Case No: HQ15A05254

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE BRITISH STEEL COKE OVEN WORKERS LITIGATION
(SITTING AT LIVERPOOL COUNTY COURT)
[2022] EWHC 3658 (KB)

35 Vernon Street
Liverpool
L2 2BX

Wednesday, 27 July 2022

BEFORE:

MR JUSTICE TURNER
DISTRICT JUDGE BALDWIN

BETWEEN:

SANDRA HUTSON
(Executrix of the estate of Maurice Hutson (Deceased)) & Ors

Claimants

- and -

TATA STEEL UK LIMITED

Defendant

MR R MARVEN QC (instructed by Messrs Irwin Mitchell LLP and Hugh James LLP) appeared on behalf of the Claimants
MR M WASZAK appeared on behalf of the Defendant

JUDGMENT
(Approved)

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1. MR JUSTICE TURNER: Could I first of all express my gratitude to District Judge Baldwin for his contribution. He has been of considerable assistance to me and, although this short judgment is phrased on the basis that it is what I decide, I do not want it to be thought that he has been merely a decorative feature in this case. Far from it.
2. I should also say that we have been considerably assisted both by the written submissions and the oral submissions from both sides. It is not my intention to resolve all of the very many issues that arise out of this application but the parties can rest assured that both myself and the district judge have read and listened with care to what has been said.
3. Can I give some assurances first of all. I think that the claimants were concerned that because I was reminded of the outcome of previous similar hearings, I might be tempted into going for a "going rate" reduction. That is not the case and I can assure everyone that this is a matter that has been determined entirely by way of a consideration of the issues which are relevant to this phase; no more and no less. I can also say that, because there is a basic dispute between the parties as to what actually is comprehended by common and by individual costs here, that less help can be derived from the defendant's figures than may otherwise be the case and they were not a predominant or significant starting point on the particular facts of this assessment.
4. The first general point to be made is this: that the exercise that I have had to perform is particularly challenging because of the level of unpredictability which arises in large part following agreement to a scheme to which all of the claimants have signed up. I have looked at that Scheme and it has obviously been worked out in considerable and appropriate detail. I note and accept that one intention of the Scheme was to make significant savings on the costs that would otherwise have been incurred in the progress of this group action.
5. I accept that the scope for common issues is now much more limited than it would have been but for the Scheme. I take the view that the bulk of the costs which are likely to be incurred going forward are those that arise on an individual basis from the cases brought by those individual claimants. I take into account, albeit in a limited way, the fact that about 50 or so cases have already settled under the Scheme. The defendant encourages us to take the view that we can be optimistic about the smooth and rapid progress of the operation of the Scheme, although I am satisfied that there is some merit in the claimants'

argument that the easier cases are likely to be those which have settled first.

6. At one stage we were invited to consider the possibility of identifying in advance what we considered to be common and what we considered to be individual costs as categorised. This was an invitation extended for the first time orally. I decline it, not simply because it will be a very considerable challenge to go through all their categories, hear argument in relation to that and reach a definitive conclusion, but also it will give rise actually to a risk of making things worse rather than better to the extent that people would then be minded to pore over the wording of an ex tempore judgment and seek to derive such comfort as they could. So I am not going to go down that path. I am, however, going to approach the three various areas of expenditure which I have to look at with the issues that I have already identified in the front of my mind.

7. In terms of the first category, which is the next case management hearing, in particular the likely discharge of the group litigation order, as matters stand, it is expected that a hearing will take place as soon as practicable after 1 September next year. There is a dispute between the parties as to whether that is optimistic or pessimistic. It is not an issue which I have to resolve. I do, however, consider that the claim under this head of £243,100 is considerably in excess of that which is appropriate. I accept that there will be a level of generic documentation generated, in particular relating to provisional damages and they will properly fall under common costs, but I take the view that the approach to predicting how this case may go in terms of the accumulation of those documents and what documents should actually be put in the eventual bundle, is unduly pessimistic.

8. The relevant practice direction I consider provides good guidance and the parties should not be encouraged to include within the bundles more documents than necessary. Far more often than not, in my experience, bundles of all varieties are packed with documents which are not necessary for the purposes for which the bundle has been produced to the court.

9. I also take into account the fact that the number of cases in which the future provisional damages will be claimed is a smaller one, to the extent that, regrettably because of the age of the cohort of claimants here, many of them have died, and I cannot discount the possibility that of those 83 claims which could theoretically result in a claim for provisional damages, would result in these more mature claimants being tempted into a once and for all offer rather than jam tomorrow.

10. Doing the best we can to bear in mind those issues, we consider that the proper budget

figure in relation to common costs here is £90,000.

11. In terms of group coordination, the claim is £259,280. I take the view that the way in which that claim is put forward fails adequately to reflect the very significant shift from common to individual costs which are heralded by the implementation of the scheme. There has been a very considerable amount of speculation, in my view, as to the categorisation of common issues which may arise. Bearing in mind all of those factors, together with the ones that I have already identified, we take the approach that a figure of £100,000 budgeted costs for that category is appropriate.

12. In relation to ADR efforts and settlement, the claimants claim £158,504. Again, I take the view that much pessimism has been deployed in that calculation as to the number and complexity of the common costs issues which are likely to arise. Some acts of creative imagination have been required in terms of predicting what they may or may not be. There is very little by way of solid evidence to justify the conclusion that these common elements are likely either to arise or, if they do, to be significantly expensive.

13. Any surprise issues which do not arise from the contemplation of the parties today, may well afford good grounds for departing from the budget in future, if appropriate. Bearing that in mind, we consider that the proper figure in this regard is £95,000. That is our ruling and judgment on those issues.