EMPLOYMENT TRIBUNALS

Claimant: QR

Respondent: The G.I. Group Limited

Heard at: Watford Tribunal **On:** 8, 9, 10 May 2024

Before: Employment Judge Cowen

REPRESENTATION:

Claimant: Mr Alexandrou (consultant)
Respondent: Ms Musgrave- Cohen (counsel)

RESERVED JUDGMENT

1 The Claimant must pay the Respondent £10,100 towards the costs of the Preliminary Hearing.

REASONS

1. The parties attended a public preliminary hearing at which a number of preliminary applications were made by the Claimant and dealt with in a case management order.

2. The substantive reason for the hearing was to consider a preliminary issue of whether there was a breach of contract claim

3. Having considered all of these applications and issues and having dismissed all of them, the Respondent made an application for costs under r.76(1)(a) & (b) at the end of the hearing. Evidence was taken under oath from both the Claimant and her husband Mr Richard Langstone with regards to their means.

The judgment on costs was reserved due to a lack of time.

4. There was no agreed bundle for this hearing. A bundle was provided by each party. Witness statements on behalf of the Claimant and her representative Mr Alexandrou were provided. Witness statements were also provided by Mr Pantelias and Mrs Pantelias on behalf of the Respondent. Submissions were heard from both parties.

5. In order to understand the context in which this decision was made please read this in conjunction with the written reasons judgment and case management order arising from the same hearing.

Costs submissions

6. Ms Musgrave- Cohen submitted on behalf of the Respondent that the Claimant's actions during the course of the hearing amounted to unreasonable conduct and that the Claimant's application for strike out/postponement and the claim for breach of contract had no reasonable prospect of success. She also submitted that costs are the exception to the rule and referred to Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420, CA.

7. The Respondent relied on the fact that the strike out application was unsuccessful, as the failure to disclose, which the Claimant relied upon, was found not to be relevant to the issues. She also relied on the fact that it was found to be untrue that the Claimant was in the dark about the Respondent's evidence, as the Claimant asserted, and that the Claimant's representative was an experienced representative in the Tribunals who knew, or ought to have known that a signature on a witness statement is not a critical requirement.

8. The Respondent relied on the correspondence which had passed between the parties on this point, where the Claimant had asserted that as the statements were unsigned and 'written on scraps of paper' they were prejudiced. This had been addressed in correspondence by the Respondent who sought to correct the Claimant's position and indicated that the Claimant's strike out application on that basis had no prospect of success.

9. Miss Musgrave- Cohen also referred to the Claimant's application to postpone and the fact that the Claimant made the application less than 7 days prior to the hearing, although they had been aware for some time of the basis that they relied upon. The decision not to postpone was said to be a fishing

expedition by the Tribunal when it was dismissed. Miss Musgrave-Cohen described the application as a waste of both time and money.

10. The third application which Miss Musgrave- Cohen relied upon was the Claimant's application for an anonymity order under r.50. This application was also made shortly before the hearing. The Claimant had provided no case law or legal argument for the order and had failed to explain to the Tribunal why the order would be necessary within the legal considerations in such an application.

11. The Respondent pointed out that all these unsuccessful applications had taken a whole day of Tribunal time to resolve and amounted to unreasonable conduct of unmeritorious applications.

12. Finally the Respondent submitted that the breach of contract claim had no reasonable prospect of success and that the Respondent had warned the Claimant of this on four occasions in April 2024.

13. The Respondent had served a Schedule of Costs on the Claimant on 8 May 2024 and provided it to the Tribunal.

14. Mr Alexandrou on behalf of the Claimant in response to the application offered the evidence of the Claimant and Mr Richard Langstone, the Claimant's husband with regard to their means and ability to pay. The Claimant and her husband appeared to be taken by surprise that this would be necessary, but gave their evidence nevertheless. Mr Alexandrou as an experienced representative had been aware of the Respondent's application for a few weeks in advance. He made no application to postpone the hearing of the costs application.

15. The Claimant acknowledged that the Breach of Contract claim was 'not our strongest claim'. She also continued to assert that she was not bound to treat the statements as served and that they were not valid until the parties gave evidence. Mr Alexandrou submitted that the main point for the preliminary hearing had been whether items of without prejudice correspondence could be disclosed at the final hearing. This was a matter which the parties had agreed themselves at the Tribunal and upon which I did not make any determination.

16. Mr Alexandrou asserted that the conduct on the part of the Respondent had been unreasonable and disproportionate. He submitted that the Claimant's actions had not been unreasonable as they had a strong belief that there had been a breach of the rules on disclosure and the manner of the exchange of witness statements. He acknowledged that the content of the statement he had received was not altered between two versions of the statements.

17. Mr Alexandrou stated that it was necessary to request a postponement as the reconsideration application had not yet been dealt with by EJ Quill. He considered that the strike out application had been appropriate. He also asserted that his client could not afford to pay a costs order.

18. Evidence was heard from the Claimant with regard to her means. She said she was unemployed but actively looking for work and had registered with a number of recruitment agencies. She had received Employment Support Benefit for 6 months, but that had stopped. The only benefit she now received is National Insurance Credit. She said she was financially dependent on her husband.

19. Mr Langstone also gave evidence to say that he was employed in purchasing components for gaming machines and has a disposable income of approximately £250-300 per month.

Law

20. The Tribunal is obliged to consider under r76(1)(a) whether to make an order for costs, but only once the proposed paying party have had an opportunity to make representations under r.77. I must then use my discretion to consider whether it is right and proper to award costs, having regard to all the relevant factors and taking into account the fact that costs are the exception and not the rule. I may also consider the Claimant's ability to pay, both at this stage and if awarding costs.

21. If a costs award is to be made, I must ensure that costs are limited to those which are reasonably and necessarily incurred.

Decision

22. In considering whether it is appropriate to make an order I have taken into account the fact that I have dealt with all the issues of the applications in

detail and therefore do not intend to spell out here, once again, all the reasons given for the dismissal of the various applications made by the Claimant. It is sufficient to say that the Claimant failed in all of them.

23. It was clear that neither the strike out, nor the postponement were likely to succeed, as the Claimant had been provided with the content of the Respondent's statements sufficiently in advance of the hearing. The application for anonymity was inappropriate. The Claimant offered no specific risk of harm, no evidence to base her application upon and provided no submission on the balance of prejudice to be considered. The application should not have been made in this form and showed a lack of understanding of the legal principles to be applied in such an application.

24. Furthermore, the breach of contract claim had little prospect of success when on the Claimant's own evidence she knew that a written agreement was not settled on the day and that she would need to take further steps to obtain legal advice in order to reach a binding agreement. Equally the Claimant's suggestion that there were two separate agreements was flawed from the outset.

25. Dealing with these applications had taken a whole day of Tribunal time and a considerable amount of extra work by the Respondent to respond to these. None of these applications had any reasonable prospect of success and the Respondent had pointed this out by way of correspondence in respect of the Breach of contract claim.

26. I therefore have concluded that it would be appropriate to make an award of costs in this case, due to the misuse of the Tribunal time and the inevitable dismissal of these applications.

27. Taking into account the joint income of the Claimant and her husband and taking into account the cost of the Respondent's time in relation to the various applications as set out on their Schedule of costs, I have concluded that a sum of £10,100 should be paid by the Claimant to the Respondent.

Employment Judge Cowen
19 June 2024
JUDGMENT SENT TO THE PARTIES ON

1 July 2024

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