Case Number 1302516/2022
1302535/2022
1302548/2022
1305515/2022

Type V

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr CV David		**Jaguar Landrover Limited**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL
(COSTS APPLICATION)

HELD AT Birmingham **ON** 7 May 2024

EMPLOYMENT JUDGE GASKELL **MEMBERS: Mrs BH Astill**
Mr T Liburd

Representation
For the Claimant: **In Person**
For the Respondent: **Ms M Sharp (Counsel)**

JUDGMENT
(Issued to the parties on 7 May 2024.Set out here for ease of reference)

The unanimous judgment of the tribunal is:

Pursuant to Rules 74 – 79 & 84 of the Employment Tribunals Rules of Procedure 2013, the claimant is ordered to pay to the respondent the sum of £20000 as a contribution towards its costs in this case.

REASONS

This judgment was delivered orally in tribunal on 7 May 2024. These written reasons are provided pursuant to a written request made by the respondent dated 24 May 2024.
(Rule 62(3) of the Employment Tribunals Rules of Procedure 2023)

Introduction

1 Over eight days in March 2024, this panel heard claims by the claimant of unfair (constructive) dismissal, direct race discrimination, victimisation, harassment, a failure to make adjustments, and a claim for breach of contract.

On 27 March 2024 we gave judgement: all of the claims were dismissed. Pursuant to a request received from the respondent at the time, full written reasons were prepared and sent to the parties on 28 March 2024. Reference should be made to the judgement and reasons issued on that day.

2 At the conclusion of the hearing, the respondent made an application for costs. We made Case Management Orders relating to that application and we have heard the application today. The respondent seeks an order for costs limited to £20,000: this being the maximum sum which we can assess summarily under the provisions of Rule 78 of the Employment Tribunals Rules of Procedure 2013. It is the respondent's case that its total costs substantially exceed that figure.

Legal Framework

3 Unlike in the civil courts, in the Employment Tribunal, costs do not ordinarily follow the event. There is no presumption that the losing party will be ordered to pay the costs of the successful party. We have a discretion to order costs in circumstances where one or more of a number of criteria are met. In a particular case where we find that one or more of the criteria are met, we have an obligation to consider making a costs order. Even where the criteria are met this only gives us a discretion to award costs and we must consider judicially whether in the circumstances of the particular case an order for costs is appropriate.

4 The legal framework is set out in Rules 74 – 78 and 84 of the Employment Tribunals Rules of Procedure 2013 (the Rules). The criteria to which I have referred are to be found in Rule 76(1):

> *(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) 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; or*
>
> *(b) any claim or response had no reasonable prospect of success.*

5 Rule 84 provides that in deciding whether to make an order for costs, and in deciding the amount of the order, the tribunal may take account of the paying parties' ability to pay. This is discretionary: we must decide whether to take

account of the claimants means - if we decide not to we have to be clear as to why; if we decide to take account of the means we need to be clear as to how that information has influenced our decision.

6 There are a number of previously decided cases from the higher courts which we have considered and which provide guidance to the employment tribunal as to how to apply the Rules:

Beynon & others –v- Scadden & others **[1999] IRLR 700 (EAT)**
Gee –v- Shell UK Ltd. **[2003] IRLR 82 (CA)**
An award of costs in the employment tribunal is the exception rather than the rule. Costs are compensatory not punative.

Salinas –v- Bear Stearns International Holdings Inc. & another
[2005] ICR 1117 (EAT)
The reason why costs orders are not made in the vast majority of employment tribunal cases is that the high hurdle has to be overcome for a costs order to be made has not, in fact, been overcome.

Beynon & others –v- Scadden & others **[1999] IRLR 700 (EAT)**
Monaghan –v- Close Thornton Solicitors **UKEAT/0003/01**
Beat –v- Devon County Council & another **UKEAT/0534/05**
Lewald-Jezierska –v- Solicitors in Law Ltd. & others **UKEAT/0165/06**
The tribunal must not move straight from a finding that conduct was vexatious, abusive, disruptive, unreasonable or misconceived to the making of a costs order without first considering whether it should exercise its discretion, to do so.

Yerrakalva –v- Barnsley MBC **UKEAT/0231/10**
There is no general rule that withdrawing a claim is tantamount to an admission that it is misconceived. There is no requirement for a direct causative link between the unreasonable conduct and the costs incurred but there should be some connection.

Dyer –v- Secretary of State for Employment **UKEAT/0183/83**
Whether conduct is unreasonable is a matter of fact for the tribunal to decide. Unreasonableness has its ordinary meaning.

McPherson –v- BNP Paribas **[2004] ICR 1398**
The late withdrawal of proceedings is not of itself evidence of unreasonable conduct. The claimant's conduct overall must be considered. But a late

withdrawal is a factor in a case where the claimant might reasonably have been expected to withdraw earlier.

Keskar –v- Governors of All Saints Church of England School **[1991] ICR 493**
A tribunal is entitled to take account of whether a claimant ought to have known his claim had no reasonable prospect of success.

Kaur –v- John Brierley Ltd. **UKEAT/0783/00**
An award of costs against the claimant was upheld in a case where the claimant had failed, despite several requests, to properly set out her claim. She proceeded with the claim only to withdraw at the commencement of the trial.

Vaughan –v- Lewisham LBC (No 2) **[2013] IRLR 713 (EAT)**
There is no requirement for the receiving party to have written a costs warning letter. It is not wrong in principle for an employment tribunal to make an award of costs against a party which that party is unable to pay immediately in circumstances where the tribunal considers that the party may be able to meet the liability in due course.

The Respondent's Application

No Reasonable Prospects of Success

7 The respondent submits that to a significant extent these claims had no reasonable prospect of success. The respondent relies on findings expressed in our judgement that elements of the claim were misconceived and based on a number of unjustified assumptions made by the claimant. The respondent further relies on our finding that the claimant had no reasonable grounds to believe that race discrimination was ever in play and that he did not in fact believe that to be the case. When giving evidence, the claimant was simply unable to explain elements of this claim and promptly withdrew them.

Unreasonable Conduct

8 The respondent further submits that the claimant has conducted himself unreasonably. There were numerous requests for full particularisation of the claims which were not complied with and it was these elements of the claims which were withdrawn at trial. Further the claimant has proceeded to trial in the light of costs warning letters which appear to have been quite properly sent and he proceeded notwithstanding an offer of settlement of £15,000.

9 Miss Sharp informed us that at a Dispute Resolution Hearing (DRH) which took place shortly before the trial, an Employment Judge explained to the claimant that there were obvious weaknesses to his claim and suggested he should consider his position very carefully. Notwithstanding this, the claimant proceeded. We have seen no official record of the DRH and we do not even know the identity of the Judge - but the claimant did not challenge the account given to us by Miss Sharp.

Vexatious Conduct

10 It is the respondent's case that the claim was vexatious. It was pursued as a personal vendetta against the claimant's former manager Ms Samantha Humphreys whom we found to be "*a very professional, diligent, conscientious, caring and compassionate manager*".

The Claimant's Response to the Application

11 In his response to the application, the claimant repeats the basis of his claims and pursues his belief that he was badly treated by the respondent and Ms Humphreys. The claimant seems to take no account of the findings which we have made against him. The claimant suggests that it was open to the respondent to settle the proceedings in advance of trial - but makes no comment on the fact that it was he who declined an offer of £15,000.

12 The claimant has produced detailed information as to his means which he has asked us to take into account in reaching our decision.

Discussion & Conclusions

The Criteria for an Award of Costs

Reasonable Prospects of Success

13 In paragraph 15 of our written determination, we make clear that in our judgement the claimant was potentially dishonest with regard to one element of this claim. We find that he had no genuine or reasonable belief that the respondent's actions were motivated by race. In evidence, the claimant admitted that when he presented the first 3three of his four claim forms, his employment was ongoing. He could not at that time bring a claim for constructive dismissal: as he explained, he therefore had to find a way of fitting his claims for unfair

treatment into the tribunal's jurisdiction. It was for this reason only that he introduced the suggestion of race discrimination. There was no merit whatsoever in the race discrimination claim or in that of racial harassment. In our judgement, these claims never had any reasonable prospect of success.

Unreasonable Conduct

14 It does not lie easily in the claimant's mouth to suggest as he does that the respondent could have settled the claim in advance of trial. The respondent made a serious offer of settlement in the sum of £15,000 - it was the claimant that prevented settlement by refusing this. In our judgement, his determination to continue with a claim with little or no merit in the face of such an offer was quite unreasonable.

15 On Miss Sharp's unchallenged account of what happened at the DRH, the claimant was given proper guidance by the Employment Judge which he chose to disregard and continue with his unmeritorious claims.

Vexatious Conduct

16 We agree with the respondent's proposition that this claim was pursued vexatiously as a personal vendetta against Ms Humphreys.

17 In the circumstances, we are satisfied that the criteria for an award of costs have been established and we are mandated by the rules to consider making such an award.

The Exercise of our Discretion

18 We are satisfied that this is a proper case for the award of costs. Not only did the claims lack merit, they were pursued in the face of the alternative of a reasonable offer of settlement and in the face of proper guidance offered by an Employment Judge. The allegations against Ms Humphreys were personal and extremely hurtful, she gave evidence to the effect that her own mental health had suffered as a result.

The Amount of the Award

19 The respondent has produced a bill of costs in summary form it clearly demonstrates that the costs incurred substantially exceed £20,000 the respondent limits the claim to £20,000 and asks us to summarily assess the costs in that some we are satisfied that the sum was reasonably incurred and that is the amount of our award subject to our consideration of the claimant's ability to pay.

The Claimant's Ability to Pay

20 The information provided claimant shows that he has a gross income of £57,750 and his wife a gross income of £22,400 the total in excess of £80,000 per annum.

21 Their current outgoings demonstrate no excess of income over expenditure. But some of those outgoings are optional including gym memberships of £60 per month and payments of £130 per month to a child's ISA account. Further the claimant remains living in Coventry but is now working in Oxford. He is therefore incurring substantial travelling expenses getting to and from work. The claimant told us that the intention was to sell their current home and move closer to his employment in Oxford. The claimant's wife works in the NHS and expects to be able to find work nearer to Oxford. This move will reduce the travelling expenses.

22 The claimant told us that the family home which will shortly be marketed for sale is worth in the region of £360,000. The outstanding mortgage is approximately £305,000. This leaves available equity of approximately £50,000. In our judgement, it is not unreasonable to expect this equity to be used in settlement of the respondents costs which ought not to have been incurred had the claimant acted more reasonably. The use of equity in this way will of course reduce the amount available to the family to provide an alternative home. It may be that a smaller house will have to be purchased than might otherwise have been the case. Maybe the family will need to consider a move to rented accommodation in the short term.

23 Applying the case of ***Vaughan***, we are of the view that the claimant has sufficient financial resources to make sensible and reasonable proposals for settlement of a costs award of £20,000 over time. We would expect the respondent to be reasonable in its response to any proposal, and of course if

necessary the claimant can make an application to the County Court for a time order in the event of enforcement proceedings.

24 In the circumstances, we make an award of £20,000 costs payable by the claimant to the respondent.

Employment Judge **Gaskell**
6 June 2024