



EMPLOYMENT TRIBUNALS  
London Central Region

Claimant: Mr M Anderson

Respondent: NG Bailey Ltd

JUDGMENT

1. The Respondent's application dated 14/4/22 for a costs order against the Claimant is refused.
2. The Claimant's application dated 22/4/22 for a costs order against the Respondent is allowed in the sum of £4680.
3. The Respondent must pay the Claimant £4680 by 1/6/22

REASONS

1. I have taken into account the respective written submissions of both parties, and looked at their costs schedules. I do not regard it as necessary or proportionate to hold a hearing to determine these applications. I have determined them on the papers.

For refusal of Respondent's application.

2. I reject the Respondent's submission that the claim was based on pure speculation. The Respondent's behaviour before proceedings were issued was ambiguous - it first offering the Claimant work and sending him application papers appropriate for completion by a non-British national, and then withdrawing the work offer without any or any clear explanation. Given his state of knowledge/belief at the time, encouraged by the Respondent, it was not unreasonable for the Claimant to be suspicious about the reasons for the Respondent's withdrawal of the work opportunity, and to issue proceedings, and to continue them until such time that the Respondent clarified its defence and produced the documents which caused the Claimant to withdraw, which occurred only in March 2022.

For allowing the Claimant's application

3. I accept the Claimant's solicitor's submissions in its letter of 22/4/22.
4. While the Grounds of Resistance (which were received by the Claimant's solicitors on about 15/12/21) broadly set out the basis of the defence, they lacked relevant detail and reference to the relevant security rules and facts, which matters were within the Respondent's own particular specialist knowledge.
5. A highly relevant document was produced by the Respondent only in response to my specific request made during the course of the hearing on 17/2/22 and even then, the facts necessary to construing that document (eg whether the Claimant required BPSS or SC) remained in doubt. Further relevant documents were disclosed by the Respondent in early March 2022, at which point for the first time the Claimant reasonably was able to see that his claim had little or no merit, such that he agreed to withdraw it.
6. Had the Respondent set out in its ET3 its reasons clearly and fully and by reference to its specific documentary evidence, the Claimant would have had an opportunity to withdraw his claim in December 21, thus saving the costs and disbursements which he incurred in pursuing the matter until March 22.
7. The Respondent is a substantial organisation represented by professional lawyers and in my view could and should have placed its cards on the table clearly and correctly no later

than mid December 2021. Not doing so was unreasonable conduct.

8. I do not award all the Claimant's solicitor's time costs incurred from 15/12/21 onwards (£5395 plus vat) because even if the defence had been clearly set out and relevant disclosure given in December 21, the Claimant's solicitor would still have had to spend time considering the matter, discussing it with the Claimant and negotiating the withdrawal, which costs (incurred in March 22) have been included in that figure. I allow £3000 plus vat as a discounted sum for solicitor's costs plus the Claimant's Counsel's fee for the 17/2/22 hearing of £900 plus vat - total £4680 including vat.

J S Burns Employment Judge

London Central

18/5/22

For Secretary of the Tribunals

Date sent to parties : 19/05/2022

---