



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr B Ganji

**Respondent:** London South Bank University

**UPON THE CLAIMANT'S APPLICATION** made by letter dated 18 July 2022 to reconsider the judgment dated 1 July 2022 under rule 71 of the Employment Tribunals Rules of Procedure 2013, and without a hearing,

## JUDGMENT

The costs order in the sum of £4000 dated 1 July 2022 has been reconsidered and the original decision is hereby confirmed. The sum payable remains £4000.

## REASONS

### Background

1. The Tribunal made an order (dated 1 July 2022) that the claimant should pay the respondent's costs in the sum of £4000. The claimant subsequently made an application for reconsideration of the costs order. The parties were notified in writing of my provisional view that there were no grounds to reconsider the making of the costs order in principle but that the amount of the costs order could be the subject of a reconsideration. The parties were given the opportunity to comment on whether the application could be dealt with without a hearing. Neither party's response addressed this issue.
2. The respondent was given the opportunity to respond to the application pursuant to rule 72(1) and did so by email dated 7 December 2022. The claimant's response to the Tribunal included further representations as to his financial means and indicated that he had sent financial documentation such as bank statements to the Watford Tribunal office in December 2022. That documentation had not been received and so the claimant was given a further opportunity to send any documents regarding his ability to pay the costs order to the Tribunal or, if he was unable to do so, a hearing would be required in order to consider the evidence in person at the Tribunal. Following further correspondence between the claimant and the Tribunal I

was informed that the relevant financial documents had been received by Watford Tribunal on 21 March 2023. Upon considering that information I determined that a reconsideration hearing was not required in the interest of justice and the application could be determined on the papers. This was because the main issue for consideration was the claimant's means to pay the costs award. The claimant had set out his position in full in writing and had been given the opportunity to provide evidence to substantiate his financial situation. The respondent had made representations in writing that the order should not be reconsidered inter alia because I had already made a reduction in award for the claimant's financial circumstances and because there was a public interest in finality of litigation. The respondent was being put to considerable cost and effort in responding to the claimant's ongoing correspondence and attempts to appeal previous judgments. I took the view that the claimant had been given ample opportunity to make his representations in writing and submit relevant documentary evidence for my consideration. He would gain nothing by repeating those arguments in person at a hearing. By contrast, by holding a further hearing I would subject the respondent to the further costs of attending which it would not be able to recoup. It was in line with the overriding objective to determine the application on the papers once both parties had been given ample opportunity to make written representations.

### **The parties' representations regarding reconsideration**

3. As required by rule 72(2) the parties were given a further reasonable opportunity to make written representations before I determined the application.

### **Respondent's representations**

4. The respondent replied to the Tribunal's correspondence by email dated 21 April 2023 indicating that the respondent's position remained unchanged from that stated in the correspondence to the Tribunal dated 7 December 2022. The respondent noted that the only real change in the circumstances was that the Tribunal was now in receipt of the claimant's financial documents. However, it was noted that copies of these documents had not been provided to the respondent. (The respondent's representative made no request for sight of copies of the same.) The respondent therefore repeated and reiterated the points made in its correspondence of 7 December 2022.
5. In the correspondence of 7 December 2022, the respondent made the following points:
  - a. A judgment should only be reconsidered when it is in the interests of justice to do so. The interests of justice include the interests of the party seeking the reconsideration and the interests of the other party to the litigation. The interests of justice also include the public interest in finality of litigation.
  - b. The Tribunal has already fully considered all the relevant facts during its consideration of the respondent's costs application.
  - c. The Tribunal has already taken into account the claimant's ability to pay the costs award. Even in the absence of the relevant

documentary evidence, the Tribunal reduced the costs award from £8000 to £4000.

- d. The Tribunal noted that it was not required to limit the amount of any costs award to the sum which the claimant has the financial ability to pay. Rather it was permitted to take ability to pay into account as a relevant consideration.
- e. The claimant had not provided any explanation as to why he did not provide the financial documents prior to the costs order being made.
- f. The claimant had failed to demonstrate that any new evidence now being relied upon met the test in Ladd v Marshall [1954] 1 WLR 1489 in that it (1) could not have been obtained with reasonable diligence for use at the original Tribunal hearing; (2) was relevant and would probably have had an important influence on the hearing (bearing in mind that the Tribunal was already on notice that the claimant considered himself to be of limited financial means and accounted for this in making the Order); (3) is credible (bearing in mind that no such documentation had (at that stage) been received by the Tribunal or the respondent).
- g. The Tribunal is entitled to reach a decision on the basis of the evidence available to them at the relevant hearing, particularly where parties have been given the opportunity to make representations and submit documentation.
- h. It is not in the interests of justice for the claimant to be given a 'second bite of the cherry' simply because he failed to adduce all the information in response to the application at the original hearing. A reconsideration is not an opportunity for the parties to re-argue their case, and a party's failure to raise a particular point or put certain documents before the tribunal as evidence should not constitute grounds for review and it is not in the interests of justice.
- i. Consideration of a party's ability to pay is not something which the tribunal must take into account in any event. Although a tribunal may take a party's ability to pay into account, this does not mean that 'poor litigants may misbehave with impunity and without fearing that any significant costs order will be made against them, whereas wealthy ones must behave themselves because otherwise an order will be made.'
- j. The Tribunal did in fact take account of the claimant's ability to pay, arguably to the respondent's detriment, given that there was no evidence before the Tribunal to this effect. This had the effect of reducing the costs awarded by half, which was advantageous to the claimant and, the respondent says, went further than was necessary to afford leniency to the claimant in the circumstances.
- k. It is not in the interests of justice to reconsider the decision. It would infringe on the principle of finality of litigation. It also ignores the very significant costs that the respondent is put to in considering and dealing with the claimant's ongoing applications for reconsideration and appeals to the EAT. The costs order represents a very small part of the total costs incurred by the respondent and there is therefore no compelling reason why any aspect of the order should be reconsidered in the circumstances.

### Claimant's representations

6. In his reconsideration application the claimant provided me with further information about his financial circumstances together with bank statements. He had previously asserted that he had been unable to pay his mortgage for six months. I received no documentation from the mortgage provider to corroborate this. He had indicated that he had been required to pay privately for his mother's healthcare. I have no details of the amounts concerned. He also indicated that his time was significantly taken up by his caring responsibilities for his mother. He indicated that BT had decided to stop providing some telephony/internet services to his home because he was unable to pay for these services. He forwarded an email to the Tribunal to confirm this.
7. The claimant gave details of his financial means. He indicated that his "Advance" bank account had a debit balance of £1971.43 out of an overdraft limit of £2000. This was later confirmed by a copy of the relevant bank statement for the period 14 June to 13 December 2022 which had an opening balance of minus £1983.00 and a closing balance of minus £1985.03. This may be the claimant's main bank account for his outgoings as it contains debits for Council Tax and various utilities. Various cash sums were paid into the account over time together with other sums. Mortgage payments were made in the sum of £300 to £500 per month in July to November 2022. Small payments (which appear to be dividends) were also paid in (e.g. BP Plc dividend). There are no obvious payments out to supermarkets in respect of the claimant's food bills. It is possible that the claimant has another bank account for such outgoings.
8. The claimant's Variable Rate Cash ISA had an opening balance of £157.58 in December 2021 and a closing balance of £138 in November 2022. The claimant's flexible saver account had a balance of £370.07 to 345.74 between December 2021 and December 2022. The claimant's HSBC current account had a balance of £19.66 between March 2021 and March 2022.
9. The claimant asserted that he had a credit card which had a debit balance of £3722.82 out of a credit limit of £5000 as of 19 July 2022. There was no credit card statement to confirm this. He indicated that his dividends from shares amounted to less than £200 per year. The claimant said that the HSBC financial support group had given him a 'breathing space' period to resolve his financial problems. There was no document in support of that assertion.
10. The claimant indicated that he would qualify for State funds (i.e. State benefits) but had not had time to apply for them. This is not credible. If the claimant were in dire financial straits, an application for State benefits would be one of his first priorities as the most obvious way to keep himself afloat financially. There is no documentation to suggest he has ever applied for State benefits.
11. The claimant responded to the further opportunity to make written representations by email dated 25 April 2023 with attachments. He re-sent some of his earlier communications and re-summarised the points he had already made to the Tribunal. He reiterated his caring responsibilities for his mother and indicated that his mother has been in hospital since August

2022. As a result, the claimant's carer's premium has been cut (presumably because he does not have to care for her himself at home).

Decision on reconsideration

12. In the original costs decision, I took into account all the relevant matters, including the claimant's ability to pay. I took into account the fact that the claimant is Litigant in Person and assessed when he would first have been put 'on notice' of the risk of a costs order by the respondent's costs warning. I sought to take account of the impact of any order on each of the parties to the proceedings. I sought to take account of the extent to which the respondent's costs were increased by the claimant's unreasonable conduct.
13. I noted that the claimant owned his own home and had access to a credit card. I noted the stated market value of the claimant's home. I noted that the claimant said that he had been unable to pay his mortgage or his credit card balance. I noted that he had paid for private healthcare for his mother. I noted that he had already had the opportunity to provide financial documents in relation to his means to pay any award but had not done so. I also noted that there was nothing to suggest that he would be precluded from obtaining paid work in the near future.
14. Taking into account all the relevant considerations, and the information then available, I reduced the amount of costs I would otherwise have ordered by half (£8000 to £4000.)
15. My decision on reconsideration must consider whether it is necessary, in the interests of justice, to change the order I previously made on the basis of the evidence subsequently submitted and the representations subsequently made by the parties.
16. I previously set out the basis on which I made the costs order within the reasons section of the judgment dated 1 July 2022. I refer to that previous document and do not repeat the contents of the same herein. Upon determining that the test for an award of costs was satisfied, I considered the amount of the costs order. I assessed the appropriate award of costs attributable to the claimant's unreasonable conduct to be £8000 (out of a claim of £19,182.) I then reduced that award by half to £4000 in light of the available evidence about the claimant's ability to pay.
17. Having reviewed all the available evidence I am not satisfied that it is in the interests of justice to vary the amount of the previous costs order. The analysis of the documentation which I have set out above shows that some of the claimant's assertions about his financial situation have now been substantiated by the documentary evidence but some have not. In particular, the claimant's inability to service his pre-existing debts and mortgage payments has not been substantiated. The documents also do not show the claimant doing his best to maximise his income by obtaining State benefits or paid work.

18. I may or may not have been sent copies of the bank and credit card statements for all of the claimant's accounts. Whilst some of the accounts contain credits and debits to deal with his day-to-day living expenses, there are no obvious payments for day-to-day costs such as food bills. If this is indeed the totality of the documentation showing the claimant's financial position but he does not receive State benefits, then it is not clear how he has sustained his day-to-day living up to this point. Furthermore, I note that he has continued to make mortgage payments during the second half of 2022. The source of this money is unclear.
19. It is notable that whilst the claimant does not have *much* money in his ISA or flexible saver, he does still have that money. It has not been withdrawn. If he were in financial difficulties one would expect to see him gather together all his financial resources to pay off his debts rather than keep savings accounts open.
20. In light of the above I am not convinced that the amount of the costs order should be further reduced to reflect the claimant's inability to pay. It would not be necessary in the interests of justice to do so. I have already reduced the amount payable by half to take account of the claimant's financial circumstances. There is nothing in the documents which have now been provided which makes a significant difference to my assessment of the claimant's ability to pay. There is certainly a realistic prospect that he might at some point in the future be able to afford to pay the award of costs (Vaughan v London Borough of Lewisham and ors 2013 IRLR 713), particularly if he takes reasonable steps to manage his financial situation. The case law previously quoted also states that the Tribunal is not precluded from making a costs award where the paying party has financial difficulties. It is a matter which can be taken into account, but an impecunious party may still be subject to a costs order.
21. I also take into account the fact that the claimant had the opportunity to put forward this documentation when the costs application was first made and determined. He chose not to and has provided no explanation for this. On reconsideration he has essentially asked for a second bite of the cherry in relation to the costs application. The respondent's argument that this should not be allowed without good reason is a strong one. A reconsideration application should not be an opportunity for the parties to simply reargue their case.
22. In light of the arguments made and evidence provided I have concluded that it would not be in the interests of justice to vary the costs order as the grounds for making it are still made out. The claimant did act unreasonably in his conduct of the litigation despite the respondent having warned him of the costs consequences. He chose to persist in this course of action despite these warnings. Balanced against this, the claimant has provided some evidence to back up his assertion as to his financial circumstances. Whilst this may not provide a complete picture, it does suggest that the claimant is carrying some debt and has only limited savings. There are payments into his bank accounts and it is not clear what the source of that income is. Nor is it clear that the claimant has taken every reasonable opportunity to avail himself of the available financial support or to reduce his outgoings. He continues to maintain that he is paying the cost of his mother's health care without stating how he is funding that treatment.

23. In light of the foregoing the costs order is confirmed in its original form.

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Employment Judge Eeley

21 August 2023

JUDGMENT SENT TO THE PARTIES ON

29 August 2023

FOR THE TRIBUNAL OFFICE