



EMPLOYMENT TRIBUNALS

Claimant: Mr. Achour
Respondents: Rainsford Contracts Limited
Heard at: London South Employment Tribunal (Hybrid)
On: 24th to 28th June 2024 (in Chambers on 27th June 2024)
Before: Employment Judge Sudra
Sitting with Members, Ms. J. Malatesta and Ms. D. Hill.

Appearances:

Claimant: In Person (unrepresented)
Respondent: Mr. T. Westwell of Counsel

COSTS JUDGMENT

The unanimous decision of the Tribunal is that the Respondent's application for a Costs Order under Rule 76 is well founded and the Claimant is ordered to pay the Respondent £7,200.00 towards its costs.

REASONS

1. The Respondent made an application for part of its costs following the Tribunal's oral judgment on liability in this case, made today.
2. The application was made under rule 76(1)(a) and (b) of the Employment Tribunal's Rules of Procedure 2013 (the "Rules"). Rule 76 provides that if a party against whom

an application for costs is made is considered by the Tribunal to have either, in bringing the proceedings or in conducting them, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the claim or response had no reasonable prospect of success, then the Tribunal must consider making a costs order against that party.

3. The Respondent pursues its application on grounds of the Claimant's unreasonable conduct and that the claims had no reasonable prospect of success.

Issues

4. The issues that we have to determine are:
 - a. Whether the threshold for a costs order has been met;
 - b. whether a costs order should be made; and
 - c. if so, in what amount
5. In dealing with these issues, we have taken into account our findings on liability and the parties' oral representations.
6. The Respondent produced an invoice of counsel's fees, a costs warning sent to the Claimant on 23rd May 2024, and the case of Oni v. Unison UKEAT/0370/14/LA.

Has the Threshold for a Costs Order Been Met?

Unreasonable conduct

7. The Respondent's main focus under this ground was:
 - (i) The Respondent contended that it was unreasonable for the Claimant to pursue his direct race discrimination claim, as it had been made the subject of a Deposit Order by Employment Judge Evans on 26th March 2024.
 - (ii) The Respondent submitted that the Claimant acted unreasonably by pursuing his claim when Employment Judge Evans had found that it had little reasonable prospects of success for the following reasons:

- (a) The contemporaneous documentation suggested that the Claimant was unprofessional in his written communications.
 - (b) The contemporaneous documentation suggested that the Respondent's client did have concerns about the Claimant.
 - (c) The contemporaneous documentation suggested that the claimant failed to follow instructions.
 - (d) It was unlikely that, just a few weeks after recruiting the Claimant, Mr Dennis would be involved in a decision to dismiss which was taken, on the Claimant's account, because of his race.
- iii. The Respondent stated that the Claimant's claim had failed for precisely the same reasons the Deposit Order was made and therefore, he had acted unreasonably. The Respondent had also sent the Claimant a cost warning letter, on 23rd May 2024, stating that the claim had little reasonable prospects of success and that costs would not be pursued if the claim was withdrawn. The Claimant decided to pursue his claim.
8. The Claimant responded to say that he was content to leave the matter to the Tribunal to determine.
9. We are satisfied that the matters at paragraph 7 above, amount to unreasonable conduct.
10. In all the circumstances we are satisfied that the threshold for a costs order has been met.

Should a Costs Order be Made?

11. The case of *Yerrakalva v Barnsley MBC* 2012 ICR 420 makes clear that there does not have to be a direct causal link between the unreasonable conduct and the costs awarded. Rather, in exercising its discretion, the Tribunal should have regard to the nature, gravity and effect of the unreasonable conduct. We are satisfied that the Claimant's pursuit of a claim that had very little reasonable prospects of success resulted in additional work by the Respondent which would otherwise not have been

required, resulting in increased legal fees. In all the circumstances, we consider it just that a costs order should be made.

How Much Should be Awarded in Costs?

12. Rule 84 of the Rules provides that in deciding whether to make a costs order, the Tribunal may (our emphasis) have regard to the paying party's ability to pay. To that end and as part of the directions for this hearing, the Tribunal asked questions of the Claimant in respect of his means.
13. The Claimant gave evidence relating to his means. He stated that he receives a £1,300.00p monthly Universal Credit payment and has no other source of income. The Claimants stated that he has no assets and had a balance of £16.00p in his bank account. We heard from the Claimant regarding his expenses and he said that once he has paid bills etc. each month, he has no residual sum of money available.
14. The Respondent seeks costs in the sum of £7,200.00p and has provided a breakdown of those costs. The sum sought is in respect of Counsel's fees and the respondent did not seek costs to cover its solicitors fees which are in the region of £19,000.00p.
15. Although I have not taken the Claimant's means into account, I have borne in mind that costs in this jurisdiction are discretionary, are still relatively unusual and are intended to be compensatory, not punitive.
16. In all the circumstances, we award costs to the Respondent in the sum of £7,200.00p and this judgment is stayed until the outcome of the Claimant's appeal against the Deposit Order which is presently before the Employment Appeal Tribunal.

Employment Judge Sudra

Date 28th June 2024