



EMPLOYMENT TRIBUNALS

Claimant: Mr M Walsh

Respondent: The Home Office

HELD AT: Liverpool

ON: 1 March 2017
(in Chambers)

BEFORE: Employment Judge T V Ryan
Mr K J Bott
Mrs J E Williams

REPRESENTATION:

Claimant: Not in attendance – written submissions

Respondent: Not in attendance – written submissions

JUDGMENT ON COSTS APPLICATION

This judgment on the respondent's application for a wasted costs order and a costs order, and on the costs applications made by the claimant and his solicitor, Mr S Pinder, is pursuant to the reserved judgment on liability sent to the parties on 25 October 2016. The judgment of the Tribunal is as follows:

1. For the purposes of the respective costs applications before the tribunal only Mr. S. Pinder and Ms. S. Begum are parties to these proceedings.
2. The claimant did not act vexatiously, abusively or disruptively in either the bringing of these proceedings (or part) or the way that the proceedings (or part) were conducted insofar as they were conducted by him.
3. The claimant acted unreasonably in conducting proceedings insofar as he conducted them by way of instruction to his solicitor/advocate to proceed to the conclusion of the final hearing, from the date of receipt, consideration and advice upon the respondent's witness statements and trial bundle to the conclusion of the liability hearing on 19 October 2016; the Tribunal will make an order for costs in respect of part of the costs incurred by the respondent on 18 and 19 October 2016 (including counsel's brief fee) subject only to any reply received in respect of the directions below and consideration of the claimant's means if he wishes his means to be taken into account at a further costs hearing in open Tribunal. Subject to those matters the tribunal is unable to assess the sum to be paid, if any, by the claimant.
4. Mr S Pinder did not act improperly, unreasonably or negligently through any act or omission provided that he disclosed to the claimant costs warnings dated 8 September 2016 received by him from the respondent, or at least the fact of them.

The Tribunal's decision on the respondent's wasted costs application against Mr. Pinder is dependent upon responses received, if any, to the directions set out below.

5. The respondent has not acted vexatiously abusively, disruptively or otherwise unreasonably in making its costs application or the way that the proceedings in respect of its costs applications have been conducted. The applications for costs orders against the respondent fail and are dismissed.

6. Ms S Begum has not acted improperly, unreasonably or negligently in respect of any act or omission on her part as representative for the respondent. The application for a wasted costs order against Ms Begum fails and is dismissed.

DIRECTIONS

By no later than 14 days after the date upon which this Judgment is sent to the parties:-

1. Mr Pinder and the claimant shall separately write to the Tribunal (sending respective copies to the respondent) confirming whether or not Mr Pinder sent to the claimant or otherwise disclosed to him the costs warnings made by the respondent on 8 September 2016. Failure to respond to this direction or the provision of an ambiguous or otherwise equivocal response will lead the Tribunal to conclude that Mr Pinder did not deal with the costs warnings in any way, as that is what he indicated in his email of 9 September 2016 addressed to the respondent. By way of clarification, it is confirmed that the Tribunal's conditional finding is that any failure to have advised the claimant of those costs warnings would amount to negligence on the part of Mr Pinder and would result in his paying all or part of the costs of the two day final hearing.

2. The claimant and Mr Pinder will confirm whether they still request an opportunity for there to be a hearing at the Employment Tribunal for them or either of them to give evidence as to their means. The Tribunal may take into account ability to pay in deciding what amount the Tribunal will order be paid to the respondent.

3. The respondent shall provide to the Tribunal, the claimant and Mr Pinder a detailed breakdown of the costs incurred in respect only of the final hearing, being the costs of attendance on the day inclusive of counsel's brief fee, which it is understood will have included some element of preparation for the final hearing. The tribunal is not as yet convinced that the cost of instructing solicitor's attendance with counsel was necessary, proportionate and ought be paid by the claimant.

Employment Judge T V Ryan
1st March 2017

JUDGMENT AND DIRECTIONS SENT TO THE PARTIES ON
7 March 2017

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.