate and should not have taken more than about 30 minutes. Even taking into account that the bundle needed to be produced quickly, I can see no reasonable justification for the printing of an existing 355 page bundle to necessitate 2 hours of fee earner time at a rate of £282/hr. There should have been no need to print the bundle out of hours as the various options were first raised with the Claimant and her representatives at around 15:25 and the Tribunal hearing concluded at 16:48 on 23<sup>rd</sup> February 2023.
  37. Accordingly, the Claimant's application for costs, whether made under Rule 76 or Rule 80, is dismissed.

Employment Judge Clarke  
Date: 10<sup>th</sup> March 2023