



EMPLOYMENT TRIBUNALS

Claimant: MR KAPILYA NYIRENDA
Respondent: VIRGIN MEDIA LIMITED
Heard at: London South ET by CVP **On:** 30 June 2023
Before: Employment Judge Hena

Representation
Claimant: None Attendance
Respondent: Mr Green, Counsel, Ms Othen, Instructing Solicitor

JUDGMENT

The Tribunal makes the following decision in relation to the costs application made by the respondent following an application to Strike Out at a Final Hearing on 30 June 2023:

1. The respondent's application for costs made on 30 June 2023 pursuant to Rule 77 of the Employment Tribunal Rules of Procedure succeeds.
2. The claimant is ordered to pay the respondent their Counsel's costs of £1,500.
3. If the claimant disagrees with this decision, which was made in his absence, he is reminded of his right to apply for reconsideration of this judgment with evidence and reasons supporting his application. He may do so **within 14 days of upon receiving this judgment.**

REASONS

Preliminary Issue

1. The application for costs proceeded in absence of the claimant pursuant to Rule 47 of the Tribunal Rules, the Tribunal was satisfied the claimant had notice of the final hearing, had not engaged with the response since the 7 June 2023 and had disconnected calls to him.
2. There were some difficulties with the respondent hearing the Employment Judge during the course of the hearing, despite the mic being tested. The respondent's Counsel made submissions and suggested an Unless Order in the event the claimant could prove he was unable to pay the costs awarded. The Tribunal upon consideration of this suggestion feels this could cause confusion and complication

and instead finds that reminding the claimant of his right to reconsideration of this judgment is a sensible approach.

Unreasonable Conduct

1. The Tribunal needed to consider Rule 76 (1) (a) and (b) of the Employment Tribunal Rules of Procedure when considering whether to award costs. The first limb of the test was assessing if the respondent behaved in an unreasonable way in their conduct of the proceedings.
2. In assessing this I have considered the following:
 - (i) The respondent's correspondence to the claimant to engage with his claim, namely the costs warning letter on 7 June 2023, which was sent due to the claimant's inactivity and their assessment of his claim to be weak.
 - (ii) The claimant's clear warning that by pursuing to final hearing they would incur costs which included Counsel's costs of £1,800.
 - (iii) The claimant has failed to produce a witness statement in this matter to support his claim.
 - (iv) The claimant has failed to produce a schedule of loss, so it is not known what he is claiming or pursuing from the respondent.
 - (v) The respondent failed to engage with the Tribunal when an email was sent and phone calls made the morning of the hearing, 30 June 2023.
 - (vi) The claimant provided no evidence to support his claim despite indicating he was still interested in pursuing the claim.
3. Given the findings in paragraph 2 it is clear that the claimant failed to conduct the proceedings in a reasonable manner, and it is under this limb that I find the claimant should pay the respondent's costs.

Notice of Costs Application

4. The Tribunal is satisfied that the claimant had notice this was a final hearing which would deal with remedy. Further the claimant received a costs warning letter from the respondent on 7 June 2023 which indicated they would be incurring Counsel's fees of £1,800 and they would pursue their costs in the event he did not succeed.
5. Further to this the Tribunal notes that the claimant has failed to actively engage in his claim and repeatedly disconnected calls from the Tribunal to him on 30 June 2023.

What Costs Should be Awarded

6. The respondent has not sought their full costs in this matter, only Counsel's costs, they have reduced the sum from £1,800 to £1,500. This sum appears reasonable considering the work undertaken by the respondent.

Employment Judge Hena
Date: 30 June 2023

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