



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102779/2023

5

Held in Glasgow by Cloud Video Platform (CVP) on 11 March 2024

Employment Judge S MacLean

10 **Ms Rebecca Stewart**

**Claimant
In Person**

Argyll College UHI Ltd

15

**Respondent
Represented by:
Mr G Mitchell -
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the respondent's application for expenses is refused.

20

REASONS

Introduction

25

30

1. The claimant claimed constructive unfair dismissal. She is a litigant in person. A final hearing was conducted between 26 and 29 September 2023. For the respondent current employees gave evidence. The Tribunal reserved judgment. The written judgment was sent to the parties on 4 December 2023 (the judgment). The claim was dismissed.
2. On 21 December 2023, the respondent made two applications, only one of which is still insisted upon: an application for expenses against the claimant. The claimant opposed the application.
3. The parties prepared a joint file of documents for the expenses hearing. The claimant gave evidence. The parties made submissions. During its deliberations the Tribunal has dealt with the points made in submissions when

setting out the facts, as agreed or as found, the law, and application of the law to those facts.

Findings in fact

4. The claimant raised a constructive unfair dismissal claim having previously sought legal advice. The claimant relied on the delay and discrepancy over her job title; the lack of support for qualification study; and alleged mistreatment by management, in particular her line manager's conduct in relation to her asking an inappropriate question of a colleague and her response to that; requiring the claimant to move to facilities; the failure to deal with a disrespectful email sent to the claimant by a colleague; and her line manager's delay in dealing with the claimant's job title.
5. The claimant has a debilitating medical condition which was exacerbated by a deterioration in her mental health in 2022. The claimant was prescribed medication by her general practitioner for her mental health throughout 2023/2024. Her mental health has been significantly affected by these proceedings.
6. The claimant represented herself throughout the proceedings. The parties were courteous and assisted each other and the Tribunal. The final hearing took place in person between 26 and 29 September 2023. The witness list was shortened during the final hearing. The parties agreed at short notice to allocate an extra day to finish the case. The claimant was exhausted after the final hearing, and anxious about the outcome.
7. The judgment dated 1 December 2023 was sent to the parties on 4 December 2023. The claim was dismissed.
8. The claimant was hugely disappointed at the outcome. She had difficulty discussing her situation with friends and family. The claimant did not seek reconsideration and did not appeal to the Employment Appeal Tribunal (the EAT).
9. On 12 December 2023, while browsing for Christmas presents the claimant purchased Christmas cards. On 19 December 2023, the claimant posted two

Christmas cards to West Bay learning centre addressed to two of the respondent's witnesses with whom she worked at the marine office. The handwritten content referred to the proceedings and the claimant's view of their evidence.

5 10. On receiving the Christmas cards, the two former colleagues were upset by the contents and fearful. They and the claimant live in a small rural community.

11. The respondent informed the police of the situation. The police visited the claimant. The claimant reassured the police that there was no issue about
10 the personal safety of the claimant's former colleagues. The claimant said that she was sorry about how they felt. She regretted her behaviour.

12. The claimant has not found new employment. She is in receipt of employment and support allowance. The claimant received a loan from her mother to pay for the legal fees that she had incurred in connection with her employment.
15 This loan has not been repaid. The claimant owns half of her property, but it is subject to a 30 year mortgage.

Deliberations

13. The respondent's application for expenses is made under rule 76 of schedule 1 to the Employment Tribunals (Constitution and Reules of Procedure)
20 Regulations 2013. The grounds upon which the respondent relies are that:

a. the claimant had acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing or conducting of the proceedings (rule 76(1)(a)) (conduct); and

b. the claim had no reasonable prospects of success (rule 76(1)(b)).

25 14. If these grounds are made out, it is discretionary whether or not the Tribunal makes the order, but the Tribunal has a duty to consider doing so. This involves a three stage test.

a. Has the Tribunal's power to award expenses been engaged?

- b. If so, is it appropriate to make an award against the claimant?
- c. If so, what amount should be awarded?

Has the power to award expenses been engaged?

- 5 15. Mr Mitchell argued that the case was vexatious and had no prospects of success. It was unreasonably continued when it was clear that there were no prospects of success. He said that the claimant's main premise was that her pay should have been considerably greater and the basis for that was conversations with others in other departments who had entirely different job roles.
- 10 16. In relation to conduct, the claimant is a litigant in person. Accordingly the Tribunal should not apply professional standards to her as she does not have the objectivity and knowledge of the law and practice.
- 15 17. The Tribunal did not consider that the claimant brought a hopeless claim without any expectation of recovering compensation but out of spite to harass the respondent. The claimant had sought legal advice before presenting the claim.
- 20 18. While the claimant had unrealistic expectations about the level of compensation that the Tribunal might award, the respondent's position was that no award was due. There was no suggestion that there was any offer made to the claimant that she unreasonably rejected.
- 25 19. Although the Tribunal did not find in her favour, as was explained in the observations on the witnesses and evidence in the judgment, there was no doubt the claimant gave her evidence honestly based on her perception of events. The Tribunal considered that the claimant assumed from discussions that her views on the management style of her line manager were shared by two of her colleagues who gave evidence for the respondent. This transpired not to be the case. Indeed the witnesses expressed views about the claimant which were no doubt a surprise to her and upsetting.

20. At the final hearing the claimant gave her evidence first. There was no application for the claim to be struck out as having no reasonable prospect of success either before or immediately after that evidence. This is not a criticism of the respondent, but rather a factor that the claimant was unaware until the submissions that the respondent reserved the right to make an application for expenses after the judgment was issued.
21. While the final hearing took longer than was initially allocated, the Tribunal did not consider that the claimant in any way prolonged the proceedings. To the contrary, she was prepared and agreed that not all the respondent's witnesses needed to give evidence. She was willing to continue the final hearing on 29 September 2024 to accommodate the respondent and the Tribunal, despite travelling each day and representing herself. The Tribunal did not form the impression that this was to incur the respondent in additional expense. The claimant had already incurred legal fees. She was representing herself as she was not in a financial position to continue to pay legal fees. It was apparent that she was tired during the final hearing. She could have asked for a break and for the final day to continue. This would, in the Tribunal's view, likely to have incurred more expense for the respondent.
22. In relation to the handwritten Christmas cards sent by the claimant to two of the respondent's witnesses, they had already given evidence and the judgment had been published on the Tribunal's website. The Tribunal accepted the Christmas cards referred to the proceedings and their evidence at the final hearing. The Tribunal also accepted that Christmas cards were offensive and that the two witnesses, who remain employed by the respondent, were intimidated by the content particularly as they and the claimant all live in a small rural community.
23. The Tribunal did not however agree with Mr Mitchell that this conduct by the claimant was either in the bringing of the proceedings or the way that the proceedings have been conducted. The parties were advised on 4 December 2023 that the claim was dismissed. The conduct took place on 19 December

2023. While the time limit for appealing to the EAT had not expired, an appeal is separate proceedings.

24. This is not to suggest that the Tribunal condoned the conduct, which reflected awfully on the claimant, but rather the matter needed to be addressed elsewhere, which is what happened when the respondent involved the police.

25. Mr Mitchell suggested that this conduct was to dissuade the respondent from making an application for expenses or defending an appeal. The claimant has not appealed the EAT or made any application for reconsideration. If anything the conduct has resulted in the respondent seeking expenses which has prolonged the situation for everyone. This has resulted in further expense for the respondent and no doubt anxiety for the claimant which will not have aided the recovery of her physical and mental health.

26. The Tribunal was not convinced that the power to award expenses had been engaged.

15 *Was it appropriate to make an award against the claimant?*

27. Having reached that conclusion, the Tribunal did not require to consider whether to make an award. However, had the power been engaged the Tribunal would not have exercised its discretion to make an award.

28. In most cases Tribunals do not make an award of expenses. Even looking at the case in the round, expenses are to be compensatory not punitive. The expenses sought by the respondent are restricted to those incurred in relation to the application for expenses not for the conducting the proceedings. The claimant has limited ability to pay, and even if the award was modest, it would place a considerable burden on her.

25

29. The Tribunal concluded that the application should be refused.

5

S MacLean
Employment Judge

22 March 2024
Date

Date sent to parties

25 March 2024

10