



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Bye

v

Amey Services Limited

COSTS JUDGMENT

The Tribunal Orders the Claimant to pay the Respondent's costs of the adjourned hearing on 5 September 2023, assessed in the sum of **£6,246.14**.

REASONS

1. On 12 December 2023, I gave a Costs Judgment ordering that the Claimant must pay the Respondent's costs of the adjourned hearing of 5 September 2023, those costs to be assessed if they could not be agreed. I allowed the parties a further 14 days from 22 December 2022 (the date on which the Costs Judgment was sent to them) in which to agree the amount of the costs, failing which the Respondent was ordered within a further period of 7 days to file with the Tribunal and serve on the Claimant a schedule of the costs being claimed by it. Within 7 days of receipt of that schedule, the Claimant was to file with the Tribunal and serve on the Respondent a counter-schedule identifying his objections, if any, to the costs being claimed and the reasons for his objections.
2. The Respondent served its schedule of costs on 12 January 2023 as ordered. The Claimant has not served a counter-schedule. In an email to the Tribunal dated 12 January 2024 he wrote that he would review the costs schedule "once the "reconsider" and "appeal" applications have been settled". I gave judgment on his reconsideration application of 20 December 2023 on 5 January 2024 and it is recorded as having been sent to the parties on 22 January 2024. Subsequently, on 12 March 2024, the parties were informed by the EAT that His Honour Judge Shanks had ordered that no further action should be taken on the Claimant's notice of appeal, which was determined to be an abuse of process and totally without merit. Putting aside that it is not for a party to unilaterally decide when they will comply with a Tribunal's order, notwithstanding the reconsideration application and appeal have been determined, the Claimant has still not made any

submissions in respect of the Respondent's claimed costs, save that in his email of 12 January 2024 he wrote that the amount being claimed was unreasonable.

3. The Respondent's costs are to be assessed on the standard basis. Rule 78(1)(b) of the Tribunals Rules of Procedure states that Employment Judges should apply the principles in the Civil Procedure Rules 1998 ("CPR") when undertaking detailed assessments of costs. Whilst the Order I made was for a summary assessment, nevertheless I have found it helpful in this matter to have regard to the CPR and to the 2021 Edition of the Guide to the Summary Assessment of Costs which is available to Judges, Parties and Practitioners in the Civil Courts.
4. Rules 44.3(1) and (2) of the CPR provide that where the court assesses the amount of costs on the standard basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.
5. The Guide states that costs will be proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings (b) the value of any non-monetary relief in issue in the proceedings (c) the complexity of the litigation (d) any additional work generated by the conduct of the paying party (e) any wider factors involved in the proceedings, such as reputation or public importance and (f) any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.
6. Rule 44.4(3) sets out the factors to be taken into account in deciding the amount of costs. Those factors include: the conduct of the parties, including conduct before as well as during the proceedings; the efforts made, if any, before and during the proceedings in order to try to resolve the dispute; the value involved in the proceedings; the importance of the matter to the parties; the complexity of the proceedings; the skill and specialised knowledge of the lawyers; the place where the work was done; and the receiving party's last approved or agreed budget (this final consideration is not relevant in the Employment Tribunals).
7. In my Reasons for the Costs Judgement I identified the conduct of the Claimant that led to the Costs Order being made. The matter was clearly important to the Respondent, particularly given the assertions of dishonesty that were directed both at themselves and their legal representatives, and which in the latter case struck at the heart of the representatives' professional integrity and potential ability to practice. The Respondent has been obliged to rely upon their legal advisors more than might otherwise have been the case had the Claimant not conducted the proceedings as he did. It will be apparent from my judgment striking out the claim that the issues in the case were sensitive and complex. Whilst I consider that the

issues were sufficiently difficult and unusual such as to warrant a higher hourly charge rate, the Respondent has not sought an increased hourly rate to reflect the complexity of the matter. I am satisfied that the claimed hourly rates for the fee earners in question are eminently reasonable, indeed that Ms Watson's hourly rate of £210 and her supervising partner, Mr McLaughlin's hourly rate of £270 are slightly lower than might be expected for a fee earner of their grade based in Edinburgh.

8. As regards the claimed costs:

- a. Whilst I accept that all of the identified preparatory work was reasonable and necessary, I consider that it would be proportionate to allow £1,000 in respect of the preparation time for the hearing as opposed to £1,385 claimed. Similarly, whilst the steps taken by the Respondent following the hearing were reasonable and necessary, an amount of £500 would be more proportionate in terms of the work involved, namely reporting back to the Respondent, diarising actions and reviewing the hearing record once received.
- b. It was reasonable for Ms Watson to attend the hearing on 5 September 2023, partly given the accusations levelled at her, but given also the sensitivity and complexity of the matter, her intimate knowledge of the case as the conducting solicitor and its importance to the Respondent. Whilst I shall allow her travel and accommodation expenses of £496.14 in full, I consider that the legal fees of attending the hearing are not necessarily proportionate to Counsel's claimed brief fee of £3,000 (which extends to Counsel's costs of preparing for the hearing as well as his attendance). Whilst I observed Ms Watson to play an active part during the hearing on 5 September 2023, she did not of course appear as an advocate. In terms of the costs that should be borne by the Claimant, I consider £1,250 to be a more proportionate sum in respect of her costs of travelling to and attending the hearing as against £2,667 claimed.
- c. I am satisfied that Mr Graham's brief fee of £3,000 inclusive of VAT is reasonable and proportionate to the issues that were to be determined at the hearing, including factoring in the additional work generated by the Claimant's conduct prior to the hearing and the importance of the matter to the Respondent. In my judgement it is reasonable and proportionate for the Respondents to meet those costs in full.

9. The total sum that I shall therefore order the Claimant to pay in respect of the Respondent's costs of the Hearing on 5 September 2023 is £6,246.14 inclusive of VAT. I have made no order that the Claimant should pay the costs incurred in connection with the costs application. Should the Respondent seek those costs they must make a further costs application in the usual way.

Employment Judge Tynan

Date: 24 April 2024

Sent to the parties on: 24 May 2024

For the Tribunal Office