



EMPLOYMENT TRIBUNALS

Claimant: B

Respondents: BENNBRIDGE SERVICES LLP (R1)
C (R2)
D (R3)
E (R4)

COSTS DECISION

London Central

Employment Judge: Employment Judge Henderson

21 May 2024

The respondents' application for costs against the claimant is refused.

REASONS

1. This is an application for costs made by the respondents, dated 29 April 2024 for a total of £16,765 incurred because of the claimant's multiple applications to amend. There was insufficient time to deal with this application at the preliminary hearing on 14 May 2024 and it was agreed with the parties that the application would be dealt with "on the papers".
2. In reaching my decision, I have considered the respondents' application and the relevant sections of Ms Mayhew's (respondents' counsel) written submissions; the claimant's response to the costs application dated 4 May 2024 and also the information given to me (orally) by the claimant about her financial situation at the hearing on 14 May 2024.

Background

3. The claimant was employment by R1 from 2 March 2022 to 14 April 2023 when she was dismissed citing gross misconduct. On 20 April 2023 the claimant lodged an ET1 in the Employment Tribunal claiming automatically unfair dismissal and detriments on ground of whistleblowing (protected disclosures

made in the public interest which raised allegations that the claimant and other employees of R1 were subjected to sexual harassment).

4. The claimant's application for interim relief was refused on 31 July 2023 by EJ Gidney. The respondents served their ET3 / Grounds of Resistance in August 2023. There was a case management hearing on 18 September 2023 with EJ Singh.
5. Following that hearing, the claimant made a lengthy (15 page) application to amend in October 2023 stating, "I want to add bullying, sexual discrimination and sexual harassment to the original unfair dismissal claim due to whistleblowing".
6. That application was heard by EJ Keogh on 7 December 2023 who (in a written decision dated 4 January 2024 and sent to the parties on 17 January 2024) refused the majority of the applications but allowed a claim of victimisation to proceed.
7. At paragraph 46 of her written reasons for this decision EJ Keogh noted that there was "*a gradual expansion*" of the claimant's claims, which made it difficult to properly identify the claims she was making. EJ Keogh observed that this had undoubtedly caused prejudice to the respondents generally and distress to the named individual respondents as they were still unable to clarify exactly what allegations were being made against them.
8. The claimant then made a further five separate applications to amend her claims over the period 28 December 2023 to March 2024 (with some overlapping subject matter). There was insufficient time to hear these applications at a further case management hearing with EJ Gidney in March 2024 and those applications were heard by me at the preliminary hearing on 14 May 2024. All the claimant's applications were refused (see Case Management Order dated 19 May 2024).
9. In the Order of 21 March 2024 at paragraph 7.3 EJ Gidney noted as follows: "*The Claimant accepted that her repeated applications to amend her Claim were causing considerable delay to the determination of her existing claims and were causing considerable extra costs to the Respondent. The Claimant confirmed that she would NOT be making any more applications to amend her Claim Form*". When the claimant was referred to this paragraph at the hearing on 14 May 2024, she said that she had been pressurised by EJ Gidney to make those statements.
10. I note that in many of the claimant's applications, she alleges that she is being pressurised by the respondents' representatives or others, when they do not accept or question her version of events or her actions. The claimant also states that the respondents' opposition to her applications violates her rights of

free speech (paragraph 2 of the claimant's application to amend dated 7 December 2023).

11. The claimant must recognise that having chosen to bring her claims in the Employment Tribunal, the nature of the litigation process is that claims may be defended, and factual matters may be disputed. Any defence put forward by the respondents, whilst it may challenge the claimant's version of events, is not of itself a denial of her right of free speech.
12. In a similar vein, in her response to the costs application the claimant made allegations that the respondents' solicitors (Lewis Silkin) and counsel had intimidated EJ Keogh by threatening to withdraw her position as a salaried Judge. The allegations are denied by the respondents' representatives, but these are serious allegations against both the representatives and indeed against EJ Keogh herself, as it is suggested by the claimant that the Judge allowed herself to be intimidated in reaching her decision. It does appear that the claimant is very ready to make serious accusations of dishonesty and misconduct against others, when they do not agree with her or do what she wants.
13. I also note that the claimant is a litigant in person and has chosen to remain as such to date. I did recommend to her that she seek free legal advice and/or see if any support is available from her professional association (she is a chartered accountant). I hope that the claimant does follow this recommendation as it may help her to negotiate the difficulties of tribunal litigation and to understand how that process works going forward.

The relevant law

Tribunal Rules of Procedure 2013 - Rule 76 (1) *A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—*

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 that the proceedings (or part) have been conducted;

14. Although costs awards are the exception to the rule this does not mean that the facts of a case must be exceptional for a costs order to be made - ***Power v Panasonic (UK) Limited UK [2003] IRLR 151***. What falls to be determined by the Tribunal is whether, considering the whole picture of what has happened, the Tribunal can conclude that a costs award should be made in such circumstances (***Yerrakalava v Barnsley Metropolitan Borough Council [2012] ICR 420***).
15. "Unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to vexatious (***Dyer v Secretary of State for Employment EAT 183/83***).

16. There is no requirement for a party to demonstrate any causal link between the specific items of costs claimed and the unreasonable behaviour of the other party; rather, *"the tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion"* — **McPherson v BNP Paribas SA [2004] ICR 1398** at [40].
17. A litigant in person should not be judged according to the same standard as professional representatives in deciding whether the threshold to award costs is met. Further, the fact that a party is unrepresented may be a relevant circumstance in deciding whether or not to exercise the discretion to award costs (even if the threshold for making such an award is met). See **AQ Ltd v. Holden [2012] UKEAT/0021/12/CEA**.
18. The Tribunal should first consider whether the threshold in ET Rules 76(1)(a) has been met and then consider whether, in all the circumstances, it is proper to exercise its discretion to make an award of costs in this case.

The respondents' application

19. In summary the respondents' say that the claimant has acted unreasonably and/or vexatiously by making repeated, piecemeal applications to amend her claims (after the original amendment made in October 2023) all of which have no reasonable prospect of success. The respondents also cited the allegations made by the claimant in her response to the costs application as an example of her unreasonable and vexatious behaviour (see paragraph 12 above).

The claimant's response

20. The claimant's states that she feels that the Tribunal does not hear her or recognise that she was a victim of abuse. Again, the claimant fails to understand that the matter must be brought to a Final Hearing (now scheduled for March 2023) before the Tribunal can reach a decision on whether her claims have succeeded.
21. The claimant does not explain why a costs order should not be made but repeats the narrative of various applications and makes allegations (as referred to above) of misconduct by the respondents' representatives.

Conclusions

22. The first stage in deciding this application is consider whether the threshold in ET Rules 76(1)(a) has been met.

Unreasonable/Vexatious Conduct

23. Having reviewed the background to this case (as set out above) and having taken an overall view (**Yerrakalva**), I find that the claimant has acted unreasonably (though not necessarily vexatiously) in bringing the various amendment applications.
24. The claimant does not appear to understand that her claim must be expressed clearly and cannot be dealt with by constant additions and variations. The claimant had been told this by at least two Employment Judges in their written decisions but has nevertheless continued to make applications to amend her claims.
25. Further, the claimant does not appear to understand that the nature of tribunal claims/litigation is that all parties are entitled to put their case and that both sides of the argument need to be heard by the Tribunal, before reaching its final decision as to whether a claim succeeds or fails.
26. As stated in numerous documents written by her, the claimant regards any opposition by the respondents to her applications or any challenge to her actions or conduct in the litigation as an attack on her right to free speech. This then leads her to make serious allegations against the respondents/their representatives and Tribunal Judges. This cannot be regarded as reasonable conduct in the litigation process.

Tribunal's discretion

27. The next stage is for the Tribunal to consider whether, in all the circumstances, it is proper to exercise its discretion to make an award of costs in this case. In exercising my discretion in this case I take into account the fact that this claimant is a litigant in person.
28. I refer to paragraphs 32 and 33 of the **Holden** case in which HHJ Richardson said:

“The threshold tests in rule 40(3) [the former version of Rule 76 (1)] are the same whether a litigant is or is not professionally represented. The application of those tests should, however, take into account whether a litigant is professionally represented. A 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. As Mr Davies submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests in rule 40(3). Further, even if the threshold tests for an order for costs are met, the Tribunal has discretion whether to make an order. This

discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice. ...

This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity”

29. In this case I feel that the claimant’s behaviour should be put in the context of her lack of legal advice and representation. I bear in mind the reference in HHJ Richardson’s judgment to lay people possibly lacking the objectivity and knowledge of the law and legal practice which would be provided by a professional legal adviser. It is exactly this objectivity and knowledge which the claimant needs in order to progress this case and it is the lack of such advice and support which I believe may well have led to her unreasonable conduct to date.
30. I therefore exercise my discretion **not to make a costs order against the claimant** at this stage of the proceedings. However, the claimant must recognise that she should review her conduct going forward in this litigation (whether or not she chooses to obtain some legal advice or support).
31. If her previous conduct continues, a different Judge may not exercise his/her discretion in the claimant’s favour in the event of another application for costs being made by the respondents in the future.

Employment Judge Henderson

JUDGMENT SIGNED ON: 21 May 2024

JUDGMENT SENT TO THE PARTIES ON

30 May 2024

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FOR THE TRIBUNAL OFFICE

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