



# EMPLOYMENT TRIBUNALS

***Claimant***

***Respondent***

**Mr D Emmanuel**

**v**

**(1) Transport for London;  
(2) Charlotte Johns**

**Heard at:** London Central

**On:** 25 May 2017

**Before:** Employment Judge Segal QC (Sitting alone)

**Representation**

**For the Claimant:** In person

**For both Respondents:** Mr Adkin, of Counsel

## JUDGMENT

The Claimant is ordered to pay costs of £125 to each of the Respondents (totalling £250).

## REASONS

1. The substantive claim in this matter was dismissed by a Judgment dated 10 January 2017 following withdrawal of the claim by the claimant.
2. Subsequently the claimant indicated that he wanted his claim to proceed. A considerable volume of correspondence ensued between the claimant, the respondents and the tribunal between (approximately) mid-January and April 2017 – by the end of which it had been made clear to the claimant by the respondents and by the tribunal that the tribunal had no jurisdiction to set aside its Judgment made on withdrawal.
3. The present hearing was convened by notice dated 3 May 2017 to consider: (1) the claimant's application for the dismissal of the claim to be set aside; (2) any respective application for costs arising from the claimant's conduct of proceedings. The claimant was put specifically on notice by the tribunal that he may be at risk of a costs order in relation to his recent conduct of proceedings and his application for the dismissal of the claim to be set aside. The tribunal recommended that he seek appropriate advice.
4. Today, there was a discussion between the claimant, Mr Adkin and myself concerning the (lack of) jurisdiction of the tribunal to set aside the Judgment of 10 January 2017. I made it clear that, by reason of rules 51 and 52, the decision in Khan v Heywood and Middleton PCT [2006] ICR 543, CA, and the decision in Barber v Staffs CC [1996] ICR 379, CA, the claim was at an end and the claimant could neither pursue the claim as originally brought in this tribunal nor pursue the substance of the claim by means of any fresh proceedings here or in any other jurisdiction.
5. On the issue of costs, the Respondents sought costs under two headings:-
  - 5.1. costs wasted by reason of vexatious or unreasonable correspondence sent by the claimant in the period January to April 2017 which was deliberately opaque and on its face irrelevant;
  - 5.2. costs wasted by reason of the claimant's vexatious or unreasonable conduct in seeking to have the Judgment of 10 January 2017 set aside, more particularly given that the position as to the tribunal's jurisdiction had

been made clear to the claimant by mid-April at the latest and given that he had been expressly put on risk of costs by the Respondents from 11 and 12 April 2017 respectively and by the tribunal by the notice of hearing of 3 May 2017.

6. I find that, as the claimant frankly conceded, he had written several letters which he described as “coded” (because he was concerned that they might be read and used with ulterior motive). That conduct was unreasonable within the meaning of r 76(1)(a).
7. I further find that, from about mid-April and certainly from 3 May 2017, the claimant’s continued attempt to have the Judgment of 10 January set aside was unreasonable conduct within the meaning of r. 76(1)(a) and involved him pursuing an application which had no reasonable prospect of success within the meaning of r. 76(1)(b).
8. Had the claimant been of considerable financial means, I would have ordered costs to be paid by him under those heads totalling somewhere between £1,000 and £1,500, taking account of certain wasted correspondence and of the £500 brief fee for counsel to attend today’s hearing.
9. I heard from the claimant about his ability to pay such an amount pursuant to r. 84. The claimant told me (and I accept) that he has not worked since leaving the First Respondent’s employment (despite efforts to find another job), he does not own his home but lives at his partner’s premises, he is on Job Seekers’ Allowance and has no significant resources.
10. Taking all the above matters into account, I made orders pursuant to rr 76, 78, 82 and 84 that the claimant should pay the sum of £125 to each of the two Respondents (the two costs orders totalling £250 combined).

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Employment Judge Segal QC  
30 May 2017