



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Neath

**Respondent:** NSL Ltd

**Heard at:** Manchester Employment Tribunal (in chambers)

**On:** 05 April 2022

**Before:** Employment Judge Mark Butler

## Representation

Decided in chambers on the papers

# COSTS JUDGMENT

The claimant is ordered to pay the respondent wasted costs in the sum of £1,014.50.

# REASONS

## Introduction

1. The claimant's claims in this case were struck out in their entirety at an open preliminary hearing on 08 November 2021. This hearing was listed to consider whether the claims brought were out of time, and, if they were, whether to extend time in the circumstances. The claimant did not attend this hearing. He did not respond to efforts by the tribunal to contact him on that day, and there has been, at least to my knowledge, no contact with the tribunal from the claimant since.
2. At the conclusion of the hearing of 08 November 2021, Counsel for the respondent raised the question of costs. Given that the claimant was not in attendance, and there potentially being good reason for his non-attendance that was simply unknown to the tribunal, the respondent was invited to make an application for costs in writing. The claimant would then be afforded time to respond to the application.
3. Directions were sent to the parties. The respondent would make an application for costs in writing. The claimant could provide a response and give evidence of his

financial means, if he wanted financial means to be taken into account, and the parties were invited to request a hearing in person if they considered that to be necessary.

4. The claimant has not responded to this application for costs, nor the directions from the tribunal.
5. It is on the basis that neither party requested a hearing in this matter, nor objected to it being determined on the papers that this hearing was heard in chambers on the papers without the parties present.

Respondent's application for costs

6. The claimant was directed by Employment Judge Rice-Birchall in a Preliminary Hearing on 10 June 2021 to engage with the respondent with a view to agreeing a hearing bundle to be used at this hearing. He was further directed to send to the respondent a witness statement to explain why he brought his claim out of time by 29 October 2021. The claimant attended this telephone hearing.
7. The respondent makes its application for wasted costs on two grounds. First, the claimant has failed to engage with the respondent since the hearing of 10 June 2021. He did not make any contact or engage with the respondent with respect the bundle, nor did he send a witness statement as directed, and is therefore in breach of tribunal orders. And secondly, on the grounds of unreasonable conduct. The respondent submits that failing to engage in the process and then failing to attend the preliminary hearing without explanation is unreasonable conduct with the aim of inflating costs and causing unfairness towards the respondent.
8. The respondent has provided me with a breakdown of its costs. I have before me the total costs incurred in defending this claim, and a breakdown of the costs that have been incurred by the respondent since 10 June 2021.

Tribunal rules relating to costs

9. The tribunal rules provide as follows:

76. When a costs order or a preparation time order may or shall be made

(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

(2) A Tribunal may also make such an order where a party has been in breach of any order or practice direction .....

78. The amount of a costs order

(1) A costs order may -

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by an Employment Judge applying the same principles .....

(3) for the avoidance of doubt, the amount of a costs order under subparagraphs (b) to (e) of paragraph (1) may exceed £20,000.

80. When a wasted costs order may be made

(1) A Tribunal may make a wasted costs order against a representative in favour of any party (“the receiving party”) where that party has incurred costs—

(a) The Respondent incurred costs as a result of the improper, unreasonable or negligent act or omission on the part of the Claimant; or

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

84. Ability to pay

In deciding whether to make a costs, preparation time or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party’s (or, where a wasted costs order is made, the representative’s) ability to pay.

Conclusion

10. I am satisfied that the claimant has conducted these proceedings unreasonably. It seems that he had behaved reasonably in conducting them up until 10 June 2021, when he attended at a Preliminary Hearing before Employment Judge Rice-Birchall. However, thereafter, he has not engaged in the process at all, despite having full knowledge that he needed to and that there was a further preliminary hearing listed for 08 November 2021. This was compounded by his non-attendance at that hearing, for which there was no explanation given. The claimant has been given further opportunity to explain matters when he received directions from the tribunal in respect of the respondent’s application for costs. However, the claimant has not engaged with this either.
11. The claimant’s failure to engage with the respondent to produce a hearing bundle for today’s hearing. His failure to take any steps to produce a witness statement in accordance with the case management timetable. And his failure to attend at this hearing without explanation is all conduct that is unreasonable.
12. I therefore conclude that from the date of the telephone preliminary hearing, at which the claimant did attend, that being 10 June 2021, the claimant had acted unreasonably in the way that he conducted these proceedings.
13. I consider in these circumstances and given that the claimant did not respond to directions sent to him in respect of the application for costs, that it is appropriate to award costs in this case.
14. The claimant did not respond to direction to provide details of his financial means.

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He had this opportunity and has elected not respond to it. I have no knowledge of the claimant's financial position. In these circumstances I have decided not to take his ability to pay into account.

15. The final question relates to the amount to be awarded. As intimated above, this should and is limited to costs incurred after 10 June 2021. As it is only from this point that the claimant's conduct in this decision went from being reasonable to being unreasonable. I am grateful to the respondent for having responded to my request for this breakdown.
16. Having considered the rates and amounts claimed on the breakdown of costs incurred since 10 June 2021, I am satisfied that those figures are reasonable. This is calculated as being the sum of £1,014.50.
17. The respondent has incurred wasted costs in the sum of £1,014.50. This is because of the unreasonable conduct of the claimant. The claimant is ordered to pay wasted costs in the sum of £1,014.50.

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Employment Judge Mark Butler

Date: 05 April 2022

JUDGMENT SENT TO THE PARTIES ON

11 May 2022

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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