



EMPLOYMENT TRIBUNALS

Claimant: Mr S Lik

Respondent: Archis Scaffolding Solutions Ltd

Heard at: East London Hearing Centre (by CVP)

On: 27 January 2022

Before: Tribunal Judge Overton acting as, an Employment Judge

Representation

Claimant: In person

Respondent: Ms S Palmer of Counsel

COSTS JUDGMENT

1. The Claimant is ordered to pay £250 contribution to the Respondent's costs pursuant to rule 76(2) of the Employment Tribunal Rules 2013.

REASONS

1. The Preliminary Hearing listed for 27th January 2022 was adjourned because the Claimant's witness statement referred to a large number of documents that did not appear in the 3 bundles before the Tribunal. Although the documents had been provided to the Tribunal Service by way of a number of emails sent over a period of weeks, those documents had not been collated into a bundle and had not been seen by the Judge conducting the hearing.

2. An attempt was made to identify the documents referred to in the witness statement but the task was too onerous for the time available and the hearing was adjourned.

3. The Respondent made an application for costs on the day of the hearing on the basis that the Claimant's conduct of the case had been unreasonable in that he had failed to cooperate with the Respondent in the case preparation and had failed to comply with the directions of the Employment Tribunal made by EJ Elgot at the Preliminary Hearing on 20 September 2021 and subsequently by EJ Gardiner on 17 January 2022.

Relevant Law

4. The Tribunal power to award costs is set out in rule 76 of the 2013 Employment Tribunal Rules

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 others unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

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

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins.

(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 adjourned or postponed on the application of a party.

78.- (1) *A costs order may -*

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

(b) order the paying party to pay the receiving party the whole or specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles; or, in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Fees of Solicitors in the Sheriff Court)(Amendment and Further Provisions) 1993, or by an Employment Judge applying the same principles;

(c) order the paying party to pay the receiving party a specified amount as reimbursement of all or part of the Tribunal fees paid by the receiving party;

(d) order the paying party to pay another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses (of the kind described in rule 75(1)(c)); or

(e) if the paying party and receiving party agree as to the amount payable, be made in that amount.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative shall be no higher than the rate under rule 79(2).

(3) For the avoidance of doubt, the amount of a costs order under sub-paragraphs (b) to (e) of paragraph (1) may exceed £20,000.

5. I had regard to the structured approach set out in the case of Milan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN where the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3 stage exercise at paragraphs 52:

There are thus three stages to the process of determining upon a costs order in a particular amount. First, the tribunal must be of the opinion that the paying party has behaved in a manner referred to in [Rule 76]; but if of that opinion, does not have to make a costs order. It has still to decide whether, as a second stage, it is “appropriate” to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount should be. Here, covered by Rule [78], the tribunal has the option of ordering the paying party to pay an amount to be determined by way of detailed assessment in a county court.

6. I therefore considered the following issues:

- 6.1 Has the putative paying party behaved in the manner proscribed by the rules?
- 6.2 If so, it must then exercise its discretion as to whether or not it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).
- 6.3 If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may take into account the paying party’s ability to pay).

The Respondent’s cost application and Claimant’s response

7. In summary, the Respondent asserts that the Claimant’s conduct was unreasonable for the following reasons:

- 7.1 The Claimant failed to co-operate with Tribunal directions made at the earlier Preliminary Hearing and later by EJ Gardiner.
- 7.2 The Claimant sent large numbers of documents when the second Preliminary Hearing was to deal with a specific and narrow issue.
- 7.3 The Claimant had not engaged appropriately with the hearing preparation process and had responded to the Respondent’s attempt to explain the case preparation process by accusing the Respondent’s representative of bullying.
- 7.4 The Claimant’s conduct resulted in an unnecessary expenditure of costs.

8. The sums claimed amount to £14,300 + VAT

9. The Claimant resisted the Respondent’s costs application. He attributed his conduct of the case preparation to lack of knowledge of the Tribunal process and his belief that the Respondent was including all the documents relevant to the Respondent’s case and was refusing to include the Claimant’s evidence in the hearing bundle.

10. The Claimant stated that he found the Tribunal process very stressful and that he felt the Respondent's representative had raised his voice at him and this had added to his stress. He confirmed that he was earning over £60,000 a year and that he was supporting his wife and two daughters.

Conclusion on Respondent's cost application

11. Pursuant to Rule 76(1)(a) of the Employment Tribunal Rules I conclude that the Claimant acted unreasonably in his approach to preparing for the second Preliminary Hearing of 27 January 2022 and failing to co-operate with the Respondent's representative in preparing a joint bundle for hearing. However, the Respondent could have included the disputed documents in a separate section of the bundle rather than leaving it to the Claimant to produce his own bundle for the Preliminary Hearing.

12. I find that the Claimant has made two attempts to provide the information requested by the Respondent in December 2021 and which was the subject of the directions made by EJ Gardiner. It is accepted that the Claimant's responses have not been adequate but I find that the Claimant has not been acting unreasonably in this regard and further directions have now been made.

13. On the basis of my findings set out at paragraph 11 above, I exercise my discretion to award costs under 76(1)(a) of the 2013 ET Rules. The Respondent claims its costs for the preparation of the adjourned Preliminary Hearing and the attendance of solicitor and Counsel at the hearing. In these circumstances I exercise my discretion to award costs and order that the Claimant make a contribution of £250 to the Respondent's costs in preparing for the adjourned Preliminary Hearing.

**Tribunal Judge Overton acting as,
an Employment Judge
Dated: 22 February 2022**