



EMPLOYMENT TRIBUNALS

Claimant: Mr S Walker

Respondent: Halton Borough Council

HELD AT: Liverpool

ON: 23 March 2017

BEFORE: Employment Judge Grundy

REPRESENTATION:

Claimant: Mr Y Bakhsh, Lay Representative

Respondent: Mrs P Fernandez-Mahoney, Solicitor

JUDGMENT ON COSTS

The judgment of the Tribunal is that the claimant shall pay half the respondent's costs of the proceedings in the sum of £4,839.

REASONS

1. This is the respondent's application for an order for costs arising from the dismissal of the claimant's unfair dismissal claim after hearings, which took place on 27 July and 19 September 2016. The respondent makes the application under rule 74 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 pursuant to schedule 1.
2. I have heard the submissions from both advocates today and read the bundle of documents, which has been prepared for this costs hearing.
3. Having regard to rule 76 of those Rules, a Tribunal may make a costs order or a preparation time order and shall consider whether to do so where it considers that, pursuant to rule 76(1)(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 (b) any claim or response had no reasonable prospect of success." The respondent relies on both of those grounds. Pursuant to rule 78, the amount of a costs order may not exceed £20,000. So far as rule 84 is concerned, "the Tribunal in deciding whether to make a preparation time or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's ability to pay, and I have considered all of those matters."

4. So far as the substantive test in relation to whether or not costs should be ordered, the respondent draws to the Tribunal's attention the original judgment which was critical of the claimant and his conduct in relation to proceedings. Those particular paragraphs which I have re-read in the substantive judgment are paragraphs 13, 14, 17 and 19, and in my judgment the way in which the claimant has conducted proceedings arising from my view of his conduct at the time is that the test of unreasonableness is satisfied.

5. So far as the test relating to whether or not the claim had reasonable prospects of success, I accept that it is always harder to assess the prospects at the outset rather than when the evidence is heard, but nevertheless at pages 6-9 of the bundle that the respondent has provided the letter of 2 June 2016 carefully and in a measured way set out the respondent's assessment of the case, and the claimant's response at page 25 through his lay representation was that he considered that the claimant had a very strong case.

6. In my judgment the prospects of a successful claim were very slim, but in any event I am satisfied in respect of unreasonable conduct such that I can award costs against the claimant.

7. I have considered the authorities to which I have been referred, both by the respondent and the claimant, those cases being on the respondent's behalf **Growcott v Glaze Auto Parts Limited UKEAT/0419/11**; **Ghosh v Nokia Siemens Neutrals UK Ltd UKEAT/0125/12**. The claimant referred me to **Three Rivers District Council v The Governor and Company of the Bank of England No. 3 [2003] 2AC96-97**; and **Naylor Limited v Robertson [1974] ICR 72**. I note that those two cases that the claimant referred me to are quite historic in terms of the way that costs orders have moved on, and in any event the 1974 case related to inappropriate pressure and I do not consider the letter of 2 June to have been in any way inappropriate.

8. That said in relation to those hurdles, it is right that I consider, in my view, the claimant's ability to pay. There is no documentary evidence before me other than a notice of repossession from a loan company who hold a charge on the claimant's home. The claimant says that there is approximately £20,000 equity in his home. He has an income of £1,200-£1,400 a month from casual employment as a carer. He is hoping to secure a full-time post later this year. My calculation of his outgoings from the figures that he gave me of necessary expenditure amounted to £1,169. That does not include the loan company or the lease termination in respect of a car that he still owes money on following the termination of his employment. So I accept that on his current income there is little in excess to pay any costs order. Having said that, if he secures full-time employment later this year his position may improve.

9. Taking that into consideration and in an attempt to be fair both to the respondent who defended these proceedings and intimated to the claimant in June 2016 that costs would be sought if the claim was dismissed, it is my judgment that the claimant should pay half of the respondent's costs of these proceedings and I assess that sum to be £4,839. That being half of £9,678 claimed.

Employment Judge Grundy

Date 3rd April 2017

JUDGMENT SENT TO THE PARTIES ON

12 May 2017

FOR THE TRIBUNAL OFFICE