



EMPLOYMENT TRIBUNALS

Claimant: Mr D Singh

Respondent: Wanis Management Services LLP

COSTS JUDGMENT

1. The Tribunal makes an award of costs under Rule 76(1)(a) of the Tribunal Rules 2013 of £1,000 plus VAT, **total £1,200 including VAT** against the Claimant and in favour of the Respondent.
2. The costs are payable by the Claimant to the Respondent within 28 days of the date of this judgment.

REASONS

1. Following the Tribunal's judgment on the time limit issue dated 2 August 2023 (sent to the parties on 15 August 2023), the Respondent made a costs application on 18 August 2023.
2. The application was made under Rule 76(1)(a) of the Tribunal Rules 2013 (vexatious etc bringing of the proceedings or the way the proceedings have been conducted) or alternatively under Rule 76(1)(b) of the Tribunal Rules 2013 (no reasonable prospect of success). The Tribunal wrote to the Claimant on 4 September 2023 asking him to respond to the costs application and in particular to give details of his financial situation. He did not reply. I therefore do not know why he says (if he does) that no costs award should be made or what his finances are.

Findings relevant to costs application

3. The time limit issue was clearly flagged up to the Claimant at an early stage and on multiple occasions, as set out in para 21 of the judgment.
4. A costs warning had been sent to the Claimant on 31 May 2023 (page 312) which told the Claimant that he had not provided any evidence about why his claim had been presented out of time but noting that this issue would be decided at the hearing on 2 August 2023. The letter also said that even if the claim was allowed to proceed

it still had no reasonable prospects of success given his dismissal for gross misconduct on reasonable grounds. The Claimant did not reply to this letter.

5. The Claimant had not disclosed his relevant documents to the Respondent by the start of this hearing despite the case management order dated 17 March 2023 that the parties exchange documents by 15 May 2023. The Claimant was not prepared for this hearing and did not reply to the readiness check letter sent by the Tribunal on 24 June 2023 which specifically asked about compliance with the 17 March 2023 orders. The Claimant emailed the Tribunal on 1 August 2023 saying he was not sure what he should be doing and how to send in evidence (although statements had been exchanged) but by now it was the day before the hearing and the Respondent had still not received the Claimant's documents (despite reminders on 2 and 7 June 2023 (page 314-315)). The Respondent's solicitors told the Claimant on 2 June 2023 that he needed to provide any documents he had to them and had provided him with a draft bundle. He was not therefore unaware on 1 August 2023 of what he had to do as regards his own evidence.
6. Ms Kaur's email on 15 June 2023 (page 314) did not address (1) the provision of the Claimant's documents including those relevant to the time limit issue (2) what it was the Claimant was saying was the reason for his late claim or (3) the draft bundle provided by the Respondent's solicitors. Even if she had previously had problems with her email (page 314) she could at this stage now have caught up with these three outstanding matters. Instead she only provided a schedule of loss; her response said she would also respond on all outstanding matters (so she was clearly aware there were other things to do) but she did not do so, even when the Tribunal wrote on 24 June 2023. By this point it was around 5 weeks before the hearing.
7. The Claimant did however provide witness statements from Ms Walker (a friend of his wife), from Ms Kaur, from the Claimant's wife Ms Shaneeta Kaur and from the Claimant. None of the statements addressed the issue as to why the claim had been presented late. The Respondent therefore attended the hearing without knowing in advance what the Claimant said the reason was. The purpose of witness statements is so that each party can see in advance what the witnesses will say in their evidence, can prepare accordingly and so that no-one is taken by surprise.
8. At the hearing on 2 August 2023 the two reasons advanced by the Claimant for his late claim (his mental health and his lack of knowledge and legal advice) were therefore matters he had not raised before this point. He could have at least addressed it in his own witness statement.
9. With regard to his mental health the Claimant had not provided any medical evidence about his mental health despite relying on it at the hearing as to why his claim although in any event he had not contacted his GP about his mental health until May 2023 (judgment para 22-23).
10. The Claimant and Ms Kaur were aware from at least 15 June 2023 that there were outstanding matters to deal with beyond the schedule of loss. She and the Claimant were not prompted into action by the Tribunal letter dated 24 June 2023 but they ignored it as they had ignored the Respondent's reminders about disclosure of documents and agreeing the bundle and raising the time limit issue. The Claimant was therefore unprepared for the hearing (judgment para 3); even though witness

statements had been provided the Claimant's statements did not address the time limit issue.

Relevant law

11. The relevant Tribunal Rules are Rules 74-84 of the Tribunal Rules 2013. Costs in the Employment Tribunal are the exception rather than the rule and there is a high threshold.
12. There is a two stage test, to consider firstly whether the relevant ground under Rule 76 is made out and then if it is, secondly whether the Tribunal should exercise its discretion to award costs.
13. Rule 76(1)(a) provides that a costs order may be made where a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing the proceedings or the way the proceedings have been conducted.
14. Rule 76(1)(b) provides that a costs order can be made where any claim (or response) has no reasonable prospects of success.
15. The Tribunal may (but is not required to) take into account the paying party's ability to pay in deciding whether to make a costs order and if so in what amount (Rule 84).
16. *Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420* requires the Tribunal to consider all the circumstances as a whole. and *McPherson v BNP Paribas [2004] IRLR 558* establishes the need to consider the nature, gravity and effect of the claimed unreasonable conduct. There is no need to show a precise causal link between the claimed unreasonable conduct and the costs incurred.
17. In *AQ Ltd v Holden 2012 IRLR 648* the EAT stated that the threshold tests governing the award of costs are the same whether a litigant is or is not professionally represented, but that the application of those tests should take this factor into account. However, a litigant in person can be found to have behaved unreasonably even when proper allowance is made for their inexperience and lack of objectivity.
18. There is also Presidential Guidance on costs (Presidential Guidance; General Case management – Guidance Note 7 Costs) which I have taken into account.

Reasons

19. Taking the above into account and looking at all the circumstances, I conclude that the grounds under Rule 76(1)(a) (unreasonable conduct in the way the proceedings have been conducted) is satisfied and that a costs order should be considered.
20. The unreasonable conduct was ignoring correspondence from the Respondent's solicitors and from the Tribunal about compliance with obligations the Claimant was under to progress his claim (hampering the Respondent's ability to prepare and to know the case it had to meet) and failing to address a fundamental part of his claim (the time limit point) until the day of the hearing and then relying on his mental health as a reason without providing any medical evidence and in circumstances where he knew he had not contacted his GP about his mental health until some months after

the claim was presented. This was not an issue of a lack of knowledge about how Tribunal claims work or not having legal advice it was an issue of not dealing with what he was being told he needed to deal with, when he had Ms Kaur's support to do so. Even as a litigant in person he could reasonably have been expected to do this or at least attempt to do so.

21. I do not find the grounds under Rule 76(1)(b) (no reasonable prospect of success) met taking the above findings into account. Although failing to address the time limit point until the last minute, the Claimant as a litigant in person was less able to assess whether the time limit issue itself had no reasonable prospect of success. He was also less able to assess whether his claim for unfair dismissal had no reasonable prospect of success given he did not understand (evident from his witness statement and in common with many unrepresented claimants) that the test for unfair dismissal for misconduct is whether the Respondent had a genuine belief in his misconduct and had reasonable grounds to dismiss him based on a reasonable investigation and not whether the Tribunal would have dismissed him or whether he in fact committed the claimed misconduct.

Discretion whether to make a costs award

22. The Respondent issued a costs warning to the Claimant on 31 May 2023, well in advance of the hearing date of 2 August 2023 so with time in particular for the Claimant to say what was the reason for his late claim and provide relevant evidence. The existence of that costs warning is a relevant factor.
23. The Claimant is unrepresented. Although he had the help of Ms Kaur neither of them dealt with the correspondence sent to the Claimant as set out above. If the Claimant was relying solely on Ms Kaur to progress his claim and deal with correspondence, that was unreasonable (in the same way as it had been as regards presentation of the claim, judgment para 38).
24. As to whether I should exercise my discretion to award costs I have no material by which I can take into account the Claimant's ability to pay because the Claimant has not responded to the costs application and in particular about anything he wanted to say or evidence he wanted to provide about his ability to pay any costs award.
25. Weighing these factors up I conclude that the high threshold is met for a costs award to be made and that I should exercise my discretion to award costs against the Claimant and in favour of the Respondent. I have taken into account that the Claimant is a litigant in person but he failed to do what he was being asked to do and failed to deal with correspondence which told him what to do. It was not therefore a case of a lack of knowledge or understanding.

Amount of costs award

26. I can only take into account the Claimant's ability to pay to the extent that I am aware that he obtained new employment at Tesco and was still working there in August 2023 (judgment para 27).

27. The Respondent says that the costs are £25,000 plus VAT (solicitors costs) plus £3000 plus VAT (brief fee). It claims £3000 (presumably plus VAT) to reflect the Claimant's likely limited means.
28. I make an award of costs of £1,000 plus VAT (£1200 including VAT) taking into account the Claimant is not a high earner but is in employment.
29. The costs are payable by the Claimant within 28 days of the date of this judgment. I have extended the 14 day default timescale in Rule 66 to enable the Claimant to make any necessary arrangements and to ensure that he will recently have been paid or be about to be paid.

**Employment Judge Reid
Dated: 23 October 2023**