



EMPLOYMENT TRIBUNALS

Claimant: AB

Respondent: (1) Mr Dhimitraq Beanj (2) Wickham Foods Ltd

Heard at: London South Employment Tribunal (in chambers)

Before: Employment Judge Abbott, Mrs S Dengate and Mr C Tansley

JUDGMENT ON COSTS

The Respondents' application for a costs order under Rule 76 of the Employment Tribunals Rules of Procedure 2013 succeeds. The Claimant is ordered to pay the Respondents the sum of £750 in respect of costs.

REASONS

1. By its Judgment of 14 June 2024, for reasons given orally that day, the Tribunal found in favour of the Respondents in respect of the Claimant's claims for unfair dismissal, unlawful deductions, breach of contract, harassment and victimisation.
2. The Respondents have applied for a costs order. They contended that they should be awarded their total costs incurred in the sum of £21,340 (inclusive of VAT) on the basis that the Claimant acted vexatiously, abusively and/or unreasonably in the bringing of and/or the conduct of the proceedings; alternatively, that the claims had no reasonable prospect of success.
3. The Claimant resists the application. She argues that the threshold for a costs order is not met and that, in any event, the Tribunal should not exercise its discretion to do so. She has identified her limited financial means as a relevant factor and, in response to a direction from the Tribunal, provided evidence in that regard.
4. The Respondent requested that the application be determined on paper, and, in her response, the Claimant did not resist that. We are 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; or (b) any claim or response had no reasonable prospect of success [...]

6. In other words, there is a three-stage process. First, we must ask whether the Claimant's conduct falls within rule 76(1); if so, we must go on to determine whether it is appropriate to exercise our discretion in favour of awarding costs against the Claimant; and if so, we 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. The Employment Appeal Tribunal (HHJ Auerbach) discussed the approach to applications under Rule 76(1) in *Radia v Jefferies International Ltd* [2020] IRLR 431.
- a. The EAT noted at [62-63] that "The Tribunal may consider, in a given case, under (a), that a complainant acted unreasonably, in bringing, or continuing the proceedings, because they had no reasonable prospect of success, and that was something which they knew; but it may also conclude that the case crosses the threshold under (b) simply because the claims, in fact, in the Tribunal's view, had no reasonable prospect of success, even though the complainant did not realise it at the time. The test is an objective one, and therefore turns not on whether they thought they had a good case, but whether they actually did. ... However, in such a case, what the party actually thought or knew, or could reasonably be expected to have appreciated, about the prospects of success, may, and usually will, be highly relevant at the second stage of exercise of the discretion."
- b. The EAT then provided guidance at [64] as follows: "This means that, in practice, where costs are sought both through the Rule 76(1)(a) and the Rule 76(1)(b) route, and the conduct said to be unreasonable under (a) is the bringing, or continuation, of claims which had no reasonable prospect of success, the key issues for overall consideration by the Tribunal will, in either case, likely be the same (though there may be other considerations, of course, in particular at the second stage). Did the complaints, in fact, have no reasonable prospect of success? If so, did the complainant in fact know or appreciate that? If not, ought they, reasonably, to have known or appreciated that?"

- c. Regarding Rule 76(1)(b) arguments, the EAT explained at [65] that the Tribunal should first, at stage 1, consider whether, objectively, the claim "had no reasonable prospects of success" when it was begun. If so, then at stage 2 the Tribunal will usually need to consider whether, at that time, the complainant knew this to be the case, or at least reasonably ought to have known it. When considering these questions, the Tribunal must be careful not to be influenced by the hindsight of taking account of things that were not, and could not have reasonably been, known at the start of the litigation. However, it may have regard to any evidence or information that is available to it when it considers these questions, and which casts light on what was, or could reasonably, have been known, at the start of the litigation.
10. 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)?

11. The Respondents argue that the allegations of sexual harassment and victimisation were based on untrue and clearly invented scenarios, and therefore had no reasonable prospects of success and/or were pursued vexatiously and unreasonably as the claimant knew they were untrue allegations and pursued them to have a maximum effect on the Respondents' reputation.
12. We accept the Respondents' submission on this point. The allegations that the Claimant made were of a highly personal and damaging nature. We found, on the facts, that they were entirely without substance. There was no contemporaneous evidence to support the allegations and the Claimant's own contemporaneous conduct was inconsistent with the narrative that she presented. We find that these allegations had no reasonable prospects of success from the outset. We further find that, given the Claimant must have known that there was no evidence to support her allegations, her pursuit of the allegations was unreasonable and vexatious in that it was done to cause maximum damage to the Respondents.
13. Rule 76(1) is therefore engaged in respect of the complaints of sexual harassment and victimisation.
14. The Respondents also argued that the claims of unfair dismissal, unlawful deductions and breach of contract (which we found to be out of time) were also misconceived and vexatious. We do not accept this submission. In our judgement, there was a tenable argument advanced for whether it was not reasonably practicable for the claimant to present these claims in time (her ill health). It was an argument that we rejected, but we do not consider it reaches the threshold of having no reasonable prospects from the outset, nor do we consider it was unreasonable or vexatious for the claimant to pursue that

argument to the final hearing.

15. Rule 76(1) is therefore not engaged in respect of the complaints of unfair dismissal, unlawful deductions and breach of contract.

Stage 2: discretion

16. Having found that Rule 76(1) is engaged in respect of the complaints of sexual harassment and victimisation, we must move to the second stage: whether it is appropriate to exercise our discretion to award costs in this case, recognising that costs awards are the exception rather than the rule.

17. We consider the following factors to be relevant to the exercise of the discretion in this case:

- a. The very serious nature of the allegations, which were entirely unsubstantiated. The Claimant must have known (or should reasonably have known) that the nature of the allegations would be highly disruptive to the Respondents and would have to be robustly defended. These were allegations of a sexual nature made against individuals running a family business in which their wives and other family members worked.
- b. That the Claimant was advised by people with experience in employment law (albeit that neither of the individuals who represented her during the course of the proceedings were qualified lawyers).
- c. The Claimant's limited financial means. The evidence before us shows that she is dependent on State benefits, with a monthly surplus of only around £70 per month after expenditure. Notably, it appears that the Claimant has not been able to obtain alternative employment, which is to a degree surprising given the passage of time since she left employment with the Respondents (but we accept that her need to provide childcare plays a role in that).
- d. That the Tribunal found that some of the Respondents' own witnesses at the final hearing collectively sought to exaggerate aspects of their evidence to paint the Claimant in as bad a light as possible. In other words, it was not only the Claimant that gave unreliable evidence. Nevertheless, the unreliable evidence from the Respondents' witnesses was peripheral to the core allegations.

18. On balance, we are satisfied that this is an appropriate case in which to exercise our discretion to make an award of costs. The very serious, and false, nature of the allegations, in our judgement, weighs heaviest in the balancing exercise.

Stage 3: quantification

19. The Tribunal can make a costs award of a maximum of £20,000 at this stage (Rule 78(1)(a)). Any award above that level would require referral for detailed assessment (Rule 78(1)(b)).

20. We accept that a very large proportion of the costs incurred will have been concerned with the core allegations of sexual harassment and victimisation. As we have already said, these were very serious allegations that the Respondents were forced to robustly defend. No breakdown of the costs has been provided, but we observe that the claimed costs are relatively high by the standards of cases normally heard in this Tribunal.
21. In quantifying the award, we need to balance the factors set out above, in particular the seriousness of the allegations against the Claimant's financial means. In our judgement, an award of £750 achieves an appropriate balance.
22. Although this is not a matter for the Tribunal but for enforcement, if the Claimant does not consider that it is possible to pay the costs award as a lump sum, she would be well-advised to seek to agree a payment plan with the Respondents as soon as possible.

Employment Judge Abbott

Date: 25 October 2024

JUDGMENT & REASONS SENT TO THE
PARTIES ON

7 November 2024.

FOR THE TRIBUNAL OFFICE

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