



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Bye

v

Amey Services Limited

Heard at: Cambridge

On: 5 and 6 October 2023

Before: Employment Judge Tynan

Appearances

For the Claimants: In person

For the Respondent: Mr G Graham, Counsel

PRELIMINARY HEARING IN PUBLIC RESERVED COSTS JUDGMENT

1. The Claimant is ordered to pay the Respondent's costs of the adjourned hearing on 5 September 2023, the costs to be assessed by the Tribunal if they cannot be agreed between the parties.
2. If the parties cannot agree the amount of the Respondent's costs within 14 days of the date this Judgment is sent to them, within 7 days thereafter the Respondent shall file with the Tribunal and serve on the Claimant a schedule of the costs being claimed by it. Within 7 days of receipt of such schedule, the Claimant shall file with the Tribunal and serve on the Respondent a counter-schedule identifying any objections he is raising in respect of the costs being claimed and the reasons for his objections.

REASONS

1. I have already given judgment striking out the Claimant's claim pursuant to Rule 37(1)(b) of the Employment Tribunal Rules of Procedure 2013 because of the manner in which the proceedings were conducted by him. It follows, pursuant to Rule 76(1)(a), that the threshold for considering making a costs order has been met. The threshold is also met under Rule 76(1)(c), in so far as the hearing on 5 September 2023 was adjourned on the application of a party (the Respondent) made less than 7 days before the date on which the relevant hearing began. As I noted

in the case management summary following that hearing, the Claimant accepts that he is responsible for the hearing being adjourned, even if he says that his mental health issues significantly impacted his preparations for the hearing.

2. Although the relevant threshold is met, the question remains whether, in the exercise of my discretion, I should make a costs order. The starting point is that costs orders in the Tribunals are to be regarded as the exception, not the rule. Costs do not follow the event as they do in the Civil Courts. In the exercise of my discretion in the matter, I am required to have regard to the nature, gravity and effect of any conduct (McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA), though on the question of 'effect' it is not necessary for me to determine whether or not there is a precise causal link between the conduct in question and the specific costs being claimed. A costs order is not intended to be punitive and should not be made simply in order to somehow mark a Tribunal's displeasure. Under the Rules, a Tribunal may have regard to a paying party's ability to pay in deciding whether to make a costs order (as well as the amount of any order), something I shall return to.
3. The Claimant's conduct has been serious and sustained. As I said in my judgment striking out the claim, it has amounted to an unwarranted interference in the Respondent's legitimate defence of the proceedings. However, whilst the Claimant's conduct of the proceedings may have led to them being struck out, in my judgment it was not unreasonable for him to oppose the Respondent's application to strike out the claim. I have previously noted Sedley LJ's comments in Blockbuster Entertainment Ltd v James [2006] EWCA Civ 684 that the power to strike out a claim is a draconic one, not to be readily exercised. In my judgment, it will be an exceptionally rare case where a party faced with such an application will not be heard by the Tribunal or will be said to be acting scandalously, unreasonably or vexatious in seeking to be heard. The points raised by the Claimant in opposition to the application were essentially arguable, even if, for example, his allegations directed at Mr Graham and Miss Watson were entirely unfounded. Whilst the Claimant's conduct during the hearing itself, including towards Mr Couthard, was a factor in my decision to strike out his claim, I proceed as I did before on the basis that the Claimant's disability: causes him to act impulsively and to be quick tempered; means that he is unable to keep quiet and has a propensity to interrupt; impairs his ability to deal with stress; means that he struggles to accommodate other people's perceptions; and leads him to be outspoken and to respond reactively where he feels put upon or bullied. In which case, these are plainly mitigating factors in terms of his conduct even if he has also acted at times with an intention to annoy, antagonise, disrupt and undermine.
4. I weigh in the balance that the hearing took longer than it might otherwise have done as a result of the Claimant's conduct. Nevertheless, it is difficult, if not impossible, for me to identify precisely the extent to which

the hearing was impacted by disability related conduct as opposed to other, more culpable conduct on his part. Whilst it is not necessary for me to determine a precise causal link between any particular conduct and the costs being claimed by the Respondent, in my judgment, the Claimant's fair trial rights, including his fundamental right to be heard on the strike-out application, outweigh any culpable conduct on his part, whether during the hearing itself or which resulted in the claim being struck out. In the exercise of my discretion I decline to make any costs order in respect of the application itself or the October hearing. However, I shall order the Claimant to pay the Respondent's costs of the hearing on 5 September 2023. The hearing could not go ahead only because the Claimant came to the hearing with a 86-page 'Submissions' document and accompanying lever arch file of documents which he had failed to serve in advance on the Respondent. Indeed, he did not even intimate to the Respondent that he was intending to rely upon detailed written submissions in addition or substitution for much shorter submissions previously served by him. Nor did he let them know that he was preparing a lever arch file of documents, notwithstanding he was aware that the Respondent had in hand a hearing bundle. There is no direct evidence that the Claimant's conduct was, as he claims, impacted by his mental health issues. However, even if such impact is assumed and provides some degree of mitigation, I balance this against the impact of his conduct on the hearing and the wasted costs that resulted. The Respondent is entirely blameless in the matter. In the exercise of my discretion, and having regard to the Claimant's stated ability to comfortably meet any costs order that might be made, I shall order him to pay the Respondent's costs of the hearing on 5 September 2023, such costs to be assessed upon receipt of the parties' written submissions if they cannot be agreed between them. The Respondent has identified in correspondence that its costs of the abortive hearing are in the region of £4,000. However, unless I have overlooked a more detailed costs schedule in the hearing bundle, there is insufficient information currently available to me to enable me to undertake a costs assessment. I have therefore made a case management order above with a view to determining the final amount of the costs on the parties' written submissions in the event these cannot be agreed between them.

Employment Judge Tynan
Date: 12 December 2023

Sent to the parties on:
22 December 2023

For the Tribunal Office.