EMPLOYMENT TRIBUNALS

Claimant: Ms M Abimbola

Respondent: Global Banking School Limited

Heard at: Leeds **On:** 15 April 2024

Before: Employment Judge D N Jones

REPRESENTATION:

Claimant: In person
Respondent: Mr M Delaney, Solicitor

JUDGMENT

The application of the respondent for the claimant to pay costs in the sum of £4,549.50 is refused.

REASONS

1. These are the second set of proceedings brought by the claimant against the respondent. The decisions to allow the application to strike out the second but not the third claims should be read in conjunction with these reasons.

2. By rule 76:
"A Tribunal may make a costs order, or a preparation time order, and shall consider whether to do so, where it considers that –
(a) a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way the proceedings have been conducted; or
(b) any claim or response has no reasonable prospect of success."

3. By rule 84:
"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."

4. By rule 2:

   "The overriding objective of these rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable –
   (a) ensuring that the parties are on an equal footing;
   (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
   (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
   (d) avoiding delay so far as is compatible with proper consideration with the issues; and
   (e) saving expense.

   A Tribunal seeks to give effect to the overriding objective in interpreting, or exercising any power given to it by these rules."

5. By a letter dated 10 October 2023 the respondent made this application for costs against the claimant on the ground that her claim had no reasonable prospect of success and was vexatious. The Tribunal had found that this, the second, claim had no reasonable prospects of success and was vexatious in its pursuit beyond 5 May 2023. Written reasons for this decision were sent on 20 November 2023. The threshold for making a costs order under rule 76 is established.

6. In the hearing of the costs application the Tribunal identified an error in paragraph 19 of the reasons, which stated that the *bringing* of the second claim was an abuse of process and vexatious. The sentence should have read that *continuing to pursue* the proceedings beyond 5 May 2023 was an abuse of process. They were presented, on 3 May 2023. The claimant had not signed the COT3 agreement until 5 May 2023. So, the issue of this claim predated the signing of the Settlement Agreement could not be considered as either vexatious or unreasonable conduct and nor could the prospects of success at that time have been considered unreasonable. That was not the case after 5 May 2023. Then paragraph 7(d) settled the second set of proceedings. This clarification of the reasoning does not require a reconsideration of that judgment.

7. In all the circumstances of the case, the threshold having been established, is it in the interests of justice for a costs order to be made?

8. The claimant said that she had been advised by ACAS when she had entered into the Agreement. She had not understood, on that advice, that she would not be able to continue the second claim. She felt fortified in that belief by the fact that the second claim only referred specifically to her having to withdraw the first claim under paragraph 2 and in the appendix. The claimant stated that she had human rights and drew attention to what she considered to be egregious behaviour of the respondent in breaching the terms of the Agreement itself in withdrawing the pension payment on 1 June 2023 and misrepresenting the dates of her employment in order to do so.

9. The respondent did know that the second claim had been issued on 3 May 2023 when it had entered into the settlement agreement. Although the claimant had contacted ACAS for the purpose of bringing the second claim, she had asked them not to contact the respondent for early conciliation purposes and, although she had contacted the Human Resources Department in respect of the shortfall in her pay, she had not indicated she was to bring a second claim. To be faced with a second

claim, believing there would be no more litigation with the claimant because of the COT3, the second claim came as a surprise.

10. By letter dated 31 May 2023 the respondent's representatives put the claimant on notice that they would apply to strike out this claim on the ground it had been improperly pursued in light of clause 7 of the COT3. They also required repayment of the sums payable to the claimant under the agreement and issued a notice that it would bring civil proceedings for recoupment of the monies if she did not repay them within 14 days.

11. The claimant should have known the second claim was not going to succeed, had she carefully read paragraph 7 of the agreement. She had been specifically put on notice of that by the letter from the respondent dated 31 May 2023. It was not a satisfactory defence for the claimant to say paragraph 2 and the appendix all related to the first claim, not least because the respondent was simply unaware of the second claim and so would not have included it in the draft agreement. The claimant had a responsibility to read all the agreement before she read it. I recognise she did not have the benefit of legal advice and had misunderstood the effect of the agreement, but she is an intelligent person who has grasped some complex legal issues in her able presentation of these proceedings.

12. In my ruling rejecting the application to strike out the third set of proceedings I found that the claimant was not in breach of the agreement by issuing the second set of proceedings, as alleged by the respondent in their letter of 31 May 2023. There had been a demand of the claimant to repay sums she which she was not legally required to repay. Even though 14 days for this was stipulated the respondent retrieved the pension payment the following day, on 1 June 2023. The claimant was informed she would have to pay costs on an indemnity basis if she did not return the monies. The tone of this correspondence was regrettable. On my findings, the obligations on the claimant under paragraph 7 of the agreement were discharged by the respondent's breach on 1 June 2023 by recouping sums lawfully due to the claimant under the COT3. That did not apply retrospectively to reawaken the right to pursue the second claim.

13. The high handed and misconceived approach of the respondent, by issuing these demands and then recouping monies to which it was not entitled, is a circumstance I take into account in the application for costs. Had the claimant been legally advised at the time she would probably have withdrawn the second claim, but she would not have repaid the monies demanded. The claimant was presented with a series of demands on 31 May 2023, the majority of which were unfounded. The claimant's continuing pursuit of the second claim after this time, without the benefit of legal advice which she could not afford, must be seen in that context.

14. Furthermore, I have regard to the very limited means of the claimant. She has been out of work until last month and survived on the payment in compensation she received from the respondent in the net sum of £47,000. She has had to repay debts to her parents who have travelled to the UK. She has no monies left. She was only able to obtain work last month. She earned £380 but is on a zero hours' contract. She is caring for aged parents and two dependent children as a single mother.

15. Having regard to all of these matters I am not satisfied it is in the interests of justice to allow the application for costs.

Employment Judge Jones

Date: 22 April 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

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