



EMPLOYMENT TRIBUNALS

Claimant: Mr A Singh

Respondents: (1) Ramgarhia Gurdwara Sikh Temple Bradford, its trustees
(2) Mr Notay
(3) Mr Riyat
(4) Mr Panesar
(5) Mr Chana
and its committee members
(6) Dr Kuldip Kaur Bharj
(7) Mr Surinder Singh Manku
(8) Mr Surinder Singh Bansal
(9) Mr Sukdev Singh
(10) Mrs Sukwinder Kaur

COSTS DECISION

The claimant's application for a costs order is refused.

REASONS

The Background

1. In a Judgment sent to the parties on 20 October 2023 following a hearing on 31 July and 1st to 4th August 2023 inclusive, the Tribunal found that:
 1. The claim for unlawful deduction from wages was presented out of time and the Tribunal did not have jurisdiction to consider it;
 2. The claimant was entitled to the sum of £921.94 in respect of holiday pay; and

3. The respondent did not fail to provide the claimant with a written statement of employment particulars.
2. At a Preliminary Hearing on 24 April 2023 Employment Judge Bright ordered that the respondents should prepare and updated bundle of documents and bring two copies of the bundle to the Tribunal for use at the hearing.
3. The respondents prepared a bundle for use at the final hearing of this claim and brought copies for the Tribunal to use. The claimant produced an additional bundle. At the start of the hearing I asked the parties to take some time to try and agree a finalised bundle, which they were able to. That bundle was then used during the hearing.

The costs application

4. On 20 September 2023 the claimant's representative made an application for costs in the sum of £98.43 relating to an additional bundle prepared by the claimant's representative in preparation for the final hearing. In support of the application, he submitted that: -
 1. The respondents had failed to comply with a Case Management Order that they should prepare a joint bundle of documents for use at the final hearing;
 2. As a result, the claimant had produced his own bundle at a cost of £98.43 and has asked the respondents to pay the cost of that bundle;
 3. It would be reasonable, fair and just for the Tribunal to award the claimant costs of £98.43.
5. The claimant asked that the case be listed for a hearing to consider the question of costs.
6. The respondents objected to the making of an order for costs. In written submissions sent to the Tribunal on 25 September 2023 they submitted that:
 1. They had sent documents to the claimant's representative on 25 May 2023 which appeared to have been downloaded, although the claimant's representative said that he could not access them;
 2. The documents were sent again by email and post on 5 June 2023;
 3. No amendments to the bundle were requested by the claimant's representative, and a further hard copy of the bundle was sent to the claimant on 26 July 2023.;
 4. The additional documents contained within the claimant's bundle were primarily case law authorities which would not have been included in the bundle in any event; and

5. It would not be appropriate for a costs order to be made when the claimant's representative had failed to ask for additional documents to be included in the bundle prior to the hearing.

The law

7. Rules 74 to 84 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 contain the rules governing costs applications. The relevant provisions for the purposes of this application are the following:

"74 Definitions

- (1) *"Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a Tribunal hearing)....*
- (2) *"Legally represented" means having the assistance of a person (including where that person is the receiving party's employee) who –*
 - a. *Has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in country courts or magistrates' courts;*
 - b. *Is an advocate or a solicitor in Scotland; or*
 - c. *Is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.*
- (3) *"Represented by a lay representative" means having the assistance of a person who does not satisfy any of the criteria in paragraph (2) and who charges for representation in the proceedings.*

75 Costs orders and preparation time orders

- (1) *A costs order is an order that a party ("the paying party") make a payment to –*
 - a. *Another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;*
 - b. *The receiving party in respect of a Tribunal fee paid by the receiving party; or*
 - c. *Another party or a witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at the Tribunal.*
- (2) *A preparation time order is an order that a party ("the paying party") make a payment to another party ("the receiving party") in respect of the receiving party's preparation time while not legally represented. "Preparation time" means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing.*

(3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings. A Tribunal may, if it wishes, decide in the course of the proceedings that a party is entitled to one order or the other but defer until a later stage in the proceedings deciding which kind of order to make.

76 When a costs order or a preparation time order may or shall be made

- (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 party) or the way that the proceedings (or party) have been conducted; or*
 - b. Any claim or response had no reasonable prospect of success; or*
 - c. A hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.*

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 Procedure

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.”

Conclusions

8. I have considered the suggestion by the claimant's representative that a hearing should be listed to consider the application for costs. It would not, in my view, be proportionate or in line with the overriding objective to do so, for two reasons:
 1. The application for costs is, for the reasons I set out below, misconceived; and
 2. The sum involved is just £98.43.
9. I have therefore considered the application on the papers. Both parties have had the opportunity to make representations in relation to the application and I have taken those representations into account in reaching my decision.
10. A costs order can only be made in favour of a party who is legally represented (as defined in Rule 74(2) of the Rules of Procedure, or who is represented by a lay

representative who charges for representation and who therefore falls within Rule 74(3). At the start of the final hearing in this case, when I asked Mr C Singh in what capacity he was representing the claimant, he said that he was a lay representative. As such, an order for costs can only be made in favour of the claimant if his representative is charging him for representation.

11. The burden of proof in relation to a costs application rests with the party making that application. There is no evidence before me to suggest that the claimant's representative is charging the claimant for representation. In the absence of any such evidence the application for costs is bound to fail as the Tribunal cannot make a costs order in favour of a party who is represented by a lay representative who is not charging for his services.
12. The Tribunal does have the power to make preparation time orders in relation to lay representatives who do not fall within Rule 74(3) (ie because they are not charging for their services), but that power only exists in relation to time spent working on the case (Rule 75(2)). The application before me relates to expenses incurred in photocopying a bundle and does not relate to time spent preparing the case.
13. In any event, this is not a case in which it would be appropriate to make either a costs order or a preparation time order in favour of the claimant. Such orders remain the exception rather than the rule in the Employment Tribunal. The only basis upon which the claimant applies for an order is that he alleges the respondents failed to comply with a case management order. They did not. The respondents produced a bundle for use at the final hearing of the claim. The claimant did not ask for additional documents to be introduced to that bundle, but rather took it upon himself to prepare his own bundle. In these circumstances there would, in my view, be no grounds for making either a costs order or a preparation time order, even if I had the power to do so.
14. The application for costs therefore fails and is dismissed.

Employment Judge Ayre

Date: 22 October 2023

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