



EMPLOYMENT TRIBUNALS

Claimant: Mrs Y Zhang

Respondent: 1. EcoCell Store Limited 2. Charge Point EV Limited

JUDGMENT

The Claimant's application for a preparation time order is dismissed.

REASONS

Introduction

1. On 15 February 2023 my judgment in this case was sent to the parties. By that judgment, I awarded the Claimant the total sum of £2,694 in respect of various allegations of unlawful deductions and breach of contract. Certain other claims that the Claimant sought to raise were dismissed.
2. On 3 March 2023 the Claimant wrote to the Tribunal, applying for a preparation time order in the total sum of £1,845. The application set out how this sum had been calculated, but did not detail the basis upon which it was said that the Claimant was entitled to a preparation time order.
3. On 6 March 2023 the Respondents wrote to the Tribunal, opposing the Claimant's application.
4. The matter was subsequently referred to me. I considered that the Claimant had not identified a basis for making a preparation time order. I accordingly directed that if the Claimant wished to pursue her application for a preparation time order, then she should by 6 April 2023 write to the Tribunal and to the Respondents, setting out:

(1) Which of the gateway(s) in rule 76 of the Employment Tribunal Rules of Procedure 2013 ('the Rules') was relied upon.

(2) The reasons why she relied on this gateway.

5. A letter requesting this information was sent to the parties on 9 March 2023. The letter also stated that:

If the Claimant does not write to the Tribunal and Respondent providing the requested information by 6 April, then I will enter a judgment dismissing the application for a preparation time order.

6. The Claimant has not written to the Tribunal or to the Respondents with the requested information. The Claimant has not written to the Tribunal withdrawing her application for a preparation time order, but she does not appear to have taken any steps to pursue it.
7. On 18 April 2023, the Respondents wrote to the Tribunal, copying in the Claimant, asking that the application be dismissed.

Relevant Law

8. As was also set out in the letter that was sent to the parties on 9 March 2023, and in the Respondents' response to the Claimant's application, a preparation time order may only be made in certain limited circumstances. Those circumstances are set out in rule 76 of the Rules, to which the letter of 9 March drew the parties' attention. The first two subparagraphs of rule 76 contain the following provisions (I have omitted rule 76(1)(c), which appears to me to be irrelevant to this case):

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

(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.

9. The remainder of rule 76 sets out various other circumstances where a costs or preparation time order may be made, but they do not seem to me to have any relevance here.
10. The gateways set out in rule 76 are necessary, but not sufficient, preconditions to the making of a preparation time order. Even if the Tribunal concludes that one or more of the gateways is open, it must still go on to consider whether or not to exercise the power to make an order: **Hossaini v EDS Recruitment Ltd** [2020] ICR 491, per Her Honour Judge Eady QC (as she then was) at

paragraph 64.

11. The mere fact that a party has not succeeded in all or part of its case, or has not had some or all of its evidence accepted, does not necessarily amount to conduct falling within rule 76(1)(a). Nor does the fact that a party has not ultimately been successful on some or all of its case mean that that party's case had no reasonable prospect of success. It is quite possible for a party to lose on a case or part of case, but nonetheless to have acted reasonably in pursuing its side of the dispute, and to have had a reasonable prospect of succeeding. Indeed, this will be so in the large majority of cases – most parties that lose on a case or an issue have not acted in a way which opens one of the gateways to the making of a preparation time order.

Decision

12. The application for a preparation time order is dismissed, for the following reasons:
 - (1) By the Tribunal's letter of 9 March 2023, the Claimant was asked to provide information in support of the application, and was warned that the application would be dismissed if the information was not provided by 6 April 2023. The information was not provided. In the circumstances, it appears clear that the application is not pursued.
 - (2) In any event, even if the application is pursued, I do not consider that any grounds for making a preparation time order are made out. The Claimant's original application did not articulate any such grounds, and despite being given a further opportunity to set out such grounds, none have been provided. I have also considered whether any of my findings from the final hearing, or anything else that I am aware of in relation to this case, shows that one of the grounds for making an order is present, and I do not consider that any ground is present.
 - (3) I make the particular point that the mere fact that the Claimant succeeded on part of (but not on the whole of) her case does not lead me to consider that the Respondents acted unreasonably, or that the response had no reasonable prospect of success. As the Respondents pointed out in their response to the preparation time order application, the Claimant succeeded on some parts of her case, but she failed on others. There were a number of disputed facts, and on many of those I accepted the Claimant's evidence, but on some others I accepted the Respondents' evidence. None of this leads me to think that either party acted unreasonably or had no reasonable prospect of success. It simply reflects a hard-fought case in which neither party achieved an absolute victory.

Employment Judge **Varnam**

20 May 2023

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE