



# **EMPLOYMENT TRIBUNALS**

**Claimant:** Mr A Scarborough  
Ms R Fitzpatrick

**Respondents:** (1) Rajesh Sood  
(2) ESMS Global Ltd

## **JUDGMENT**

The application for costs is refused.

## **REASONS**

1. Costs applications in respect of both claims have been considered together given the claimants' joint response.
2. The claimants have now explained that the allegation of race discrimination was considered a detriment for whistleblowing, in the context of an existing whistleblowing claim, and that they acted on pro bono advice. Although they gave details of a legal representative they appear to be acting as litigants in person.
3. Put that way, the claims are reasonably arguable. Having re-read the claims the fact that the race discrimination allegation is a response to the claim about bonuses (without mention of whistleblowing) is mentioned on paragraph 6) c) on page 5 of the ET1 attachment in claim 2307508.23, though not mentioned in claim 2307669.23 (that I can find). It was far from clear on the face of the claims given the way the claims were presented, in using lengthy letters to the Board as the particulars of the claims. An amendment might have been required to pursue the claims.

4. It is not clear why the claimants did not respond to the tribunal orders to explain the way they argue their case but Employment Judge Corrigan nevertheless does not understand either claimant to be challenging the dismissal of their claims in 2307508.23 and 2307669.23.
5. Whilst it would have been preferable for the claimants to be clearer about their claims in the first place and then to respond and explain their cases, the respondent has had the benefit of an early strike out at the initial consideration stage because the claimants did not respond to the orders, in claims that might otherwise have been amended and progressed as whistleblowing complaints.
6. In the circumstances Employment Judge Corrigan does not consider there is a basis to award costs under rule 76, but even if there is, exercises her discretion not to do so in all the circumstances.

Employment Judge Corrigan  
Date: 12 July 2024

Sent to the parties on  
Date: 15 July 2024

*J Tidy*  
Mrs J Tidy

For the Tribunal Office

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