



EMPLOYMENT TRIBUNALS

Claimant: Iqbal Hussain

Respondents: Irubber Ltd

At A Hearing

Heard at: Nottingham on 30 August 2022

Before: Employment Judge Hutchinson (sitting alone)

Representation

Claimant: Not present

Respondent: Not present

RESERVED JUDGMENT

The Employment Judge gave Judgment as follows: -

The Claimant is ordered to pay the Respondent's costs in the sum of £1,200.00

RESERVED REASONS

Background to this Hearing

1. The Claimant presented his claim to the Tribunal on 27 December 2021. He said that he had been employed by the Respondent between 8 September 2003 to 22 July 2021. He claimed Unfair Dismissal only.

2. At the time he was represented by a Solicitor.
3. He said that he had been called into an informal meeting on 22 July 2021 and been threatened, intimidated and bullied at that meeting and was then suspended and told to return on 23 July 2021 at which hearing he was dismissed.
4. He said that he had appealed against that decision and the appeal had not been heard until 26 November 2021.
5. Whilst he had not claimed discrimination, he did mention issues of discrimination in his claim form saying that not only was the dismissal unfair because of serious failings in the disciplinary process but that he had been discriminated against as less able white employees were promoted. He had provided no details of this.
6. His claim was accepted. It was listed for a Preliminary Hearing which was due to take place on 20 May 2022.
7. Case Management Orders were made by the Tribunal including an order that the Claimant should provide a schedule of loss by 18 February 2022 and should send a list of documents to the Respondents by 15 April 2022.
8. On 2 February 2022 the Respondent's filed their ET3. The Respondent explained that the Claimant had been dismissed on 23 July 2021 because of gross misconduct. The misconduct was that he had been making clothes for his own benefit or the benefit of another during working time and with the Respondent's patterns and materials.
9. The Claimant had not been warned of an investigation meeting that took place on 22 July 2021. He had been suspended and asked to return to a further meeting the next day.
10. According to the Respondent the Claimant was presented with evidence of garments purchased from a competing business which appeared to be made from the Respondent's material and with the use of its patterns. He was also shown photographic and video evidence of him producing garments other than those he had been instructed to make for the Respondent.
11. The Claimant denied that he had been dishonest or that he had made garments for a competing business. The Respondent accepted that tempers had been heightened during the discussion.
12. In respect of that meeting they did not say that the Claimant had been given any advanced warning of the disciplinary meeting or that any due process had been followed in terms of statements provided or indeed him being given an opportunity to have a representative with him at the meeting.
13. After the Claimant was dismissed, he had appealed but his appeal which had been held at a much later date had confirmed the decision.

14. The Respondent contended that they had a reasonable belief the Claimant had stolen the patterns or materials and produced garments for himself or another business during his working time and in competition with the Respondent. They also said that he had acted dishonestly when asked about his conduct.
15. They accepted that they had failed to follow a fair process and that if he was entitled to a finding of unfair dismissal that any award should be reduced in accordance with the principals of *Polkey v AE Dayton Services*.
16. They denied discriminating against the Claimant.
17. That response was accepted.
18. The Claimant had not complied with any of the Case Management Orders but on 19 May 2022, one day before the Case Management Preliminary Hearing the Tribunal received notification from the Claimant's representative that he had decided to withdraw his case.
19. By that time the Respondent had prepared an agenda for the Case Management Preliminary Hearing which included setting out the issues in the case.
20. A dismissal Judgment was signed on 19 May 2022 and sent to the Parties on 31 May 2022.
21. The Respondent's Solicitor wrote to the Tribunal on 20 May 2022 making an application for costs under Rule 76(1) of the Employment Tribunals Rules of Procedure.
22. The basis of the application was that the Claimant had acted vexatiously or otherwise unreasonable in either the bringing of the proceedings or part or the way that the proceedings had been conducted.
23. In support of the application the Respondent relied on the following: -
 - 23.1. That the Claimant did not comply with any orders of the Tribunal.
 - 23.2. The Claimant had failed to provide further and better particulars of his claim.
 - 23.3. Whilst the Claimant's representative had advised the Respondent's representative that they had not received any correspondence from the Tribunal they said that this was inconceivable.
 - 23.4. The Claimant chose to withdraw his claim without giving any reason and only one day before the hearing which they had prepared for.
24. Their schedule of costs amounts to £2040.00 plus VAT totalling £2448.00.
25. Their schedule of costs included: -
 - 25.1. A sum of £750.00 for drafting the ET3.

25.2. £300.00 for drafting a list of documents.

25.3. £300.00 for completing a preliminary hearing agenda.

25.4. £300.00 for preparing the costs application.

26. My colleague Employment Judge Adkinson ordered that the application should be listed for a cost hearing to be considered on the papers. That hearing takes place today.

Submissions

27. I have read the submissions from the Respondent's Solicitor who I see has increased further their claim for costs to £2340.00 plus VAT adding a further £300.00 costs for preparing for today's hearing. I have received no submissions at all from the Claimant's Solicitor.

The Law

28. Rule 75 of the Employment Tribunal Rules of Procedure 2013 (The Rules) provides;

"(1) A costs order is an order that A party ("to the paying party") make a payment to; -

(a) Another party ("the receiving party") in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative."

29. Rule 76 of the Rules provides when a costs order or a preparation time order may or shall be made; -

"(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so when it considers that: -

(a) A party (or that parties 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."

30. Rule 78 provides that I can make a costs order, a specified sum not exceeding £20,000.

31. In support of the Respondent's contentions the Respondent relies on the following cases: -

- ***Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78.***
- ***McPherson v BNP Paribas (London Branch) [2004] IRLR 558.***
- ***Raggett v John Lewis Plc [2012] IRLR 906.***

32. A decision to make an order for costs involves a two-stage process. I first must decide

in this case whether the Claimant had behaved unreasonably in his conduct of the proceedings. If I am satisfied that there has been unreasonable conduct, I then must decide whether I should exercise my discretion to make a costs order. If I do, I should then decide how much to order. In this case the Respondent's say that the bringing of the claim and the conduct of these proceedings amounted to unreasonable conduct and/or that the bringing or conduct of the proceedings was vexatious.

33. The conduct in this case is said to be a failure to respond by the Claimant's legal representative to the Respondent's solicitors' emails and messages. In particular: -

33.1. A request on 21 February 2022 for a schedule of loss.

33.2. A failure to respond to further emails requesting that schedule of loss on 22 February and 2 March 2022.

33.3. A failure to respond to their letter of 17 March 2022 after they had sent a list of documents.

33.4. Further failures to respond to correspondence on 22 and 28 March, 26 April and 4 May 2022.

33.5. A further failure to respond to a letter from the Respondent's Solicitor on 11 May 2022 with a draft agenda for the Preliminary Hearing that was due to take place on 20 May 2022.

33.6. They further say that it was unreasonable for the Claimant to withdraw his claim without explanation just before the preliminary hearing.

34. It can be seen from the above that having submitted his claim to the Tribunal the Claimant did nothing further to pursue his claim which resulted in a waste of costs incurred by the Respondent.

35. The basis upon which I am asked to exercise my discretion is: -

35.1. The sequence of events leading up to the Case Management Preliminary Hearing on 20 May 2022. They say that the claim had been brought vexatiously in order to cause the Respondent to suffer financial loss and/or distress.

35.2. No reason has been given as to why orders were not complied with.

35.3. It is unfeasible for the Claimant and/or his representative to say that they were not aware of the orders.

35.4. The Claimant waited until the day before the Preliminary Hearing to withdraw his claim by which time the additional fees had been incurred.

My Conclusions

36. I am satisfied in this case that the Claimant has behaved unreasonably in his conduct of the proceedings. He presented his claim to the Tribunal of unfair dismissal but then did not pursue the claim at all.
37. He failed to comply with the orders made by the Employment Tribunal on 7 January 2022.
38. He failed to provide the further and better particulars of his claim reasonably requested by the Respondent's Solicitors.
39. He failed to provide a schedule of loss or a list of documents.
40. His Solicitors failed to reply to correspondence from the Respondent's Solicitors.
41. He then only withdrew his claim that on the day before the Case Management Preliminary causing the Respondent to incur costs in preparation of that.
42. When he withdrew the claim, he was given an opportunity to make written submissions and he has failed to provide any submissions to his Tribunal.
43. I am satisfied that I should exercise my discretion and make an award of costs in this case. The sequence of events following the issue of the claim that are outlined above amount to the sort of unreasonable conduct where an order of costs is appropriate. Having presented his claim the claimant had done nothing to pursue it, ignored the requests reasonably made by the Respondent's solicitor and the orders of the Tribunal and then only withdrew his case at the last moment.
44. I see that the Respondent's Solicitor has a charge rate of £250 plus VAT per hour.
45. I do not accept that it would be reasonable to make an award of costs for the full amount that the Respondent claims. In this case I make an Award of £1200.00 (i.e., £1000 plus VAT). The Claimant will pay those costs to the Respondent.

Employment Judge Hutchinson

Date: 20 October 2022

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.