



EMPLOYMENT TRIBUNALS

Claimant: EF
Respondent: ST
Heard at: Leeds **On:** 13 January 2017
Before: Employment Judge Cox
Members: Mrs R Bergin
Mr G H Hopwood

Representation

Claimant: Mrs S Bishop, Claimant's mother
Respondent: Ms K Reece, consultant

JUDGMENT

1. The Claimant's application for an Order that the Respondent pay further compensation as a result of an unreasonable failure to comply with a recommendation is granted.
2. The Respondent is ordered to pay the Claimant the additional sum of £500.
3. The Claimant's application for a preparation time order is granted.
4. The Respondent shall pay the Claimant £108 in respect of her preparation time.

REASONS

Additional compensation

1. In a Judgment on remedy dated 10 June 2015, the Tribunal ordered the Respondent to pay the Claimant compensation of £2,183.23 and also made a recommendation in the following terms:

By 7 days after the expiry of the time limit for appealing against the Tribunal's Judgments on liability and/or remedy and/or the determination of any such appeal the Respondent shall write to the Claimant as follows:

"The company apologises to you for the distress caused by its letter of 15 April 2014."

2. Under section 124(7) of the Equality Act 2010, if a Respondent without reasonable excuse fails to comply with a recommendation the Tribunal may increase the amount of any compensation it has already awarded to be paid.
3. The parties agreed that the letter should have been written by 18 July 2016. The letter was not in fact written until several weeks later. It was the delay in the writing of the letter that formed the basis of the Claimant's application for additional compensation.
4. The Respondent's case was that the letter was sent on the date that appears on the letter that the Claimant eventually received, namely 4 September 2016, but it provided no oral or documentary evidence at the Hearing of when the letter was written or posted. The Claimant's evidence, which the Tribunal accepted, was that she did not receive the letter until 3 October 2016, when it was sent to her as an attachment to an email that the Respondent's representative, Ms Reece, sent to the Tribunal and copied to Mrs Bishop, the Claimant's mother and representative. On the basis of this evidence, the Tribunal finds that the letter was not in fact sent until 3 October 2016.
5. The delay in compliance with the recommendation was from 18 July 2016 to 3 October 2016. The Respondent accepted that there was no reasonable excuse for that delay. The Tribunal therefore considered whether it should increase the award of compensation it had already made.
6. The Claimant gave evidence on the effect on her of the recommendation not being complied with by the due date. Mrs Bishop had told her that the letter was due by 2 June 2016 whereas in fact it was not due until 18 July. The Tribunal therefore considered it appropriate to award compensation to reflect the effect on the Claimant of the delay from 18 July to 3 October, a period of 10 weeks. On the basis of the Claimant's evidence, the Tribunal found that the delay caused her distress. The Tribunal also found that her distress about not receiving the letter was exacerbated by the fact that the Respondent had not paid her the compensation the Tribunal had ordered either, until Mrs Bishop enlisted the services of a High Court Enforcement Officer.
7. The Tribunal concluded that the appropriate sum to award the Claimant for the Respondent's failure to write to her by the due date was £500.

Preparation time Order

8. The Claimant made an application for a preparation time Order. The Tribunal has power under Rule 76 of its Rules of Procedure to make a preparation time Order if it is satisfied that a party or a party's representative has acted unreasonably in the way it has conducted proceedings.
9. In preparation for this Hearing, the Tribunal ordered the parties to disclose to each other, by providing copies, all relevant documents by 18 November 2016. The parties were ordered to agree a hearing bundle within a further 14 days, and the Respondent was ordered to serve a copy of the agreed bundle on the Claimant by that date and provide a further five copies for the Tribunal on the day of the Hearing. The parties were ordered to exchange witness statements on 16 December 2016.
10. Mrs Bishop sent Ms Reece the Claimant's documents on 18 November 2016, in the form of an indexed bundle headed "Claimant's documents for inclusion in the bundle". Ms Reece took the view that the Respondent had no relevant documents to disclose. She did not contact Mrs Bishop to confirm this, nor did

she seek to agree a bundle of documents with Mrs Bishop for use at the Hearing. She decided that Mrs Bishop's bundle would suffice. Mrs Bishop sent her witness statements to Ms Reece on 16 December 2016 but received none in return. The Respondent had decided not to give any witness evidence at the Hearing, but Ms Reece did not contact Mrs Bishop to confirm this.

11. Ms Reece accepted that she could have sent Mrs Bishop an email confirming that the Respondent had no documents to disclose or witness statements to exchange. She decided not to do so, she said, because she had received an email from Mrs Bishop saying that Ms Reece was threatening her. According to Ms Reece's submissions, "The Claimant's mother has accused the Respondent and its representatives of threatening and abusing her throughout, so the policy has been to have as little communication with her as possible to avoid further allegations."
12. This submission relates to an exchange of emails on 3 October 2016 between Mrs Bishop, Ms Reece and the Tribunal. In an email to the Tribunal, copied to Mrs Bishop, Ms Reece said that the letter of apology had been sent on 4 September and attached a copy. In response, Mrs Bishop emailed the Tribunal, copied to Ms Reece, to say that the Claimant had not received the email until that day. She continued: "It seems probable that no such letter was sent at that time, and it has only been created and backdated today, due to pressure from the Tribunal's correspondence . . ." Ms Reece then emailed Mrs Bishop in these terms: "Who is it that you are alleging created and backdated the letter today please? This is a serious allegation to make so I want to be clear as to who you are making the allegation against before any further steps are taken." Mrs Bishop responded that she was not making any allegations, merely stating what she considered to be the probable scenario and what her suspicion was. Ms Reece then emailed: "Please advise as to whether the "suspicion" is directed towards myself/Peninsula as creating the document or towards my client". Mrs Bishop then said "I find the tone of your last two emails rather threatening. I have not accused or alleged anyone of anything. I am within legal rights to voice suspicions . . ." Ms Reece responded: "To be clear, I am not making any threats. I have asked you whether it is myself or my client that you think probably backdated the letter." Mrs Bishop's response was: "To be clear, I am not making any allegations. There is nothing to advise."
13. The Tribunal notes that Ms Reece felt able to respond to the email in which Mrs Bishop mentioned feeling threatened, and to confirm that no threat was intended. The Tribunal finds that there was nothing to prevent Ms Reece sending short emails to Mrs Bishop at the appropriate date confirming that the Respondent had no documentation to disclose or witness statements to serve. It is difficult to see how Mrs Bishop could have viewed emails in those terms as a threat of any sort. From her correspondence with the Tribunal, it is clear that Mrs Bishop was trying to follow the case management orders, which imposed obligations on both parties. As an individual without legal training, Mrs Bishop could not reasonably be expected to understand that the Respondent did not consider that it had any relevant documents and did not intend to rely on any witness evidence unless and until that was confirmed to her. (In any event, it seems likely that the Respondent would in fact have been in possession of relevant documentation, in the form of Orders from the Employment Appeal Tribunal relating to its appeal and a copy of the letter of apology, even if those documents were also in the Claimant's possession.)

The Tribunal is satisfied that Ms Reece acted unreasonably in deciding not to communicate with Mrs Bishop at all.

14. The Tribunal also considers that the Respondent's representative acted unreasonably in not responding to the Tribunal's letters of 2 December and 14 December 2016 in which the Tribunal asked for the Respondent's comments on Mrs Bishop's emails to the Tribunal complaining that it was not complying with the Case Management Orders. Ms Reece said she had not herself had sight of those letters, but the Tribunal is satisfied that the firm for which she works received them, and that it was unreasonable for it not to have responded.
15. The amount of a preparation time order is based on the number of hours the receiving party says they have spent in working on the case and the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work (Rule 79). Mrs Bishop said in evidence that she had spent 25 hours in preparing for the Hearing, of which five hours were due to the Respondent's failure to comply with the Case Management Order. The Tribunal accepts that, as a result of Ms Reece's unreasonable failure to communicate with Mrs Bishop, Mrs Bishop ended up preparing five copies of her bundle for use at the Hearing, because she had had no indication that the Respondent would be providing a bundle. (In the event, the Respondent also provided five copies of Mrs Bishop's bundle at the Hearing, but had not met its obligation under the Case Management Order to agree a joint bundle with her.) She also spent time in correspondence with the Tribunal and Ms Reece raising her concerns that the Respondent was failing to comply with the Case Management Order or respond to the Tribunal's correspondence, which also could have been avoided had the Respondent's representative acted reasonably. The Tribunal considers it appropriate to limit its preparation time Order to three hours, being a reasonable amount of time for Mrs Bishop to have spent on these activities.
16. For these reasons the Tribunal awards the Claimant a preparation time order for three hours at the current rate of £36 per hour, which totals £108.

Employment Judge Cox

Date 15 February 2017