



EMPLOYMENT TRIBUNALS

Claimant: Miss S Roach

Respondent: Initiar Cash Converters Limited

JUDGMENT

It is the judgment of the Employment Tribunal that:-

The Respondent shall pay to the Claimant the sum of £740 pursuant to rule 76 Employment Tribunal Rules of Procedure in respect of preparation time.

REASONS

1. By a claim form presented on 3 September 2017, the Claimant brought a claim of unfair dismissal following termination of her employment on 17 September 2017. She alleged that in an altercation with a colleague she was referred to as a bitch and told to “**get the fuck out of the shop now!**”, that her subsequent grievance had not been upheld and that she had felt unable to return to work at the end of her maternity leave, forcing her to resign. In its Response, the Respondent accepted that the colleague’s actions were completely unacceptable and that he was subjected to disciplinary sanction. It admitted that the grievance had not been upheld but denied that the Claimant was entitled to treat herself as dismissed.
2. On 30 November 2017, the Claimant applied to amend her claim to include a complaint of harassment because of sex. The Respondent did not object within the specified time limit and so I granted leave on 18 January 2018.
3. In an email sent on 8 January 2018, the Claimant applied for an order striking out the Response for failure to comply with case management orders in respect of disclosure, preparing a bundle and exchanging witness statements. Alternatively, she requested an Unless Order. By email the same day, the Respondent conceded that it had failed to comply with the orders by the required dates but said that the bundle had been provided that day and that witness statements could be exchanged on 15 January 2018. I declined to make either Order as it would be disproportionate.
4. On 19 January 2018, the Respondent conceded constructive dismissal and the Claimant withdrew all other claims. The case was then heard on 25 January 2018, with a reduced time estimate as it was dealing with remedy only. I awarded the Claimant the total sum of £11,290.22.

5. By a letter dated 19 February 2018, the Claimant applied for a preparation time order pursuant to rule 76 on grounds that the Respondent had acted unreasonably in the conduct of proceedings. The conduct relied upon was the failure to concede unfair dismissal until seven days before the hearing. The Claimant also relies upon the Respondent's failure to comply with case management orders. The Claimant claims for 60 hours of work spent on preparing the ET1 (10 hours), her schedule of loss (15 hours), disclosure (10 hours), communications with ACAS (5 hours) and drafting three witness statements (20 hours).

6. The Respondent has not replied to the application (which was copied to its representatives who remain on file).

7. Rule 76 of the Employment Tribunal Rules of Procedure 2013 provides that:

“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 have acted vexatiously, feasible, 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.”

8. The making of a costs order therefore requires a two stage approach: has the threshold been passed and, if so, is a costs order appropriate.

9. The lead authority in deciding whether to award costs in the Employment Tribunal is **Yerrakalva v Barnsley Metropolitan Borough Council** [2011] EWCA CIV 1255, in particular the judgment of Mummery LJ. The Tribunal should consider the whole picture of what had happened in the case and ask whether there had been unreasonable conduct by the relevant party in bringing or defending the case. If so, it should identify the conduct, what was unreasonable about it and the effect it had. The Tribunal should also take into account any criticisms made of the other party's conduct and its effect on the costs incurred.

10. Having regard to the above, I am satisfied that the threshold for a preparation time order has been met in respect of the Respondent's failure to comply with case management orders but not in respect of the merits of the claim.

11. To concede a claim at a relatively late stage should not automatically lead to a costs order as it is in the interests of justice that the parties take a pragmatic approach to assessing the merits of their case even at a relatively late stage. Here, the concession was made a little under a week before the final hearing. It enabled the hearing time to be reduced and, even if the concession had been made sooner, this hearing would still have been required. Furthermore, the Respondent did not concede the harassment and pay claims which were in fact withdrawn. As for the merits of the Response, the resignation was not solely reliant upon the altercation and the Claimant's allegations in that respect were admitted. The employee was disciplined and the remaining issues were matters which would have depended upon a proper assessment of the evidence. It is not possible to say that the Response had no reasonable prospect of success.

12. As for the case management orders, the failure to comply by a party which was professionally represented is disappointing. Dates set out in Case Management Orders are not merely aspirational targets. Compliance is not within the gift of the Respondent. Nevertheless, there was eventually compliance with the Orders for disclosure and bundles. Even if compliance had taken place in a timely manner the Claimant would have been required to prepare her initial claim form, schedule of loss, disclosure and liaise with ACAS.

13. I consider, however, that the position is different with the witness statements. On 8 January 2018, the Respondent clearly indicated its intention to exchange witness statements and sought an extension of time in order to do so. The Claimant was led to believe therefore that she would also be required to ensure that her statements were prepared by the revised date of 15 January 2018. In the event, the Respondent did not provide the Claimant with any witness statements but instead conceded on 19 January 2018. This was unreasonable conduct and/or failure to comply with an Order and it caused the Claimant to spend 10 hours preparing witness statements which were unnecessary. I therefore award her £740 in respect of her preparation time on witness statements.

Addendum

14. The Claimant contacted the Tribunal on 21 March 2018 requesting a Notice of Recoupment for the purposes of enforcement. The Tribunal clerk apologised for the failure to provide this sooner. A copy of the Notice has been sent to the Claimant's representative at FRU on her behalf.

Employment Judge Russell

22 March 2018