



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms A Hodis

**Respondent:** Adam Grooming Atelier Ltd

**Heard at:** Central London Employment Tribunal (by CVP)  
**On:** 27 February 2023

**Before:** Employment Judge Keogh

## Appearances

For the claimant: Ms L Amartey (Counsel)

For the respondent: Ms S Younis (Litigation Consultant)

# JUDGMENT

1. The respondent's application for costs under Rule 76 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 against the claimant and her former representatives is dismissed.

# REASONS

1. At a case management hearing on 27 February 2023 the claimant's application to amend her claim was refused, with the result that all of her claims had been dismissed at the previous hearing in December 2022. The respondent indicated that it wished to make a costs application against both the claimant and her previous solicitors, and directions were given for such an application to be made by 6 March 2023. I indicated that a decision would be made on paper unless any person applied for the matter to be heard at a hearing.
2. On 10 March 2023 the respondent made an application for costs under Rule 76 in the sum of £1,435. While this was beyond the date set out in the case management order of 27 February 2023 it was nevertheless within 28 days of the hearing.
3. In summary, the respondent submitted that the claimant had ample time to plead her claim since June 2022 and made no attempt to do so until her Amended Particulars of Claim were received. She was legally represented

at the previous hearing which, it is alleged, could not proceed because of the claimant's actions or those of her legal representatives. It is noted that Employment Judge Hodgson dealing with the first preliminary hearing considered the claimant's conduct to have been unreasonable. The claimant had failed to set out any breach of contract claim clearly in the claim form and had taken no steps to amend the claim form. The breach of contract claim was in any event out of time and the claimant knew there were no reasonable prospects of success. In the alternative the costs incurred at the hearing on 7 December 2022 were wasted due to lack of preparation by the claimant and/or her legal representatives.

4. The claimant's response to the application is that she had a legitimate and reasonable basis for pursuing the claim. The claim was not frivolous or vexatious and was based on a genuine dispute. The claimant contends she has acted reasonably and cooperated with the respondent throughout the litigation. She draws the Tribunal's attention to alleged mismanagement by her former solicitors and notes that the costs claimed are disproportionate and that she is suffering from financial hardship.
5. The claimant's former solicitors also object to the application. A timeline of its involvement in the litigation is set out. In short, it is suggested that the claimant herself was responsible for all preparation for the hearing in December 2022, with the solicitors arranging only representation by counsel. It is noted that just because a claim does not succeed does not mean it had no prospects of success, less still that the claimant knew it had none. At the hearing in December 2022 Employment Judge Hodgson accepted the possibility that there was a successful breach of contract claim and granted the claimant permission to make an application to amend, to be considered at a future hearing. The hearing in December 2022 was effective and did proceed. Many of the claimant's claims were withdrawn. An application for strike out of the claim or a deposit order was refused. In relation to Employment Judge Hodgson's view that there had been unreasonable conduct, this was only because the respondent had been denied the opportunity to put relevant evidence before the Tribunal. No evidence was subsequently provided for the hearing in February 2023. It is further noted that Rule 76 requires a party to make payment. An application against a representative needs to be made under Rule 80.
6. Neither of the parties requested a hearing to consider this matter. The claimant's former solicitors invited me to reject this matter on paper, and if serious consideration was to be given to a costs order against them then a hearing should be convened. Taking into account the overriding objective I considered it proportionate to deal with this matter on paper.
7. Rule 75 provides:
  - (1) *A costs order is an order that a party ("the paying party") make a payment to—*
    - (a) *another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;*
    - (b) *the receiving party in respect of a Tribunal fee paid by the receiving party; or*

*(c) another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal.*

*(2) A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing...*

8. Rule 76 provides:

*(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;*

*(b) any claim or response had no reasonable prospect of success...*

9. Rule 80 provides:

*(1) A Tribunal may make a wasted costs order against a representative in favour of any party ("the receiving party") where that party has incurred costs—*

*(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or*

*(b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay.*

*Costs so incurred are described as "wasted costs"...*

10. In ***McPherson v BNP Paribas SA (London Branch)*** [2004] ICR 1398 the Court of Appeal indicated that in considering whether to make an award of costs against an applicant who had withdrawn a complaint, an Employment Tribunal should ask itself whether, in all the circumstances, the applicant had conducted the claim unreasonably not whether the withdrawal of the claim was in itself unreasonable. There was no requirement that a party only pay the costs attributable to specific instances of unreasonable conduct.

11. I was also referred to ***Dyer v Secretary of State for Employment*** UKEAT/183/83.

12. The first point to note is that there is no application for wasted costs made against the claimant's former solicitors which would require them to make a payment to the respondent. In any event the timeline provided (which the claimant has not sought to correct) demonstrates that the claimant's solicitors were not themselves responsible for the preparation of the hearing in December 2022 but only for arranging representation at that hearing. Further they were not formally on the record as acting for the claimant. In the circumstances there is no identified improper, unreasonable or negligent act or omission which could give rise to a wasted costs order in any event.

13. I therefore consider whether the claimant or her representatives have 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, and/or whether the claim or response had no prospect of success.

14. There is no evidence that the claimant's former solicitors themselves acted vexatiously, abusively, disruptively or otherwise unreasonably in the way in which proceedings were conducted (having been instructed after they were brought). The claimant was responsible for all preparation for the hearing in December 2022.
15. I turn to the claimant's own involvement. Prior to the hearing in December 2022 the claimant was a litigant in person. She brought a variety of complaints which were properly withdrawn once she had legal representation at the hearing (save for the redundancy pay claim, which appears to have been overlooked). The only issue outstanding was whether she also had a breach of contract claim. An oral application was duly made. I accept the submission made by the claimant's former solicitors that the only reason her conduct was found to be unreasonable in that regard was that there was no notice given to the respondent to enable it to provide relevant documentation. However, as discussed in my case management summary, it had failed to do so by the hearing in February 2023, taking the matter no further. Had the respondent indicated that there was no pertinent information to be provided Employment Judge Hodgson may well have been able to deal with the oral application on that date and not list a further hearing. Employment Judge Hodgson did consider that there might be a valid breach of contract claim and declined to strike the matter out or to make a deposit order. The claimant did not therefore act unreasonably in pursuing the application to a further hearing. In the circumstances I conclude that the claimant's conduct overall in the proceedings was not unreasonable. Nor was it vexatious, abusive or disruptive.
16. I go on to consider whether the claim had no reasonable prospect of success. The respondent relies on the breach of contract claim being out of time. However, here there was an application to amend the claim to include a breach of contract claim. This was a procedural application and not part of the claim itself (*Warburton v Chief Constable of Northamptonshire* [2022] EAT 42). Such claims as were included in the claim form were withdrawn and no conclusions have been reached as to whether those parts of the claim were meritorious or not. Costs do not automatically follow the event, and I reject the respondent's submission that the claimant knew her claim had no prospects of success. The claimant was a litigant in person when the claim was drafted, and took proper steps to withdraw elements of her claim when she was first represented.
17. In the circumstances I conclude that I should not exercise discretion to award costs in this case.

Employment Judge Keogh

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4 May 2023

JUDGMENT & REASONS SENT TO THE PARTIES ON

04/05/2023

FOR THE TRIBUNAL OFFICE