



EMPLOYMENT TRIBUNALS

Claimant: Ms S Hare

Respondent: API Global UK Limited

Heard at: London Central (without an oral hearing) **On:** 19 September 2024

Before: Employment Judge B Smith (sitting alone)

Representation

Claimant: In person

Respondent: In person

JUDGMENT

The judgment of the Tribunal is as follows:

1. The claimant's application for costs is refused.

REASONS

The Law

1. The circumstances of the claimant's successful claim for unauthorised deduction from wages are set out in the Judgment and Reasons dated 7 August 2024 and sent to the parties on 13 August 2024 ('Judgment and Reasons'). The claim was decided in the absence of the respondent, the respondent's application to postpone the hearing having been refused.

2. The application is made under rule 76 Employment Tribunals Rules of Procedure (2013). This says:

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—

(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;

(b) any claim or response had no reasonable prospect of success; or

[...]

3. Whether a costs warning is given is relevant but not determinative: *Millin v Capsticks Solicitors LLP and others* UKEAT/0093/14 at [68].
4. Even if the criteria for awarding costs are met, I must still separately consider whether or not the discretion to award costs should be exercised: *Radia v Jefferies International* [2020] IRLR 431 at [61].

Procedure

5. This application has been decided without an oral hearing with the agreement of the claimant. I also, separately, consider that it is in the interests of justice and appropriate to consider this application without an oral hearing. I did not, given the content of the claimant's application, consider it necessary to require a response from the respondent, applying the overriding objective.
6. The documents relied on by the claimant are: the original judgment and reasons, a costs schedule, a letter to the respondent sent by Ellisons

Solicitors dated 1 July 2024, the claimant's application dated 9 September 2024, and a supporting documents bundle (4 pages).

Analysis and Conclusions

7. I do not consider that the letter sent by the claimant's solicitors dated 1 July 2024 is cogent evidence in support of a costs application. I make the same finding for the claimant's supporting documents which include her raising the issue of underpayment of commission on 19 January 2024 by email, the respondent's response dated 31 July 2024, the respondent's further email dated 6 August 2024 suggesting a postponement of the hearing.
8. The claimant argues that the respondent's response had no reasonable prospect of success, relying paragraph 35 of the Judgment and Reasons. This is a misunderstanding of the judgment. The conclusion was that, taking into account the evidence, the respondent's position was not supported by the evidence. This is not the same as having no reasonable prospect of success. It is also a judgment reached in circumstances where the respondent's postponement application (in part requested to gather more evidence) had been rejected by the tribunal.
9. The claimant also relies on allegations of unreasonable conduct and the respondent's failure to attend the tribunal. I do not consider that the respondent's failure to attend the tribunal was in of itself unreasonable or in fact necessarily led to the claimant incurring costs. In reality, any party which does not attend a tribunal is likely to suffer a disadvantage from this. Also, this was a contested claim and therefore it's likely that a hearing was going to be required in any event, whether or not the respondent attended. I do not consider that this was a claim that was unreasonably resisted by a respondent with no intention of genuinely following through with a defence. This is because the full circumstances of this case are far from that scenario.

10. I also do not consider that the respondent's conduct more broadly is unreasonable such that would justify an award of costs for unreasonable conduct. The fact that the respondent did not reach any settlement with the claimant is not by itself unreasonable.

11. Overall, I do not consider that there is anything that the claimant has identified that would justify an award of costs against the respondent.

12. Even if I am wrong about the above, I would not exercise any costs discretion against the respondent. This is because the respondent was entitled as of right to defend the claim and the fact that it was unsuccessful in doing so does not mean that the claimant's costs should be awarded. Also, it is relevant that the claimant has received an uplift of 10% to the remedy awarded because the respondent unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures 2015. In those circumstances I consider that this more properly reflects any criticism of the respondent's approach to the claim, and the claimant has already and separately received a remedy for that.

13. The claimant's application for costs is refused for all of the above reasons.

Employment Judge Barry Smith
19 September 2024

SENT TO THE PARTIES ON

25 September 2024

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FOR THE TRIBUNAL OFFICE