



EMPLOYMENT TRIBUNALS

Claimant: Mr K Paramanantham

Respondent: Kerry Mini Market (R1)
Mrs Elda Bhamini Uthayakumaran (R2)

HEARD AT: Bury St Edmunds ET **ON:** 19th December 2016

BEFORE: Employment Judge S Moore

REPRESENTATION

For the Claimant: Ms Ismail (Counsel)

For the Respondents: Mr Siri (Counsel)

COSTS JUDGMENT

The Second Respondent's claims for costs and wasted costs are dismissed.

REASONS

1. An application for costs is made against the Claimant on the grounds that the claim had no reasonable prospect of success because it was misconceived, vastly exaggerated and was not corroborated by independent evidence.
2. Under rule 76(1)(b) of the Employment Tribunals Rules of Procedure a Tribunal may make a costs order (or preparation time order) and shall consider whether to do so where it considers that any claim or response had no reasonable prospect of success.
3. I am not satisfied that the claim that the Claimant was an employee of Kerry's Mini Market and/or the Second Respondent had no reasonable prospect of success. There clearly was a business relationship of some

kind between the Claimant and the Second Respondent, which involved the Claimant working extensive hours in Kerry's Mini Market. Further the Claimant had payslips that covered a part of the period for which he claimed to be an employee.

4. Further, in the exercise of my discretion, I would not award costs against the Claimant in any event. First, costs in the employment tribunal do not follow the event but are awarded against a losing party as an exception. Secondly, as I stated in my decision, I am not satisfied that I got to the bottom of the true factual position in this case; I was critical of all parties, including the Second Respondent whom I found was not being truthful when she denied receiving in Germany a regular income from Kerry's Mini Market. Thirdly, Rule 84 of the Employment Tribunal's Rules of Procedure permits me to have regard to the paying party's ability to pay; in this respect the Claimant's means are modest, his wife is unwell and now does not work, and he has a disabled daughter and three other children.
5. A claim for wasted costs is also made against the Claimant's representatives, Selva and Co, pursuant to Rule 80 of the Rules of Procedure. Under that provision wasted costs means any costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of the representative.
6. The threshold for triggering the Tribunal's discretionary power to make a wasted costs order under Rule 80 is high; it requires the actions of the representative to amount to an abuse of court process. In particular a wasted costs order is not justified because a representative does not persuade a claimant from pursuing a hopeless case. Moreover, I have found that this case was not hopeless, in the sense that it had no reasonable prospect of success, and therefore the criticisms that the Second Respondent makes of Selva and Co for not taking a more robust approach in advising their client of the strengths and weaknesses of his claims, fall well short of the threshold required for engaging the Tribunal's discretion to make a wasted costs order.
7. A number of criticisms are also made in respect of Selva and Co's case preparation, however for the most part these are entirely misplaced. In particular, the Second Respondent criticises Selva and Co for not taking steps to adduce evidence from Justin and Co (the accountants responsible for the accounts of Kerry's Mini Market). However, the position is that the Claimant's solicitors did attempt to procure documentation from Justin and Co, but Justin and Co refused to disclose any documentation without instructions from the Second Respondent (their client), and only did so once the Second Respondent had complied with my request to speak to them. Further, the Second Respondent criticises Selva and Co for not attempting to put the Titan Telecom recording (referred to in paragraph 29 of the judgment) "to those instructing". However the Titan Telecom recording was obtained, and adduced in the Tribunal, by the Second Respondent. In general the

criticisms made, again fall far short of the threshold required for engaging the Tribunal's discretion to make a wasted costs order.

Employment Judge S Moore, Bury St Edmunds

Date: 6 March 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS