



EMPLOYMENT TRIBUNALS

Claimant: Mr M Y Mayiba
Respondent: Clarion Housing Group Ltd

Heard at: Watford Employment Tribunal
On: 23 January 2025
Before: Employment Judge Alliot
Members: Mrs S Boot
Mr D Bean

Representation

Claimant: Did not attend
Respondent: Ms Moray Dalziel (solicitor)

JUDGMENT

The judgement of the tribunal is that:

1. The respondent's application for costs is dismissed.

REASONS

1. On 8 July 2024 the respondent made an application for costs. The grounds of the application are that the claim had no reasonable prospect of success (Rule 74(2)(b) The Employment Tribunal Procedure Rules 2024). During the course of the hearing Ms Dalziel also submitted that the claimant had acted unreasonably in the conduct of these proceedings in light of the two costs warning letters dated 30 November 2022 and 17 November 2023 and the "Last Chance" email dated 14 May 2024.

The law

2. Rule 74 provides as follows:-

"When a costs order... may or must be made

74.— (1) The Tribunal may make a costs order... on the application of a party...

(2) The Tribunal must consider making a costs order... where it considers that—

(a) a party... has acted... otherwise unreasonably in either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted.

(b) any claim... had no reasonable prospect of success.”

3. As Ms Dalziel submitted to us, this is, in essence, a three stage process.
 - 3.1 Firstly we need to be satisfied that the claim, or part of it, had no reasonable prospect of success and/or that the claimant’s conduct of the proceedings has been unreasonable.
 - 3.2 If so, we must consider whether to exercise our discretion and make a costs order.
 - 3.3 If so, we must consider the amount to be awarded and may take into account the claimant’s means in doing so.

The evidence

- 4 We were provided with a 90 page hearing bundle.

The claimant’s absence

- 5 The hearing of this case took place from 20 to 24 May 2024. Judgment and reasons were delivered orally. The judgment was signed on 28 May 2024 and sent to the parties on 5 July 2024. On 8 July 2024 the respondent made its application for costs and requested full written reasons.
- 6 Full written reasons were signed on 10 October 2024 and sent to the parties on 15 October 2024.
- 7 On 8 November 2024 this costs hearing was listed to be heard on 13 January 2025.
- 8 On 2 December 2024 the claimant emailed the employment tribunal requesting that the costs hearing be rescheduled as he was due to be on annual leave as he had to go abroad for bereavement of his late mother. He indicated availability from March 2025.
- 9 On 2 December 2024 the respondent requested proof of the holiday and leave arrangements etc.
- 10 On 8 December 2024 the claimant stated that he had annual leave scheduled for 06.06 (probably an error and should have been from January) to 17.01.2025. He claimed that he had booked his holiday in June 2024 and said he planned to use this booked annual leave to travel abroad for bereavement. He also referenced ongoing counselling for anxiety and bereavement.
- 11 On 9 December 2024 the respondent emailed objecting to the application to postpone the case and pointing out there had been a failure to provide further information.
- 12 On 16 December 2024 I indicated that the hearing remained listed for 13 January 2025 and told the claimant that he had not provided sufficient evidence to support a postponement and that if he wanted to renew his application he would have to provide the information requested.
- 13 On 15 December 2024 the claimant sent in two documents. The first of these

was a type written, unsigned, note from a psychologist in the following terms:-

“This letter confirms Martial’s attendance for personal therapy at South London and Maudsley NHS. He was referred for support with stress, anxiety and grief and commenced person-centered therapy in June 2024. To date, he has attended 13 sessions. The therapy is ongoing.

Kind regards,

Claudia Mulligan

Trainee Counselling Psychologist”

- 14 The claimant also submitted what looks like extracts from a diary which have until 17 January 2025 blocked out on annual leave.
- 15 Due to the claimant’s submitted evidence the hearing on 13 January 2025 was postponed and relisted for 23 January 2025.
- 16 On 26 December 2024 the claimant sent an email to the tribunal attaching a Med 3 fit note. This is dated 22 December 2024 and signs the claimant as not fit for work until 23 January 2023 because of “Depression, stress and anxiety – started on antidepressant”.
- 17 The respondent was copied into to the claimant’s email and, on 6 January and on 13 January 2025, the claimant was asked if he was seeking a postponement. The claimant did not respond to those emails.
- 18 The 90 page hearing bundle was sent to the claimant on 15 January 2025.
- 19 On 22 January 2025 the claimant sent an email to the respondent and the tribunal as follows:-

“Please be aware that as per my email on 26 December 2024, I have been signed off for depression, stress and anxiety till 23 January 2025 pending further evaluation.

I am currently on antidepressant.”
- 20 The email went on to set out details of the claimant’s salary and outgoings.
- 21 At 10am today the claimant was not in attendance. I caused the clerk to call the claimant and send him an email. The phone would not connect, and the claimant did not reply to the email by 10.45am.
- 22 The claimant has twice tried to postpone the hearing of this costs application. Firstly, he was citing annual leave and when that was accommodated secondly he advanced medical grounds. We note that the claimant’s medical evidence falls well short of indicating that he was medically unfit to attend this hearing as opposed to being unfit for work. Further, we note that the claimant has failed to reply to the respondent’s enquiries as to whether he was seeking a postponement of this hearing.
- 23 We decided that in all probability the claimant had voluntarily absented himself from this hearing and we determine to proceed in his absence.

The costs application

- 24 Obviously enough, the starting position in this jurisdiction is that costs do not follow the event and are not payable by the unsuccessful party to the successful party.
- 25 During the course of the conduct of this litigation the respondent sent two costs warning letters to the claimant dated 30 November 2022 and 17 November 2023. It is fair to say that the respondent set out the law in relation to a claim for direct race discrimination on the basis that the claimant was a litigant in person. The point was made that just because the claimant felt he had been treated unfairly did not necessarily mean that he had been discriminated against on the grounds of his race and that more was required.
- 26 Nevertheless, we observe that respondents will often send such letters in an attempt to dissuade a claimant for pursuing his/her claim and, in our judgment, it would only be in the plainest of cases that to continue with a claim in the face of such a letter could be considered as unreasonable conduct.
- 27 In this case the claimant alleged less favourable treatment in respect of 16 factual allegations. We found nine not proved but six were proved.
- 28 At the end of the day it was a matter for our judgment as to whether the six items of treatment that we found proved constituted less favourable treatment and, if so, whether that less favourable treatment was on the grounds of the claimant's race. We also note that, as regards one item of alleged treatment, even though we found that it did not constitute less favourable treatment, we nevertheless went on to acknowledge that the comments complained about had caused the claimant upset and that those comments could, in certain circumstances, have had racial undertones. We concluded that they did not in this case but, in our judgment, the claimant was entitled to explore the issue in evidence.
- 29 We have considered whether parts of the claimant's claim could be separated out from other parts and determined that they could not. In our judgment, the totality of the claimant's claim stood to be considered on its merits.
- 30 We have concluded that we cannot say that there was no reasonable prospect of the claimant succeeding. Further, we have concluded that it was not unreasonable conduct for the claimant to continue with his claim in light of the costs warning letters and the "Last Chance" email.
- 31 Consequently, the respondent's application for costs is dismissed.

Approved by:

Employment Judge Alliott

13 / 2 / 25

JUDGMENT SENT TO THE PARTIES ON

8 March 2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/