



EMPLOYMENT TRIBUNALS

Claimant: Mr David Steven Saxton

Respondent: Hinduja Global Solutions UK Limited

Heard at: London South Employment Tribunal

Before: EJ W Brady

Representation

Claimant: No response

Respondent: Howes Percival Solicitors

JUDGMENT

1. Upon the receiving party (as defined in the order below) applying for a costs order against the paying party (as defined in the order below)
2. And Upon the Tribunal considering Tribunal rules 74 to 78 and 84
3. And Upon the receiving party (as defined in the order below) averring it incurred total costs of £13,973.54
4. And Upon the Tribunal concluding that the conditions in Tribunal Rules 76 (1) (a) are satisfied
5. And Upon the Tribunal considering that it is appropriate to make such an order
6. And Upon considering the ability to pay of the paying party (as defined in the order below) to pay any costs order and that therefore the paying party should pay no more than **£1,000**.
7. THE TRIBUNAL'S JUDGMENT IS AS FOLLOWS:
 1. In the judgment,
 - a. The paying party is the Claimant
 - b. The receiving party is the Respondent

8. The paying party shall pay to the receiving party costs in the sum of **£1,000.**

REASONS

1. Judgment was given in favour of the Respondent in this case on 9th April 2024.
2. On 10th July 2024 the Respondent submitted an application for costs against the Claimant under Rule 76 (1) (a) and Rule 76 (1) (b).
3. On 7th October 2024, a letter was sent to the Claimant inviting him to give reasons in writing why it should not be granted.
4. By 2nd December 2024, no response had been received from the Claimant. I have therefore considered the Respondent's application for costs and my reasons for my decision are outlined below:
5. In their letter dated 10 July 2024, the Respondent submits that the Claimant continued to bring a claim for unfair dismissal against the Respondent which had no reasonable prospect of success after he was warned by the Respondent that his claim had no reasonable prospect of success and, even if successful, that his award would be nil (based on mitigation circumstances); and his failure to attend the final hearing or seek a postponement at an earlier and reasonable time.
6. The Respondent has exhibited letters that were sent to the Claimant on 6 February 2024 and 27 March 2024, advising him that they would be seeking an application for costs if the Claimant's claim was unsuccessful. Both letters argued that even if the Claimant's claim was successful, the basic award and compensatory award would be reduced to nil due to the fact that soon after his dismissal, the Claimant secured employment. The case was listed for a final hearing on 9th April 2024, the Claimant sought a postponement on 22nd March 2024 which was refused. The hearing proceeded in the Claimant's absence and EJ Brady ruled that the Claimant's claim was unfounded and dismissed the claim.
7. When considering an application for costs, the Tribunal must first consider whether the Respondent passes one of the gateways in the Employment Tribunal Rule 76. Secondly, the Tribunal must exercise discretion as to whether to make an award. Finally, the Tribunal must consider the amount of the award and the form of the award.
8. When considering the application, the Tribunal must bear in mind that Costs in Employment Tribunal are the exception rather than the rule, and also the fact that the Claimant in this case is unrepresented.

Stage 1: Gateways to making an order:

9. For the reasons outlined above, the Respondent relies on ET Rule 76 (1) (a) and ET Rule 76 (1)(b).
ET Rule 76(1) states, “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) of the way that the proceedings (or part) have been conducted;
 - (b) Any claim or response had no reasonable prospect of success.
10. When considering the Claimant’s conduct, I have taken into account the fact that he was unrepresented. However, I find that the two “without prejudice” letters that were sent by the respondent were clear and fairly presented. Despite the warning that his claim would be of little monetary value, the Claimant pursued his claim but then failed to make the necessary arrangements and was unable to attend the hearing as he was unable to take time off work. He had been notified of the final hearing date on 13th December 2023 and had therefore had time to notify his employer of the hearing date.
11. I therefore find that the Claimant acted unreasonably by pursuing his claim after the “without prejudice” letters were sent and then failing to make the necessary arrangements to be present at the final hearing.

Stage 2: Tribunal’s Discretion:

12. When considering whether or not to exercise my discretion, I have noted that costs in the Employment Tribunal are the exception, not the rule. However in this case, I note that the Claimant was repeatedly warned by the Respondent that a costs application would be made if he continued to pursue his claim, which, he was advised, had little prospect of success and was of very little monetary value. Despite this, the Claimant continued to pursue his claim. As the Claimant has not responded to the letter asking for his representations with regard to costs, it is not known whether or not the Claimant sought legal advice after receiving this letter, but he did continue with his claim.
13. On 22nd March 2023, the Claimant wrote to the Tribunal requesting a postponement of the hearing due to the fact that he was unable to secure time off work for the hearing. The application was refused and the Claimant was advised that the case would proceed in his absence.
14. For these reasons, I find that this is an exceptional case and therefore that costs should be considered.
15. I also note that costs should be compensatory and not punitive. Again, it is unfortunate that the Claimant has not responded to the request for representations.
16. I have also considered the Claimant’s ability to pay. The Claimant was asked to make representations but has not responded to the request. I do note however that he is now employed, and that his new salary is more than that that he was earning with the Respondent. On 9 October 2023, the Claimant’s

new annual basic pay was £48,000 and his net weekly basic pay was £718.68.

Stage 3: What Costs Order Should be made?

17. The Respondent has claimed for costs from 6 February 2024 up until 14 June 2024 which is £13,973.54 exclusive of VAT.

18. I have taken into account the Claimant's ability to pay, and the fact that he was unrepresented and I order that the Claimant shall pay a contribution towards the respondent's costs in the sum of **£1,000 in total.**

Employment Judge W Brady

Date: 28 January 2025

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