



EMPLOYMENT TRIBUNALS

Claimant: Mr L Kemplay

Respondent: TFAS Wealth Ltd

Considered on the papers

JUDGMENT

The claimant is ordered to pay the sum of £6,315 to the respondent in respect of the costs incurred by the respondent in defending this claim.

REASONS

Background and history to the claim

1. The claimant presented his claim to the Tribunal on 25 February 2024 following a period of early conciliation that started on 14 December 2023 and ended on 18 December 2023.

First Preliminary Hearing

2. The case was listed for a Preliminary Hearing for case management on 12 July 2024 before Employment Judge James. The respondent was represented by a solicitor at the hearing. The claimant did not attend the hearing or write to the Tribunal to explain why he would not be attending. A clerk tried to telephone the claimant, but the call went straight to voicemail. The clerk left a message for the claimant but the claimant did not contact the clerk or participate in the hearing.
3. Employment Judge James ordered that the claimant write to the Tribunal by 9 August explaining why he did not attend the hearing and confirming whether he wished to proceed with the claim. The claimant was warned that if he did not do so the claim would be struck out.

4. The claimant did not comply with the Order of Employment Judge James.

Second Preliminary Hearing

5. A second Preliminary Hearing took place on 20 November 2024, before Employment Judge Ayre. The claimant did not attend that hearing either and was not represented. He did not contact the Tribunal to state that he would not be attending or ask for a postponement. The respondent was also represented by a solicitor at that hearing.
6. A member of Tribunal staff telephoned the claimant and was able to speak to him. The claimant said that he had not been given notice of the hearing and that his partner was giving birth. He then ended the call by putting the telephone down on the member of staff.
7. The hearing proceeded in the absence of the claimant and the claim was struck out. The respondent indicated that it wished to make an application for costs. It was not possible to deal with the costs application on the day and Case Management Orders were made regarding the costs application.
8. The respondent was ordered to set out its costs application in writing to the claimant and the Tribunal by 27 November and the claimant was ordered to write to the respondent and the Tribunal by 18 December 2024 setting out his response to the application. The claimant was ordered to include in the response any information that he wished the Tribunal to take into account when considering the costs application, including any financial information on his ability to pay the respondent's costs.
9. The claimant was also warned that if he did not comply with the Order, a costs award may be made against him without the benefit of his input.
10. Both parties were asked whether they wanted the costs application to be dealt with on the papers or at a hearing. The claimant did not reply. The respondent indicated that its preference is for the costs application to be determined on the papers so as to avoid the costs of a hearing.
11. In light of the claimant's non attendance at previous hearings, the stated preference of the respondent, the lack of any objection from the claimant and the nature of the application that I have to decide, it is in my view appropriate and proportionate for the costs application to be determined on the papers without a hearing.

Communications with the claimant

12. The claimant has, during the course of this litigation, written to the Tribunal by email on the following occasions:
 - a. 24 May 2024;
 - b. 10 June 2024;

- c. 9 October 2024; and
- d. 22 November 2024

13. All of the claimant's emails were sent from the following email address: leon.kemplay9397@gmail.com That is the email address provided by the claimant in the claim form.
14. All communications by the Tribunal to the claimant have been sent to that email address.

The Costs application

15. The respondent's application for costs is set out in a letter dated 27 November 2024 which was sent by email to the claimant and the Tribunal. The respondent applies for costs in the sum of £6,315, in respect of 22.5 hours work in defending the claim at an hourly rate of £275 an hour. A breakdown of the time spent on the claim and the work carried out is attached to the application.
16. The grounds upon which the respondent applies for a costs order are, in summary:
- a. The claimant has acted unreasonably in the conduct of these proceedings by:
 - i. Not attending either of the preliminary hearings;
 - ii. Not co-operating with the respondent to prepare for the preliminary hearings; and
 - iii. Not complying with any of the Orders made by the Tribunal.
 - b. As a result of the claimant's unreasonable conduct the respondent has incurred costs in defending the claim, preparing for and attending two preliminary hearings.
17. The claimant has not responded to the respondent's application for costs. He has not complied with the Order set out in paragraph 3 of the Case Management Orders made at the hearing on 20 November, that he write to the Tribunal and the respondent by 18 December 2024 setting out his response to the application.
18. The claimant's only communication with the Tribunal since the hearing on 20 November is an email that he sent on 22 November replying to an email from the Tribunal attaching the strike out judgment.
19. In his email of 22 November the claimant wrote:

"You're quite right, I have zero respect for the tribunal or the respondent. I haven't received any correspondence from the tribunal since I put my claim in. No phone calls, no letters, no SMS. Only the emails from the Respondents"

*solicitor. No further evidence has been requested, which goes against a lot of the points made by the Respondent.
The whole process has been farcical from start to finish.
By the way, respect is earned. Learn for the future I guess.
Thank you for your amazing support."*

The Law

20. The statutory provisions governing applications for costs are set out in Rules 72 to 76 and Rule 82 of the Employment Tribunal Procedure Rules 2024 ("**the Rules**"). The relevant rules for the purpose of this application are:

a. Rule 75 (Procedure):

"(1) A party may apply for a costs order... at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) The Tribunal must not make a costs order.... against a party unless that party has had a No such order may be made unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order)."

b. Rule 74 (When a costs order or a preparation time order may or shall be made):

"(1) A Tribunal may make a costs order.... on its own initiative or on the application of a party....

(2) The Tribunal must consider making a costs order.... 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 it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success, or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order On the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned...."

c. Rule 76 (The amount of a costs order):

“(1) A costs order may order the paying party to pay –

(a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party....”

d. Rule 82 (Ability to pay):

“In deciding whether to make a costs...order, and if so the amount of any such order, the Tribunal may have regard to the paying party’s...ability to pay.”

21. Costs remain the exception rather than the rule in Employment Tribunal proceedings. In deciding whether to make an order for costs, the Tribunal must first consider whether the conduct of the claimant falls within Rule 74. If it does, the Tribunal must then go on to consider whether to exercise its discretion to make an award of costs and, if so, how much. The mere fact that a party’s conduct has been unreasonable or that a party has pursued a claim which did not have reasonable prospects of success does not mean that a costs award will automatically follow.
22. When considering whether to make a costs order under Rule 74(1)(a), the Tribunal must therefore apply a three-stage approach:
- a. Consider whether the grounds for making an order are made out;
 - b. If so decide whether to exercise its discretion as to whether to actually award costs; and
 - c. Decide the amount of the award.

Conclusions

23. Since issuing his claim in February 2024, the claimant has taken no steps to progress it, save for the emails he sent to the Tribunal on 24 May and 10 June chasing a response to the claim. Both emails were sent before the Tribunal had processed and accepted the respondent’s response to the claim. Since the response was accepted the claimant has done nothing to progress his claim.
24. The claimant has not attended either of the Preliminary Hearings in this case. He did not contact the Tribunal to explain his non-attendance on either occasion or seek a postponement of either hearing. When a member of the Tribunal’s staff was able to speak to him to ask about his non attendance at the second Preliminary Hearing the claimant ended the call abruptly and made no attempt to contact the Tribunal after the end of the call.
25. Employment Judge James set out clearly in the Record of the Preliminary Hearing on 12 July 2024 the importance of attending Tribunal hearings, and that non attendance is a serious matter. He ordered the claimant to provide an explanation for his non-attendance on 12 July, but the claimant has not done so.

26. The claimant has not complied with any of the Orders made by the Tribunal, including the Order made on 20 November that he set out his response to the respondent's application for costs. Instead, he sent an email to the Tribunal on 22 November, which was very critical of the Tribunal, describing the proceedings as 'farcical' and indicating clearly that he has no respect for the Tribunal's process.
27. The claimant's suggestion, in the email of 22 November, that he had not received any correspondence or phone calls from the Tribunal since he put his claim in is not credible and is not supported by any evidence. That very email is a reply to an email from the Tribunal. On 20 November a member of Tribunal staff spoke to the claimant by telephone about the hearing that day. This leads me to the conclusion that the claimant is not being honest with the Tribunal when he states that he has not received any correspondence or phone calls.
28. I am satisfied that the correspondence from the Tribunal has been sent to the correct email address, namely the one that the claimant has used to communicate with the Tribunal, which is the address named by the claimant in the claim form. When emails are sent by the Tribunal they are sent to both parties at the same time. The respondent appears to have received all of the emails, which indicates to me that there has not been an issue with the sending of emails by the Tribunal.
29. I have no hesitation in finding that the claimant's behaviour in the conduct of these proceedings has been unreasonable and falls within Rule 74(2)(a) of The Employment Tribunal Procedure Rules 2024.
30. I also find that, by failing to comply with all of the Tribunal's orders, the claimant's conduct falls within Rule 74(3) of The Employment Tribunal Procedure Rules 2024.
31. I am therefore satisfied that the grounds for making a costs order are made out. I have then gone on to consider whether to exercise my discretion to make such an order. There are, in my view, no mitigating circumstances to be considered here. The claimant has chosen to issue proceedings and has then taken no steps to pursue his claim. No credible explanation has been provided for his lack of participation in the proceedings.
32. The claimant has demonstrated a total lack of respect for the Tribunal process and for the respondent. He has failed repeatedly to comply with orders and has failed twice to attend hearings without any excuse. Non attendance at a hearing is a serious matter. It puts the public purse and the respondent to considerable expense.
33. The claimant was ordered to provide a reply to the respondent's costs application, but he has failed to do so. He was asked to provide information about his financial situation and ability to pay a costs order. He has not done so.

34. As a result of the claimant's failure to provide information about his financial situation, the only evidence of the claimant's finances that I have before me are:
- a. the claim form itself, in which the claimant indicated, in response to question 7, that he started new employment on 5 February 2024 earning £35,000 pa, which is £6,000 more than his salary with the respondent; and
 - b. The respondent's application for costs in which the respondent's solicitor wrote that in November 2023 the respondent had agreed to 'forgive' a loan of £3,673.52 that the claimant owed to the respondent.
35. For the above reasons I am satisfied that this is a case in which it is appropriate to exercise the Tribunal's discretion to make a costs order.
36. The final question for consideration, therefore, is the amount of the costs award. The Tribunal has the power to award up to £20,000 without referring the matter for detailed assessment. The sum claimed by the respondent is £6,315.
37. The respondent has provided a detailed breakdown of the costs claimed, and an explanation of the work that has been carried out and the relevant hourly charge out rate. I am satisfied that the work carried out appears to be reasonable, and the sums claimed by the respondent do not appear to me to be unreasonable. They have not been challenged by the claimant.
38. The claimant is therefore ordered to pay the sum of £6,315 to the respondent in respect of its costs.

Employment Judge Ayre

Date: 8 January 2025

JUDGMENT SENT TO THE PARTIES ON

23 January 2025

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FOR THE TRIBUNAL OFFICE