



EMPLOYMENT TRIBUNALS

Claimant: Mr Jason King

Respondent: Peter's Food Services Limited

Judgment

1. The application for a preparation time order under rule 76(1) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237 is dismissed.

Reasons

Introduction

2. On 7th December 2022 the Claimant succeeded in his claim of unfair dismissal against the Respondent. An application was made on 12th December 2022 for a preparation time order under rule 76(1) Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013/1237 ('the Procedure Rules').

3. By email of 20th January 2023 the Respondent was required to provide a response within 7 days. By email of 27th January 2023 the Respondent's solicitors stated they were objecting to the order being made, however submissions were still waiting sign off by the client. This objection was followed by submissions on 29th January 2023. These submissions were accepted by the tribunal.

4. The tribunal wrote to the parties on 5th April asking the parties to indicate whether the application would be dealt with on the papers or whether a hearing is

required. By email of 5th April 2023 the Claimant indicated he was happy for the case to be dealt with on the papers. By email of 11th April 2023 the Respondent indicated it was happy for the matter to be dealt with on the papers.

5. By email of 11th May the tribunal informed the parties that the matter would be dealt with on the papers and invited any further submissions by no later than 4pm on 24th May 2023. No further submissions have been received.

Application

6. The claimant gives 3 reasons for requesting that a preparation time order be made:

- a The Respondent disclosed documents late and only disclosed copy documents.
- b Some email chains were redacted as part of the final hearing bundle without good reason.
- c That the response had not reasonable prospect of success.

The Law

7. Rule 76 of the Procedure Rules states:

“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;

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.”

16. Costs awards in the Employment Tribunal are the exception rather than the rule: *Yerrakalva v Barnsley Metropolitan Borough Council and nor 2012 ICR 420, CA* paragraph 7. A tribunal is first required to consider whether a ground for costs is made out and, only if so, whether it should exercise its discretion to award costs.

Ground 1: Vexatious, abusive, or unreasonable conduct

17. The Claimant is correct to say that documents at pages 143 – 146 of the bundle had been more heavily redacted than documents previously disclosed to the Claimant. The Claimant did not mention this until at the hearing. At this point the Respondent provided copies of the less redacted emails. I find this redaction to be a genuine mistake borne out of a misunderstanding of UK-GDPR. It was quickly remedied, and concerned issues that were not central to the decision finally made. This conduct was not vexatious, abusive or unreasonable.

18. The Claimant further asserts that certain documents were only disclosed on 17th November 2022, 4 months after the original disclosure deadline of 29th July 2022. This is denied by the Respondent who says that they had been. I have no evidence to determine this either way. However, it is clear that the Claimant had copies in good time to prepare before the final hearing. The second allegation is that the original documents were not disclosed. The Respondent has explained that it kept hardcopies which were scanned in November.

19. Again, I do not consider that the Respondent's behaviour was vexatious, abusive or otherwise intended to hinder the fair disposal of proceedings. These

documents did not materially prejudice the Claimant in preparing his claim in any event.

Ground 2: No reasonable prospects of success

20. This is a case where the claimant's complaints of unauthorised deduction from wages and wrongful dismissal was not well-founded and the response to these elements of the claim were clearly not unreasonable. The Claimant also made a complaint that he had not received a copy of his employment contract. I found he had received this contract. There were therefore a number of elements to the Claimant's claim where he failed.
21. The Claimant did succeed in his claim for automatically unfair dismissal. However just because an element of the claim succeeds does not mean the Respondent was unreasonable in resisting the claim. Ultimately, the question turned on whether the Claimant had been physically sick and had thus been required to leave work for food hygiene reasons. The Respondent's position was that they did not believe he genuinely had been sick. This was not an unreasonable position to take on the evidence in front of me. I found as a fact that the Respondent had honest concerns about the genuineness of some of the Claimant's absences.
22. Furthermore, the period of loss over which the Claimant can claim the compensatory award was reduced to 2 weeks on the basis that he would have been dismissed after that period in any event.
23. For all the reasons above, I do not find that the Respondent's case had no real prospects of success.

Discretion

24. The tribunal can only exercise its discretion to award costs if the tests for unreasonable behaviour or no reasonable prospects are met. I have found they are not and so the issue of discretion does not arise.
25. However, even if the tests were met, I would not have exercised the tribunal's discretion to award costs in this case on the basis it would have not been just and equitable to do so.
26. It remains a fundamental principle that the purpose of an award of costs is to compensate the party in whose favour the order is made, and not to punish the paying party: *Lodwick v Southwark London Borough Council 2004 ICR 884, CA*. The time claimed does not demonstrate that any of the Respondent's actions resulted in significantly more time being spent on the case than would have otherwise been necessary.

Conclusions

19. For the reasons given above, I decline to make a time preparation order.

Employment Judge Grubb

Date: 26th May 2023

REASON SENT TO THE PARTIES ON 7 June 2023

FOR THE TRIBUNAL OFFICE Mr N Roche

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