



EMPLOYMENT TRIBUNALS

Claimant: Mr Khan

Respondent: Mr Sulh

Decided by Judge Shukla on the basis of written representations

On: 8 January, 2024

JUDGMENT

1. The respondent's application for costs is dismissed.

WRITTEN REASONS FOR JUDGMENT

Background

1. I conducted a preliminary hearing by VCP in this case on 17 November 2023, at which the claimant appeared in person and the respondent was represented by Mr Goodwin of Counsel. I gave judgment at the hearing, and found that the claimant's claim for unlawful deduction of wages and claim for breach of contract were not presented within the applicable time, when it was reasonably practicable to do so. I therefore dismissed the claims. I found that the respondent had not proved there were no reasonable prospects of the claimant successfully establishing the respondent was the claimant's employer, and I did not make any findings in relation to the respondent's application for a deposit order.

Respondent's costs application

2. The respondent made a costs application by letter dated 11 December 2023 (letter from Gunner Cooke LLP). The basis of the costs application is (a) the claim had no prospects of success because it was presented late; and (b) the claimant's conduct of proceedings was unreasonable and disruptive. As regards the second point, the respondent states:
 - i. The claimant adopted an unreasonably aggressive tone and position in his correspondence with Gunner Cooke LLP;
 - ii. The claimant unreasonably refused to agree to a postponement of the hearing, when the hearing had originally been scheduled for a time when the respondent was in Mauritius.

- iii. The claimant had a habit of making factual assertions that he knew or ought reasonably to have known were not true, or which he did not have knowledge of (eg that the respondent was a Mauritian national; the claimant had been tricked into signing a debenture, when in fact the claimant was not a party to the debenture);
 - iv. The claimant described the respondent in negative terms, and made repeated and irrelevant comments about the respondent's lifestyle and social circles, with the aim of embarrassing the respondent in a public forum.
 - v. The claimant made serious attacks on the respondent's character, with no evidence to support them, eg the respondent had a reputation for being a shark; that the claimant felt personally threatened by the respondent; and the respondent had breached various legal and regulatory obligations, such as tax evasion, a criminal offence.
 - vi. The claimant misled the tribunal as to the date on which he established his new business. He told the tribunal it was established on 18 April 2023, when in fact it was established nearly a month earlier, on 22 March 2023.
3. The respondent also states that he has been put to considerable cost in responding to the claimant's "meritless" claims, and should be able to recover at least some of his outlay. Furthermore, the respondent argues that there was no basis for the claimant to consider himself to have been employed by the respondent. The respondent adds:

The company, Affinis, was named on the contract of employment, the payslips, the P60 and on all other documents. Whilst it is recognised that the learned Judge did not find that there were no reasonable prospects of the Claimant showing that Mr Sulh was his employer, she did find that the Claimant had "not a strong case" in this regard.

The Respondent avers that the Claimant's motives in pursuing Mr Sulh – rather than the company that actually employed him – [were] personal. He wished to harass and embarrass Mr Sulh. That much is evident from the deeply personal way in which he put his case, as referred to above.

Claimant's representations

4. The claimant has sent representations by emails to the tribunal dated 2 and 4 January 2024. In those emails, the claimant states as follows:
 - a. There were extenuating circumstances for his late claim (namely his fragile mental state).

Being unrepresented in the hearing as well as the preparatory steps, I was unable to effectively make my case for an exercise of discretion. I understand ignorance of the law is no defence, but I was left in the most parlous state where being able to afford to take professional advice/help with the litigation was trumped by the need to meet even the most basic financial needs of myself and my family. Being owed as much as UK£ 288,000 in wages spanning

over multiple years has left me in the most embarrassing financial predicament.

- b. "I respectfully submit that while the Tribunal was unable to fully explore the strength of my case, I would remind the Judge the protestations of the Respondent that he was not my actual employer remain contentious in my humble opinion. He tried to hide behind the façade of having a company but still paid my salary during the first two years of my employment with his own personal cheques from his Coutts & Co. bank account. Strange actions from someone who vigorously denied being my de facto employer."
- c. The claimant is in debt, and in receipt of universal credit. The claimant has provided evidence of receipt of universal credit, and his bank balances.

Conclusions

- 5. Costs may be awarded where the claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of proceedings or the way the proceedings have been conducted; or the claim had no reasonable prospects of success.
- 6. I find this threshold test for awarding costs has not been met in this case, for the following reasons:
 - a. I find the claimant's late bringing of his claims is not of itself evidence of unreasonable behaviour. It is implicit in the tribunal's jurisdiction to extend time that claimants may bring claims late. In this case, there was a delay of about 2 months, and the claimant did give witness evidence to explain his delay (stress and mental fragility). The appropriate course of action for the respondent in such circumstances was to apply for the claims to be dismissed on the basis they were brought after the applicable time-limit, which the respondent successfully did. I find it was not unreasonable for the claimant to bring proceedings late, and attempt to extend the time limit, as claimants are entitled to do under the tribunal's rules.
 - b. At the hearing, I rejected the respondent's application to strike out on the basis the claimant's claims had no reasonable prospects of success (because the respondent was not the claimant's employer). While there was documentary evidence supporting the respondent's case (eg contract of employment), this was clearly a complex situation, with a web of legal relationships including a debenture and a shareholder agreement. The claimant's case was that the company which nominally employed him was in effect a fig leaf for the respondent; the claimant was effectively the respondent's "lackey"; the respondent was the main client and investor of the company; and the business was run overwhelmingly for the respondent's benefit for VAT and/or other purposes. There had not been full disclosure of documents eg about regular emailed reports allegedly sent to the respondent, and whether and for how long the respondent paid the claimant's salary from his personal bank account at Coutts. Given that there had not been full disclosure of documents or witness statements on the full merits of

the case I did not accept at the hearing the respondent's submission that the claimant's case had no reasonable prospects of success. That finding applies to the respondent's costs application. I did not make any findings on whether the company (Affinis Lifestyle Ltd) should be added or substituted as the respondent.

- c. I find the claimant has not acted vexatiously, abusively, disruptively or otherwise unreasonably in relation to bringing proceedings or the way the proceedings have been conducted.
- i. He is a litigant in person, and clearly feels strongly about his claim that he has not been paid his full salary for around a decade. Without full disclosure of documents and witness statements dealing with the full merits of the claim, it is not clear at this stage whether (and which) of the claimant's statements about the respondent are incorrect and/or irrelevant. I accept that the claimant's language about the respondent has been strong, but given the claimant is a litigant in person, I find the claimant's alleged lack of focus and objectivity do not constitute unreasonable conduct.
 - ii. The claimant was not obliged to agree to the postponement. As a litigant in person, it is not unreasonable for the claimant to be unfamiliar with the rules about giving evidence from Mauritius.
 - iii. The claimant did not mislead the tribunal about the date that he registered his new company. He said at the hearing it was around February or April 2023. In fact, as is a matter of public record, the claimant registered his new company on 22 March 2023.

7. For the reasons given above, the respondent's application for costs is dismissed.

Employment Judge Shukla
10/01/2024

JUDGMENT SENT TO THE PARTIES ON
11/01/2024

FOR THE TRIBUNALS

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