



EMPLOYMENT TRIBUNALS

Claimant: Mr Z Hussain
Respondent: Nottinghamshire Healthcare NHS Trust
Heard at: Nottingham
On: Friday 9 June 2017
Before: Employment Judge Britton
Members: Mr G Kingswood
Ms J Johnson

Representation

Claimant: In person
Respondent: Ms H Barney of Counsel

JUDGMENT

Upon this matter having been remitted by Her Honour Judge Eady QC and in terms of paragraph 50 of her Judgment, the tribunal now clarifies for the avoidance of doubt that the costs awarded in this case, and in terms of the 85% that the Claimant is ordered to pay, runs from the issue of the first costs warning letters by the Respondent on 20 May 2013.

REASONS

Introduction

1. On 14 May 2015, this tribunal gave a judgment on costs with full reasons. Essentially, it ordered that the Claimant should pay 85% of the costs which had been incurred in the extensive litigation before us culminating in our judgment on the main matter issued on 30 May 2014. That judgment ran to 259 paragraphs over 76 pages.
2. That judgment had been appealed by Mr Hussain but it was dismissed in its entirety. Therefore, the judgment remained.
3. Against that background, there was the costs application from the Respondent and the hearing to which we have now referred on 14 May 2015.
4. The Claimant appealed our judgment and it was heard before Her Honour Judge Eady QC on 24 August 2016 and a judgment was promulgated on 12 September.

5. In essence, she upheld the majority of the tribunal's findings. However, what she did remit was that she did not think that the tribunal's reasoning for when the costs should run from was clear enough. Thus, we pick it up at paragraph 48:

"I remind myself that the assessment of costs is a matter for the ET and the EAT should not readily interfere. That said, I do consider that a party against whom such an Order has been made is entitled to understand the basis of the award. Whilst the Respondent's application was made on a number of bases, when it came to the ET's decision the focus was very much on the reasonableness of the Claimant's conduct in pursuing his claims once the weaknesses of those claims and the possible risk of a costs application had been made clear to him by the Respondent (the first costs warning). It was this that stood in place of any deposit Order from the ET. Thereafter, the ET certainly refers to other aspects of the Claimant's conduct in pursuing his claims, which it considers was unreasonable: withdrawing certain matters only to reinstate them when the hearing resumed, for example. The award made, however, is for 85% of the total costs expended. As the 15% reduction expressly relates to the unfair dismissal claim, I unable to see any allowance made for the period prior to the first costs warning, yet I am equally unable to see that the tribunal has made an express finding that its costs jurisdiction was engaged in respect of costs incurred prior to that time. Whilst the ET may only have said that the Claimant behaved otherwise unreasonably "at latest" from that warning, I think Ms Macey (Counsel for the Claimant) is right that the Claimant is entitled to see the ET's findings on costs be clearly set out, and I see no clear finding that the ET had found that the Claimant had behaved unreasonably prior to that date. I therefore allow the appeal on this point.

.... "

At paragraph 50:

"... The only issue is whether the ET's award of 85% of the total costs expended was meant to apply to costs post-dating the first costs warning sent by the Respondent or to all costs and, if the latter, on what basis was the order made."

6. As can be seen therefore that the issue that was remitted to the tribunal is very narrow in scope.

7. Against that background we therefore come to today's hearing. The Claimant has represented himself accompanied by his son (Ali) and the Respondent has again been represented by Ms H Barney of Counsel.

8. For the avoidance of doubt, our award was meant, and we thought we had made it clear, to run only from the issue of the first costs warnings. Those were issued by the Respondent on 20 May 2013. They are referred to in our paragraph 18 of the costs judgment. Thus, going onward there from, it can be readily seen at paragraph 25 as follows:

"So reverting to the first stage of the test at rule 76(1), we do find the Claimant had behaved "or otherwise unreasonably" certainly in pursuing these proceedings at latest from the first costs warning."

9. Why we take it from the first costs warning is as per our paragraph 16. This is because prior thereto during the 4 case management discussions that were held in this case and the run up to the hearing, there was not an application by the Respondent for, as an example, a deposit order. Her Honour Judge Eady QC impliedly refers to that. It may well be that therefore, erring on the side of caution, we should conclude (as we in fact tried to make plain) that the Claimant may not have been on notice as to how misconceived his claim was prior thereto.

10. This of course brings us back to our paragraph 18. To reiterate, the Claimant could not have been other than fully aware post the issue of those costs warning letters on 12 and 20 May 2013 that his claim was misconceived. Yet, for all the reasons that we have exhaustively covered in our original judgment and then summarised in the costs judgment, the Claimant unreasonably proceeded with his claims post that date.

11. We trust that gives the necessary clarification to our judgment that Her Honour Judge Eady QC was requiring.

12. The Claimant has sought to reopen other issues in effect really as to the general merits of the costs order. This he cannot do given the judgment of HHJ Eady QC.

13. It thus follows that we now clarify that the 85% costs award made by us runs from the issue of the costs warning letters on 20 May 2013.

14. As to the assessment of the costs, that of course is not a matter for us and will now be dealt with by a County Court District Judge.

Employment Judge P Britton

Date: 14 July 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

8 August 2017

.....
S.Cresswell

.....
FOR THE TRIBUNAL OFFICE