



EMPLOYMENT TRIBUNALS

Claimant: Miss D Okobia
Respondent: Leigh Academies Trust
Heard on: 30 September 2024 by video
Before: Employment Judge Pritchard
Members: Mr P Dodd
Ms R Effeny

Representation

Claimant: In person
Respondent: Mr M Withers, counsel

REASONS

1. These written reasons for the Tribunal's decision set out in its judgment of 30 September 2024 are provided at the Claimant's request.
2. The hearing took place by video to consider the Respondent's application for costs.
3. In advance of the hearing, the Respondent set out its application for costs in writing, Mr Withers amplifying the application in submissions.
4. The Claimant sent to the Tribunal her written representations objecting to the application in advance. She too amplified her representations in submissions.
5. The Respondent's application was based on Rule 76(1)(b) (that the claim had no reasonable prospects of success), alternatively Rule 76(1)(a) (that the Claimant had acted unreasonably in the bringing of the proceedings).
6. The Claimant brought claims of direct race discrimination and harassment related to race. By way of a Reserved Judgment dated 6 March 2024, the Tribunal dismissed the Claimant's claims.
7. In doing so, the Tribunal applied the principle in the case of Laing v Manchester City Council [2006] ICR 1519 by considering the 'reason why' test. The Tribunal concluded that in respect of the allegations of discrimination and harassment, the Respondent had shown non-discriminatory reasons for its actions and that there was no credible evidence to the contrary. The Tribunal also concluded that some of the acts alleged did not take place or the Claimant was confused about who was responsible for them.

8. The Claimant was a schoolteacher, although some years previously she had successfully completed a law degree, been called to the Bar, and undertaken some pro bono work for the Free Representation Unit. She has some Trade Union background.
9. The Respondent did not at any stage during the course of proceedings, make an application to the Tribunal to strike out the Claimant's claim or for a deposit order.
10. Nor did the Respondent at any time prior to the hearing put the Claimant on notice that it might make a costs order.
11. When considering an application for costs under Rule 76(1)(b) the Tribunal must adopt an objective test: Vaughan v London Borough of Lewisham 2013 IRLR 713.
12. In the Tribunal's view, judged objectively, the claim had no reasonable prospects of success throughout proceedings. The Tribunal finds the threshold test under Rule 76(1)(b) is met.
13. However, the Tribunal does not exercise its discretion to award costs in this case.
14. In Gee v Shell UK Ltd 2003 IRLR 82 the Court of Appeal stated that costs in Employment Tribunals are still the exception rather than the rule.
15. The purpose of an award of costs is to compensate the party in whose favour the order is made, not to punish the paying party: Lodwick v Southwark London Borough Council 2004 IRLR 554. The fact that the Claimant lost her claim, without more, does not lead to the conclusion that she should pay costs.
16. It is well-recognised that obtaining evidence of discrimination is often difficult and that a Claimant will often rely on being able to show, through cross examination of witnesses, that the employer's stated reasons for the treatment complained of were not in fact the true reasons; see London Borough of Lewisham v Oko-Jaja EAT 417/00; Saka v Fitzroy Robinson Ltd EAT 0241/00.
17. In this case, the Claimant was dissatisfied about the way in which allegations against her had been handled by the Respondent, allegedly in breach of procedures, and believed that the Respondent's treatment of her might have been because of, or related to, race. On balance, the Tribunal finds that the Claimant was entitled to cross examine the Respondent's witnesses about their stated reasons for the treatment of which she complained and should not be met with a costs order because she did so.
18. The Tribunal may properly have regard to the fact that the party against whom a costs order is made is a litigant in person. In AQ Ltd v Holden UKEAT/0021/12/CEA His Honour Judge Richardson stated that a Tribunal cannot and should not judge a litigant in person by the standards of a professional representative. This does not mean that lay people are immune from costs orders; some litigants in person will be found to have behaved unreasonably even when proper allowance is made for their inexperience and lack of objectivity.

19. The Tribunal notes that the question of causation, and the burden of proof in such discrimination cases, is not without some complexity. Notwithstanding the Claimant's legal qualifications obtained some years ago, it is tolerably clear from both the Claimant's claim and the way she pursued it that she should not be judged by the standards of a professional representative. Rather, for the purposes of her claim, she is similar to a lay person.
20. In Vaughan v London Borough of Lewisham, the Employment Appeal Tribunal held that although the law does not require a party to be put on notice for a costs order to be made against them, a warning might be well relevant. In this case, the Respondent's failure to issue a costs warning was a factor taken into account by the Tribunal.
21. If, as submitted by the Respondent, the Claimant's claim so obviously had no reasonable prospects of success from the outset, it is surprising that the Respondent made no application for a strike out at the preliminary stage, or (given the difficulties with the potential success of such an application in light of relevant case law) made an application for a deposit order. Had such an application been made, the Claimant might have focussed more closely on the merits of her claim at an earlier stage and the evidence she felt she would be able to establish. Had such an application succeeded, it might have brought matters to a close far sooner.
22. For these reasons the Tribunal exercised its discretion in the Claimant's favour.
23. Turning to Rule 76(1)(a), even if the threshold test were met under that limb, the Tribunal would not exercise its discretion to award costs for the same reasons.
24. The Respondent's application for costs was refused.

Employment Judge Pritchard

Date 2 December 2024

REASONS SENT TO THE PARTIES ON

2 December 2024

FOR THE TRIBUNAL OFFICE

P Wing