



EMPLOYMENT TRIBUNALS

Appellants

Respondent

Mr Shabir Ahmed

v

Tania Bernice Shiffer

Miss Bethany Ahmed

**(One of His Majesty's Inspectors of
Health and Safety)**

Heard: On the papers

On:

14 December 2023

Before:

Employment Judge JM Wade

JUDGMENT

The respondent's costs application is dismissed.

REASONS

Introduction

1. On 9 August 2023 the Tribunal gave an extempore judgment in the claimants' appeal against the respondent's prohibition notices in respect of safety at the second appellant's property – the first appellant is her father, and representative in these proceedings, and controller of works at the property. The judgment was sent to the parties on 14 August 2023.

2. The respondent made an oral costs application at the conclusion of the hearing. The appellants' position was that the respondent had been influenced by a campaign of racial harassment conducted by the local authority towards the second appellant and that the application for costs was more of the same. The Tribunal therefore directed the following:

*2 The appellants shall by **30 August 2023** provide to the respondents any documents on which they rely in connection with their opposition to the oral application for costs made on behalf of the respondent today.*

*3 The respondent shall **by no later than 13 September 2023** provide to the Tribunal and the appellants either a) an application for costs in writing together with any consequent schedule of costs and confirmation of which type of decision, papers or attended hearing, she seeks; or b) confirmation that a costs application is not pursued.*

4 If the costs application is pursued, the appellants may then submit to the Tribunal and the respondent any further grounds of opposition by 27 September 2023 and confirmation of whether they wish the application to be decided by the Employment Judge without a hearing or by the full panel at a hearing at which they attend (or be represented).

5 A decision/hearing date shall then be fixed as soon as practicable before the full Tribunal or the Judge alone as appropriate with a time estimate of three hours/two hours respectively.

3. The appellants provided no documents in opposition to the oral application, later suggesting this was because the reasons were not sent until 29 September. On 11 September 2023 the respondent nevertheless sent to the appellants and the Tribunal a costs bundle and application/skeleton.
4. On 29 September 2023 the Tribunal sent to the parties the written reasons for the 9 August Judgment.
5. On 12 October 2023 the Tribunal received from the first appellant documents by post, including manuscript comments on the written reasons, a new structural report, and a letter of “appeal”.
6. On 16 October 2023 the Tribunal reminded the appellants of order 4 above.
7. On 6 November 2023 the first appellant provided the appellants written opposition to the respondent’s costs application. The appellants’ simple position was, it could not be said the appeal had no chance of success because a) it was accepted by the Tribunal, and b) the Tribunal modified the notice, and the appeal had therefore succeeded. The first appellant also complained of the losses and costs he had incurred as a result of the inspector’s “tactics”.
8. As to the first of these matters – it is unfortunate that the Tribunal issues standard correspondence saying, “your appeal has been accepted”, as it does for employment related claims. This communication would be better expressed – “your appeal has been received” – all that the communication is intended to convey is that the appeal will now be served on the respondent. It is not intended to convey that any assessment of its arguability has been made by the Tribunal. This typically happens at a case management discussion and in these proceedings a final hearing was listed after a case management hearing without any warning to the appellants that any part of their assertions had little reasonable prospects of success. It also appears that no such warning was issued by the respondent “without prejudice save as to costs” or at all.
9. Finally, as no party had sought a hearing before the Tribunal to determine this matter, I directed I would address the costs application on paper, deliberating alone.

The Law

10. The Tribunal's costs provisions are set out within Rules 74 to 84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules").

Application

11. The respondent's application was made on the basis that the appellants acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing and/or conducting the proceedings; further that the appeal had no reasonable prospects of success within Rule 76(1)(a) or (b). Earlier strike out/unless order applications had been made by the respondent, but these were in connection with the appellants' engagement in preparation, rather than the merits of their appeal.

Discussion and conclusions

12. These reasons are to be read with the reasons for the Tribunal's judgment, referred to above,

13. As to the allegation that the appellants did not engage in the case management orders for preparation in an orderly or even handed fashion – for this is the gist of the respondent's position – that is a fair description, but it is not an uncommon approach for litigants in person without lawyers to assist them navigate such a process. The example of supplying partisan disclosure, for example, is very common for litigants in person - it is not necessarily intuitive to supply information which is against your own case. The Tribunal is designed as a largely cost free environment for good reason, and no doubt that was one reason why Parliament gave this Tribunal that particular jurisdiction. I do not consider this a basis to exercise my discretion to make a costs order, relating to that particular conduct.

14. As to the application never having any prospect of success because it was put on the basis of an allegation of racism, which was always doomed to fail because the complaint against the local authority had not been upheld, that was not the only basis on which the appeal was put. Though surprising, it was an arguable assertion for a litigant in person because of the twin property, as we described it in our reasons – again although this allegation did not succeed – it cannot be said it was not arguable, and indeed we needed to make findings about that twin property and why it did not give rise to any inference of an underlying improper motive.

15. Further, the appeal was put strongly on the basis that the impression of the notice was that the first appellant had removed the chimney and supporting structures....". On that issue, the appellants have succeeded factually and a modification has consequently been declared. The respondent would always have had to respond to this appeal, even and explain its position, event without the allegation of racially motivated conduct.

16. In the round, it is fair to say that while the Tribunal considered the first appellant a reluctant witness, whose evidence required corroboration, it cannot be said that in bringing the appeal in a generally costs free environment, his conduct, when taken in the context of the eventual outcome, is such that I consider it in the interests of justice to exercise my discretion to make a costs order.

17. Clearly a different costs regime applies in the High Court, where appeal from the Tribunal's decision lies.

18. The application is dismissed.

Employment Judge JM Wade

14 December 2023

Judgments and written reasons are published on the Tribunal's website shortly after they are made available to the parties.