



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms M Bignall

**Respondent:** London Ambulance Service NHS Trust

**Heard at:** East London Hearing Centre (by CVP (video))

**On:** 7 November 2023

**Before:** Tribunal Judge R Overton acting as an Employment Judge

**Members:** Mr G Bishop  
Mr M Woods

## Representation

For the Claimant: Mr Middleton, Counsel

For the Respondent: Ms Whiteley, Solicitor Advocate, Capsticks Solicitors LLP

# RESERVED COSTS JUDGMENT

The Claimant is ordered to pay costs to the Respondent of £3,000.

## REASONS

1. The Claimant's claims of unfair dismissal, victimisation, detriment related to public interest disclosure, detriment related to health and safety, unauthorised deduction from wages and notice pay were dismissed at the conclusion of an eight day hearing including reading time, submissions from the parties and deliberation by the Tribunal.
2. The Respondent's application for costs, made at the conclusion of oral judgment and heard on 7 November 2023, is on the basis that the Claimant acted unreasonably in bringing the proceedings, or part thereof and that the claims had no reasonable prospects of success. The Respondent argues in the alternative that had the claim been restricted to a claim of unfair dismissal, the hearing time required and therefore the costs would have been significantly reduced.
3. At the hearing of the Respondent's costs application, Ms Bignall gave oral evidence and was cross-examined by the Respondent. Both representatives provided written submissions and made oral arguments. A bundle had been prepared with relevant documents.

4. The Respondent has applied for costs in the sum of £20,000 having calculated their costs from the date of exchange of witness statements onwards and then having reduced those costs to the cap applied by rule 78(1) of the Employment Tribunals Rules of Procedure. The Respondent provided a schedule of costs incurred. For clarity, the Respondent was not conceding entitlement to all costs incurred but had made their application with an eye to proportionality.

## **Facts**

5. Ms Bignall's original claims included claims for direct and indirect discrimination. These claims were the subject of deposit orders and Ms Bignall subsequently withdrew those claims and did not pay the deposit.
6. Ms Bignall was represented at various stages of the proceedings by two public-access barristers.
7. Ms Bignall received positive legal advice on the merits of her claim.
8. The Respondent sent two costs warning letters to the Claimant on 15 June 2022 and 26 January 2023 and at least the second of these letters was responded to by the Claimant's legal representative at the time.
9. In cross-examination at the merits hearing, Ms Bignall gave evidence that indicated her victimisation claim could not succeed. She also conceded facts that indicated her claim for unauthorised deductions from wages could not succeed.
10. Ms Bignall has 5 adult children, three of whom are studying at university and are financially reliant upon her.
11. Ms Bignall has cashed in a workplace pension in order to fund her claim and has therefore negatively affected her future financial standing.
12. She has obtained new employment and has set up her own business but her new work is insecure and variable in hours and her business is at a fledgling stage and is bringing in little income. Overall, her finances have reduced since her employment at the Respondent from around £55,000 per annum to approximately £40,000 in 2022/23 and looking significantly lower than that in 2023/24.

## **The law**

13. Rule 75 The Employment Tribunals Rules of Procedure:
  - (1) A costs order is an order that a party ("the paying party") make a payment to –
    - (a) another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;
14. Rule 76 The Employment Tribunal Rules of Procedure:

- (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) party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in wither 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 prospects of success
15. Rule 78 The Employment Tribunals Rules of Procedure:
  - (1) A costs order may –
    - (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000 in respect of the costs of the receiving party;
16. Rule 84 The Employment Tribunals Rules of Procedure:

In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.
17. Both representatives drew the Tribunal's attention to caselaw in their submission/skeleton argument, including that the tribunal has a wide discretion, that costs are the exception and that cost awards are compensatory and not punitive in nature.
18. We were reminded by Opalkova v Acquire Care Ltd EA-2020-00345-RN to consider each claim separately, having concluded that a party has acted unreasonably in the bringing or conduct of proceedings. We were also reminded that the means of a paying party can be considered at the point of deciding whether to make an award and then at the point of deciding the amount of award and that whether or not the paying party was represented is a relevant consideration.

## **Conclusions**

19. We considered that the Claimant's claim for unfair dismissal, although it was ultimately unsuccessful, was not without merit and therefore it could not be said that the unfair dismissal claim had no reasonable prospect of success and we find that she did not act unreasonably in bringing that claim.
20. The claim for notice pay followed the claim for unfair dismissal.
21. The claims of victimisation, detriment, and unpaid wages were unreasonably pursued.
22. In cross-examination it appeared that the Claimant may not have fully understood the basis for her claims for wages and victimisation and on the evidence they had

no reasonable prospect of success. That fact should have been evident to the Claimant when drafting and/or reviewing her witness statement in light of the Respondent's documents and witness statements. These claims were dealt with reasonably swiftly during the hearing and we find that they did not contribute in any meaningful way to the costs incurred by the Respondent.

23. The claim for detriment related to health and safety changed during the course of the hearing and submissions - from a claim under section 44(1)(c) Employment Rights Act 1996 to a claim under 44(1)(a) &/or (b). The factual basis for this claim also remained unclear from the claimant's evidence and she was unable to refute the clear factual evidence of the Respondent concerning the existence of means by which health and safety concerns could be raised. This should have been evident to her when drafting and/or reviewing her witness statement in light of the Respondent's documents and witness statements.
24. Given the oral evidence of the Claimant, the claim for detriment related to public interest disclosure had no reasonable prospect of success. This should have been evident to the Claimant at the time of drafting and/or reviewing her witness statement in light of the Respondent's documents and witness statements.
25. We find that the two detriment claims were unreasonably pursued by the Claimant and that they made the more significant impact upon the time taken by the Respondent in defending the claims and the costs incurred.
26. We acknowledge that Ms Bignall had sought legal advice and representation at her own expense and at times she was represented and at other times was not. We acknowledge that she had a genuine belief in the merits of her case overall and that the merits advice she received supported her belief. When encouraged to consider the merits of some of her claims by the Tribunal by means of a deposit order, she did so and withdrew those claims. However, apart from the unfair dismissal and notice pay claims, she pursued a number of claims for which she either failed to produce evidence in support or she ought to have known that her own evidence to the Tribunal did not support those claims and therefore it was appropriate to exercise our discretion to make a costs award.
27. We considered that it was the two detriment claims that most contributed to the respondent incurring unnecessary costs. We took account of Ms Bignall's means and her financial commitments as we are permitted to do by rule 84. We used the Tribunal's wide discretion and concluded that it was appropriate to make a costs order in the amount of £3,000.

**Tribunal Judge R Overton acting  
as an Employment Judge  
Date: 26 February 2024**