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# EMPLOYMENT TRIBUNALS

BETWEEN

**Claimant**

**AND**

**Respondent**

Mrs B Rahman

Fresh and Wild Ltd t/a  
Whole Foods Market

**Heard at:** London Central

**On:** 3 October 2017

**Before:** Employment Judge Wade

## Representations

**For the Claimant:** Mr Rahman (Husband)

**For the Respondent:** Mr N Pourghazi (Counsel)

## JUDGMENT

- 1 The judgment of the Tribunal is that:
  - a. The Respondent in breach of contract failed to pay the Claimant two weeks' notice amounting to £320 net and the Tribunal orders the Respondent to pay that figure to the Claimant in damages.
  - b. The Respondent unlawfully deducted two weeks' wages from the Claimant amounting to £320 which the Tribunal orders the Respondent to pay to the Claimant having made any required deductions.
2. The Claimant is ordered to pay the Respondent costs of £840.

## REASONS FOR THE COSTS ORDER

1 No reasons are given for the orders against the respondent because it has admitted liability for the full sum identified by EJ Russell on 3 July.

2 The Tribunal has been asked by the Respondent to make a costs order against the Claimant. As at the hearing today, 3 October, the Claimant did not understand, or alternatively did not accept, that following the Tribunal Judgment of 3 July 2017 only two issues remained to be adjudicated. These were, first, whether the Respondent was obliged to pay the Claimant two weeks' pay in respect of her suspension amounting to £320 and, second, whether the Respondent was obliged to pay the Claimant her notice pay in respect of a wrongful dismissal claim, also amounting to £320.

3 As of 3 July the Respondent openly accepted liability and invited the Claimant to settle for the full figure which she could obtain from the Employment Tribunal. That was £640: £320 notice pay (which because the Claimant did not earn more than the personal allowance for tax would be both the gross and the net figure) and then two weeks' pay in respect of her unpaid suspension which would be subject to deductions. That was both what the Tribunal had the power to order and what the Respondent offered. The Respondent also offered to reimburse the Claimant in respect of fees, which is now no longer necessary.

4 At the start of this hearing the Claimant accepted that those were the issues and that the full extent of the Respondent's liability was £640 but as the hearing progressed it became clear that she did not in fact agree that this was the full range of what the Tribunal could and should deal with. She and her husband wanted the whole case to be litigated, especially the question of whether she was unfairly dismissed when the Respondent dismissed her because of her immigration status.

5 The Claimant said emotively to me today "this is the land of law, why is the Respondent not following the law?" and urged the Tribunal to apply the law. The point I want to emphasise is that I *am* following the law. Firstly, Employment Judge Russell set out the issues extremely clearly in the order of 3 July. See paragraphs 9, 10, 14 and 16 and I am bound by those issues as set out there. Secondly, today I am following the law on costs.

6 The Claimant has to understand that I am bound by the statutory rules that apply to Employment Tribunals and also by the rules of justice which do not, unfortunately for them, include opening the doors to the Tribunal to consider an agenda set by the Claimant. Justice entails being fair to both sides and following the letter of the law, which in this case means that there were only two issues potentially to be considered today as already described. The law on costs is that if I decide that the Claimant behaved unreasonably then I have discretion to make an order for costs against her. I also have a discretion to take into account the Claimant's ability to pay.

7 At the point the respondent admitted liability the claimant had only paid the issue fee of £250. Rather than accept the full figure on offer the Claimant, rather extraordinarily, took the step of paying a hearing fee which she ill afford of £950; I understand she had to borrow it. She incurred a huge debt in order to have a hearing which, essentially, could never happen to her satisfaction because of the fact that there were only two issues left to determine and the respondent had admitted liability. The respondent had to attend today because the claimant rejected the offer made to her.

8 The Respondent says that all of this was unreasonable behaviour. I am very struck by the Claimant's determination to have all her issues heard at all costs (including cost to the respondent) and in the face of the fact that this was demonstrably impossible. It does raise for me the question of whether there was a profound misunderstanding as well as a profound unreasonableness. Certainly, on the face of it the Claimant's conduct was unreasonable as, given the issues defined on 3 July, she could not possibly have got more than she was being offered by the Respondents.

9 Also, she did twist and turn in that when I asked why she had not accepted the figure she said that that was because she was not happy with the fact that the Respondent would make deductions. However, it is clear from her email to the respondent of 28 July that that was not the issue. She said:

"Thanks for your offer but we are interested. I totally disagree that you still mention in your letter that the Claimant did not have the right to work, therefore for the public interest final hearing needs to take place to find out the truth."

10 That was why the Claimant did not accept the offer and it is not an attractive feature that she sought to change her position without any proof at all and say that the question of deductions was the sticking point. I did find that the Claimant was unusually blinkered and unable to stick to the point when I asked what I thought were quite straightforward and clear questions and I find that particularly odd because Mr Raman has told me today that he is a part-qualified accountant. This means that there should not have been an issue with understanding and does not explain why the Claimant could not accept that the Tribunal had an obligation only to apply the law which meant sticking to the narrow issues as defined on 3 July. I do think that there is a comprehension issue here but I understand they have had some legal advice. I wonder whether they have such a strong alternative view about what justice is that there are barriers to their understanding.

11 I have found out about the Claimant's means and, although I do not have to take means into account, I think that it is a just and fair thing to do. Mr Raman is a part-time cashier and he says that at the moment he cannot increase his earnings from £792 a month. The Claimant is not working. She has an eight month old baby and there is no informal childcare available as her parents live overseas which means that it is going to be very difficult for her to find remunerative work in the short term.

12 I am afraid to say that I do not accept the Respondent's position that the prospect of a significant change to their financial position is reasonably foreseeable. I am afraid to say that this couple, who live in a rented room at the rent of £500 a month inclusive of fuel bills, are in a very low income position. When they gave me a quick summary of their income and expenditure, excluding any emergency and excluding any leisure activity and purchase of clothes, for example, for themselves, they are already well up to the top of their monthly income.

13 The Respondent provided a schedule of £3,733.20 plus VAT. They made the point, which I accept, that the costs mounted rather significantly from 3 July due to the Claimant's unexpected intransigence. The Claimant insisted on a hearing when it there was nothing to hear and no prospect of her recovering more than what had already been offered.

14 The Tribunal agreed with the Respondent to the extent of reducing the hearing from one day to two hours but the Claimant did not see that as a sign that she had to think rather harder about whether it was worth running the clear costs risks and attending. The costs risk had been explained to them both by Judge Russell and by the Respondent in several pieces of correspondence. In fact, the Claimant just objected to the hearing being reduced from one day to two hours, and served full submissions on the Respondent, to include all of the issues struck out or not allowed in by Judge Russell on 3 July. So, for example, in their email of 22 September they told the Tribunal that they objected to the hearing being curtailed as the Respondent needs to "answer some questions and the Judge needs to give his decision after hearing all the arguments". That was not at all what the Tribunal needed to do.

15 The Respondent has complained about certain failures to follow the Tribunal order of 3 July in terms of disclosure and the bundle. I think that was not something that perhaps ought to have been emphasised by the Respondent. I am afraid these kind of failings are mundane and unless there is a problem with the final hearing being impeded those are not things that reach the threshold of a costs order. Also, not the Respondent's fault or the Claimant's fault: it is very unfortunate that the Tribunal Order of 3 July was not actually sent to the parties until September. This did not stop the Claimant making two applications for reconsideration, further illustration that the Claimant did understand what the Tribunal had said that just did not want to accept it and that she was able to engage in the Tribunal process when she chose to do so.

16 I would reduce the Respondent's cost schedule by £600 to take into account that I would not make a costs order in respect of failure to comply with the directions, but I do accept that it was unnecessary for the Respondent to proceed with preparation for the final hearing. Of course, it was also unnecessary to have today's hearing because the Claimant could have written in withdrawing the claim on the basis of a full settlement.

17 I think that it was a shame that the Respondent was not clearer about the deductions that would need to be made from the settlement sum. It would have been perfectly possible for the Respondent to work out the deductions and

therefore given the Claimant an actual figure to be paid but I am entirely satisfied that this was not the reason why she refused to settle.

18 I also think that it is pity that the Respondent did not provide a draft judgment because sometimes a Respondent wants to settle confidentially, but I accept that in this case it did clearly state before today's hearing it was admitting liability as well as offering the relevant payments.

19 So, a reasonable starting point for the Respondent to ask for is £3,133. I would further reduce that figure because I think that given what happened to the Claimant and given that the written reasons were provided late, it would be appropriate to allow some time for the penny to drop in terms of what she could possibly expect from the final hearing.

20 The Claimant wanted everything to be heard, she was applying for reconsideration and she wanted the reasons for the dismissal to be examined. She should, however, have realised by the start of August that this was not going to happen and certainly by then the Claimant's failure to understand had become unreasonable. The Respondent emailed on 28 July saying:

“Regardless of either of our views on prospects of success I would like to emphasise that the offer represents the full amount that could be achieved in the Tribunal. You are therefore on notice that if you continue with the claims you suggest my client will make an application for their costs in defending the claim.”

I have not actually calculated exactly what that would mean because I do not have the material available to me in the costs schedule, I make no criticism of the costs schedule.

21 The claimant's conduct from the start of August was unreasonable and not due to lack of understanding. She had access to advice, her husband is a part-qualified accountant and ultimately unreasonableness is an objective standard.

22 I do, however, further reduce the figure that I would award because of the Claimant's poor financial situation and taking all of that into account, including the fact that she is shortly to be paid £640 by the Respondent, I make an order for £840.

23 I note that the Claimant will get back the full hearing fee and issue fee that she has paid the as far as I understand the position. It is not within my jurisdiction to order the Government to repay that figure. It is a matter for the Tribunal administration. My understanding is that that figure which the Claimant said she borrowed would be returned which means that she will not be in debt to whoever lent the money for very much longer.

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Employment Judge Wade  
17 October 2017