



EMPLOYMENT TRIBUNALS

Claimant

Donna Harding

Respondents

St George's University Hospitals NHS
Foundation Trust

JUDGMENT ON COSTS

1. The Claimant will pay the Respondent's costs in the sum of £1,000.

REASONS

1. This Judgment has a lengthy history. Following a hearing on 4 April 2023, the claim was struck out as having no reasonable prospects of success. The Judgment was signed on 6 April 2023, but unfortunately not sent out to the parties until 26 June 2023. The Claimant sought written reasons, which were promulgated on 1 August 2023.
2. Meanwhile, the Claimant's second claim (2301827/2020) proceeded to a hearing and judgment was given on 19 September 2023 dismissing all of the complaints. The Claimant was also ordered to pay the Respondent's costs in the sum of £20,000.
3. After judgment was given in April 2023 in this claim, the Respondent made an application for its costs (28 April). On 9 May, the Claimant was asked to respond to that application in writing within 14 days. Although there was subsequently correspondence in which the Claimant said she had sent in her objections to the Tribunal, there was no record of those being received.
4. There was further correspondence, which included the Claimant seeking postponement of the hearing of her second claim. She was given an extension of time for her response to the costs application and then a further and final extension of 14 days by letter of 14 October 2023.

5. On 23 October 2023, the Claimant emailed the Tribunal in response to that Order and her objections are set out below. As throughout this claim, the Claimant sought to link her two claims and the bulk of that email criticised the striking out of this claim and addressed issues in her second claim.
6. By the date of that email, the Claimant had brought an application for permission to appeal against the judgment in this claim, which was received by the Employment Appeal Tribunal on 20 October 2023 and subsequently notified to this Tribunal. She has also brought an application for permission to appeal against judgment in the second claim (filed on 16 November 2023). Those applications have yet to be considered.
7. The initial intention was to wait to see the outcome of those applications before finalising this costs matter, but in the event it makes better sense to deal with it now.

The application for costs

8. EJ Wright set out at some considerable length the relevant rules and case law relating to costs application in the costs judgment given in case no. 2301827/2020 and the parties are referred to that very helpful summary, which is relied upon here.
9. In summary, the three questions that need to be asked are:
 - a. Is the relevant jurisdictional threshold in rule 76 met?
 - b. If so, should the ET exercise its discretion in favour of making a costs order?
 - c. If so, what sum of costs should the ET order?
10. The Tribunal has reminded itself of its findings of fact and its conclusions in the reasoned judgment in the striking out application.
11. The Respondent's application for costs, which was copied to the Claimant, was accompanied by a schedule of costs. In terms, it echoed the submission made at the strike out hearing, which was that the Claimant had brought a claim for unfair dismissal when she had not been dismissed. This was an unreasonable thing to do, because the claim had no prospect of success. The Claimant had been warned of this.
12. In response, the Claimant denied that she had acted unreasonably. She quoted correspondence between the parties, which linked her two claims and said that she was bewildered by the request that she should pay costs. It is probably fair to say that the Claimant simply does not understand why this claim was struck out and, to her mind, there has been a real injustice in failing to link this claim with her other claim, so that everything can be heard together. She also complains strongly that she was treated unfairly at the Preliminary Hearing.

13. However, the stark fact remains that she brought a claim for unfair dismissal that had no possible chance of succeeding, because at the time of that claim she had not been dismissed, nor was she under threat of dismissal. However one looks at it, that was not a reasonable thing to do. Therefore, the jurisdictional threshold in Rule 76 is met, because in bringing and pursuing that claim the Claimant acted unreasonably.
14. Therefore, there is force in the Respondent's application and the Tribunal has decided to exercise its discretion in the Respondent's favour. The amount of costs sought is £8,518.85. The issue then becomes the Claimant's ability to pay. The Tribunal is having regard to this, because it has in mind that the Claimant is already facing a sizeable costs order.
15. The Claimant states that she is currently earning £65,262 per annum (on a fixed term contract to March 2024) and that she has no savings, but she has loans, overdraft and a mortgage totalling £180,201. As noted, she also has a costs order of £20,000 to meet.
16. The Claimant has not provided details of her outgoings, so the Tribunal has done its best to work out what she is likely to be left with at the end of each month and the answer is very little, despite being on a relatively good salary, at least until March. Doing the best it can, the Tribunal therefore considers that a costs order in the sum of £1,000 would be appropriate in all the circumstances.

Employment Judge S Cheetham KC
Dated 10 January 2024