

JERSEY / JUDGMENT

JT (Jersey) Limited v Mark Wood

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Costs judgment – appeal against decision of the Royal Court. [2016]JCA221 Court of Appeal 28 November 2016 Before : Jonathan Crow, Q.C., President George Bompas, Q.C., and David Perry, Q. C. Between JT (Jersey) Limited Appellant And Mark Wood Respondent Advocate E. B. Drummond for the Appellant. Advocate H. J. Heath for the Respondent.

judgment

crow ja: This is the Judgment of the Court

Introduction

1. On 10 October 2016 we gave judgment on the substance of this appeal (JT (Jersey) Limited-v-Wood [2016] JCA 183). We now have to deal with the question of costs. 2. The starting point is to determine who (if anyone) is the overall winner. So far as that is concerned, the answer is straightforward: the Respondent (“Mr Wood”) has successfully established that he was unfairly dismissed. There is accordingly an a priori presumption that the Appellant (“JT”) should pay his costs. The more vexed question is whether there are any factors which militate against that outcome. 3. In our judgment, there are. First, and most importantly, JT made a settlement offer which, if accepted, would have avoided the need for any contested hearings before the Tribunal, the Royal Court or this court. By a letter dated 8 September 2014, JT offered to pay Mr Wood £21,307.69 which it calculated was the maximum amount he could recover if he were to succeed in establishing that he had been unfairly dismissed. JT now says that this was a very slight over-estimate, and Mr Wood has not sought to dispute the calculation. Instead, he points out that the settlement offer was conditional on his abandoning any claim for redundancy, and since the question of redundancy remains unresolved he submits that the settlement offer should not affect his entitlement to costs. 4. In our judgment, the settlement offer cannot be so readily ignored. It was indeed conditional on Mr Wood abandoning a claim for redundancy, and for that reason we would reject JT’s submission that the existence of the offer is sufficient to justify an adverse costs order against Mr Wood. But we consider that it would be too crude to adopt a blunt, binary choice between awarding JT all of its costs or awarding Mr Wood all of his costs, depending on whether or not the settlement offer was bettered by the outcome in court. We consider that a more nuanced approach is required in order to do justice between the parties. In this case (i) Mr Wood made no counter-offer at the time (e.g. by inviting JT to pay something more to persuade him to drop the redundancy claim), (ii) three years after his dismissal, he

has still not issued any claim for redundancy, and (iii) in light of paragraphs 108–119 of our substantive judgment we consider that he would face very real difficulties if he tried launching such a claim now. We do not accept JT’s submission that the claim would have “no prospect” of success; but it is apparent that any claim seeking to establish that Mr Wood was dismissed for reasons of redundancy would face very real difficulties. We therefore regard the settlement offer as a powerful consideration against awarding Mr Wood his costs, but not as sufficiently powerful to require an adverse costs order against him. 5. There are three other relevant factors to be taken into account: (i) First, a considerable amount of time and effort was consumed, both in this court and in the Royal Court, with Mr Wood’s argument about the existence and the relevance of a ‘redundancy situation’. Ultimately, we consider these efforts to have been wasted. (ii) Second, JT was successful in this court in relation to Ground 1 of its appeal (see paragraphs 103–120 of our substantive judgment), which occupied a considerable amount of the evidential and legal argument. (iii) Finally, it is fair to observe that the final outcome in this court (namely, a finding that Mr Wood was unfairly dismissed) was not one which he himself advanced: rather, he was seeking to uphold the Royal Court’s remittal of the matter to the Tribunal for a number of issues to be reconsidered, and we have held that to represent the wrong solution. 6. For this accumulation of reasons, we consider that justice would best be served by making no order as to costs, either of the appeal to this court or of the appeal from the Tribunal to the Royal Court. We are not persuaded by JT’s argument that an adverse costs order should be made against Mr Wood, not least because he is the overall winner and the settlement offer made by JT was conditional. Nevertheless, this case has involved an enormous amount of lawyers’ time and court time, all of which could have been avoided. For this, and the other reasons outlined above, we make no order as to costs. Authorities JT (Jersey) Limited-v-Wood [2016] JCA 183.

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