



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102608/2022 (P)

Held on 1 August 2022

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Employment Judge N M Hosie

Mr J Sutherland

**Claimant
In Person**

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20 **Hall & Tawse Joinery Ltd**

**Respondent
Represented by
Mr G Caunt,
Operations Manager**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the respondent's application for an award of expenses is refused.

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REASONS

1. The claimant brought a claim for alleged unlawful deduction of wages. His claim was denied by the respondent. I dismissed the claim at the Final Hearing on 21 July and gave oral reasons for my decision. On 25 July, I issued a Judgment dismissing the claim.

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Application for an award of expenses

E.T. Z4 (WR)

2. By e-mail on 25 July 2022, the respondent's HR Manager, Kirstie Brown, applied for an award of expenses of £1,030.50.

3. By e-mail on 29 July 2022, the claimant opposed the application. He said this
5 in his e-mail:-

*"As regards costs like Kirstie said it was also my first time at an Employment Tribunal and to find out about this cost is an absolute shock to say the least. I was totally unaware about this as far as I was concerned it was win or lose, nothing about costs on both parties. I have never been advised by ACAS or
10 any other parties about this."*

Discussion and decision

4. An Employment Tribunal's powers to make an award of costs ("expenses" in
15 Scotland) is governed by Rules 74-84 in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ("the Rules of Procedure").

5. As the respondent was not legally represented, in terms of Rule 76 (coupled
20 with Rule 75(2)) a Tribunal has power to make an Order known as a "Preparation Time Order" in favour of an unrepresented party to compensate for time spent working on the case.

6. Rule 76 is the relevant provision in the present case. It is in the following
25 terms:-

"When a costs order or a preparation time order may or shall be made

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 –

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- (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 the proceedings (or part) have been conducted; or*

(b) *Any claim or response had no reasonable prospect of success.*"

7. The issue in the case was whether or not the claimant was entitled to an additional week's pay when his employment ended, in respect of a so-called "lie-week".
8. I did not find this issue straight forward and it took some time for me to reach a decision. I was only able to do so once I had heard evidence from both parties and considered the documentary productions. I was not persuaded, therefore, that the claim "had no reasonable prospect of success".
9. Further, the claimant had no experience of Employment Tribunal proceedings, did not have the benefit of advice and there was no doubt from his evidence and general demeanour at the Final Hearing that he strongly believed he was entitled to a further week's pay. In my view, he acted in good faith.
10. There was no question either of him having acted "vexatiously, abusively, or disruptively". It was clear that he felt very strongly that he had a claim and expressed this forcefully at times. However, in my view he did not act "unreasonably" in either bringing these proceedings or the way that he conducted them.
11. Looking at the whole picture, as I was required to do, there were no grounds, in terms of the Rules of Procedure, therefore, for making an award of expenses.
12. Further, in arriving at my decision, I was mindful, as the Court of Appeal reiterated in ***Yerrakalva v. Barnsley Metropolitan Borough Council & Anor*** [2012] ICR 420, that an award of expenses in an Employment Tribunal is still the exception rather than the rule and is more sparingly exercised than in the Civil Courts where the general rule is that expenses are normally awarded to the successful party.

13. I was also mindful that in ***Salinas v. Bear Stearns International Holdings Inc & Anor*** [2005] ICR 1117, Mr Justice Burton, then President of the EAT, expressed the view that the reason why “Costs Orders” are not made, in the
5 substantial majority of Tribunal cases, is that the Rules of Procedure contain a high hurdle to be surmounted before such an Order can be considered.

14. For all these reasons, therefore, the respondent’s application is refused.

10 **Employment Judge: N M Hosie**

Date Signed: 3 August 2022

Date Sent to Parties: 3 August 2022