



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Paul Embery

v

Fire Brigade Union

Heard at: Norwich

Date: 10 June 2022

Before: Employment Judge Postle

Appearances:

For the Claimant: In person

For the Respondent: Mr Segal, QC

JUDGMENT having been sent to the parties on 8 September 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2013, the following reasons are provided:

REASONS

1. This is a request for written reasons in respect the Remedy Judgment given in the Norwich Employment Tribunal on 10 June 2022.
2. Employment Judge Postle makes the point that although the request for written reasons was made in good time by the Claimant, namely on 16 September 2022, the Judgment having been sent out on 8 September 2022, the matter was first referred to Employment Judge Postle on 20 January 2023, at which point Employment Judge Postle requested the file to enable him to prepare the written reasons.
3. The matter, it is accepted, has been chased by the Claimant a number of times, but for reasons best known to the Administration the file went missing and the file was only submitted to Employment Judge Postle on 20 July 2023 to enable him to prepare the written reasons.
4. The first part of the Judgment on Remedy, namely paragraphs 1 and 2, are perfectly clear.
5. The Claimant is unhappy with the Costs Order amounting to £750 +VAT which was made.

6. The background to the Remedy was that apparently the parties had agreed a Compensatory Award prior to the Hearing. However, the Claimant insisted on pursuing a claim for four weeks' pay in respect of the failure to provide a statement of terms and conditions of employment. It was made perfectly clear by the Respondent, as the Claimant had not pleaded this in his original claim he was not entitled to such an Award.
7. The Claimant persisted with his claim and insisted on the matter coming before the Tribunal on 10 June 2022 in the Norwich Employment Tribunal, which necessitated the Respondent's Counsel attending in Norwich for something which the Claimant was never going to achieve and he had been warned the reasons why.
8. Mr Segal, QC submitted before the Tribunal that it was unreasonable on the Claimant requiring a Hearing today. The Claimant had been warned and in effect nobody needed to be here today as the Compensatory Award had already been agreed.
9. Further, quite simply the Claimant had never asked, pleaded or claimed four weeks' pay for the failure to provide a statement of terms and conditions of employment, in the absence of which the Employment Tribunal cannot make such an Award.
10. Mr Embery, submitted he was a litigant in person and on 21 April 2022 he was notified of the Remedy Hearing. He tried to get independent legal advice but was unable to do so. He accepts now the Law in respect of a written statement of terms but was not going to be bounced into accepting an offer at short notice. The Respondents say that the Claimant has been unreasonable bringing everybody to the Tribunal on 10 June 2022 when it simply was not necessary and therefore he should pay the Respondent's costs.
11. The Respondent was asking for £1,500 +VAT.
12. The power to award costs arising under Rule 76 of the Employment Tribunal Rules of Procedure 2013, which states:
 - (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 the proceedings (or part) have been conducted; or
 - b. ...
 - c. ...
13. In considering whether to make such a Cost Order: firstly, a Tribunal must consider whether, in this case, the Claimant has acted unreasonably; secondly, then should the Tribunal exercise its discretion to make a Costs Order, it clearly is not an automatic sanction; thirdly, the Tribunal may have regard to a Claimant's means.

14. Clearly given the background to this Remedy Hearing, that the Claimant and the Respondents had agreed the Compensatory Award, the Respondents had warned the Claimant that given the fact he did not plead or request a claim for a written statement of terms and conditions of employment not being provided, that there was no point in forcing a Hearing as the Tribunal simply could not make such an Award. The Claimant could have made a simple call to a firm of Solicitors, he is an intelligent, articulate man and it would not have been difficult to clarify the position at this point. Apparently this was made clear to the Claimant by the Respondent, though the Claimant says he was not going to be bounced into accepting their view.
15. The Tribunal takes the view that the threshold of unreasonableness has been met by forcing the parties to attend a Hearing in the Norwich Employment Tribunal when it was completely unnecessary.
16. Secondly, clearly it is case where the Tribunal should exercise their discretion to award costs on the facts and the Claimant is clearly not a man who is incapable of satisfying the Costs Order which I now make limited to £750.00 +VAT, given the fact that it was not necessary for a QC to attend today's Hearing, a young junior could have attended for a smaller sum.
17. For those reasons I have made the Costs Order in the sum of £750.00 +VAT.

Employment Judge Postle

Date:25 September 2023

Judgment sent to the parties on
2 October 2023

.....
.....
For the Tribunal office