



TC06972

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2016/2809

COSTS – claim by litigant in person for time spent waiting for, and chasing up, payment of the amount due to her on settlement of her appeal – whether Tribunal has jurisdiction – no - whether tribunal would order costs if it could – no - because HMRC has already offered compensation

BETWEEN

FRANCES HUMPHRIES

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE Barbara Mosedale

Decided on the papers on the basis that the matter did not fall within Rule 29 and it was an appropriate matter to decide on the papers as the amount at stake was small and the parties should not be put to the expense of an oral hearing; moreover, I had the parties’ written submissions, and I would not be assisted by oral representations.

DECISION

Introduction

1. On 9 June 2018, the parties settled the dispute the subject of this appeal on terms that HMRC would make the claimed refund of NIC contributions of £2,293.10 to the appellant.
2. On 6 September 2018, the appellant wrote to the Tribunal stating that she had not received the amount due from HMRC and therefore wished to revoke the settlement and reinstate the appeal.
3. The Tribunal replied on 28 September to say that the revocation appeared to be too late and also appeared to be made under a misapprehension as the settlement agreement was enforceable in law and HMRC owed her the agreed amount.
4. It appears agreed by the parties that HMRC had sent a cheque to the appellant in settlement of HMRC's debt to her but which was lost in the post due to HMRC's failure to send the cheque to the appellant's new address, which had been duly notified to them. HMRC also accept that they were then slow to issue the replacement cheque but it appears agreed that HMRC have now done so and the appellant no longer wishes to revoke the settlement.
5. On 25 October 2018, the appellant made an application to the Tribunal for 'wasted costs' in the sum of £191 calculated in respect of time she had lost and postage expenses she had incurred in chasing HMRC for her payment of the agreed settlement.
6. HMRC were given the opportunity to comment on the costs application and did so by letter dated 20 December 2018. The appellant commented on their reply by letters dated 10 and 24 January 2019.

Litigants in Person (Costs and Expenses) Act 1975

7. The Litigants in Person (Costs and Expenses) Act 1975 ('LPCEA') applies to proceedings in the tax tribunal by virtue of the Tribunals Courts and Enforcement Act 2007 s48(1). LPCEA permits litigants in person to claim for actual financial loss or an hourly rate of £19 per hour.
8. Mrs Humphries claims £191 made up as follows:
 - (1) Wasted time waiting for cheques to arrive - £100
 - (2) £18 x 4, for wasted time spent contacting HMRC and the Tribunal on specified dates;
 - (3) £10 for cost of phone call to Australian post office and £9 for half hour spent making it.
9. HMRC have not challenged her claim to have spent 4.5 hours' time in contact with HMRC and the Tribunal (ie items (2) and (3)) and the rate claimed is in line with LPCEA. Similarly, postage costs would appear to fall within LPCEA.
10. However, her claim at (1) is a claim for time spent 'waiting' for the cheques to arrive. This seems to be a claim that Mrs Humphries spent about 5 hours doing nothing but waiting for cheques to arrive. I do not understand this claim. It would not be rational to do nothing

while waiting for post to arrive and so I think what Mrs Humphries is really asking for is compensation for having to wait several months for her money. Such a claim is not allowed under LPCEA and I would not in my discretion award it in any event as the £100 does not appear to represent lost time.

11. I dismiss the claim in so far as it relates to this £100, and I go on to consider whether I can and should award the claim for 4.5 hours and postage expenses.

Wasted costs orders

12. The claim by Mrs Humphries was for a 'wasted' costs order. The Tribunal's rules allow it to make in any case an order for costs under s 29(4) of the Tribunal Courts and Enforcement Act 2007. This is known as a 'wasted costs' order.

13. 'Wasted' costs have a very specific meaning under s 29(4) and they are limited to orders against the representative of the litigant to pay the whole or part of costs (s 29(5)) which were incurred:

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it unreasonable to expect that party to pay.

14. In other words, a wasted costs order is an order against a representative to pay the other party's costs because of the representative's own behaviour.

15. The use of the word 'wasted' sometimes misleads litigants to believe that they can recover from the other party costs they incur but regards as being 'wasted' in a colloquial sense. Reading Mrs Humphries' costs application, it seems likely that Mrs Humphries did not appreciate the distinction. She does not expressly state she is seeking an order against any particular HMRC officer but seems to be seeking costs against HMRC itself.

16. I am going to proceed on the assumption that Mrs Humphries intended to make an application for costs under rule 10(1)(b) on the basis she alleges HMRC acted unreasonably in its defence or conduct of the proceedings. While there is no specific provision allowing me to treat one type of application as another, the Tribunal has power to award costs of its own motion.

17. In any event, it makes no difference 'whether it was a claim for wasted costs against a named HMRC officer, or a claim for costs for unreasonable behaviour against HMRC as a body, as I would not award it for reasons stated below.

Costs of proceedings

18. This is because, whether the application is under Rule 10 (1)(a) (wasted costs) or Rule 10 (1)(b) (unreasonable behaviour), it is clear from s 29(1) TCEA that the Tribunal only has power to award costs 'of and incidental' to proceedings in the Tribunal.

19. The 4.5 hours and postage expenses were spent by Mrs Humphries in chasing HMRC and the Tribunal for her payment under the agreed settlement. While costs incurred after an appeal has come to an end could be incidental to the proceedings, I do not think that costs incurred in chasing payment are incidental to proceedings in this tribunal, as the proceedings

only concerned liability and not enforcement, as this Tribunal only has jurisdiction over liability and not over enforcement.

20. The remainder of the claim to costs should therefore be rejected as it does not relate to costs of the proceedings in the Tribunal. I have no power to make the award. The entire application for costs must be **DISMISSED**.

21. In any event, in contacting the Tribunal over HMRC's failure to pay her, her time was not well spent as the Tribunal had no jurisdiction in that matter. It was therefore not necessary for her to incur those costs. Therefore, I would not award such costs even if I had discretion to do so.

Unreasonable behaviour

22. Therefore, having said no costs should be awarded as there is no jurisdiction to do so, I do not need to consider whether HMRC's behaviour was unreasonable. Nevertheless, for the sake of completeness I do so. Letters which the appellant has produced to me show that HMRC do accept that they did make a mistake in both sending her cheque to the wrong address, and then being slow to put the matter right. I do not, however, see this as unreasonable behaviour in the defence or conduct of an appeal for the reasons given above: the appeal had already come to an end.

23. So a second reason for refusing the claim is that I have no jurisdiction to make an award for unreasonable behaviour in the defence or conduct of an appeal, because the alleged unreasonable behaviour took place after the appeal had come to an end.

Discretion

24. Even if I were wrong about having no jurisdiction to award costs, I would not award costs in this matter in any event. While HMRC certainly made a careless mistake in sending the original cheque to the wrong address, and took some months to put it right, it is clear that HMRC have already offered compensation of £100 for these very errors.

25. The appellant does not accept that she was offered compensation for the same matter for which she claims costs. She also says she has not accepted the compensation. But that is up to her: she accepts it has been offered.

26. HMRC's letters, relied on by the appellant, said £50 was for 'worry and distress' caused to her by the late payment and 'poor complaint handling' by HMRC in relation to the late payment; the other £50 was for the fact she had to spend time contacting HMRC over their mistake.

27. So, contrary to what the appellant said, it seems to me that there is considerable overlap between what she was offered compensation for and what she seeks costs for. She has been offered compensation for time spent chasing the repayment. It would not be right to order costs which would amount to compensation twice over.

28. In these circumstances, even assuming that I had jurisdiction to make the claimed award, which I do not, I would not consider it appropriate to make an order which in effect would compensate the appellant twice.

29. The application is **DISMISSED**.

Right to apply for permission to appeal

This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**BARBARA MOSEDALE
TRIBUNAL JUDGE**

RELEASE DATE: 08 FEBRUARY 2019