



EMPLOYMENT TRIBUNALS

Claimant: Mr K Hussain

Respondent: London Fire Commissioner

DECISION ON APPLICATION FOR COSTS MADE BY THE RESPONDENT

1. I have seen the Respondent's written application for costs and its schedule of costs sent to the Tribunal on 21 October 2022 following a Preliminary Hearing (CVP) in front of me on 17 October 2022.
2. The Claimant responded to that application on 28 October 2022 but unfortunately that document did not come to my attention until recently.
3. Thus, both parties did comply with paragraph 3 of my Judgment on 17 October 2022 and neither are at fault for the subsequent delay in determining this matter.
4. The basis of the Respondent's application is that the Claimant, immediately before the hearing on 17 October 2022, substantially withdrew his application to amend his claims. This would have also required significant changes to the List of Issues in this complex litigation.
5. The Respondent did agree to add '*a small number of claims which clearly arose from the pleadings*'.
6. I do not agree that a change of mind by the Claimant even at the last minute in order to review and refine his claims and the issues, in circumstances where counsel for the Respondent and the Claimant worked together, in furtherance of the overriding objective, to at least provisionally finalise the claims and an agreed List of Issues albeit on the evening before and on the day of the Preliminary Hearing, demonstrates that the Claimant has acted unreasonably in the conduct of the proceedings under Rule 76 Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
7. The attendance of counsel for both parties at the CVP Preliminary Hearing was helpful and accomplished progress in preparing this case for the final hearing. It is not the case that there would have been no necessity to attend or prepare for the Preliminary Hearing if the Claimant had abandoned some of his proposed amendments earlier.

8. The final hearing of this case took place over 18 days in January and March 2023 with a further 9 days deliberations in chambers up to and including 10 July 2023. The purpose of emphasising this timetable is to underline my finding that, in proceedings of the length and complexity involved in these two cases, it is unsurprising that there are numerous preliminary hearings at which the parties and the representatives are obliged to take a flexible and responsive approach to the claims and issues. Such flexibility is not inevitably indicative of unreasonable action by one party or another.
9. In all the circumstances the application for costs by the Respondent does not succeed.

Employment Judge B Elgot
Dated: 2 November 2023