



Neutral Citation Number: [2018] UKIPTrib IPT 11 167 H 2

Case No: IPT/11/167/H

IN THE INVESTIGATORY POWERS TRIBUNAL

Date: 29th November 2018

Before :

LORD JUSTICE SINGH (PRESIDENT)

MR CHRISTOPHER GARDNER QC

and

PROFESSOR GRAHAM ZELICK CBE QC

Between :

KATE WILSON

Claimant

- and -

COMMISSIONER OF POLICE OF THE METROPOLIS

**First
Defendant**

and

NATIONAL POLICE CHIEFS' COUNCIL

**Second
Defendant**

RULING ON COSTS

Lord Justice Singh:

1. The Claimant seeks an order that the Defendants should pay the costs of two applications:
 - (1) the Defendants' application of 25 June 2018 inviting the Tribunal to discharge its earlier orders for disclosure, to assess remedies on the basis of admissions or assumed facts, and to decline to determine the remainder of the claim ("the June application");
 - (2) the Defendants' limitation defence, which was raised on 23 June 2017 and abandoned on 12 September 2017.
2. We are grateful to counsel for their written submissions, dated 18 October 2018 on behalf of the Claimant and 2 November 2018 on behalf of the Defendants.
3. On behalf of the Claimant it is acknowledged that the jurisdiction of the Tribunal to award costs is "highly unusual". However, it is submitted that on the unusual facts of this case justice requires such an order to be made. It is submitted that the two applications were particularly unmeritorious. It is further submitted that it is unreasonable and unfair for a public authority defendant to be able to raise repeated interlocutory obstacles to the progress of a claim in this Tribunal without any costs sanction for unsuccessful or unmeritorious applications.
4. On behalf of the Defendants it is denied that the Tribunal has the jurisdiction to award costs at all. Without prejudice to that submission it is further submitted that the facts of this case do not justify the making of a costs order.

5. There is no clear authority which states that this Tribunal has jurisdiction to make an award of costs at all. There is authority to the effect that it does *not* have that jurisdiction: *W v Public Authority* (IPT/09/134/C) (1 February 2011). That was a reasoned decision given by the then President (Mummery LJ) and Vice-President (Burton J).
6. More recently the Tribunal has made an order for costs but has only done so in one case: *Chatwani v National Crime Agency* (cited below). That order was made on 9 September 2015. However, neither counsel nor the Tribunal have been able to find a transcript of a judgment setting out the reasons why the earlier decision in *W* would not be followed. In any event, the order was made in circumstances which were described as being wholly exceptional. The defendant in that case had been guilty of repeated failures to comply with orders made by the Tribunal.
7. In *Dias & Ors v Chief Constable of Cleveland Police* (IPT/15/586/CH) (9 August 2017) the Tribunal (sitting as a panel of five, chaired by the President, Sir Michael Burton) said at para. 24:

“Further, it is important to recall that the Investigatory Powers Tribunal is essentially a costs free jurisdiction, unlike the European Court of Human Rights. There is no statutory power to award costs, and none appears in the Rules of the Tribunal. There is a plausible explanation for this. For obvious reasons claimants frequently do not know how strong their claim is when they issue it, and it is strongly in their private interest but also in the public interest that complaints to the Tribunal should not be deterred by the possibility of an adverse order for costs. The function of the Tribunal cannot be performed if no complaints are made. If no costs are to be awarded against a claimant then the same result should follow in respect of a respondent, or the ‘costs-free’ jurisdiction would be skewed in favour of the claimant. The position was affirmed in *Chatwani and others v. National Crime Agency* [2015] UKIPTrib 15-84-88-CH. Ironically, at a later stage of those proceedings an

order for costs was made, but that was at a time when the Respondent repeatedly failed to comply with the Tribunal's orders and the Tribunal concluded that it had no other means of enforcement. It is clear that orders for costs will be highly unusual in this jurisdiction. Thus, where the conduct of a respondent in the proceedings can plausibly be said to have aggravated the injury to the victim the better way in which an acknowledgement of that fact can be made is by taking it into account in deciding whether to make an award of damages and, if so, at what level.”

8. In a future case the Tribunal may have to consider further the question of law whether it has jurisdiction to make an award of costs at all. It would be appropriate to do so only after full argument given the earlier decision in *W*. If such a case arises, it may also provide an opportunity for this Tribunal to set out the principles on which it should act if it is suggested that it should not follow one of its own earlier decisions. However, for present purposes we are prepared to proceed on the assumption that the jurisdiction exists but is only to be exercised in rare cases which are highly unusual.
9. We are not persuaded that the circumstances of this case fall into that category.
10. The June application was not wholly unsuccessful. Although the main application which was made on behalf of the Defendants was rejected, the Tribunal did not accept the submission made on behalf of the Claimant that the arguments were precluded by the Tribunal's decision of 4 December 2017. Furthermore, and importantly, the application provided the opportunity for the Tribunal to reassess what needed to be done to put this case back on track. That is what we have sought to do in making our order of 3 October 2018. The steps which we have directed in that order are more in keeping with what

should happen in a case which is analogous to a claim for judicial review. We do not consider that the Defendants have acted unreasonably or unfairly.

11. As for the limitation defence, we note that the Defendants no longer pursued this issue once it had been addressed in the Claimant's evidence. However, at the hearing on 23 June 2017 (which was chaired by the previous President, Sir Michael Burton) there was a genuine issue about limitation. Again we do not accept that the Defendants' conduct in this regard was unreasonable.
12. For those reasons, even if the Tribunal has jurisdiction to make an award of costs, we have reached the conclusion that no such order should be made in the circumstances of this case.