



EMPLOYMENT TRIBUNALS

Claimant: Mr. A. Allen
Respondent: British Transport Police
Heard at: London South (on the papers) **On:** 18th December 2024
Before: Employment Judge Sudra

(References in square brackets in this judgment are to pages in the costs bundle.)

JUDGMENT ON COSTS

The Respondent's application for a Costs Order under Rule 76 is well founded. A Costs Order is made of 100% of the Respondent's overall costs and the Claimant is ordered to pay the Respondent's costs in the sum of £10,150.53p.

REASONS

1. This was a Hearing to consider the Respondent's costs application of 4th July 2024, following the Tribunal's strike out judgment this case, sent to the parties on 21st June 2024.
2. The application was made under rule 75(1) and rule 76(2) of the Employment Tribunal's (Constitution and Rules of Procedure) Regulations 2013 (the 'Rules'). Rule 76 provides that if a party against whom an application for costs is made is considered by the Tribunal to have either, in bringing the proceedings

or in conducting them, acted vexatiously, abusively, disruptively or otherwise unreasonably, or the claim or response had no reasonable prospect of success, then the Tribunal must consider making a costs order against that party.

3. The Respondent pursues its application on grounds of the Claimant's unreasonable conduct and that the Claimant had breached Case Management Orders made by the Tribunal.
4. I had before me:
 - (i) The Respondent's costs application.
 - (ii) a 90-page costs bundle;
 - (iii) the Respondent's schedule of costs; and
 - (iv) the Respondent's fee notes and timesheets.

Issues

Background

5. The Claimant submitted an ET1 claim form on 29th December 2023, alleging that he had been unfairly dismissed. On 13th February 2024, the Respondent defended the claim on the grounds that the Claimant had been fairly dismissed for reason of capability.
6. On 29th January 2024 the Tribunal sent the parties a Notice of Hearing with Case Management Orders [19-23].
7. On 12th March 2024 the Respondent advised the Claimant that he needed to comply with the Case Management Orders and must provide a Schedule of Loss as soon as possible. The Claimant failed to provide a Schedule of Loss or, indeed, comply with any of the Case Management Orders and the Respondent sent the Claimant another 'chaser' email on 16th March 2024. The claimant failed to respond.

8. On 22nd March 2024, the Respondent complied with its disclosure obligations; the Claimant did not.
9. The Respondent emailed the Claimant on 26th March 2024 expressing their concerns as to the Claimant's non-compliance with the Tribunal's Orders and his apparent non-participation in the process. The Respondent had also attempted to contact the Claimant via Acas, to no avail.
10. On 28th March 2024, the Respondent wrote to the Tribunal informing it of the Claimant's non-compliance with Tribunal Orders and lack of engagement in the process. The Claimant's total disregard of the Tribunal's Orders prevented the Respondent with complying with its of disclosure duties and made witness statement exchange unworkable.
11. The Tribunal made fresh Case Management Orders on, 19th April 2024 [65-67] with amended deadlines. The Claimant failed to comply with these Orders too.
12. On 25th April 2024, the Respondent made an application to the Tribunal for the claim to be struck out (as the Claimant had failed to comply with Case Management Orders) – or for an Unless Order to be made – and for the Claimant to confirm whether or not he was pursuing his claim. The Claimant remained abstract from the process.
13. On 13th June 2024, Employment Judge Dyal ordered the Claimant to comply with Tribunal Orders by no later than 20th June 2024 and warned him that his claim was '*at grave risk of being struck-out.*' The Claimant, yet again, ignored the Tribunal's Order.
14. On 21st June 2021, the Claimant's claim was struck-out for non-compliance with a Tribunal Order and on the ground that the claim was not being actively pursued.
15. Between the period 26th March 2024 to 3rd May 2024, the Respondent had sent the Claimant no less than five costs warning letters.

16. The issues that I have to determine are:

- (a) Whether the threshold for a costs order has been met.
- (b) whether a costs order should be made; and
- (c) if so, in what amount

Has the Threshold for a Costs Order Been Met?

Unreasonable Conduct

17. There were two aspects to this ground:

- (i) The Respondent contended that it was unreasonable for the claimant to pursue his unfair dismissal claim, as he had been fairly dismissed for capability. I find, based on a proper reading of the ET1, that the Claimant's claim did not have a reasonable prospect of success and am satisfied that the Claimant's continued pursuit of the unfair dismissal claim was unreasonable.
- (ii) The Respondent also asserted that the Claimant persistently failed to comply with Case Management Orders. This allegation is incontestable. There has been no compliance with any Tribunal Orders by the Claimant. Nor has the Claimant pursued his claim; actively or otherwise.

18. I am satisfied that the matters at paragraphs 17(i-ii) (supra.) amount to unreasonable conduct by the Claimant and a failure to actively pursue his claim.

Should a Costs Order be Made?

19. The case of Yerrakalva v. Barnsley MBC 2012 ICR 420 makes clear that there does not have to be a direct causal link between the unreasonable conduct and the costs awarded. Rather, in exercising its discretion, the Tribunal should have

regard to the nature, gravity and effect of the unreasonable conduct. I am satisfied that the Claimant's pursuit of a claim that had no reasonable prospects of success and his repeated non-compliance with Case Management Orders resulted in additional work by the Respondent which would otherwise not have been required, resulting in increased legal fees. I am satisfied that those fees were more than '*de minimis*'. In all the circumstances, I consider it just that a costs order should be made.

How Much Should be Awarded in Costs?

20. Rule 84 of the Rules provides that in deciding whether to make a costs order, the Tribunal may (my emphasis) have regard to the paying party's ability to pay. To that end, the Tribunal wrote to the Claimant on 21st June 2024, asking him to provide a response to the Respondent's application for costs. The Claimant failed to respond or provide any evidence of his means.

21. The Respondent seeks costs in the sum of £10,150.33p and has provided a breakdown of those costs. Although I have not taken the Claimant's means into account¹, I have borne in mind that costs in this jurisdiction are discretionary, are still relatively unusual and are intended to be compensatory, not punitive.

22. In all the circumstances, I award costs to the Respondent in the sum of **£10,150.33p**.

Employment Judge Sudra

¹ I was prevented from taking the Claimant's means into account due to his total failure to communicate with the Tribunal despite being Ordered to respond to the Respondent's costs application on 11th October 2024.

Case Number: 2307989/2023

Date: 18th December 2024

Sent to the parties on:

19 December 2024

For the Tribunal Office:

P Wing