



# EMPLOYMENT TRIBUNALS

## Claimant

Dr Christian Mallon

v

## Respondent

Vector Recruitment Limited

**Heard at:** Norwich (by CVP)

**On:** 29 May 2024

**Before:** Employment Judge Postle

**Members:** Mrs J Jerram and Mr M Kidd

## Appearances

**For the Claimant:** In person

**For the Respondent:** Miss Kaye, Counsel

## JUDGMENT on the RESPONDENT'S APPLICATION for COSTS

The Claimant is Ordered to pay a contribution towards the Respondent's costs summarily assessed at £20,000.

## REASONS

1. This is the Respondent's Application for Costs following a unanimous Judgment given on 25 October 2023. The Claimant's Claims that the Respondents failed to make reasonable adjustments was not well founded.
2. In this morning's Hearing we have had a Bundle consisting of 401 pages. Written submissions from Mr Mallon and we also had the Respondent's written submissions from Miss Kaye, Counsel for the Respondent.

## The Rules and the Law

3. Rule 76 sets out the Tribunal's discretionary power to make a Costs Order where it is considered either the grounds in Rule 76(1)(a) or Rule 76(1)(b) are made out.

4. Rule 78 empowers a Tribunal to make an Order in respect of a specified amount not exceeding £20,000.
5. Under Rule 84, in deciding whether to make a Costs Order and if so in what amount, the Tribunal may have regard to the paying party's ability to pay but it is not duty bound to do so.
6. It is accepted that an Award of Costs is the exception rather than the rule. However, the Tribunal does have a wide discretion where an Application for Costs is made and parties cannot assume that the Employment Tribunal is a cost free zone.
7. Furthermore, there is no rule of Law which prevents a Tribunal from making a Costs Order against a disabled party and / or litigant in person. The Tribunal is entitled to take into account the impact of a party's disability on their conduct.
8. Tribunals are entitled to take into account previous claims, including those against previous parties which have been unsuccessful and attach such weight as they consider appropriate having regard to all the circumstances and their findings.
9. In determining an Application for Costs there is effectively a three stage process:-
  - 9.1. The Tribunal must ask itself whether any of the matters under Rule 76(a) or (b) are met, for example was the conduct against the paying party whom costs is sought vexatious, unreasonable or had no reasonable prospect of success?
  - 9.2. If so, the Tribunal has to consider whether to exercise its discretion that the conduct merits a Costs Order; and
  - 9.3. If so, the Tribunal should consider the appropriate amount of costs incurred by the Respondent in defending the Claim.

## **Conclusions**

10. In reaching our decision to make an Award of Costs, the Tribunal reflects on its original Judgment and reasoning, particularly paragraphs 25, 28, 32, 33, 34, 36, 37, 38, 39, 41 and 46.
11. In summary the reason the Claimant was unsuccessful is that he was totally unselective about the jobs to which he was applying, many of which were unrealistic with him not meeting basic requirements for the jobs or having the relevant qualifications. The Claimant could and should have taken more time to be selective about the jobs he applied for. The Tribunal have noted there was nothing in the Medical Evidence that suggests the Claimant's disability prevents him from sorting out those jobs which he has the background and experience to apply for and those which are clearly outside the Claimant's ability and experience.

12. Indeed, in this morning's Hearing the Claimant accepted that in this case somewhere between half and three quarters of the jobs he applied for with the Respondent, he would not have been the perfect candidate and / or qualified to do the job.
13. The Claimant is a serial and experienced litigant, highly intelligent and articulate. The evidence before us shows that the Claimant makes multiple claims to the Tribunal on the same or similar terms as those he made against the Respondent. The Bundle exhibits evidence of that from page 112 to page 253 there are pages of previous claims, all unsuccessful.
14. Indeed, the Claimant has previously been made the subject of Costs Orders.
15. The Tribunal's findings at paragraphs 39 and 41 of the Judgment clearly demonstrate that the Claimant knew or ought reasonably to have known that his skills, qualifications and experience did not meet the essential requirements for the specialised roles for which he applied. Thereby, in the Tribunal's view, he was acting vexatiously and unreasonably in bringing and continuing with claims against the Respondent.
16. Furthermore, the Claimant knew or ought reasonably to have known that he could not set out anything more in an oral Application to the Respondents which was not contained in his CV.
17. The Tribunal having found the Claimant was unrealistic in applying for roles for which he had no experience, where he failed to meet clearly identifiable basic requirements as set out in the job adverts, the Tribunal concludes that the Claimant has acted vexatiously and unreasonably.
18. Clearly there would have been no reasonable adjustments that would have assisted the Claimant in those circumstances.
19. Turning to the question of whether the Claimant's claims has a reasonable prospect of success, again the Tribunal repeats largely what we have said above. In particular, it was plain from the job adverts, irrespective of the Claimant's disability that the Claimant did not meet the essential and basic requirements for the roles for which he was applying. Accordingly, there was absolutely no reasonable prospect of success, or establishing a substantial disadvantage when compared to non-disabled persons.
20. Having concluded that the Claimant was acting vexatiously and unreasonably in pursuing a claim that had no reasonable prospects of success, it is appropriate to make a Costs Order. In other words to exercise our discretion.
21. The Tribunal note that the Claimant was warned by the Respondents in a Costs Letter that if he withdrew his claim they would not pursue costs, but clearly if he continued then costs would be pursued.

22. It is noteworthy that His Honour Judge Taylor in the Employment Appeal Tribunal in the case of ACOM Limited against the Claimant, UKEAT-0175-20-LA, that it was commented by the Judge that

“The Claimant made multiple applications for jobs that he did not want. The aim of bringing claims possibly to achieve settlement, that is a matter that could result in strike outs and costs.”

23. The Tribunal also noted that the Claimant’s pattern of behaviour in litigation was often a refusal on numerous occasions to take up offers of telephone calls with the Respondents, seems to demonstrate a cynical approach possibly to achieve a settlement.

24. In conclusion, the Claimant’s Claims had no reasonable prospect of success. The Claimant was clearly acting vexatiously and unreasonably and there was simply no evidence of discrimination at all.

25. To repeat, there was no evidence before the Tribunal, medical or otherwise to suggest that the Claimant was unable to understand the limitations of his Claim, irrespective of the Claimant’s disability. He could clearly identify the essential requirements of the roles advertised by the Respondent. The Claimant’s disabilities have not caused him to behave in a vexatious or unreasonable manner.

26. In reaching the Tribunal’s decision as to how much to award, the Tribunal notes that the Respondent’s costs in defending this Claim are in excess of £50,000. They have asked for a summary assessment capped at £20,000.

27. The Claimant has admitted he owns a house with his partner, being a three bedroomed detached property. Another house in Belfast which he rents out. Two flats in Scotland, one currently rented out and the other currently empty. The Claimant has been reluctant to disclose the full extent of his business dealings, particularly income derived therefrom.

28. Therefore, having taken the Claimant’s means into account it is clear he is not a man of straw and has the wherewithal to satisfy Judgment against him for Costs.

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Employment Judge Postle

Date: ...18 June 2024.....

Sent to the parties on:5 July 2024.....

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For the Tribunal Office.

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