



THE EMPLOYMENT TRIBUNAL

AT:
BEFORE:
BETWEEN:

**LONDON CENTRAL
EMPLOYMENT JUDGE ELLIOTT**

Mr S Kumar

Claimant

AND

UK Tax Advice Ltd

Respondent

JUDGMENT ON COSTS

The Judgment of the Tribunal is that the claimant shall pay the respondent's costs in the sum of **£660**.

REASONS

1. At a hearing on 22 October 2024, at which judgment was delivered orally, the claim was struck out for the failure of the claimant to comply with Tribunal Orders and because it had no reasonable prospect of success. Judgment was sent to the parties, with Reasons, as requested by the claimant, on 29 October 2024.

The respondent's costs application

2. The respondent said at the conclusion of the hearing that it intended to make an application for a Preparation Time Order (PTO) which is in effect a costs application against the claimant. In the event that such an application was made, the parties were asked to state whether they wished the application to be dealt with at a hearing or on the papers.
3. On 23 October 2024 the respondent made a written application for a PTO and asked that the application be dealt with on the papers.
4. On 28 October 2024 the tribunal wrote to the parties asking the claimant to send any objections to the application together with a short statement setting out his means for the tribunal to consider. The claimant was also asked to say whether he wished the application to be dealt with at a hearing or on the papers. The respondent was asked to set out the total of the sum claimed.

5. The claimant did not respond to this letter. He had emailed the tribunal on 26 October 2024 saying that he was seeking “*relief from sanction on a few grounds*”. A further letter was sent to the parties on 26 November 2024. The claimant was informed that there is no relief from sanction process in the Employment Tribunal, as in the County Court and was reminded of the information he was sent with the Judgment in a letter dated 29 October 2024. This told him what he could do.
6. Time was extended until Friday 6 December 2024 for the claimant to comply with the directions set out in the letter of 28 October 2024. The tribunal has no record of any correspondence from the claimant in response to the letters of 28 October or 26 November 2024. The claimant was clearly told that if no response was received, the Judge would deal with the costs application in the absence of any further information.

The respondent's grounds for the costs application

7. The respondent made its application on 3 grounds under Rule 76: (i) that the claimant had acted vexatiously or otherwise unreasonably; (ii) that the claim had no reasonable prospect and (iii) that the claimant had been in breach of Tribunal Orders.
8. The respondent relied upon the facts of the case, in terms of their view on the lack of merits. They pointed out that the first time the claimant raised the alleged underpayment of salary was after his employment ended on 29 March 2024. This was despite alleging that he was underpaid from May 2023, a period of 10 months. They say that the claimant did not raise the matter in his final review in February 2024.
9. The respondent says that the claimant alleged the underpayment of salary as a direct consequence of being asked to return a work laptop and to repay a loan. They say that this claim was vexatious or otherwise unreasonable because on their case the claimant had no reasonable basis upon which to believe he was entitled to the salary he claimed. It was, on their case, a direct response to being required to return his company laptop and repay money lent to him. They say that this is wholly unreasonable and vexatious.
10. The respondent relies on the tribunal's finding made on 22 October 2024 that the claim had no reasonable prospect of success.
11. The also respondent relies on the tribunal's finding made on 22 October 2024 that the claimant had failed to comply with Tribunal Orders. This meant that the original full merits hearing listed for 31 July 2024 could not go ahead and had to be converted to a case management hearing. They also rely on the fact that for the hearing on 22 October 2024, when the claimant was again not ready, they had to deal with his postponement application and pursue a strike out application.

12. The respondent acknowledges that under Rule 75(2) a PTO does not apply to final hearings. They say that neither of the two hearings that took place were final hearings and they claim a PTO for attendance at the hearings on 31 July and 22 October 2024.

The amount claimed

13. The respondent provided a Schedule of Costs incurred over the period from 30 May 2024 when drafting the ET3 to 22 October 2024 being the hearing at which the claim was struck out. They claim 46 hours. Although the respondent did not set out the amount claimed, the calculation is simple, being 46 hours at £44 per hour making a total of £2,024.
14. The respondent was represented by the firm Croner which is not a firm of solicitors. The work was carried out by litigation executives who do not meet the definition of a legal representative falling within Rule 74(2).

Dealing with this application on the papers

15. The parties were asked to state whether they wished the application to be dealt with on the papers or at a hearing. The respondent stated within their application that they wished it to be dealt with on the papers. The claimant did not reply. In those circumstances I decided to deal with the application on the papers. As set out above, the claimant was given an opportunity to respond to the application and time was further extended for this purpose.

Relevant law on costs

16. Rule 37 of the Employment Tribunal Rules of Procedure 2013 provides that
17. Costs do not follow the event in employment tribunal proceedings and an award of costs is the exception and not the rule (Lord Justice Mummery in ***Barnsley Metropolitan Borough Council v Yerrakalva* 2012 IRLR 78**).
18. The power to award costs is contained in Rule 76 of the Employment Tribunal Rules of Procedure 2013 which provides that:

(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..... had no reasonable prospect of success;

.....

(2)where a party has been in breach of any order or practice direction.

19. The Court of Appeal held in **Yerrakalva** (above) that 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 was unreasonable conduct in bringing and conducting the case and in doing so, to identify the conduct, what was unreasonable about it and what effects it had. There does not have to be a precise causal link between the unreasonable conduct in question and the specific costs being claimed.
20. “Unreasonable” has its ordinary English meaning and is not to be interpreted as if it means something similar to vexatious: **Dyer v Secretary of State for Employment EAT/183/83**.
21. Rule 84 says that in deciding whether to make a costs or a wasted costs order and if so, in what amount, the tribunal may have regard to the paying party’s ability to pay.
22. PTO’s are covered in Rule 75(2) which says:

A preparation time order is an order that a party (“the paying party”) make a payment to another party (“the receiving party”) in respect of the receiving party’s preparation time while not legally represented. “Preparation time” means time spent by the receiving party (including by any employees or advisers) in working on the case, except for time spent at any final hearing
23. The amount of a PTO is covered by Rule 79. The Tribunal shall decide the number of hours in respect of which a preparation time order should be made, on the basis of the information provided by the receiving party on time spent falling within rule 75(2) above and the Tribunal’s own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
24. The hourly rate for a PTO was originally £33 when the Rules came into force and increases on 6 April each year by £1. The claim was presented on 30 April 2024 so the relevant hourly rate throughout the period in question is £44.

The decision on whether to make a PTO

25. The claim was struck out on grounds that it had no reasonable prospect of success and because the claimant had failed to comply with Tribunal Orders. This is sufficient for the threshold test for an award of costs or PTO to be met.
26. The claimant did not give evidence at either hearing. He was in India and had made no application to give evidence from overseas. For this reason there was no cross-examination as to his reasons for presenting the claim and as to whether it was because the respondent wanted the return of his work laptop and the repayment of a loan. I am unable to make such a finding so I do not award a PTO on the first ground relied upon.
27. The failure to comply with Tribunal Orders meant that the respondent twice prepared for a full merits hearing that was ineffective. The second hearing was necessitated by the failure to comply with Orders relevant to the first hearing. The claimant suggested on 22 October 2024 that the first hearing on 31 July 2024 had been "*fully effective*". It was not. It could not take place as a full merits hearing and had to be converted to a case management hearing to ensure that the time was used productively.
28. The respondent had no option but to prepare the case on two occasions for a full merits hearing and to deal with a postponement application on the date of the second hearing. They also prepared a strike out application, which was successful.
29. The claimant brought the claim and did not properly engage with it. Two attempts at a full merits hearing fell by the wayside. This caused the respondent to incur the cost of necessary preparation time. I have also found that the claim had no reasonable prospects of success.
30. I find that the respondent has incurred cost that it ought not to have incurred had the claimant complied with Tribunal Orders and had the claim been one which had a reasonable prospect of success.
31. In addition the claimant has chosen not to set out any grounds of opposition to the application.
32. Under Rule 84 the Tribunal may have regard to the paying party's ability to pay when making a decision as to whether to award costs. The claimant was twice given the opportunity to give details of his means. He failed to do so which meant I was unable to take this into account.
33. For these reasons I have decided that a PTO is merited.

The amount of the PTO

34. As set out above, the respondent claims for 46 hours of preparation time including attendance at the two hearings, which they correctly noted were not full merits hearings. The first became a case management hearing and the second was a preliminary hearing to deal with the claimant's postponement application and the respondent's strike out application.
35. I have considered the respondent's schedule of costs which claims for 46 hours. What took my attention when considering that schedule was what appeared to be a substantial amount of duplication. There were two Schedules often claiming for the same hours on the same dates. Under the first schedule 19 hours were claimed and under the second schedule 27 hours were claimed.
36. In terms of duplication and by way of example, both schedules claimed 3 hours on 30 May 2024 from 5am to 8am for drafting the response to the claim. Both Schedules claim another 2.5 hours each for finalising the response. It should not take 11 hours to put together a response to a claim of this nature even for a lay person. It was a straightforward claim for unlawful deductions which was not legally or factually complex. The response to the claim ran to only 6 paragraphs in box 6.1 of the ET3.
37. A further example of duplication is two people claiming 1.5 hours for the same meeting to discuss the claim.
38. It appears from the Schedules that both Croner and the lay client claim, in places, for the same work. By way of further example, there are two claims of one hour each by two people on 18 July 2024 from 6.30am to 7.30am for "*trying to contact the tribunal*". This is not justified.
39. In the circumstances I decided to exercise the discretion to award an amount for the PTO in a broad-brush fashion by assessing what I consider to be a reasonable and proportionate amount of time to spend together with the complexity of the proceedings, the number of witnesses and documentation required.
40. The proceedings were not complex either legally or factually. It was a straightforward case. It was document-light. Had there been a full merits hearing there would have been 1 witness on each side. On the claimant's best case, the maximum value of the claim was £900. I consider a reasonable and proportionate amount of preparation time to be 15 hours.
41. I had no evidence as to the claimant's means to take into account.
42. I make a PTO in the sum of **£660** being 15 hours x £44.

Employment Judge Elliott
Date: 13 December 2024

Judgment sent to the parties and entered in the Register on: 23 December 2024
_____ for the Tribunal