



THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Dunn

Respondent: CGB Humbertherm Ltd.

Heard at: Leeds by CVP video link

On: 1 August 2023

Before: Employment Judge Shepherd

**Members: Ms Lee
Mr Lannaman**

JUDGMENT ON APPLICATION FOR COSTS

The unanimous judgment of the Tribunal is:

The respondent's application for costs succeeds and the claimant must pay the respondent the sum of £400.00 towards its costs

REASONS

1. The judgment of the Tribunal in respect of the claims brought by the claimant was sent to the parties on 13 April 2023. The judgment was that the claim brought by the claimant of refusal of employment on grounds related to union membership was not well-founded and was dismissed and any claim of detriment on the ground that the claimant had made a protected disclosure was not well founded and was dismissed.

2. On 21 April 2023 the respondent made an application for costs. It was stated that the respondent made the application against the claimant on three grounds:

- i) That the Claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing the proceedings (or part); and, or in the alternative

- ii) That the Claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in the way the proceedings (or part) have been conducted; and
- iii) That the claim had no reasonable prospect of success.

3. The respondent requested that the costs application should be dealt with “on the papers” without the need for an oral hearing.

4. On 3 May 2023 the Tribunal wrote to the parties indicating that if the claimant wished to make any written representations in response to the respondent’s application for costs he must send them to the Tribunal and the respondent within 14 days. It was indicated that the Tribunal intended to deal with the respondent’s costs application on paper. If the claimant wished the Tribunal to hold a hearing to decide the costs application rather than dealing with it on the papers alone, he should confirm that as well.

5. The respondent’s application referred to the claimant having been ordered to cease sending reams of irrelevant and abusive email to the Tribunal and the parties but he continued to do so and his behaviour throughout these proceedings was vexatious, abusive, disruptive and/or unreasonable.

6. The respondent referred to the claimant’s failure to comply with Case Management Orders.

7. At the hearing, despite being warned repeatedly and exhaustively that the matter would not be recorded, the claimant behaved exactly as he had done on other cases, walked out having had his demands for the matter to be recorded refused. Such conduct was vexatious, abusive, disruptive and/or unreasonable.

8. It was submitted that, in terms of the merits of the case itself, as is clear from the Judgment, the entire claim was based on pure speculation. The Claimant never applied for a job with the Respondent, either directly or indirectly. He had absolutely no evidence to support that contention when he brought the claim which was confirmed absolutely via disclosure and witness evidence. Indeed, the Claimant never actually pointed to any date or time when he did apply. Further, he had no evidence at all to support a contention that the Respondent had any knowledge of who he was or his alleged Trade Union activities, which to this day remain unspecified.

9. It was also submitted that granting this application would deal with the case fairly and justly and it simply cannot be right for a claimant to behave in the manner set out without consequence.

10. The costs hearing was listed for 1 August 2023 and it was indicated that the respondent’s application would be dealt with on paper by the Tribunal panel.

11. On 24 July 2023 the claimant sent an email to the Tribunal stating:

"I am writing regarding my financial circumstances.

I Can prove I have not worked since 2012.

Had 2 daily break ups 2016, 2023 regarding the stresses of no work, money

I had to get a debt relief order 2019 as my debts snowballs through no work

All can be proven

I'm now homeless and universal credit csn prove this

I've asked in court many times to go through my finances

I'm completely broken ,homeless, farther less

I have nothing to give even if I get a costs order, not a higher to live in

I'm a broken ,skint, man"

The law

12. The Employment Tribunal is a completely different jurisdiction to the County Court or High Court, where the normal principle is that "costs follow the event", or in other words the loser pays the winner's costs. The Employment Tribunal is a creature of statute, whose procedure is governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Any application for costs must be made pursuant to those rules. The relevant rules in respect of the respondent's application are rules 74(1), 76(1) and (2), 77, 78(1)(a), 82 and 84. They state:-

74(1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purposes of or in connection with attendance at a tribunal hearing).

76(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) had 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.

77 A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party, was sent to the parties. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may order) in response to the application.

78(1) A costs order may –

(a) order the paying party to pay the receiving party a specified amount not exceeding £20,000 in respect of the costs of the receiving party.

84 In deciding whether to make a costs, preparation time or wasted costs order and, if so, in what amount, the Tribunal may have regard to the paying party's ability to pay.

13. The discretion afforded to an Employment Tribunal to make an award of costs must be exercised judicially. (**Doyle v North West London Hospitals NHS Trust UKEAT/0271/11/RN**). The Employment Tribunal must take into account all of the relevant matters and circumstances. The Employment Tribunal must not treat costs orders as merely ancillary and not requiring the same detailed reasons as more substantive issues. Costs orders may be substantial and can thus create a significant liability for the paying party. Accordingly, they warrant appropriately detailed and reasoned consideration and conclusions. Costs are intended to be compensatory and not punitive. The fact that a party is unrepresented is a relevant consideration. The threshold tests may be the same whether a party is represented or not, but the application of those tests should take account of whether a litigant has been professionally represented or not. (**Omi v Unison UKEAT/0370/14/LA**). A litigant in person should not be judged by the same standards as a professional representative as lay people may lack the objectivity of law and practice brought to bear by a professional adviser and this is a relevant factor that should be considered by the Tribunal. (**AQ Limited v Holden [2012] IRLR 648**). The means of a paying party in any costs award may be considered twice – first in considering whether to make an award of costs and secondly if an award is to be made, in deciding how much should be awarded. If means are to be taken into account, the Tribunal should set out its findings about ability to pay and say what impact this has had on the decision whether to award costs or an amount of costs. (**Jilley v Birmingham & Solihull Mental Health NHS Trust UKEAT/0584/06**).

14. There is no requirement that the costs awarded must be found to have been caused by or attributable to any unreasonable conduct found, although causation is not irrelevant. What is required is for the Tribunal to look at the whole picture of what happened in the case and to identify the conduct; what was unreasonable about the conduct and its gravity and what effects that unreasonable conduct had on the proceedings (**Yerraklava v Barnsley MBC [2012] IRLR 78**). As was said by Mummery LJ in **McPherson v BNB Paribas (London Branch) [2004] ICR 1398**, that there is a balance to be struck between people taking a cold, hard look at a case very close to the time when it is to be litigated and withdrawing, on the one side of the scale, and others, on the other side of the scale, who do what may be described as raising a “speculative action”, keeping it going and hoping that they will get an offer. The same principle will apply in respect of respondent’s conduct in respect of unmeritorious responses.

11. The claimant did not have legal representation. Lord Justice Sedley in the case of **Gee v Shell UK Limited (2002) IRLR 82** stated that it is:

“A very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that – in sharp distinction from ordinary litigation in the United Kingdom – losing does not ordinarily mean paying the other side’s costs”.

12. That remains the case today. Costs are still the exception rather than the rule.

13. The Tribunal has taken into account the fact that the claimant is not legally represented. He has provided an indication that he is of very limited means. However, he has not provided a statement setting out his monthly income, expenditure and assets and liabilities as he was instructed to do.

14. The claimant has indicated that he has nothing to give even if a costs order is made. The Tribunal has considered the position carefully, including the prospects of the respondent recovering any costs and considers that an order for costs should be made which has a realistic prospect of being paid.

15. In these circumstances the Tribunal does not make an order for the claimant to pay all of the respondent’s fees. However, it is appropriate that the claimant should pay some of the fees incurred by the respondent. The bringing of a case that had no reasonable prospect of success and the unreasonable way in which the proceedings were conducted should be reflected in an order for costs.

16. In all the circumstances, the Tribunal finds it just and equitable to order the claimant to make a contribution towards the respondent’s costs.

17. The unanimous judgment of the Tribunal is that the claimant is ordered to pay to the respondent the sum of £400.00 inclusive of VAT.

Employment Judge Shepherd

1 August 2023

JUDGMENT SENT TO THE PARTIES ON

2 August 2023

AND ENTERED IN THE REGISTER

CM Haïnes

FOR THE TRIBUNAL OFFICE