



## EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Younga**

**v**

**Livewell Southwest Ltd**

**Heard at:** Exeter ET

**On:** 7 December 2023

**Before:** Employment Judge Oldroyd

### **Appearances**

**For the Claimant: Did not appear**

**For the Respondent: Did not appear, but made written submissions**

### **JUDGMENT**

1. The Claimant shall pay the Respondent's costs of this claim in the sum of £18,000 by 10 March 2025.

### **REASONS**

1. This claim was commenced by ET1. The Claimant brought claims for unfair dismissal and direct race discrimination.
2. A case management hearing took place before EJ Roper on 12 April 2024 at which time a further preliminary hearing was ordered to consider whether the claims were brought in time or should be struck out as having no reasonable prospect of success.
3. A hearing was listed to take place on 10 August 2023. In advance of that the Claimant requested the hearing take place by video, as she was overseas in the Democratic Republic of Congo (DRC) dealing with a "critical family matter".
4. On 2 August 2023, the Tribunal advised the Claimant that it was not possible to give remote evidence from the DRC. In response and on 4 August 2023, the Claimant made a request for a postponement which was granted. The hearing was relisted to 7 December 2023 and came before me on that day.
5. The Claimant did not attend the hearing. The Claimant provided no explanation for her non-attendance.



6. The claim was struck out pursuant to (what was then) Rules 47 and 37(c) and (d) of the Employment Procedure Rules. To this end, the Claimant had not attended a hearing, had not complied with Employment Tribunal Rules and also had not actively pursued her claim.
7. The Respondent was given permission to make an application for costs (the **Application**) within 49 days of receipt of the Order striking out the claim which it did. The Claimant sought costs of £22,472.75, supported by a time ledger.
8. I directed that the Claimant should respond to the Application within 21 days and, subject to any comments that the Claimant may have, I would deal with the matter on paper.
9. The Respondent had already placed the Claimant on notice of its intention to pursue costs claim by way of letters dated 28 October 2022 and 26 May 2023. Both letters were accompanied with 'drop hands' offers.
10. In the event, the Claimant did not apply to review or appeal the order striking out her claim or respond to the Application at all.
11. The costs hearing was listed to take place by video on 10 February 2024.
12. The Respondent filed written submissions in advance of the hearing but indicated it would not otherwise attend.
13. The Claimant did not attend the hearing. The Claimant gave no reason for non attendance.

#### **The Law in respect of costs**

14. Rule 74 of the Employment Tribunal Rules allows the Tribunal to make an order for costs against a party.
15. An application for must be made within 28 days, but in this case that deadline was extended by the Tribunal and the Application was made 'in time'.
16. The Claimant must be given the opportunity to respond to the claim. In this instance, that opportunity was afforded to her
17. Rule 74 allows the Tribunal to make a costs order on various ground including:
  - a. On the basis that the claim had no reasonable success
  - b. On the basis that a party's conduct was unreasonable.
18. As far as unreasonable conduct is concerned, this has its ordinary meaning. But a three stage approach is required. (**Radia -v- Jefferies International Limited UKEAT/0007/18**).



19. First, the Tribunal must be objectively satisfied that the conduct is unreasonable.
20. Second, having regard to all the circumstances, the Tribunal must decide whether to exercise its discretion to make and award of costs. The tribunal will consider all of the circumstances (**Metropolitan Borough Council -v- Yerrakalava [2012] IRLR 78**). It is to be noted that costs orders are the exception, not the rule.
21. Third, the Tribunal must decide the amount of the costs to be awarded. As to amount, the Tribunal may make an award of costs of up to £20,000 or else the matter may be dealt with by detailed assessment proceedings in the County Court. The costs awarded are intended to be compensatory, not punitive. The costs must in any event be reasonable and necessarily incurred and be proportionate.

### Conclusions

22. I am not minded to make an order for costs on the basis that the claim had no reasonable prospects of success on the basis the claim was not struck out for that reason. I instead consider whether a costs order should be made on the basis of unreasonable conduct.
23. I am satisfied that the Claimant's conduct was unreasonable, objectively viewed. It is clear to me that since the hearing before EJ Roper, the Claimant has not engaged in these proceedings. Aside from requesting a postponement of the hearing listed in August 2023, the Claimant has not been in contact with the Tribunal or indeed with the Claimant. The Claimant did not attend the hearing on 7 December 2023 and has not responded to the Application. In circumstances where the Claimant plainly knew that a preliminary hearing was to take place and has been in contact with the Tribunal up to early August 2023, I can only conclude the Claimant has abandoned her claim, but without advising the Claimant or the Tribunal. This is not reasonable. It has put the Respondent to expense.
24. I then turn to the exercise of my discretion.
25. I do note the Claimant acts in person and I give her some leeway in that regard.
26. Given the Claimant has given no indication of her means, in spite of having the chance to do so, I do not take means into account in exercising my discretion (one way or the other)
27. However, the fact that the claim was abandoned soon after the hearing on 12 April 2024 is a very significant factor that in my judgment justifies the making of the costs order. The Claimant could easily have advised the Claimant or the Tribunal that the claim was not being pursued. Instead, the Claimant has been put to the expense of having to deal with it. Costs and time have been wasted. This, I am satisfied, justifies a costs order being made.



28. In terms of amount:

- a. Given the claim was abandoned only after 12 April 2024, I am not inclined to award any costs that relate to before that date – approximately £3,800 of the costs claimed.
- b. I then have regard to whether the costs claimed are reasonable in amount and were necessarily and proportionately incurred. I do note the use of multiple fee earners and that time was charged for attendance at a hearing along side counsel.

Taking into account both of the points above, I am satisfied that a costs order in the sum of £18,000 is justified in amount. For the avoidance of doubt, this is inclusive of any VAT.

**Employment Judge Oldroyd**

Dated: 10 February 2025

Sent to the parties on:

3 March 2025

Jade Lobb  
For the Tribunal Office

Reasons

*Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.*

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