Case No: 2303207/2023

EMPLOYMENT TRIBUNALS

Claimant: Ms D Sangster

Respondent: Stopwatch UK

Heard at: London South Employment Tribunal (in chambers)

Before: Employment Judge Abbott (sitting alone)

JUDGMENT ON COSTS

The Respondent's application for a costs order under Rule 76 of the Employment Tribunals Rules of Procedure 2013 succeeds. The Claimant is ordered to pay the Respondent the sum of **£1,750.00** in respect of its costs of resisting the Claimant's application to amend.

REASONS

1. By decision made on 8 November 2024, for reasons given orally that day, the Tribunal refused an application by the Claimant to amend her claim to introduce a complaint of discrimination arising from disability.

2. The Respondent has applied for a costs order on the basis that the Claimant acted "*vexatiously, abusively, disruptively or otherwise unreasonably in … the way that the proceedings (or part) have been conducted*" (Rule 76(1)(a)); specifically, it says that the application to amend had no reasonable prospects of success and was unmeritorious, and furthermore it was (contrary to the Claimant's submissions) brought after an unreasonable delay. It claims its solicitors' fees for dealing with the application (including the hearing) in the sum of £2,100.

3. The Claimant resists the application. She argues that the threshold for making a costs order is not met. In particular, she argues that the discrimination arising from disability claim would have had good prospects of success had it been allowed to proceed, she addresses the alleged delay in bringing the application (laying some blame at the Respondent's door), and notes that much of the costs were incurred because of the Respondent's request that the application be determined at a hearing rather than on paper.

4. I had indicated my provisional view at the hearing that costs could be dealt with on paper. Neither party has objected to that. I am satisfied it is appropriate in the interests of justice and the furtherance of the overriding objective to determine the application on paper, and have done so based on the written

submissions of the parties.

The law

5. Rule 76(1) provides (insofar as relevant):

> 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; […]

6. In other words, there is a three-stage process. First, I must ask whether the Claimant's conduct falls within rule 76(1); if so, I must go on to determine whether it is appropriate to exercise my discretion in favour of awarding costs against the Claimant; and if so, I must quantify the order (Rule 78).

7. Rule 84 provides that, in deciding both whether to make a costs order, and if so, in what amount, the Tribunal may have regard to ability to pay.

8. Costs orders in the Employment Tribunal are the exception rather than the rule (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420, CA at [7]).

9. Matters of causation may be relevant, per *Yerrakalva* at [41]: "The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had. ..."

Discussion

Stage 1: Conduct engaging Rule 76(1)?

10. The Respondent says the pursuit by the Claimant of the application to amend was unreasonable because the application was without merit.

11. I agree that the application was without merit. As I explained in my oral reasons for refusing the application, the balance of hardship clearly favoured not allowing the amendment to be made. The key factors in that balance were, in summary, (i) that the application was made after all preparations for the final hearing had been completed, (ii) it involved the raising of a new claim (a section 15 Equality Act claim) for the first time and in a way that would materially expand the scope of the factual enquiry at the final hearing, (iii) time limit problems, the claim having only first been raised more than 15 months after the Claimant left her employment, (iv) the 5 month delay between solicitors coming on record for the Claimant and the application being brought, (v) the clear prejudice to the Respondent, a charity, of having to reopen disclosure and evidence in a very short timeframe before the final hearing, and (vi) that the Claimant still has a number of live claims proceeding to final hearing which, if they succeed, would render the incremental value of this further claim to be minimal.

12. I also agree with the Respondent that the application was unreasonable, in that the Claimant should reasonably have been advised by her solicitors, and therefore should have realised when deciding to pursue the application, that the application was without merit. Whilst the grant of permission to amend is a matter of the Tribunal's discretion, in this instance there was very little to tip the balance in favour of the amendment being allowed to proceed and numerous factors weighing the other way.

13. I do not accept that the need to prepare for a Dispute Resolution Appointment provides a good reason for the delay in bringing the application. On the contrary, one would think that having the full breadth of the claim set out before the Dispute Resolution Appointment would be vitally important given the nature of such a hearing is to explore a settlement. Equally, none of the short delays in the Respondent complying with directions, in my judgement, explain or justify the delay.

14. Rule 76(1)(a) is therefore engaged.

Stage 2: discretion

15. Save as already set out above, I consider the following factors to be relevant to the exercise of the discretion in this case:
    a. The disruptive nature of the application, it being brought after all other case preparations had been completed despite solicitors having been engaged by the Claimant as early as March 2024.
    b. That the Claimant is represented by solicitors, so it can be assumed she had been properly advised as to the merits of the application.
    c. That the Respondent requested an oral hearing of the Claimant's application to amend (though I would note that, in my experience, applications to amend are generally decided at a hearing rather than on the papers, and there is nothing unreasonable about the Respondent taking the view that a hearing was needed).

16. The Claimant has put forward no evidence in respect of her means despite my direction to do so, so I do not take account of her means at this stage.

17. On balance, I am satisfied that the circumstances of this application are sufficiently exceptional that, in my discretion, an order for costs should be made.

Stage 3: quantification

18. The costs claimed are under £20,000, so I can make an order myself (Rule 78(1)(a)).

19. The Claimant has put forward no evidence in respect of her means despite my direction to do so, so I proceed on the basis that she can afford to pay any sum up to the total sum claimed.

20. I have considered the Respondent's costs schedule. The claim is for 12 hours of work, charged at the rate of £175.00 per hour. The hourly rate claimed is far below the applicable guideline rate, and I am satisfied that the rate is

reasonable and proportionate. I am also satisfied that it was reasonable and proportionate for the Respondent to request a hearing of the application.

21. Looking at the costs incurred in the round, I am satisfied that a small reduction in the number of hours for which costs should be awarded is appropriate. In my judgement, a reasonable and proportionate costs order is in the sum of **£1,750.00**, and that is the order I shall make.

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Employment Judge Abbott
Date: 16 December 2024

Sent to the parties on
Date: 18 December 2024