



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms H Lowe

**Respondent:** River Island Clothing Company Limited

## DECISION

The respondent's application for costs dated 15 January 2024 is refused.

## REASONS

1. By an application to the Tribunal during a preliminary hearing on 15 January 2024, the respondent applied for an order that the claimant pay its costs of £4318.50 incurred in relation to its application to strike out her claims on the basis that they have no reasonable prospect of success, or in the alternative that she be ordered to pay a deposit on the grounds that they had little reasonable prospect of success.
2. The claimant did not attend the hearing on 15 January 2024 and did not notify the respondent that she would not attend. She notified the Tribunal at the end of the working day before the hearing, after the offices had closed. Her claim was struck out at the hearing on the basis of her non-attendance.
3. The claimant was given an opportunity to respond to the application in writing and did respond at length. The Tribunal therefore does not consider that a hearing is necessary to deal with this application for costs. The respondent made further submissions following the claimant's response and these have been considered.
4. The claimant has provided the Tribunal with further information about her claim and brief information about her financial and personal circumstances. Much of the information about her claim relates to a considerable number of allegations of bullying by her line manager, Kieron Ellis, over a period of approximately 12 months. These allegations were briefly set out in her claim form but without any significant detail being provided. It was therefore unclear what the extent of her complaints were on the basis of the information in the claim form. The claimant said that her reluctance to attend the hearings in this matter were as a result of feeling extremely anxious and upset recounting her treatment by him.
5. The Tribunal notes that the respondent has incurred costs as a result of the claimant's failure to participate in the proceedings and her failure to withdraw her

claim, or notify the respondent and the Tribunal that she did not intend to take part in the hearing on 15 January 2024.

6. The respondent's submissions, provided in their correspondence of 5 February 2024, note that the claimant has produced no medical evidence of her anxiety or stress. However, it is not for the claimant to persuade the Tribunal that a costs order should not be made, but for the respondent to establish that a costs order ought to be made.

7. In the email of 5 February 2024, the respondent notes that the Tribunal concluded on 15 January in the case management orders that the claimant's conduct was unreasonable. This is not correct – the Tribunal considered that on the basis of the information available to it on 15 January 2024, this was the case, and provided the opportunity for the claimant to make submissions. The Tribunal did not have any information about the nature of the claimant's claims or any substantive pleadings, as the ET1 claim form contained very little detailed information about her claims. She has provided far more information in relation to this costs application. Taking the claimant's case at its highest, an anxiety about attending a hearing to discuss allegations of extensive bullying would be understandable, although her lack of notice about her unwillingness to attend was nevertheless unreasonable conduct.

8. The claimant's email of 12 January 2024 was effectively a withdrawal of her claim when considered in the circumstances of the proceedings. The respondent prepared for the hearing on 15 January 2024 on the basis that it sought a dismissal of her claim. Her claim was dismissed on 15 January, albeit for her non-attendance. Had the claimant attended the hearing on 15 January, the respondent would have made its representations to the Tribunal and may or may not have been successful. Were the Tribunal to make an award of costs to the claimant, she would in effect be being punished for the decision to discontinue her claim rather than attending the hearing at which her claim may have been dismissed. Her unreasonable conduct was to fail to communicate sooner that she did not wish to continue. However, it would have been open to her to attend the hearing on 15 January and she would not have been penalised for doing so. There was no guarantee that the respondent would have been successful in the application to strike out the claimant's claims had the hearing gone ahead. There is no obligation on a claimant to withdraw claims by any particular stage in the proceedings.

9. The claimant is a litigant in person and was representing herself throughout the proceedings. The Tribunal, in considering whether the claimant has acted unreasonably, must consider whether she has acted unreasonably throughout. Her non-attendance at the previous hearing was communicated in advance. This was not, of itself, unreasonable conduct sufficient to trigger a consideration of an award of costs.

10. It is a well-established principle that costs in the Employment Tribunal are the exception and not the rule. (*Yerrakalva v Barnsley Metropolitan Borough Council and another 2012 ICR 420, CA*). The costs provisions of the Employment Tribunal Rules of Procedure 2013 make clear that even if grounds for making a costs order are made out, the Tribunal is not obliged to make an order and has discretion whether or not to do so.

11. The Tribunal has considered the evidence provided of the claimant's ability to pay and notes that the claimant has a regular salary. She has two young children as her dependents.

12. Taking all of the factors in this application into consideration, although the claimant ought to have notified the respondent in advance of the hearing on 15 January 2024 that she did not want to continue with her claim, in that she would have saved them counsel's fee at least or possibly also further preparation costs incurred by the respondent's solicitors had she done so, on balance the circumstances are not such that it is in the interests of justice that an award of costs will be made. The respondent's application is refused.

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Employment Judge Barker  
Date: 28 February 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
7 March 2024  
FOR THE TRIBUNAL OFFICE