



EMPLOYMENT TRIBUNALS

Claimant: Mr Abdool Jugut
Respondent: Isaac Creative Hair Ltd

RECORD OF A COSTS HEARING

Heard at: Watford Employment Tribunal
On: 22 July 2024
Before: Employment Judge Alliot

Appearances

For the claimant: In person
For the respondent: Mr Isaac Harman (Director)

JUDGMENT

The judgment of the tribunal is that:

1. The claimant is ordered to pay the respondent £1,188 costs.

REASONS

1. Following a hearing held on 3,4 and 5 April 2024 the claimant's claims were dismissed,
2. On 24 April 2024 the respondent applied for costs on the basis that the claimant's claims were vexatious and/or unreasonable and/or his conduct had been vexatious and/or unreasonable. The respondent applied for its entire legal costs of the action being the sum of £21,944.40.

The law

3. Rule 76 The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides as follows:-

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

(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; or

- (b) Any claim or response had no reasonable prospect of success; or
- (c) A hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins. “

4. Rule 84 provides as follows:-

“84 Ability to pay

In deciding whether to make a costs, preparation time or wasted costs order, and if so in what amount, the tribunal may have regard to the paying parties (or, where a wasted costs order is made, the representatives) ability to pay.”

5. As per the IDS Employment Law Handbook “Practice and Procedure) at 18.49:-

“Litigants in person.

It is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented.”

6. And, at 18.58:

“Unreasonable conduct

A costs order or PTO may be awarded against a party under rule 76(1)(a) where the party (or his or her representative) has acted unreasonably in bringing or conducting proceedings. “Unreasonable” has its ordinary English meaning and is not to be interpreted as if it meant something similar to “vexatious” – Dyer v Secretary of State for Employment EAT 183/83. It will often be the case, however, that a tribunal will find a party’s conduct to be both vexatious and unreasonable.

In determining whether to make an order under this ground, an employment tribunal should take into account the “nature, gravity and effect” of a party’s unreasonable conduct – McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA. However, a tribunal should not misunderstand that to mean that the circumstances of a case have to be separated into such sections such as “nature”, “gravity” and “effect”, with each section being analysed separately – Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420, CA. The Court of Appeal in Yerrakalva commented that it was important not to lose sight of the totality of the circumstances. The vital point in exercising the discretion to order costs... is to look at the whole picture. The tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.”

7. There should be a causative connection between the costs incurred and the unreasonable conduct.

The facts

8. This costs hearing was originally scheduled for 28 June 2024. The claimant did not attend. On the morning of the hearing the claimant telephoned and emailed the tribunal to state that he was ill and unable to attend the hearing.

Consequently, I adjourned this hearing and made directions for the claimant to file a witness statement verified with a statement of truth setting out details of his illness, including the nature of the illness, when it began, what effect it had on him and why he said it prevented him from attending the hearing today. In addition, I required medical evidence in support and indicated that the medical evidence should include a statement from the medical practitioner that, in his or her opinion, the applicant was unfit to attend the hearing, the prognosis of the condition and an indication of when the state of affairs may cease.

9. On 15 July 2024 the claimant emailed the tribunal to state that on the morning of the costs hearing he suffered from severe diarrhoea, a common symptom for him due to irritable bowel syndrome. He stated that this made it impossible for him to attend the hearing. The claimant's medical evidence provided is an extract from his GP records that confirms that he was diagnosed with irritable bowel syndrome in 2009. The requested medical evidence and particularity concerning events on 28 June have not been provided by the claimant. The respondent has provided me with a witness statement signed by Mr Simon Read who is apparently a solicitor. This witness statement indicates that at 10.49am on 28 June 2024 he telephoned the claimant and asked if the claimant had availability for a haircut the same day. The claimant responded that he could fit Mr Read in for a haircut if he was able to come straight away to his shop in Newport Pagnell. In my judgment, that casts significant doubt on the veracity of the claimant's claim to be unable to attend at the hearing on 28 June 2024. However, at that time the respondent was unrepresented, and a preparation time order is not requested.
10. In my judgment, the bringing of these proceedings cannot be said to have been unreasonable. The fact that the claimant was unsuccessful does not mean that the claimant was unreasonable in presenting his claim. Further, I cannot conclude that there was no reasonable prospect of success. The claimant was alleging acts of sex and race discrimination and was entitled to have his evidence heard and tested.
11. The claimant's claim form is largely devoid of any detail of his claims. On 20 April 2023 Employment Judge Ord ordered the claimant to provide particulars of the alleged discrimination by 18 May 2023. On 17 May 2023 the claimant sent the respondent 10 PDF documents. That was clearly not in the format directed by the order that had been made.
12. On 22 June 2023 Employment Judge Postle clearly took considerable time discussing the claimant's case with him and recorded the five instances of alleged discrimination in the case summary. Employment Judge Postle went on to make case management orders which included an order for witness statements. This recited:-

“5 Witness statements

It is ordered that evidence in chief in this case will be through typed witness statements. Such witness statements shall be in chronological order, in numbered paragraphs. If a document is to be referred to in the bundle, the page number to be inserted in the relevant paragraph. Such witness statements to confine themselves to the issues to be determined in this case and shall not

consist of hypotheses, supposition or theory and be exchanged on 30 November 2023.

13. Unfortunately, the case management order was only sent out on 28 September 2023 by which time some of the deadlines had expired. In the event, the parties agreed a revised timetable. The date for exchange of witness statements was varied to 28 February and then moved to 6 March, 13 March and 20 March because the claimant was missing the deadlines.
14. I do not find that the claimant's conduct in presenting a claim form devoid of detail of his claim or in failing to comply with the initial order for further details of the alleged acts of discrimination in the 10 PDF documents was in itself unreasonable. In coming to that conclusion I have made due allowance for the fact that the claimant is a litigant in person, unused to litigation and was doing his best.
15. However, the claimant's attempt to comply with the order for a witness statement was unreasonable conduct in my judgment. On 20 March 2023 the claimant sent a large number of emails, each described in the hearing bundle index as a witness statement on a specific issue, most of which were largely irrelevant as they related to incidents that occurred after the date of the claim form, namely 23 January 2023. They were not of assistance in the final hearing and, as recited in paragraphs 10 and 11 of the reasons to the judgment, the tribunal had to search through the PDF documents to ascertain what the claimant's case was concerning the identified issues.
16. I have considered the claimant's means. The claimant says he has considerable personal and financial difficulties. The claimant was dismissed by the respondent in February 2024. The claimant tells me he has been unemployed since and is in receipt of Universal Credit of about £600-£800 per month. However, the witness statement of Mr Read suggests that he may be undertaking some hairdressing work. In addition, he is in the process of setting up a coffee shop in Newport Pagnell and has recently paid carpenters £1,150 for shopfitting.
17. The claimant has shown me his Santander Current Account which covers the period 7 June – 6 July 2024. During the course of that month £5,261.34 has been transferred into the current account from an "A Jugut" account. Initially the claimant said to me he had two accounts or possible three. It would appear that the claimant has two credit cards, one with Lloyds Bank and another with Virgin Money. In addition the claimant has shown me a Lloyds saver account and a saver account at Santander on his mobile. It is fair to say that those accounts shown negligible amounts of money in them. However, the fact of the matter is that a substantial amount of money has been paid into his current account in the course of one month. Given what the claimant told me about his whereabouts on 28 June 2024 I approach what the claimant tells me with some scepticism.
18. The respondent had provided me with seven bills from its solicitors, BP Collins. In my judgment it was entirely reasonable for the respondent to take legal advice in light of the difficulties concerning the exchange of witness statements and contents thereof. The last bill for legal professional charges is dated 28 March 2024 and the breakdown indicates that it covers

legal advice on the telephone and correspondence from 20 March to 26 March 2024. In my judgment, those legal costs were caused by the unreasonable conduct of the claimant in the delayed way he exchanged his witness statements and the contents thereof.

19. Consequently, in my judgment, the claimant should be ordered to pay the respondent costs in the sum of £1,188.

Employment Judge Alliott

Date: 1 August 2024

Judgment sent to the parties on

11 September 2024

For the Tribunal office

Recording and Transcription

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