



EMPLOYMENT TRIBUNALS

London South Employment Tribunal

Claimant: Nicola Richardson
Respondent: Greene King Retail Services Limited

Application for costs

Before: Judge M Aspinall (sitting alone as an Employment Judge)

JUDGMENT WITH REASONS

1. The Claimant is to pay a contribution towards the costs of the Respondent in the total sum of £1,000.

Introduction

2. This Judgment deals with the Respondent's application for costs following my decision on 16 August 2023 to strike out all the claims brought by the Claimant.
3. The Respondent seeks an order for costs pursuant to Rule 76 of the Employment Tribunals Rules of Procedure 2013 ("the ET Rules"). Rule 76 allows the Tribunal to make a costs order where a party or their representative has acted unreasonably in the conduct of proceedings or has been in breach of a Tribunal order.

Background and Chronology

4. The Claimant, Miss Nicola Richardson, presented various claims against the Respondent, Greene King Retail Services Limited, in November 2022. Her claims included unfair dismissal and disability discrimination.
5. A preliminary hearing took place on 13 March 2023 before Employment Judge Wright. At that hearing, the Claimant was ordered to provide further particulars in relation to her claim of disability discrimination by 3 April 2023.
6. Despite reminders from both the Respondent and the Tribunal, the Claimant failed to comply with the order to provide particulars by 3 April 2023.
7. On 7 June 2023, Employment Judge Martin wrote to the Claimant requiring her to comply with the earlier orders within 10 days to avoid the Tribunal issuing an Unless Order against her. The Claimant continued to disregard the Tribunal's directions.
8. On 7 July 2023, Employment Judge Fowell stated the Claimant's persistent non-compliance with orders would likely result in her claims being struck out. The Claimant was again warned to comply, or her claims may be struck out but she continued to ignore the Tribunal's instructions.
9. A preliminary hearing was listed on 16 August 2023 for the Respondent to make an application

to strike out the claims.

10. On 16 August 2023, the Claimant did not attend the preliminary hearing or make any contact with the Tribunal.
11. The Respondent attended the hearing and made an application to strike out all the claims due to the Claimant's unreasonable conduct in failing to comply with Tribunal orders and failing to actively pursue her claims over a prolonged period.
12. In a Judgment handed down on 16 August 2023, I struck out all the claims brought by the Claimant pursuant to Rule 37 of the ET Rules.
13. I found the Claimant had shown blatant disregard for the Tribunal's orders, despite repeated warnings about the consequences of continued non-compliance.
14. I concluded the Claimant's conduct had been unreasonable such that a fair hearing was no longer possible. Her sustained lack of engagement meant striking out was the appropriate and proportionate sanction.

The Respondent's Application for Costs

15. The Respondent made a prompt written application seeking an Order that the Claimant pay some or all the costs incurred in defending the proceedings.
16. The Respondent submitted, relying on Rule 76 of the ET Rules, that the Claimant had acted unreasonably and was in breach of Tribunal orders.
17. It was argued the Claimant had failed to engage in the litigation process, failed to comply with orders to provide further particulars, failed to attend the preliminary hearing, and failed to withdraw stale claims. This caused unnecessary inconvenience and expense to the Respondent.
18. The history of the Claimant's non-compliance and lack of engagement was set out, despite her having been warned repeatedly about the consequences.
19. The Respondent's total costs were said to be £7,638 plus VAT. Alternatively, costs from 14 March 2023 onwards were £3,629 plus VAT.
20. The Respondent proposed the application be determined on paper, allowing the Claimant to make written submissions in response.

The Claimant's Response

21. On 31 August 2023, the Claimant provided a written response to the Tribunal and Respondent.
22. The Claimant apologised for her conduct and lack of engagement. She explained she had faced difficulties in her personal and professional life which caused her mental health to decline.
23. The Claimant asked that I show leniency regarding costs given her explained personal circumstances. However, she did not directly address her ability to pay any costs ordered.
24. I made Case Management Orders on 19 August 2023 requiring the Claimant to formally set out her position on costs and whether she sought a hearing to determine the issue. The Claimant sent her response to the Respondent's costs application before those orders were sent out; she does not, now, need to comply with those orders.
25. The Claimant, in her response to the application made by the Respondent, did not ask for a hearing to address the question of costs. As the Respondent referred to the application being

determined on paper (by submissions) and the Claimant has provided a full response to their application, I am satisfied that the Claimant does not seek a hearing.

The Law on Costs Orders

26. The power to award costs is contained in the Employment Tribunals Rules of Procedure 2013 ("the ET Rules"). Rule 75(1) provides that a costs order includes an order that a party makes a payment to another party in respect of costs incurred while legally represented.

27. The circumstances in which the Tribunal may make a costs order are set out in Rule 76. Relevant to this case, Rule 76(1) states that the Tribunal may make a costs order 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."

28. When making a costs order for unreasonable conduct, the Tribunal's discretion is not limited to costs caused directly by specific identified unreasonable acts (**McPherson v. BNP Paribas (London Branch)** [2004] ICR 1398). The Tribunal should have regard to the nature, gravity and effect of the unreasonable conduct in exercising its discretion.

29. The Tribunal should look at the whole picture of what happened and consider whether there was unreasonable conduct in bringing and conducting the case (**Barnsley Metropolitan Borough Council v. Yerrakalva** [2012] IRLR 78 CA).

30. However, even litigants in person can be found to have behaved unreasonably and have costs awarded against them, whilst making allowance for their lack of experience and not holding them to the same standards as would be expected of a professional representative (**AQ Ltd v Holden** [2012] IRLR 648 EAT).

31. The Tribunal has discretion to consider the paying party's ability to pay, but this does not require costs to be limited to only what the paying party can afford (**Arrowsmith v Nottingham Trent University** [2012] ICR 159 CA).

32. In deciding whether to award costs, the Tribunal must determine: (1) whether the circumstances for a costs order in Rule 76 are engaged; (2) if so, whether a costs order should be made; and (3) if so, the appropriate amount (**Oni v Unison** [2017] UKEAT 0141/17/BA).

Discussion and Decision on Costs

33. The making of a costs order is a discretionary decision for the Tribunal. I have carefully considered the parties' submissions and the background history of this litigation.

34. I accept the Claimant faced certain personal difficulties during the period in question. However, none of those relieve her of the obligation to comply with Tribunal orders and progress her claims properly and reasonably. It would have been properly open to her to write to the Tribunal and the Respondent to briefly explain her difficulties and to ask for more time. She did not. As paraphrase what she said in her response to the application, she stuck her head in the sand.

35. The Claimant's wholesale failure to engage, over a period of several months, was unreasonable and caused unnecessary inconvenience and expense to the Respondent who continued to incur legal costs in defence of the claims.

36. I consider that some order for costs is appropriate given the Claimant's unreasonable conduct, including her breaches of clear Tribunal orders which ultimately, in combination with how she

had conducted the claims, led to her claims being struck out.

37. I have scrutinised the sums claimed by the Respondent for legal costs. I am satisfied from the provided schedule that they appear reasonable given the nature of the proceedings.
38. The total figure of £7,638 plus VAT reflects the costs of defending the claim overall, not just those caused directly by the Claimant's unreasonable conduct.
39. Doing the best I can on the limited evidence before me, I consider an award of £1,000 represents an appropriate contribution towards the Respondent's costs. I am satisfied this reasonably reflects the extent of the Claimant's unreasonable conduct whilst ensuring proportionality.
40. I have not been provided with formal evidence regarding the Claimant's means. However, I do take note of the health matters raised by the Claimant in her claim and in her response to the costs application.
41. In all the circumstances, I find the sum of £1,000 strikes a fair balance between recognising the Respondent's unnecessary expenditure resulting from the Claimant's unreasonable conduct whilst avoiding undue hardship on the Claimant.
42. I also bear in mind that a costs award acts as a deterrent. The Claimant must appreciate there are consequences for unreasonable behaviour and disregard of Tribunal orders.
43. For these reasons, I order that the Claimant shall pay the Respondent the total sum of £1,000 as a contribution to its costs incurred in these proceedings.
44. Such costs are to be paid by the Claimant within 28 days of the date this Judgment is sent to the parties.

Other Matters

45. If the Claimant fails to pay the costs ordered within 28 days, the Respondent may issue County Court proceedings to recover the sum awarded.
46. I make no order for preparation time as this application has been dealt with on paper.

Judge M Aspinall
10th September 2023