



JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Claimant: Ms I Florea

Respondent: International Procurement and Logistics Ltd

Heard at: Leeds

On: 27 September 2023

Before: Employment Judge Shepherd

JUDGMENT

The respondent's application for costs against the claimant succeeds and the claimant is ordered to pay to the respondent costs in the sum of £4,490 plus VAT.

REASONS

1. The respondent has made an application for costs pursuant to rule 76(1) (a) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.
2. The application has been determined on the basis of written representations. The claimant was asked for comments on the respondent's application for costs. She was asked to provide information about her means to pay any order and informed that the application would be decided on the papers. The claimant provided no comment on the application and no details of her means despite having been sent reminders.
3. It is contended by the respondent that the claimant brought a claim with no reasonable prospect of success and that her conduct leading up to the strike out order issued by the Tribunal on 19 June 2023 was disruptive, vexatious and/or unreasonable.
4. The claimant presented a claim to the Tribunal on 12 February 2023. She brought claims of unfair dismissal, disability discrimination and arrears of holiday pay.
5. In the grounds of response the respondent pleaded that the claimant did not have sufficient qualifying employment to bring a claim of unfair dismissal, the Tribunal did not have jurisdiction to hear any of the claims as they were presented out of time. The early

conciliation certificate was against the wrong party and the claim was not received until some four months late. Also, it was contended that the claims had no reasonable prospect of success.

6. The Tribunal had granted the respondent's application for a public preliminary hearing. The respondent issued the claimant with a costs warning (Calderbank) letter. In that letter the respondent made a without prejudice save as to costs offer in that it would not pursue the claimant for costs if she withdrew her claim. It was explained that she did not have sufficient qualifying service to bring a complaint of unfair dismissal and why the respondent considered the complaints had no reasonable prospect of success. The claimant was advised to take advice on the implications of the Calderbank letter and to use the services of ACAS.

7. On 13 April 2023 the respondent informed the Tribunal that the claimant may require an interpreter and/or permission to give evidence from abroad. The claimant was ordered to provide urgent comments as to whether she required an interpreter and could partake in a hearing by video or in person. She failed to respond. The Preliminary Hearing was converted to a Case Management Hearing

8. At a Preliminary Hearing on 5 May 2023 the claimant failed to attend. Employment Judge O'Neill made an order that unless by 5 June 2023 the claimant informed the Tribunal whether she intended to continue with her claims, whether she needed an interpreter for the hearing, to provide a statement to explain why she failed to attend the Preliminary Hearing and why she had failed to comply with orders made on 12 April 2023.

9. The claimant failed to respond and on 19 June 2023 the Tribunal confirmed that, because of the claimant's failure to comply with any terms of the unless order, the claims were dismissed as of 5 June 2023.

10. The respondent has set out the detail of the background to the claim.

Relevant law

11. The Employment Tribunal is a completely different jurisdiction to the County Court or High Court, where the normal principle is that "costs follow the event", or in other words the loser pays the winner's costs. The Employment Tribunal is a creature of statute, whose procedure is governed by the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Any application for costs must be made pursuant to those rules. The relevant rules in respect of the respondent's application are rules 74(1), 76(1) and (2), 77, 78(1)(a), 82 and 84. They state:-

74(1) "Costs" means fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purposes of or in connection with attendance at a tribunal hearing).

76(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) had been conducted; or

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

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.

77 A party may apply for a costs order or a preparation time 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. No such order may be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing, as the tribunal may order) in response to the application.

78(1) A costs order may –

(a) order the paying party to pay the receiving party a specified amount not exceeding £20,000 in respect of the costs of the receiving party.

84 In deciding whether to make a costs, preparation time or wasted costs order and if so in what amount, the tribunal may have regard to the paying party's ability to pay.

12. The discretion afforded to an Employment Tribunal to make an award of costs must be exercised judicially. (**Doyle v North West London Hospitals NHS Trust UKEAT/0271/11/RN**). The Employment Tribunal must take into account all of the relevant matters and circumstances. The Employment Tribunal must not treat costs orders as merely ancillary and not requiring the same detailed reasons as more substantive issues. Costs orders may be substantial and can thus create a significant liability for the paying party. Accordingly they warrant appropriately detailed and reasoned consideration and conclusions. Costs are intended to be compensatory and not punitive. The fact that a party is unrepresented is a relevant consideration. The threshold tests may be the same whether a party is represented or not, but the application of those tests should take account of whether a litigant has been professionally represented or not. (**Omi v Unison UKEAT/0370/14/LA**). A litigant in person should not be judged by the same standards as a professional representative as lay people may lack the objectivity of law and practice brought to bear by a professional adviser and this is a relevant factor that should be considered by the Tribunal. (**AQ Limited v Holden [2012] IRLR 648**). The means of a paying party in any costs award may be considered twice – first in considering whether to make an award of costs and secondly if an award is to be made, in deciding how much should be awarded. If means are to be taken into account, the Tribunal should set out its findings about

ability to pay and say what impact this has had on the decision whether to award costs or an amount of costs. (Jilley v Birmingham & Solihull Mental Health NHS Trust UKEAT/0584/06).

13. There is no requirement that the costs awarded must be found to have been caused by or attributable to any unreasonable conduct found, although causation is not irrelevant. What is required is for the Tribunal to look at the whole picture of what happened in the case and to identify the conduct; what was unreasonable about the conduct and its gravity and what effects that unreasonable conduct had on the proceedings. (Yerraklava v Barnsley MBC [2012] IRLR 78).
14. The claimant has not provided any details of her means despite being given the opportunity to do so.
15. I am satisfied that that the claimant has acted unreasonably in the bringing and the conduct of these proceedings. The respondent claims costs that it believes been reasonably incurred due to the claimant's failures which have been clearly identified. It is not seeking to claim costs in connection with the preparation of its own case or work incurred in connection with its preparation for Preliminary Hearing.
16. For those reasons, the respondent's application for costs succeeds.
17. I am satisfied that the claimant acted vexatiously, abusively, disruptively or otherwise unreasonably in both the bringing of the proceedings and the way in which the proceedings were conducted. In those circumstances the respondent's application for costs succeeds.
18. The claimant was given the opportunity to provide details of her means. She has failed to do so and I have been unable to take those into account in considering the respondent's application.
19. I have considered the detailed information provided with regard to the respondent's claim for costs unreasonably incurred since the date of its costs warning letter. I am satisfied that the costs claimed are reasonable and the claimant should pay the amount claimed. This includes the respondent solicitor's fees in the sum of £3,690 plus VAT and £800 plus VAT in counsel's fees.

**Employment Judge Shepherd
27 September 2023**