Deposit orders

Whilst slowly increasing, costs orders, wasted costs orders and preparation time orders are still relatively rare in the Employment Tribunal. Unlike the civil courts, costs do not “follow the event” and are traditionally “the exception rather than the rule”. The purpose of costs is not to punish the paying party, but to compensate the receiving party.

Deposit orders however are being used more and more since the introduction of the new Tribunal Rules on 29 July 2013. Under the Rules, the Tribunal can order a party to pay a deposit of up to £1,000 to either continue participating in proceedings, or to pursue any specific allegations or arguments. In essence, if a Judge considers an allegation or argument (put forward by either Claimant or Respondent) has little prospect of success, that party can be ordered to pay a deposit to allow that allegation or argument to continue.

Prior to April 2012, the maximum amount of a deposit order was £500, however that increased to £1,000 for claims lodged on or after 6 April 2012. Quite importantly though alongside the increase, the £1,000 maximum now relates to “any specific allegation or argument in a claim or response” that the Judge considers warrants a

Tel: 0344 967 0793 | Email: info@LA-Law.com | www.lesteraldridge.com

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deposit.

This may seem a little harsh in some cases and certainly, in the recent case of Wright v Nipponkoa Insurance (Europe) Ltd, the Claimant thought the same.

At a Preliminary Hearing in the case, the London Central Employment Tribunal ordered the Claimant to pay a deposit for seven of the 11 allegations of race discrimination and whistleblowing detriment he had brought, finding that they had little reasonable prospect of success. In addition to the seven deposits, three more allegations were also struck out.

Giving the Tribunal some credit though, they didn't actually award an overall deposit of £7,000, but instead ordered the Claimant to pay £300 per allegation, totalling £2,100.

The Claimant appealed, saying that the Tribunal was firstly wrong in finding seven allegations had little reasonable prospects of success; had secondly failed to consider the proportionality of the deposits ordered and thirdly, had failed to give adequate reasons for the amounts ordered.

The Employment Appeal Tribunal has dismissed the appeal, noting that it was well within the Tribunal's power to make an order of £1,000 per allegation and by not doing so, they had in fact considered the proportionality of the total order. In relation to prospects of success, it was noted that Tribunals have a broad discretion when deciding deposit orders, and are entitled to consider the likelihood of the party being able to prove the facts as well as looking at the legal arguments.

Deposit orders can be made by a Tribunal of its own initiative, or upon an application by a party. From a Respondent's point of view, deposit orders are useful to try and weed out the weaker allegations made by a Claimant as if a deposit isn't paid, the allegation to which it is subject will be struck out, meaning the parties can concentrate on the stronger (and probably better pleaded) allegations.

Respondents can though also be subject to a deposit order, especially if they provide a basic response which is nothing more than a blanket denial of all allegations. A thorough response answering all allegations (or putting the onus back on the Claimant by requesting further particulars of the poorly pleaded allegations) will place the Respondent in a much better position when taking the case forward.

For advice and assistance with Tribunal claims, at any stage of the proceedings, please contact Kevin Barnett.

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