



EMPLOYMENT TRIBUNALS

Claimant:
Ms I Sihra

v

Respondent:
Sera Neon Ltd

DETERMINED ON THE PAPERS

On: 10 & 20 February 2024

Before:

Employment Judge Fredericks-Bowyer (sitting in the Employment Tribunal at Leicester)

COSTS JUDGMENT

The claimant brought a claim which had no reasonable prospects of success and was pursued in a manner which was wholly unreasonable, leading to the claim being struck out at the final hearing. It is ordered that she pay the sum of **£10,000.00** in contribution to the respondent's legal costs.

REASONS

Introduction

1. This is a claim which was run through the London (Central) region, which I had picked up through the Tribunal's 'virtual region'.
2. I struck out the claim following the respondent's application at the outset of the full merits hearing. The claim was struck out because the claim had no reasonable prospect of success, and because the claimant's serial failure to comply with orders relating to disclosure and the provision of a witness statement had rendered a fair hearing impossible. In this way, I found that the claimant had indulged in

conduct which was unreasonable. The written reasons for that decision should be read in conjunction with this document.

3. The respondent made a costs application upon the claim being struck out. I directed the application should be made in writing. That application followed on 7 August 2023. The respondent relies on the strike out and comments made in the written reasons in an application for the claimant to pay the sum of £10,709.82 plus VAT. The respondent asked for the matter to be dealt with on the papers.
4. In written directions, I directed the claimant to respond if she opposed the application. She was also directed to say whether or not she wished there to be a hearing instead of a paper determination. The claimant was also advised that she should present evidence about her means if she wished her ability to pay to be taken into account. The specific direction was:-

“Within 28 days of the sending of this Order, the claimant must provide a document, verified by a statement of truth, setting out the following matters:-

- 1.1. *Whether she opposes a costs order being made and, if so, on what grounds;*
- 1.2. *What assets she holds in her name either individually or jointly, and their value;*
- 1.3. *What debts she carries and the amount of repayments for those debts, or the amount of her share of those repayments if there is joint debt;*
- 1.4. *The amount of her monthly income, including any informal support received, and the amount of that income; and*
- 1.5. *Any regular outgoings or other financial commitments which she says cannot be reduced.*

*The document outlined at paragraph 2 above should also be accompanied by **supporting documents**. Any particular items referenced as assets, debts, income or regular expenditure should be supported with documentation or statements.*

If the claimant does not provide information and supporting evidence about her means, then a costs consideration will be made without regard to whether or not the claimant could pay the amount being requested.”

5. I have not been provided with any document verified by a statement of truth. The claimant sent an e-mail outlining that she cannot afford to pay the amount claimed because she has been on universal credit since she left the respondent's employment. She has not provided any list of assets or liabilities, or given figures for her income or costs. No supporting documents have been provided. The claimant has not objected to a paper determination either. At the time of determining the costs application, I note that I have no submissions from the claimant at all to the effect that she opposes the making of a costs order in principle. She only objects to the amount.
6. I regret the amount of time it has taken for this determination to be made. It appears that I was waiting for information which has not arrived, and the Tribunal

had not passed the respondent's e-mails to me confirming that deadlines had passed without action being taken.

Costs in the Employment Tribunal

7. The general rule is that the Employment Tribunal is a 'no costs jurisdiction'. This means that the loser in proceedings does not automatically pay the winner's costs, which is a divergence from proceedings which run in most of the civil court jurisdictions.

8. The rules relating to costs are found under Rule 76 Employment Tribunal Rules of Procedure (2013):-

"76.—(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—

(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success;

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party."

9. It is, therefore, a multi-stage determination to awarding costs. First, at least one of the 'gateways' outlined by Rule 76(1) and Rule 76(2) needs to be found to have been opened. In other words, I must be satisfied in this case that I have the ability to award costs.

10. If one of the gateways to award costs is opened, then I may award costs. There is a discretion. The next stage, therefore, is to decide whether or not this is a case in which I exercise my discretion to award costs, having in mind the circumstances of the case and the nature of the conduct that has led to the ability to award costs if decided appropriate.

11. The final stage, if I decide to exercise discretion, is to decide the amount of the costs to award. Where evidence about a claimant's means is provided, this should be taken into account so long as I am satisfied I have an honest and full picture of the claimant's financial position. I must also consider the amount of costs requested in the application and decide whether or not the amount is appropriate, before deciding what amount should be paid towards those costs, or ordering that the whole of the costs are paid.

12. The assessment of the amount of costs to pay is a broad brush exercise and does not take the form of any sort of detailed assessment of cost. The assessment is made broadly in all the circumstances using my judgment of what would be reasonable in this case. Generally, I am trying to consider the proportion of costs incurred because of the criticised conduct.

The 'gateway' to award costs

13. The judgment from the full merits hearing where the claim was struck out made the following adverse findings about the claimant's case and her conduct of it:-

- 13.1. Failed to respond to an order about her unfair dismissal claim, which was then struck out;
- 13.2. Failed to comply on time with an order to particularise her money claim;
- 13.3. Running a contract claim to final hearing when she knew she had no contractual argument which would lead to the claim's success;
- 13.4. Not preparing any argument for the final hearing;
- 13.5. Not complying with disclosure orders in the case but attempting to ambush the respondent through mentioning audio recorded evidence the day before the hearing;
- 13.6. Not complying with orders to produce a witness statement and refusing to engage with the respondent's representative about that;
- 13.7. Relying on illness (flu) which could not possibly have explained her failure to comply with orders over a four month period, or at all;
- 13.8. Rendering a fair trial impossible at the final hearing; and
- 13.9. Running a claim which had no reasonable prospects of success.

14. It is clearly the case that the threshold to consider awarding costs has been met. In my judgment, the 'gateways' defined by rules Rule 76(1)(a), Rule 76(1)(b) and Rule 76(2) have been activated.

Exercising discretion to award costs

15. Having established that there is the power in this case to award costs, I must consider whether to exercise my discretion to do so. This stage requires me to reflect on the fact that costs remain the exception and not the norm, and that litigants in person in particular might for perfectly understandable reasons struggle to manage a claim in the way a professional lawyer would.

16. In my view, there may be grounds to not exercise discretion where a claim has no reasonable prospects of success, but the claimant might have reasonably not realised that. Or if there had been few or insignificant failures to comply with orders.

17. In this case, the claim which was run to the final hearing was obviously flawed. The claimant had refused to properly clarify it until the final hearing. When she did so, she admitted she had no evidence or legal argument for her position that she should have been paid a significant bonus, even though she agreed she was not contractually entitled to it, because that was the 'fair' thing to do. This was an argument which should not have been the subject of an employment tribunal claim because there was no substance beyond the claimant's opinion – an opinion that she could not substantiate in the hearing when asked about it.
18. Additionally, in terms of process, the claimant had not provided disclosure, even though she did possess relevant evidence, and she had not provided a witness statement. Her excuse for not complying with these directions, that she had flu, was not a credible reason for the serial non-compliance with orders over a sustained period.
19. Given the number of issues with the claim and the running of it that give rise to the costs application, I consider it appropriate to exercise my discretion to award costs to the respondent.

The amount of the costs to be paid

20. The claimant has not provided me with a statement and evidence about her means, in yet another example of her unwillingness or inability to either (1) comply with Tribunal directions, or (2) raise any issues about why she cannot comply with Tribunal directions. The only information I have is that she was not working, had not worked since leaving the respondent, and was in receipt of universal credit. I have no real picture of her overall wealth or her ability to pay any amount. I note that the claimant is an educated professional and was earning reasonable money when she was working at the respondent. I have no evidence before me that the claimant's period on universal credit is permanent or even long-term. For these reasons, I consider that I do not have the rounded picture required to properly take means into account. Consequently, I do not do so.
21. What that leaves is a broad brush assessment of the costs which the claimant must pay to the respondent. The respondent asked for £10,709.82 plus VAT. Given the history of the case, including that the respondent was required to plead a response to a much more complicated claim than that which survived to final hearing, that figure seems to me to be an appropriate cost for these proceedings. I must decide whether the claimant should pay all of that or a contribution to that. In my view, it would not be right for the claimant to be ordered to pay that whole amount. The respondent would have incurred legal cost in obtaining advice and corresponding with the claimant prior to the point at which she ought to have realised that her claim had no reasonable prospects of success, and before her unreasonable conduct meant that the respondent was forced to engage in proceedings which were ultimately wasted and with which it should not reasonably have been required to engage.
22. In my view, something in the region of £2,500 to £3,000 would have been properly incurred by the respondent up until the point highlighted above. Consequently, I consider that the claimant should make a contribution to the respondent of £10,000 in respect of its legal costs. If the claimant ever engages in legal proceedings

again, it is imperative that she learns from this experience and (1) does not pursue arguments she knows are not legally sound, and (2) complies with all orders, directions and obligations upon her made during the course of those proceedings.

Employment Judge Fredericks-Bowyer

Dated: 20 February 2024

Sent to the parties on:

29 February 2024

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For the Tribunal Office:

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