



EMPLOYMENT TRIBUNALS

Claimant: Mr. G Needham

Respondent: Malvern Tyres (Wholesale) Ltd

COSTS ORDER AND REASONS

1. The claimant issued a claim to the Employment Tribunal on 12 October 2020 for unfair dismissal and race discrimination.
2. On 9 April 2021 the Tribunal held a preliminary hearing which was attended by the claimant in person and by the respondent's counsel. EJ Butler made an order requiring both parties to comply with various case management directions. EJ Butler issued a strike out warning to the claimant in respect of his unfair dismissal claim and ordered him to provide more information about that. The claimant failed to comply with any of the orders, including the order relevant to the strike out warning. He did not actively pursue the claim after the 9 April 2021 hearing and he did not contact the respondent or the Tribunal to explain that he no longer wished to pursue the claim or simply to withdraw it.
3. On 20 May 2021 the respondent applied to strike out the claimant's claim or for an unless order. Further correspondence was sent by the respondent to the Tribunal on 25 November 2021 which explained that they had received no further communication from the claimant and making a further request to strike out the claim. The Tribunal sent a strike out warning to the claimant on 13 March 2023. The claimant did not respond. As a result, I struck out the claimant's claim on 17 April 2023.
4. On 10 May 2023 the respondent made an application for costs. The application was made under Rule 76 of the Tribunal's rules of procedure. Rule 76 provides that the Tribunal has a discretion to make a costs order in circumstances where a party has acted vexatiously, disruptively, or otherwise unreasonably in the bringing or conducting of the proceedings, or a part of them (Rule 76(1)). A tribunal may also make a costs order where a party has been in breach of any order or practice direction (Rule 76(2)). I have had regard to Rule 76.

5. The respondent submits that the claimant's conduct in bringing the claim and not taking any steps whatsoever to comply with the Tribunal's orders is conduct to justify the Tribunal making of a costs order on the basis of the relevant parts of Rule 76 as referred to above. The respondent also points out that if the claimant wished to withdraw his case this should have been swiftly communicated to the respondent to minimise its exposure to further legal costs. Instead, the claimant ignored numerous letters from both the respondent and the Tribunal, and required the respondent's attendance at the Preliminary Hearing on 9 April 2021. These matters are also relied upon as unreasonable conduct to justify making a costs order under Rule 76. The respondent enclosed a signed Statement of Costs which set out the costs that the respondent has incurred. The respondent has incurred £4,275.50 in costs and it seeks an order that the claimant pay that amount.
6. On 6 June 2023 I wrote to the parties as follows: *"Unless the parties request otherwise I propose to deal with the respondent's costs application in writing. The claimant has 14 days from the date this letter is sent to make any representations in writing in response to the costs application. If he wishes the tribunal to take into account his means the claimant must provide information as to his means, including full details of all his income and outgoings, savings and assets. If the claimant does not respond the tribunal will determine the costs application without the benefit of his representations."*
7. Neither party requested that I should deal with the application at a hearing rather than in writing. The claimant did not make any representations in response to the application or provide any information as to his means. I shall therefore determine the costs application without the benefit of the claimant's representations, as I indicated I would.
8. I find that the claimant's conduct of these proceedings has clearly been unreasonable. He has not complied with any case management orders and he has not explained why not. He appears to have taken a decision not to continue with his claim but has failed to inform the respondent or the Tribunal about that. The claimant should have thought about whether he really wanted to pursue his claim at an early stage and withdrawn it if he didn't want to. The respondent has incurred costs unnecessarily as a result of the claimant's unreasonable conduct. I consider that I should exercise my discretion to award costs because the claimant continues to ignore the tribunal process. He has not responded to my letter giving him a fair opportunity to provide any representations and therefore there is no basis for me to consider that I should not exercise my discretion to award costs.
9. I remind myself that a costs order should be compensatory and not punitive. The costs should be limited to those which have been reasonably and necessarily incurred. Proportionality is relevant.
10. The costs claimed by the respondent are in my view high considering the lack of progress which has been made in dealing with this claim. I assess the costs

reasonably and necessarily incurred as £2200. This includes counsel's fee for attendance at the hearing plus a reasonable figure for preparation. I think this is a proportionate figure to expect the claimant to pay and adequately compensates the respondent for the costs incurred as a result of the claimant's unreasonable conduct.

11. I therefore order the claimant to pay the respondent £2200 in respect of the respondent's costs.
12. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Employment Judge Meichen

Date 10.7.23

Sent to the parties on: 14th July 2023

For the Tribunal Office:

Gulfaraz Amjad

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