



# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

Mr B Keeratinuntapreecha

AND

**Respondent**

Kasteel Collection Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Heard:** In chambers

**On:** 18 January 2022

**By:** Employment Judge Gray

## RESPONDENT'S APPLICATION FOR COSTS

The judgment of the tribunal is that the Respondent's application for costs is granted in the sum of £195.30, which the Claimant is ordered to pay.

## REASONS

1. By judgment of the tribunal at a preliminary hearing dated 4 November 2021, which was sent to the parties on 30 November 2021, it was determined that:
  - a. The Claimant's claim is dismissed pursuant to Rule 47 of the Employment Tribunals Rules of Procedure.
  - b. The Respondent's application for costs is still to be determined.
2. By way of background the preliminary hearing on the 4 November 2021 was listed following a telephone case management hearing before Employment Judge Cadney on the 3 June 2021.

3. It was listed to consider four claims 1404591/2020, 1404993/2020, 1405020/2020 and 1405048/2020; and for each decide:
  - a. Whether all or any of the claims were brought out of time;
  - b. If so whether time should be extended;
  - c. Whether the tribunal has jurisdiction to hear all or any of the claims;
  - d. Whether any claim should be struck out as having no reasonable prospect of success and/or whether a deposit should be ordered in respect of any claim having little reasonable prospect of success.
  - e. To give any further case management directions and listing directions in respect of any of the claims.

4. Employment Judge Cadney noted about Mr Keeratinuntapreecha's claim:

"1404993/20 Boonoparet Keeratinuntapreecha

11. By a claim form submitted on 22nd September 2020 arising from the termination of his employment 1st January 2020 the claimant brought the following complaints:

- (a) Unfair dismissal;
- (b) Wrongful dismissal;
- (c) Unpaid holiday pay;
- (d) Breach of contract (notice pay);
- (e) Unlawful deduction from wages;
- (f) Failure to provide payslips and/or accurate payslips;
- (g) Modern Slavery;
- (h) Coercion

12. The respondent contends that all of the claims are out of time; and that the claimant has insufficient length of service to bring a claim of unfair dismissal. Claims g) and h) do not appear to fall within the tribunal's jurisdiction."

5. Case management orders were made by Employment Judge Cadney for requests for further information to be made and answered, witness

statements to be prepared by those Claimants whose claims were potentially out of time, and the Respondent to set out its position on the matters to be determined.

6. Mr Keeratinuntapreecha had not responded to any of the case management directions at all.
7. The Respondent made an application for costs against each Claimant at the preliminary hearing.
8. Mr Keeratinuntapreecha was not in attendance.
9. It was therefore determined that Mr Keeratinuntapreecha's claim was dismissed following his non-attendance at the hearing pursuant to Rule 47, noting his failure to comply with the case management orders made by Employment Judge Cadney and his claim not being actively pursued in advance of this hearing. The Respondent's costs application was still to be determined and pursuant to Rule 77 case management orders were made to enable Mr Keeratinuntapreecha to be given reasonable opportunity to make representations in response to the Respondent's application.
10. It was therefore directed that:
  - a. On or before 14 days of this case management order being sent to the parties the Respondent must write to the Claimant and the Tribunal setting out the details of its application for costs specific to this Claimant.
  - b. On or before 14 days from the above details being sent to the Claimant, the Claimant must write to the Respondent and the Tribunal with his representations in response to the Respondent's costs application.
  - c. It is anticipated that the costs application will then be determined on the papers submitted by the parties.
11. The Respondent confirmed the basis of its application for costs on 14 December 2021.
12. The Claimant did not submit anything within 14 days of that and was reminded by the Tribunal to do so by correspondence dated 10 January 2022 requesting comments be submitted by 17 January 2022. Nothing has been received from the Claimant.
13. Under rule 77 of the Rules a party may apply for a costs 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. The Respondents' application was therefore received in time.

14. Further, 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.
15. The Claimant has been given reasonable opportunity to make representations and the parties have not requested the matter be determined by a hearing, so it is therefore now determined on the papers as indicated it would be in the case management orders made on the 4 November 2021.

#### The Application for Costs

16. The Respondent makes its application on the basis that the Claimant's claim had no reasonable prospects of success and that it was frivolous and vexatious. In particular it submits that the complaints about Notice and Holiday pay along with Unlawful Deductions of Wages were frivolous due to a lack of particularisation. Also, that the complaints for Harassment, Modern Slavery, Coercion and the Housing Claim were outside the Tribunal's jurisdiction.
17. The Respondent asserts, the Claimant could get information about his claims from ACAS, the CAB and various Government Websites.
18. It is asserted by the Respondent that it would have been apparent to the Claimant the length of service issue and time limit issues. Although this is just an assertion it is not rebutted by the Claimant, despite him being given opportunity to make representations.
19. The Respondent also points to the lack of particulars about the claim. However, I would note that this was the purpose of the case management orders made by Employment Judge Cadney to seek to clarify matters further.
20. The Respondent makes assertions as to the motivations of the Claimant and the other claimants, in particular Mr Ramsden. This though is mere assertion and it is noted that evidence of Mr Keeratinuntapreecha's direct and complicit involvement in such matters has not been presented.
21. I note that at the point of the claim being dismissed the Claimant was not subject to a deposit order or threat of strike out due to the prospects of his claim. However, as is noted in the application of the Respondent it asserts that following the first preliminary hearing it was clear to the Claimant what was needed to continue his claim and warnings were included regarding

areas that the Tribunal did not have jurisdiction. The Claimant has not responded to the requests for further information, did not produce a witness statement, nor attend the second preliminary hearing. The Claimant did not notify the Respondent or Tribunal that he was no longer proceeding with his claim. This put the Respondent to further costs in respect of this Claimant.

The Rules:

22. Of relevance are rules 74 to 84 of the Employment Tribunals Rules of Procedure (the "Rules").
23. I note in particular in respect of the application for costs:
24. Rule 76(1) of the ET Rules provides that a Tribunal may make a costs order, and shall consider whether to do so, where it considers that:
  - d. (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) have been conducted; or
  - e. (b) Any claim or response had no reasonable prospect of success.
25. That under Rule 76, there is a two-stage test, the Tribunal must consider (a) whether rule 76(1)(a) or (b) applies and, if so (b) whether to exercise its discretion to award costs.
26. An order for costs is the exception, and not the rule.
27. Under Rule 78(1)(a) a costs order may order the paying party to pay the receiving party a specified amount not exceeding £20,000.
28. With reference to **Raggett v John Lewis plc 2013 ICR D1, EAT**, an employment tribunal should not include VAT in a costs award if the receiving party is registered for VAT and, therefore, able to recover the VAT element as input tax.

The Decision

29. Based on the above I do not find that it can be said, as submitted by the Respondent, that this claim had no real prospects of success from the outset. To know this would require further determination of matters which has not happened.
30. I therefore do not find that rule 76(1)(b) applies in the way submitted by the Respondent.

31. However, following invitation to engage in the process to clarify such matters the Claimant has not done so. The Claimant has not responded to the requests for further information, did not produce a witness statement, nor attend the second preliminary hearing. The Claimant did not notify the Respondent or Tribunal that he was no longer proceeding with his claim. This put the Respondent to further costs in respect of this Claimant. The Claimant has made no representations on the Respondent's costs application about this. This lack of engagement in my view does amount to conduct under rule 76(1)(a), so that rule applies.
32. With this finding I now go on to consider whether to exercise my discretion to award costs.
33. In my view the Respondent's costs associated with the second preliminary hearing and the sending of its application for costs emails should be met by the Claimant. These amount to £43.40 for the preparation, £108.50 for the attendance, and £43.40 for the emails to the Claimant and the Tribunal. This totals £195.30 and this amount is awarded to the Respondent to be paid by the Claimant.

Employment Judge Gray  
Date: 18 January 2022

Judgment sent to Parties: 18 January 2022

For the Tribunal Office