



EMPLOYMENT TRIBUNALS

Claimant: Mr C Davison

Respondent: Primelink Transport Ltd

COSTS ORDER

The respondent is ordered to pay to the claimant the sum of £3469.20.

REASONS

1. The claimant's claim of breach of contract against the respondent succeeded. The reserved judgment and reasons were sent to the parties on 11 January 2024.
2. On 8 February 2024 the claimant made an application for costs in the sum of £3469.20, as set out in a Statement of Costs (summary assessment). The claimant confirmed that it had copied the application to the respondent and invited any objections to be made within 14 days of receipt. It was a detailed application which set out the basis of the application in full. The letter stated: "Where no response is received, we aver that the Tribunal can determine the application on the papers and that the respondent has been given a reasonable opportunity to respond".
3. No response was received from the respondent. Nonetheless the Tribunal wrote to the respondent, by a letter dated 19 March 2024, to request the respondent's comments on: whether the application could be dealt with on the papers; the application itself; and the respondent's means. No response was received from the respondent.
4. The Tribunal considered that the matter could be dealt with on the papers, the respondent having been provided with the opportunity to make representations as to why a costs order should not be made or to request a hearing, and further to provide evidence of the respondent's means.
5. The claimant sought costs pursuant to Rule 76(1)(a) and/or (c) of the Employment Tribunal Rules of Procedure 2013: (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. (b) any claim or response had no reasonable prospect of success.

6. The Tribunal finds that the respondent acted unreasonably in bringing the claim and that its defence had no reasonable prospect of success, causing the claimant unnecessary costs.

7. The Tribunal finds that the respondent acted unreasonably in that Ms Yang presented inconsistent evidence in written statements, signed with statements of truth, and orally, on oath, to the Tribunal.

8. The Tribunal found Ms Yang’s evidence to be inconsistent. In paragraph 27 of the Judgment, the Tribunal found as follows: “In her original witness statement, Ms Yang said that the claimant had himself sent 100 text messages overnight to his fellow employees. That was a change from the position put forward in the witness statement before this Tribunal and the claimant’s oral evidence in which she suggested that the 100 messages from the claimant were sent through the two different chats. Ms Yang confirmed that her first witness statement contained an error, but it appears that that is what Ms Yang believed at the time of the postponed hearing, as the statement was signed and dated and Ms Yang confirmed that its contents were true at the outset of the hearing.”

9. Further, evidence to support bald assertions was not disclosed. Paragraph 39 of the Judgment states: “There was no evidence in the Bundle to demonstrate that that number, or anything like that number, of messages had been sent by the claimant that night. From the extracts in the Bundle, the claimant did not appear to have sent more messages than other members of the team and no disciplinary action was taken against them at all. This allegation is simply not made out on the evidence provided to the Tribunal, or on the balance of probabilities.”

10. The Tribunal also found that the respondent had exaggerated its evidence. In paragraph 45 the Judgment states: “The respondent has exaggerated the number of messages sent by the claimant. Ms Yang, if she conducted an investigation as alleged, cannot have believed that that number of messages had been sent.”

11. In the alternative, the Tribunal finds that the respondent’s defence had no reasonable prospect of success. The ET3 simply stated that the claimant was dismissed for gross misconduct, relying on the disciplinary procedure, and identified a “Serious act of insubordination” as gross misconduct. During the respondent’s evidence, different factors were identified as potential grounds for gross misconduct as follows, none of which had reasonable prospects of success:

- a. The claimant bombarded the respondent’s employees with WhatsApp chat messages: This was incorrect (paras 39 and 45 of the Judgment).
- b. The content of the messages was the reason they amounted to gross misconduct, because Ms Yang was being bad mouthed: The claimant’s messages were not significantly different to others. It was not apparent that he was the instigator of any negative comments or even the main

participant. In any event, sending messages on a private chat to other drivers is not gross misconduct (paragraphs 41 –42 of the Judgment).

- c. The claimant did not ask for a pay-rise in a formal grievance and tried to pressurise the respondent's director and force a pay-rise: This was not pursued in oral evidence as a reason, despite being referred to in the statement (paragraphs 46 –48).
- d. The claimant spread rumours: The documentary evidence proved this not to be the case (paragraph 49).
- e. The claimant tried to poach the respondent's drivers: The documentary evidence proved this not to be the case (paragraphs 50 -51).
- f. The claimant's messages had disrupted other drivers' sleep: This was not made out on any of the evidence and, in any event, drivers had the responsibility to switch off their own phone if necessary (paragraphs 52 – 53).

12. Having found that the threshold tests have been met, the Tribunal has considered whether or not to exercise its discretion, taking into account all the circumstances, to make an award of costs and considers that it should do so in circumstances in which the respondent was represented and has failed to make any representations. There appears to be no obvious explanation for the respondent's conduct other than a failure to properly engage with the facts of the claim and the proceedings in the Tribunal.

13. The Tribunal has been unable to consider the claimant's means in making this order for costs as the claimant has failed to respond to any of the Tribunal's correspondence. However, the Respondent is ordered to pay the claimant's costs of preparing for the hearing and this costs application in the total sum of £3,469.20.

Employment Judge Rice-Birchall
22 April 2024

JUDGMENT SENT TO THE PARTIES ON
10th May 2025

FOR THE TRIBUNAL OFFICE