



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. B Challoner  
**Respondent:** Penny Hydraulics Ltd  
**Heard at:** Nottingham  
**On:** 12<sup>th</sup> November 2018  
**Before:** Employment Judge Heap (Sitting Alone)

## Representation

**Claimant:** No representations  
**Respondent:** Written representations

# JUDGMENT

The Respondent's application for a Preparation Time Order is granted and the Claimant is Ordered to pay to the Respondent the sum of £114.00.

# REASONS

## BACKGROUND

1. This hearing has proceeded on the papers as per the notice to that effect previously sent to the parties. It is to consider the application of the Respondent for a Preparation Time Order following on from the dismissal of the Claimant's claim at a hearing on 12<sup>th</sup> July 2018.
2. The dismissal of the claim in that regard was pursuant to of Rule 47 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 given the non-attendance of the Claimant at the full merits hearing.
3. By way of a Judgment and Reasons sent to the parties on the same day that the full merits hearing took place, I gave the Claimant an opportunity to make representations as to why a Preparation Time Order should not be made. No representations have been made by the Claimant.
4. The basis of the Respondent's application is that it is said that that the Claimant has been unreasonable in his conduct of the proceedings with regard to his non-attendance at the hearing on 12<sup>th</sup> July 2018. As a result of that, it is contended that the Respondent has been put to the time of preparing for that hearing, including collating and putting together a hearing bundle.

**THE LAW**

5. Rules 74 to 84 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (“The Regulations”) deal with the question of whether an Employment Tribunal should make a Preparation Time Order.
6. Rule 76 sets out the relevant circumstances in which an Employment Judge or Tribunal can exercise their discretion to make such an Order, which are as follows:

***“When a costs order or a preparation time order may or shall be made***

**76.—***(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, where it considers that—*

- (a) a party (or that party’s representative) 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.*

*(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction or where a hearing has been postponed or adjourned on the application of a party.*

*(3) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal shall order the respondent to pay the costs incurred as a result of the postponement or adjournment if—*

- (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing; and*
- (b) the postponement or adjournment of that hearing has been caused by the respondent’s failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.*

*(4) A Tribunal may make a costs order of the kind described in rule 75(1)(b) where a party has paid a Tribunal fee in respect of a claim, employer’s contract claim or application and that claim, counterclaim or application is decided in whole, or in part, in favour of that party.*

*(5) A Tribunal may make a costs order of the kind described in rule 75(1)(c) on the application of a party or the witness in question, or on its own initiative, where a witness has attended or has been ordered to attend to give oral evidence at a hearing.”*

7. In short, therefore, there is discretion to make a Preparation Time Order where a party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing or conducting of the proceedings. Equally, the discretion is engaged where a party pursues either a claim or defence which has no reasonable prospect of succeeding or, to put it as it was termed previously, where a claim or defence is being pursued which is "misconceived".
8. With regard to unreasonable conduct it is necessary for the Tribunal to consider "*the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the Claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had.*" (**Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78**)
9. It should be noted that merely because a party has been found to have acted vexatiously, abusively, disruptively or unreasonably or where a claim or response has no reasonable prospect of succeeding, it does not automatically follow that a Preparation Time Order should be made. Once such conduct or issue has been found, a Tribunal must then go on to consider whether an Order should be made and, particularly, whether it is appropriate to make one. Particularly, when deciding whether an Order should be made at all and, if so, in what terms, a Tribunal is required to take all relevant mitigating factors into account.
10. In accordance with Rule 84, a Tribunal is entitled to have regard to an individual's ability to pay any award of costs both in relation to the making of an Order at all, or the amount of any such Order. However, it is not a mandatory requirement that such consideration must automatically be given.

## **CONCLUSIONS**

11. It is against that background, I come to consider the Respondent's application.
12. Firstly, was the Claimant's conduct in not attending the hearing unreasonable conduct? As I concluded on the last occasion, it was clear that the Claimant's non-attendance on 12<sup>th</sup> July 2018 was a conscious and voluntary decision. He had given all concerned the impression, by way of an email dated 4<sup>th</sup> July 2018, that he would be attending. He has not suggested otherwise, or that there was something impeding his attendance, in any communications to the Tribunal after that hearing. Indeed, there has been no contact from the Claimant whatsoever.
13. The Claimant was aware that the Respondent would be attending the hearing and that they would be put to the time and trouble of preparing for the same. If the Claimant did not intend to attend to prosecute his claim, then the reasonable course would have been to withdraw the proceedings or to notify the Respondent so that they could then take a view as to whether they would undertake any preparation.
14. It was unreasonable conduct for the Claimant to have made representations that he would be attending the hearing, when it appears that he had no intention of participating at all, and of failing to take one of the most important steps in the conduct of the claim.

15. I am therefore satisfied that in his deliberate action in not attending the hearing, and particularly in view of his representations suggesting to the contrary in an email just a few days before the hearing, the Claimant's conduct was unreasonable conduct. The effect of that conduct was to put the Respondent to the time and trouble of preparing for a hearing that it appears clear that the Claimant had no intention of attending.
16. Having determined that the Claimant's conduct was unreasonable, I turn then to consider whether a Preparation Time Order should be made and, particularly, whether it is appropriate to make one. As I have already observed, the Claimant has made no representations in respect of the Respondent's application. He has not suggested that he did not intentionally choose not to attend the hearing or argue against the Respondent's contention that his behaviour was unreasonable. He has offered no mitigation for his actions.
17. On that basis, I am satisfied that a Preparation Time Order should be made as it is appropriate to do so. That brings me to the sum that should be Ordered in that regard. The Respondent contends that it spent a full two days preparing for the hearing in terms of getting together the relevant paperwork and preparation generally and Mr. Penny who appeared on behalf of the Respondent on 12<sup>th</sup> July 2018 sought a Preparation Time Order at the appropriate rate of £38.00 over a period of 12 hours.
18. I do not accept that a Preparation Time Order in those terms is appropriate. The bundle prepared for the hearing was limited, running to only 43 pages. There is little within it that would not have been easily accessible from the Claimant's personnel file. The Respondent did not prepare any witness statements for the hearing. As such, I do not accept that it was necessary to spend a full two days preparing for the hearing. The papers and the issues were limited and relatively straightforward.
19. That being said, I do accept that it was necessary for Mr. Penny to have spent some time reviewing the papers and preparing for the hearing generally so as to enable Mr. Penny to defend the Respondent's position. I consider a period of three hours to be a reasonable period in that regard for preparation before the hearing.
20. I therefore make a Preparation Time Order in the Respondent's favour in the sum of £114.00. I cannot take into account the Claimant's means as I have no information about them.

---

Employment Judge Heap  
Date: 12<sup>th</sup> November 2018

JUDGMENT SENT TO THE PARTIES ON

.....  
.....  
FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.