



EMPLOYMENT TRIBUNALS

Claimant: Mrs L Nod

Respondent: L Rowland & Co (Retail) Ltd

Heard at: Birmingham

On: 4 April 2018 (in chambers)

Before: Employment Judge Broughton

Members: Mr Virdee
Mr Liburd

JUDGMENT

The respondent's applications for a preparation time order and for witness expenses are refused.

REASONS

1. We refer to our judgment with reasons on liability dated 23 May 2017.
2. The respondent made their applications (under rules 74 to 84 Employment Tribunals Rules of Procedure 2013) by letter dated 7 June 2017. The claimant replied on 10 October 2017. Both parties agreed to the original panel considering the applications on the papers alone.

3. The respondent submitted that the claimant had acted vexatiously, abusively or otherwise unreasonably in bringing the proceedings or in her conduct of the same.

4. They suggested that the claimant had made a number of unfounded allegations but those were not our findings. We found that the claimant had failed to establish many of her allegations and gave detailed reasons for those findings. We did not, however, expressly find that she had lied to the tribunal nor would such a finding naturally follow from not upholding her claims.

5. We did find that at least some of the claimant's diary entries were unlikely to have been contemporaneous as claimed. That finding contributed to some of our findings on credibility and whether the claimant had established facts from which we could conclude that discrimination had occurred. That does not mean, however, that we concluded that some or all of the diary entries were necessarily fabricated, merely that some were probably written after the dates in question.

6. We were rightly referred to some relevant authorities and reminded that we should consider any alleged dishonesty in context. We do not consider that the claimant claiming that her diary was contemporaneous was a central part of the claimant's case.

7. Her case focused on a number of very specific allegations. They were the central part of her claim.

8. Some of the factual background to some of those allegations was agreed or made out in whole or part. Some were matters of the claimant's honest, but misguided, perception of events. The language barrier seemingly contributed to some of the misunderstandings.

9. We were satisfied that the claimant genuinely felt badly treated and, indeed, there was at least some evidence to explain those feelings. It may well be that she also genuinely felt discriminated against.

10. She was entitled, in those circumstances, to bring her claims. As a lay person we cannot say that her conduct was so unreasonable as to warrant a costs award.

11. We would acknowledge that it is not pleasant for individuals and companies to face allegations of discrimination but that has to be balanced against the importance of individuals having the right to bring such claims without fear of costs awards merely because they are unable to prove their case.

12. It is also legitimate to challenge the evidence of witnesses and put to them that they may have been influenced because, for example, they may remain employed by a party. Again, we remind ourselves that the claimant was a lay person with language difficulties.

13. The claimant was also entitled to apply for witness orders for certain individuals that she believed may be able to attest to certain events in support of her claim. Some did to some extent, some did not.

14. The claimant could not know what witnesses would be able to recall without testing their evidence. Ultimately, we found their evidence helpful, albeit often not supporting the claimant's contentions.

15. Whilst their attendance inevitably resulted in costs and expenses for the respondent it was not unreasonable for them to be called, they assisted the tribunal and, to some degree, aided the respondent in defending the allegations.

16. It is not accurate to suggest that we found that the vast majority of the allegations did not occur, let alone that it would necessarily follow that the claimant knew that her allegations were false.

17. It would be yet another unsupported leap to suggest that the claimant deliberately made false allegations to increase the time and cost for all concerned. We found that the claimant had failed to prove her case and/or that her perception of events was, at times, inaccurate.

18. It should be clear from our findings on liability that we found significant failings on both sides in this case. The failings on the part of the respondent doubtless contributed to the claimant's sense of grievance and her claims cannot be said to have been completely false or manufactured.

19. The claimant should not have covertly recorded certain witnesses without their permission nor delayed disclosure of those recordings. That said, she did disclose them in advance of the hearing and we repeat that we found the evidence of some of those witnesses to be helpful.

20. We do not consider that the claimant's conduct was so unreasonable as to warrant an award of costs, nor did it unduly increase costs. We do, nonetheless, acknowledge that those who were covertly recorded were, understandably, upset about the claimant's conduct. Ultimately that did not assist her case.

21. We do not consider that the claimant acted vexatiously or abusively. Whilst we do not condone covert recordings and the claimant's evidence with regard to her diary was unreliable those are not matters that we consider to be sufficiently serious as to amount to unreasonable conduct.

22. In any event, we do not consider it to be in the interests of justice to award costs in this case. The claimant did have some valid concerns and was entitled to bring and pursue her claims. The respondent's costs in defending those claims would have been the same even without the claimant's failings.

23. As a result, the respondent's claim for a preparation time order, whilst largely reasonable in terms of scope, must fail. In any event, we do not think they could legitimately claim for locum cover for Mr Banga. That would, effectively, involve claiming for the time he spent at the hearing which is not able to be claimed under rule 75(2).

24. Moreover, we considered the claimant's very limited means and would not have felt it just to make an award against her in all the circumstances even were such an award otherwise warranted..

25. Whilst the hurdle for claiming witness expenses does not require there to have been unreasonable conduct we are not minded to make an award in relation to those either. The modest expenses were seemingly met by the respondent. The witnesses assisted the tribunal. It does not appear to us to be proportionate or in the interests of justice to expect the claimant to meet those expenses.

Employment Judge Broughton

4 April 2018