



EMPLOYMENT TRIBUNALS

Claimant: **Mr K Fullarton**

Respondent: **Butterworth Laboratories Ltd**

Heard at: London South Tribunal On: 07 November 2016

Before: Employment Judge Freer

Representation

Claimant: In person

Respondent: Mr H Davis, Counsel

REASONS FOR JUDGMENT AT A PRELIMINARY HEARING

1. These are the reasons for the Tribunal's judgment at a preliminary hearing that the Claimant's claims are struck out on the ground that they have no reasonable prospect of success and the Claimant shall pay the Respondent's costs in the sum of £1,186.
2. These reasons are made at the request of the Claimant, oral reasons having been provided at the hearing.
3. The Tribunal apologises for the delay in providing these reasons which has been due to an administrative oversight. The Claimant has not, however, pursued the reasons with the Tribunal since they were originally requested.
4. The Respondent seeks to strike out the Claimant's claims under rule 38 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 in that they have no reasonable prospect of success.
5. The Claimant confirmed at the hearing that he is claiming an alleged sum of reclaimed wages that had been overpaid to him of £585.74 and a bonus payment of £830. The Claimant confirmed that he is withdrawing his claim for lawyers' fees of £2,800. The Claimant confirmed that he is not pursuing any

other claim.

6. With regard to the claim for an alleged overpayment of wages reclaimed by the Respondent, the Claimant confirmed that he still retains the alleged overpayment and therefore this is not money that has actually been reclaimed and of which he has yet been deprived at the date of this hearing. There has been no deduction to his wages and therefore no unauthorised deduction from wages exists. Furthermore, there was no breach of contract arising at or existing upon the Claimant's termination of employment and as such the Tribunal has no jurisdiction to consider any breach of contract claim. No such claim exists in any event as no sum of money has been withheld from the Claimant. Accordingly, this claim has no reasonable prospect of success and is struck out.
7. With regard to the claim for a bonus payment, this matter has been settled by virtue of a compromise agreement entered into between the Claimant and the Respondent (see tab 20 of the bundle and clause 1.3). Furthermore, when considering the Claimant's terms of contract (tab 15 of the bundle), the Claimant has no contractual right to a bonus payment in any event. Accordingly, this claim also struck out on the ground that it has no reasonable prospect of success.
8. The Respondent made an application for its costs.
9. The Tribunal referred itself to the rules relating to costs in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. In particular rule 76 provides:

“(1) 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) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success”.
10. The Tribunal also reminded itself of the general legal principles including that an order for costs is an exception rather than the rule and costs do not follow the event. An award of costs should be compensatory, not punitive. Tribunals have a wide discretion to award costs where they consider that there has been unreasonable conduct in the bringing or conducting of proceedings. Every aspect of the proceedings is covered. When making a costs order on the ground of unreasonable conduct, the discretion of the tribunal is not fettered by any requirement to link the award causally to the particular costs incurred as a result of the unreasonable conduct (See **McPherson –v- BNP Paribas (London Branch)** [2004] ICR 1398, CA).

11. The Respondent's application was made on the basis that the Claimant's bringing of proceedings and/or the conduct of them was vexatious and abusive and/or was unreasonable.
12. The Tribunal concludes that the emails relied upon by the Respondent as demonstrating vexatious and abusive conduct by the Claimant display no more than general acrimony often present in litigation.
13. However, the Claimant was warned his claim had no reasonable prospect of success in both the Respondent's ET3 and a costs warning letter dated 25 October 2016, for the same reasons as found at this hearing. The Tribunal concludes that the Claimant should have reviewed his circumstances once he received the detail in the warning and the given the nature of the claims being pursued, but he did not do so.
14. Therefore it is the conclusion of the Tribunal that pursuing the claims beyond the warning on 25 October 2016 was unreasonable conduct by the Claimant and the Tribunal exercises its discretion and make a costs order in favour of the Respondent.
15. The Tribunal further orders that the Claimant shall pay to the Respondent the sum of £1,186 being the Respondent's costs of preparing and attending at this hearing which comprises solicitor's costs of £336 and Counsel's fees of £850 (no VAT is claimed), which are sums both reasonably incurred and reasonable in amount.

Employment Judge Freer
Date: 26 July 2017