



# THE EMPLOYMENT TRIBUNAL

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**SITTING AT:** LONDON SOUTH

**BEFORE:** Employment Judge Martin

**BETWEEN:** Mr Osiji Onah Claimant  
and  
Department for Work and Pensions Respondent

**ON:** 31 March 2017

## **JUDGMENT ON COSTS**

1. The Claimant's application for costs is dismissed
2. The Respondent's application for costs is dismissed

## **REASONS**

1. Following judgment promulgated on 9 August 2016 the Claimant made an application for costs on 5 September 2016. The judgment was in favour of the Claimant with reductions in compensation of 50% for contributory fault and Polkey reduction. Remedy was dealt with by way of settlement. On 28 February 2017, the Respondent made an application for costs on the basis that the Claimant was acting unreasonably in bringing his application for costs as it had no reasonable prospects of success.
2. The relevant provisions governing the award of costs are found at Rules 76-78 of the Employment Tribunal Rules of Procedure 2013 (the "Rules").
3. Rule 76(1) of the Rules provides that a Tribunal may make a costs order....and shall consider whether to do so, where it considers that –
  - a. a party has acted vexatiously, abusively, 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.
4. Hearing to determine the applications for costs had been listed however due to my unavailability both parties agreed that the costs application should be considered on paper without the need for a hearing. I considered the submissions from the Respondent and from the Claimant.
  5. A summary of the Claimant's application is that the Response had no prospect of success because the Tribunal found the appeal process to be inadequate and the Respondent did not make financial offers to settle the case. The Claimant also submitted that the Respondent's costs schedule was inflated.
  6. The Respondent replied to the Claimant's submission. A summary of these submission is that the Respondent was entitled to defend a claim of unfair dismissal and that a finding by the Tribunal that the internal process was unreasonable and therefore unfair does not equate to unreasonable conduct pursuant to rule 76(1)(a) of the ET rules.
  7. I accept the Respondent's submission that unreasonableness in the finding of unfair dismissal pursuant to s98(4) was different to unreasonableness in the context of a costs application pursuant to rule 76(1)(a). I find that the Respondent acted reasonably in defending the proceedings. The fact that the judgment went against them does not mean that they were unreasonable in defending the proceedings particularly when a substantial reduction to the award was made as set out above.
  8. The Claimant's application for costs is therefore dismissed.
  9. The Respondent's application is similarly dismissed. I see no basis on which to award costs as the Claimant was entitled to make an application for costs. The fact that this application failed does not make it necessarily unreasonable.

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Employment Judge Martin  
Date: 31 March 2017