



EMPLOYMENT TRIBUNALS

BETWEEN: Mrs M Jabeen **and** EC4 Hotel Limited
Claimant t/a Cedar Court Hotel
Respondent

Heard at: Leeds **on:** 30 October to 3 November 2023

Before: Employment Judge Cox

Members: Mrs J Hiser
Mr M Brewer

Representation:

Claimant: Mr Ahmad, husband and lay representative

Respondent: Mr Underwood, consultant

REASONS

1. In her claim, the Claimant alleged various acts of direct sex and race discrimination and harassment. At the Hearing, all the allegations failed and were dismissed. Written reasons for that decision have been issued already.
2. The Respondent applied for a Preparation Time Order. Its application was limited to the time it spent preparing the evidence of Mrs Kalsoom.
3. In her original witness statement, Mrs Kalsoom gave evidence to counter the Claimant's case that Mrs Kalsoom had told her that she too had been the subject of racial harassment whilst working at the hotel and that Mrs Kalsoom had witnessed the Claimant being bullied. Further details of her evidence and the Tribunal's findings on it can be found in paragraphs 92 to 95 of the Reasons for the liability Judgment. In summary, the Tribunal accepted that the Claimant had misrepresented the content of a telephone message that Mrs Kalsoom had left for her, pressurised Mrs Kalsoom to give evidence in support of her claim and then sought to discredit Mrs Kalsoom as a witness when she found out that she was giving evidence for the Respondent.

4. As explained in paragraph 8 of the Reasons for the liability Judgment, Mrs Kalsoom also prepared a supplementary witness statement to deny allegations relating to her that Mr Ahmad sought to raise in his own witness statement. He said that she had asked for his help in raising her experience of discrimination with the hotel's owner. As a preliminary matter at the Hearing and for reasons set out in paragraph 8 of the Reasons for the liability Judgment, the Tribunal decided that this part of Mr Ahmad's statement should not be admitted in evidence, but the Respondent clearly considered that it needed to prepare for the possibility that it would be.
5. The Tribunal has power to make an Order in respect of a party's preparation time in working on the case whilst not legally represented. The power arises if the Tribunal finds that the party against whom the Order is to be made has acted "vexatiously, abusively, disruptively or otherwise unreasonably" in the way that the claim has been conducted (Rules 75(2) and 76(1) of the Tribunal's Rules of Procedure).
6. The Respondent argued that the Claimant, and her husband as her representative, had acted vexatiously and unreasonably in maintaining that Mrs Kalsoom had told the Claimant that she too had been the subject of racial harassment at the hotel when they knew that she had not said that. This had included inserting a reference to the hotel into the translation of the telephone message that Mrs Kalsoom had left. They had also sought to pressurise Mrs Kalsoom into giving evidence that she had seen the Claimant being bullied when they knew that she had not. Finally, they had sought to discredit Mrs Kalsoom as a witness when she would not support their case.
7. The Tribunal accepted that this did amount to unreasonable and vexatious conduct by the Claimant and/or her husband as her representative. Their whole approach in trying to pressurise Mrs Kalsoom into giving evidence that she was unwilling to give and misrepresenting what she said in her message was unreasonable. The improper motives for their actions became clear when they tried to discredit Mrs Kalsoom when she decided to give evidence for the Respondent. The Tribunal was therefore satisfied that it had power to make a Preparation Time Order. It also considered that it would be just to order the Claimant to pay towards the Respondent's preparation time in responding to that conduct.
8. The number of hours in respect of which an Order should be made must be based on the information provided about the time spent preparing the case and the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work (Rule 79(1)). Mrs Kalsoom's first language is Urdu and she is not fluent in English. The Respondent's representative visited her at home on three occasions to discuss

with her and her family whether she was willing and able to give evidence at the Tribunal Hearing and to take instructions from her on what she wanted to say. He spent 10 hours on those visits and finalising the statements. In all the circumstances, the Tribunal accepted that that was a reasonable and proportionate amount of time to spend on this work.

9. The hourly rate for a Preparation Time Order at the relevant time was £43 (Rule 79(2)). The Respondent limited its claim to £400.
10. In deciding whether to make a preparation time Order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay (Rule 84). The Tribunal explained this to the Claimant at the Hearing but she declined to give information about her means. The Tribunal was therefore unable to take her ability to pay into account.
11. In summary, the Tribunal concluded that the Claimant and/or her representative had acted vexatiously in conducting her claim, the amount of time claimed by the Respondent was reasonable and proportionate and it was just to make an Order that the Claimant pay the Respondent £400 in respect of its time in preparing its case.

Employment Judge Cox
Date: 4 December 2023