EMPLOYMENT TRIBUNALS

Claimant: Mark Anthony Ridyard

Respondent: Howden Joinery Limited

HELD AT: Manchester **ON:** 21 February 2024

BEFORE: Tribunal Judge Holt

On papers (no attendance by either party)

JUDGMENT

Introduction

1. This is my written decision and reasons in relation to the Respondent's application for costs relating to the final hearing of this matter on 16-17 November 2023. The Claimant was a litigant in person and the Respondent represented by solicitors DLA Piper and counsel Ms Brewlis.

2. The Claimant presented his claim form against the Respondent on 17 January 2023. He claimed unfair dismissal. By my Judgment dated 17 November 2023 the Claimant's complaint of unfair dismissal (by way of "constructive dismissal") was dismissed under Part X of the Employment Rights Act 1996.

3. At the end of the hearing on 17 November 2023 the Respondent applied for costs pursuant to rule 76(1)(a) and (b) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

4. By my Judgment dated 17 November 2023 and sent to the parties on 23 November 2023, I made directions for the issue of costs to be dealt with at a future date, which I do by this Judgment.

The parties to the litigation and procedural background

5. The Claimant commenced his employment with the Respondent some point in the summer of 2015. It is uncontroversial that the Claimant tendered his resignation on 14 December 2022 and that his employment period ended on 11 January 2023.

6. The Claimant claimed that he was dismissed **unfairly** by way of *"constructive dismissal"*. In very general overview terms he claimed that he was bullied by his manager Gary O'Conner and that this caused him to suffer stress and anxiety for which he received treatment from his GP. He claimed that the stress and anxiety were linked to his working conditions and, particularly, to Mr O'Connor's demeanour and attitude towards the Claimant and his handling of the Claimant as the Claimant's line manager.

The hearing

7. I heard from the Claimant as a witness in-person. He presented his witness statement and answered cross-examination questions from Ms Brewis with some questions of clarification from me. Mr Gary O'Connor was tendered as a witness for the Respondent and confirmed his witness statement and the formalities linked to that but, to my surprise, the Claimant declined to ask any questions. I explained to the Claimant what the consequence were was of not asking any questions, but the Claimant was adamant that he did not want to ask questions. He repeatedly said that he was *"intimidated"* by Mr O'Connor and also referred to the fact that he was feeling stressed and that he was still receiving treatment for high blood pressure from his GP.

Chronology

8. The chronology of the case is as follows:

DATE	EVENT
01 August 2015	Employment commenced
07 September 2015	Respondent says Claimant commenced employment as counter sales/warehouse person at Manchester depot.
15 November 2017	Claimant transferred to Respondent's Heywood depot as assistant depot manager.
09 October 2018	Claimant suffered a grievance. After discussing grievance with the Respondent Claimant decided to retract his resignation and remain in the Respondent's employment. The Respondent moved to different depots and ended up as the depot manager at the Haslingden depot.
3 March 2022	The first one-to-one meeting between the Claimant and Mr O'Conner
24 March 2022	Area Managers' meeting where Mr O'Conner made reference to a "kangaroo court".
25 July 2022	*Letter from Respondent to the Claimant confirming transfers designated manager North East (West) effective from 25 July 2022. All terms and conditions were as outlined in the existing contract of employment. Is this the floating manger role or the NE Howdens job application?*
14 December 2022	Claimant tended his resignation with his employment terminated on early January 2023. Claimant sent email to Bryan Buchan (regional director) to tend his resignation. In this email the Claimant made a number of allegations about the conduct of his area manager Gary O'Connor stemming back to Mr O'Connor's appointment into the role of area manager on 04 January 2022. This was the first time that the Claimant made any complaints about Mr O'Connor.

DATE	EVENT
22 December 2022	ACAS certificate
6 January 2023	ACAS certificate issued
11 January 2023	End of employment period
17 January 2023	Manchester ET issue Notice of Claim
05 May 2023	DLA Piper for Respondent ask for postponement
09 May 2023	DLA Piper told by ET (rule 21) that because respondent did not respond, then judgment might be entered
09 May 2023	ET write to Claimant asking him to explain his case
09 May 2023	Email from Claimant to ET objecting to adjournment, saying that the respondent had his contact details all along and complaining that there has been a "data breach" regarding his contact details.
10 May 2023	Adjournment request granted
19 May 2023	Respondent provides ET3 and grounds of resistance (document 20).
	The covering letter says that the Claimant's ET1 had been sent to the employment tribunal in London in error.
	The Respondent's business was manufacturer and supplier of kitchen and associated products operating from a network of depots across the United Kingdom.
07 July 2023	Letter from the tribunal to the parties saying that Judge Batten has considered the correspondence and directed that the directions were varied as per the Respondent's representative's second email at 14:54 hours on 22 June 2023.
12 July 2023	Email from the Claimant responding to the grounds of resistance.
17 October 2023	Claimant's witness statement.
15 November 2023	Gary O'Conner witness statement

9. The substantive case fell to be decided relating to 4 different events. The parties agreed that the important dates were:

i. A one-to-one meeting between the Claimant and Mr O'Conner on 03 March 2022.

ii. Area meeting 24 March 2022 where it is agreed that there was a comment made by Mr O'Connor about a *"kangaroo court"*.

iii. When the Claimant was appointed to the role of floating manager in July 2022.

iv. A meeting between the Claimant and Mr O'Connor in December 2022 which included a discussion about the Claimant's bonuses.

Submissions at the final hearing – November 2023

10. At the end of the hearing, the Claimant made brief submissions when he essentially disputed the factual basis for the Respondent's claims. He emphasised that he found the various meetings and interactions with Mr O'Connor stressful and

made him feel emotionally charged. The Claimant communicated that he found Mr O'Conner's behaviour towards him to be degrading and he often felt humiliated after interactions with Mr O'Conner. He said that he *"felt pushed out of my depot"* in July 2022 and that it had adversely affected his health.

11. Somewhat surprisingly, the Claimant also said Howdens had been good to him and that he *"loved"* them. The only thing, he claimed, that had changed, was Gary O'Connor's attitude towards him. He repeatedly said that he found Mr O'Connor intimidating. Several times the Claimant told me that all he wanted was an apology an *"lessons learnt"* and that he was not interested in the money which is why he was bringing the claim. I reminded the Claimant that I did not have power to order an apology or an process to instigate "lessons learnt". At the same time, the Claimant did confirm that he was still interested in pursuing his claim namely £36,000 i.e. £18,000 over 2 years, which he could have earned if he had not had to leave because of Mr O'Connor.

12. The Respondent's central submission was that there had been a fundamental breach of in the contract of employment between the parties by the Claimant's conduct because the parties had lost trust and confidence in each other.

13. Having considered all of the evidence, I found that the Claimant's account of the meeting at the one-to-one on 03 March 2022 to be grossly exaggerated and not true.

14. In relation to the meeting on 24 March 2022 with the other area managers the Claimant provided no corroborative evidence that he was singled out or humiliated and that a *"kangaroo court"* was somehow set up to embarrass him or that he was singled out in an intimidating manner. At the beginning of his cross-examination, the Claimant alleged that the *"kangaroo court"* issue was the *"main issue"* in the case, but I found that this did not sit well with the Claimant continuing to work for the Respondent until December 2022, if this was the *"main issue"*. I found it much more likely, applying a balance of probabilities test, that Mr O'Connor was simply joking with the managers and it was his way of trying to look at possibly sensitive issues in a way that communicated to the workforce that they were not being criticised and that they had to accept a public discussion about their figures. With hindsight "kangaroo court" was a poor phrase for Mr O'Conner to have chosen, but I found that the Claimant had twisted the words and had deliberately failed to communicate the true context of the comments in a reliable manner.

15. In relation to the Claimant being given the role of floating manager in July of 2022, I find that there was no evidence that he was forced into accepting the role. I found that he accepted the role which would inevitably have made his life easier because he was taken away from the Haslingden base which was starting to show reduction in sales. Further his basic pay and bonus conditions were retained and protected. There was no suggestion in the evidence from Mr O'Connor that the Claimant was "forced out" and I accepted the evidence of his witness statement that, had the Claimant not wanted to have taken on the floating manager role, then other processes would have been considered regarding his remaining in position at Haslingden. I accepted the evidence from the Respondent that it was a supportive move and a strategy designed to deal with the Claimant's reports of health concerns, whilst at the same time noting that he had indicated that he was planning his retirement 6 months hence in any event. I was satisfied that the Claimant was not pressurised

into accepting the role and that he did so voluntarily and with a sense of relief, as illustrated by the Whatsapp messages between the Claimant and Mr O'Conner that I was shown at the final hearing.

16. Finally, in relation to the meeting with Mr O'Connor in December 2022, I was satisfied that the meeting ended with them shaking hands, which is far from consistent with the Claimant's allegation of bullying behaviour on the part of Mr O'Conner. Consequently, I was satisfied that the Claimant's account of the meeting had been falsified. I was also satisfied that the failure to pay the Claimant his bonus over 3 months prior to December 2022 was an innocent oversight and that Mr O'Connor took steps to rectify the situation as soon as it came to light. There is no evidence from the WhatsApp messages that the Claimant was upset by what had happened regarding delayed payment of his bonuses.

17. Overall, I found that there was no breach of contract on the part of the Respondent. I was satisfied that the Claimant resigned for his own personal reasons. I did not speculate why, but all the evidence pointed to him having bought a new house in Yorkshire and against the background of the fact that from the Summer of 2022 he said that he was going to retire. Further, it was striking that the alleged *"kangaroo court"* experience and comment was in March of 2022, and yet he only resigned in December 2022, over 8 months later. I was satisfied that he resigned on 14 December 2022 because of reasons connected to his future plans and new house purchase. I was satisfied that even if there was a breach of contract, (which I did not find), then the Claimant affirmed the contract by continuing to remain employed as per the case of Western Excavating (ECC) Limited v Sharp [1978] IRLR 27.

Directions of 17 November 2023

18. Following my decision delivered orally on 17 December 2023 the Claimant left the CVP hearing abruptly. I asked the Tribunal staff to contact him by telephone to offer technical support if he had been suffering technical issues with his connection. The Tribunal staff spoke to the Claimant, but he did not rejoin the hearing. For completion, I record that the Claimant had managed the technical side of the CVP during the 16 and 17 November hearings with no apparent difficulties.

19. Having heard my decision, Ms Brewis (Respondent's counsel) made an application for costs pursuant to Rule 76(1)(a) and (b) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Not least because the Claimant was not present by the time that the application was made, I made directions that:

i. By 8 December 2023 the Respondent should send a schedule of costs as a result of preparation and attendance at the final hearing.

ii. By 7 January 2024 the Claimant should respond to the costs schedule indicating whether he contested it or not and to provide his details regarding his means to pay.

iii. I also ordered that the parties were to inform the Tribunal by 15 January 2024 whether the matter was resolved and, if not, whether I should decide the costs application on papers or

whether the case should be re-listed. I encouraged the parties to engage in alternative dispute resolution.

20. I note that the Claimant has not engaged with the Respondent or the Tribunal. I am satisfied that he has received the costs schedule but has not commented on it. He has not provided details of his means to pay, nor has he asked for an oral hearing. Consequently, I am satisfied that the most cost-effective way of dealing with this outstanding costs matter is on the papers.

21. I have not been made aware of any offers to settle.

22. It was brought to my attention at the hearing that the Claimant was told that he had no prospects of success and that if he persisted with the litigation then there could be costs consequences. On 27 September 2023 it was explained to him that he had no prospects of success.

Rule 76 (1)(a) and (b) and the legal framework

23. Rule 76(1)(a) and (b) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 says:

When a costs order or preparation of time order may or shall be made

> ***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.*

24. Costs in the Employment Tribunal are very much the exception and not the rule. Costs do not simply follow the event. The power to award costs is limited to the specific reasons provided in the Employment Tribunals Rules of Procedure.

25. Also relevant is the costs section of the Employment Tribunals (England & Wales) Presidential Guidance – General Case Management. The Tribunal has considered that Guidance and will not reproduce it here, save for highlighting the first line of paragraphs 1 and 19:

> *The basic principle is that employment tribunals do not order one party to pay the costs which the other party has incurred in bringing or defending a claim.*
>
> *When considering the amount of an order, information about a person's ability to pay may be considered, but the Tribunal may make a substantial order even where a person has no means of payment.*

26. In *Yerrakalva v Barnsley MBC* Mummery LJ said at paragraph 41:

> "*The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. The main thrust of the passages cited above from my judgment in McPherson was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the ET had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. In rejecting that submission I had no intention of giving birth to erroneous notions, such as causation was irrelevant or that the circumstances had to be separated into sections and each section to be analysed separately so as to lose sight of the totality of the relevant circumstances.*"

Findings

27. I have been provided with a copy of the Respondent's costs schedule. I am satisfied that it was appended to an email that was sent to the Claimant on 6 December 2023 @ 16:14 by Sophie Anderson (Senior Associate at DLA Piper Solicitors). The Claimant did not respond, and so Ms Anderson re-sent the costs schedule on 8 January 2024 @ 10:47.

28. The grand total of the claim in the costs schedule is £32.909.28, but which includes Ms Brewis' fee for the final hearing and VAT at £5,100. The costs incurred by the solicitors are claimed at £23,174.40 plus £4,634.88 VAT.

29. The costs schedule also sets out the hourly rates of the various solicitors and trainees that worked on the case.

30. In assessing the costs, I have taken into account the guidance of Mummary LJ cited above and have considered matters in the round.

31. I found the Claimant's behaviour in pursuing the case a final hearing to be deeply flawed and wholly unreasonable, especially when he declined to ask any cross-examination questions and also made, in the context of his other claims, bizarre concessions regarding the positive aspects of the Respondent's business. As a result I am easily satisfied that the claims had no prospects of success and so rule 76(1)(a) and (b) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 are satisfied. The Claimant has continued to act unreasonably in leaving the hearing on 17 November 2023 early and not returning and in failing to engage with the Respondent and the Tribunal in relation to how the Respondent's application for costs should be resolved.

32. It is regrettable that the Claimant has failed to provide evidence regarding his means to pay, as a result of which I assume that he does have means to pay. In that regard I note from the evidence at the hearing that he appeared to have resources including the property which he was selling to move. I was shown photographs of a large detached house in Yorkshire as part of the evidence which the Claimant discussed his purchase with colleagues.

33. I therefore find that, in principle, the Respondent is entitled to an order of costs.

34. I turn to deal with matters of quantum and I make my decision informed by the following matters:

a. The claim for £32.909.28 appears to be for the entire cost of the litigation.

b. The hourly rates appear to be high when compared to the guideline hourly rates published by the Master of the Rolls.

35. I find that the Claimant should have reconsidered his pursuing the claim and abandoned it by the beginning of October 2023. Had he done so then he would have not faced adverse costs consequences. I therefore deduct from the global costs claim all the costs from before October 2023 (up to and including box 10 of the costs schedule) but allow the costs of preparing for the final hearing. This amounts to £4,181.70 (plus VAT) of solicitor time. The hourly rates (no doubt agreed with the Respondent client) on a private basis appear to be roughly 25% more than the guideline hourly rates. I therefore reduce the amount of solicitor time claim by 25% which gives £3,136.23. Applying VAT at 20% gives £3,763.48. I also allow counsels fees as claimed at £5,100 (inc VAT).

Decision

36. I award the respondent costs pursuant to Rule 76(1)(a) and (b) of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 in the sum of **£8,863.48**.

Tribunal Judge Holt
21 February 2024

JUDGMENT SENT TO THE PARTIES ON
5 March 2024

FOR THE TRIBUNAL OFFICE