



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant  
MR M CARR

AND

Respondent  
ENGINEERED FABRICATION  
SOLUTIONS LTD

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL      ON:    22<sup>ND</sup> MARCH 2024

EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:-      IN PERSON

FOR THE RESPONDENT:-    MS P HALL (SOLICITOR)

## JUDGMENT

The judgment of the tribunal is that:-

- i) The claimant's claim for damages for breach of contract is dismissed on the grounds that all sums previously owing have been paid.
- ii) The respondent's application for costs is dismissed.

## Reasons

1. By a claim form submitted on 31<sup>st</sup> October 2023 the claimant brought a claim for unlawful deduction from wages and/or breach of contract.
2. The claimant was employed by the respondent from 30th May 2023 until 6<sup>th</sup> September 2023, having resigned 31<sup>st</sup> August 2023. The claim related to three day's pay he claimed he was still owed for 30<sup>th</sup> and 31<sup>st</sup> May 2023 and 1<sup>st</sup> September 2023.

He set out in both in his ET1/claim form and Schedule of Loss a claim for a total of £251.97 in unpaid wages.

3. That claim was initially defended and liability denied, but by 3rd January 2024 the respondent accepted that sum was owed, and paid it to the claimant. In addition on 17<sup>th</sup> January 2024 it paid interest on the unpaid amounts.

### Remaining Claims

4. As a consequence the respondent invited the claimant to withdraw his claim on the basis that any sums owed had been paid in full. The claimant declined to do so saying that he was still pursuing claims for “breach of contract” and “compensation”.
5. At the beginning of the hearing I clarified with the claimant what claims, if any, were still outstanding given that sums claimed in the claim form and Schedule of Loss had been paid. The claimant asserted that he was still bringing claims for breach of contract, and compensation for the behaviour of the respondent. He contended that before bringing his claim he had set out precisely what was owed and how it was calculated. The respondent rejected this and refused to pay him, putting them in breach of contract. They refused to settle through ACAS and originally defended the claim before finally admitting it in January 2024. Even when they did so they did not formally admit the claim, or even apologise to him, but simply paid the money into his bank account without even any notification to him that were going to do so, or had done so. As a result he contends that the respondent was in breach of contract at least until 3<sup>rd</sup> January 2024, during which time they in fact had no defence to the claim or any basis for refusing to pay the wages owed. He contends that he is the wronged party and has been treated appallingly by the respondent, and invites the tribunal to award any compensation it believes appropriate for the ongoing breach of contract and the respondent’s behaviour.
6. The respondent submits that the tribunal has no jurisdiction to award any further compensation. The measure of damages for a claim for breach of contract in the failure to pay sums owed is the payment of those sums. Even viewed as a claim for unlawful deduction from wages, there is no allegation of any consequential loss which the tribunal would have jurisdiction to award. The claimant is effectively inviting the tribunal either to make an award for some form of injury to feelings, or an award to punish the respondent for failing to admit the claim sooner, neither of which are within its jurisdiction. However it is viewed, the tribunal has no jurisdiction to make any further award to the claimant arising out of his claim for unpaid wages.
7. In my judgement the respondent’s submissions are correct and I have no jurisdiction to make any further award to the claimant. It follows that the claimant’s claim must be dismissed as, as at the date of the hearing, there is no sum outstanding which the tribunal could award him.

Respondent's Costs Application

8. The respondent has made a costs application on the basis that by 3<sup>rd</sup> January 2024 it had paid the claim in full, and on paying interest on the sums owed the claimant had in fact received more from the respondent than he could have been awarded by the tribunal. In those circumstances it was unreasonable conduct of the proceedings within the meaning of rule 76(1)(a) to continue with the claim and put the respondent to the expense of attending a hearing when it had already paid the claim in full. Alternatively from the point at which the claim was paid in full there was no remaining claim with any reasonable prospect of success (r76(1)(b)). On either basis it is entitled to its costs from 3<sup>rd</sup> January 2024. The amount claimed is ten hours work, including the final hearing, being £1020.00 plus VAT. In my judgement if in principle I decide to make a costs order, and subject to taking into consideration the claimant's means in deciding the amount, that the amount claimed is in and of itself reasonable.
9. By an email of 9<sup>th</sup> January 2024 the respondent asserted that the payment was in full and final settlement of the claim, and put the claimant on notice of its costs application. In his reply the claimant disputed the fact that any payment was in full and final settlement of the claim as he had never agreed, or been asked to agree, this. He interpreted the payment as an admission of liability, "guilt" as he put it, and stated " I will not be withdrawing my claim unless an agreed amount of compensation is offered.", and "...the payment was...over four months late not to mention the time effort and emotional stress caused in pursuing what I work so hard for in the first place..".
10. The claimant is, to put it mildly, outraged that there should be any question of him paying the respondents costs. For the reasons set out above he contends that he has behaved entirely reasonably, and that even if he is wrong to assert that he is entitled to any further compensation arising out of the delay in payment or the respondent's behaviour that he brought and pursued the claim in good faith at all times. As a litigant in person, and not a lawyer, he fully accepts that he will be bound by any decision of the tribunal as to whether it can or will order any further compensation. However, he does not accept that he should be ordered to pay the respondent's costs, or even that there should be any consideration of the respondent's costs application. I explained that as the application had been made I was bound to consider it, and ask him questions as to his means, but this did not mean that I had decided in principle that I intended to make a costs order.
11. The issues I have to decide are:
  - i) Whether the threshold for making an order for costs has been crossed;
  - ii) If so whether I would in principle make an order for costs (the discretion still exists even if the threshold has been crossed);
  - iii) If so the amount of any award taking into account the claimant's means.

12. The fact that the claimant is a litigant in person is a factor I am entitled to take into account (See *AQ Ltd v Holden 2012 IRLR 648, EAT*:
- i) The threshold tests governing the award of costs or a preparation time order in rule 76(1) of the Tribunal Rules 2013 are the same whether the claimant is or is not professionally represented, but that the application of those tests should take this factor into account;.
  - ii) “An employment tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. Lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Furthermore, the EAT observed, even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order, which will be exercised having regard to all the circumstances. In its view, ‘it is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice’. (Summary quoted taken IDS Handbook Volume 9 para 18.130).
13. It is clearly correct that a professional representative would be expected to recognise that the respondent’s assertion that as it had paid the claim in full the litigation was, or should have been, at an end was correct. However it is not at all clear to me that a litigant in person should necessarily have appreciated that, or to understand that he was not entitled to compensation for the delay in payment, or the fact of the respondent at least initially defending a meritorious claim.
14. In those circumstances I am not satisfied that it was unreasonable to proceed or that he should necessarily have appreciated that he no longer had any claim with any reasonable prospect of success. Even had I concluded that one or both of the threshold tests had been crossed for the same reason I would not have exercised my discretion to make an award of costs in this case in any event.
15. It follows that the respondent’s application is dismissed.

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Employment Judge Cadney  
Dated: 28th March 2024

Judgment sent to the parties on 17 April 2024

For the Tribunal Office