



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Ghufoor  
**Respondent:** Mazars LLP  
**Heard at:** East London Hearing Centre  
**On:** 11 July 2022 (In Chambers)  
**Before:** Employment Judge Crosfill

## COSTS JUDGMENT

1. The Claimant's costs of its application made by e-mail on 7 July 2021 are summarily assessed in the sum of £3,630.00
2. The Respondent is ordered to pay the Claimant the sum of £3,630.00

## REASONS

1. By an order made without a hearing on 16 July 2021 and included in a letter sent to the parties on 23 July 2021 EJ Jones made the following order:  
*'The Respondent is Ordered to pay the Claimant's costs in relation to this application on summary assessment'*
2. At a hearing that took place on 24 January 2022 it transpired that the assessment of the Claimant's costs had not yet taken place. In written submissions placed before me by Mr Gillie, who represented the Claimant the sum that was sought was identified as £1,278.00<sup>1</sup>. I made the following directions:
  - 2.1. That the Claimant file a schedule of costs and any submissions in relation to the principle to be applied on assessment by 31 January 2022; and
  - 2.2. That the Respondent makes any submissions by 7 February 2022.

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<sup>1</sup> It appears that that sum may have referred to a further application and I have had no regard for that when carrying out this assessment.

3. On 31 January 2022 the Tribunal receives a document from the Claimant's solicitors entitled 'Claimant's Assessment of Costs'. The sum claimed is £6,078.00.
4. On 7 February 2022 the Respondent's solicitors sent correspondence to the Tribunal including a letter sent under cover of an e-mail sent at 17:07 on 7 February 2022 in which the Respondent sets out its objections to the sums claimed by the Claimant.
5. The final hearing which was to have commenced on 19 April 2022 was postponed. REJ Taylor dealt with matters arising from that postponement and allocated me to undertake the summary assessment of costs.

#### Background to the costs order

6. It is clear from the application of 7 July 2021 that the Claimant was contending that the Respondent had breached orders of the Tribunal by failing to disclose documents in these proceedings. Very brief reasons were given for EJ Jones' order however it is apparent that she has concluded that the Respondent had failed to comply with orders of the Tribunal. It is to be inferred that she considered that the respondent's conduct of the proceedings was unreasonable for the purposes of rule 76(1)(a) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. That was a conclusion that was clearly open to her - **McPherson v BNP Paribas (London Branch) [2004] ICR 1398** and one which has not been appealed by the Respondent.

#### The scope of the costs order

7. In assessing the amount of costs to be paid a tribunal is not limited to awarding a sum that was incurred as a direct consequence of the unreasonable conduct but the unreasonable conduct is a factor to be taken into account when assessing what form the costs order should take - **McPherson v BNP Paribas (London Branch)**.
8. It appears to me that the order of EJ Jones has already prescribed the nature of the award of costs. She has stated that the Respondents must pay '*the costs in relation to this application*'. In other words she has decided that the Respondent should pay the Claimant's reasonable legal costs of making its application of 7 July 2021.
9. If I am wrong in my understanding of EJ Jones's order and it were open to me to exercise my discretion in relation to what costs in principle should be paid by the Respondent I would have come to the same conclusion. The application of 7 July 2021 was for specific disclosure and an unless order made under rule 38 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. EJ Jones did not actually make an unless order but considered it appropriate to make a costs order. I should not go behind EJ Jones' conclusion that the Respondent's conduct of the proceedings was unreasonable. Had the Respondent complied with its obligations in respect of disclosure, and the orders of the Tribunal then the Claimant's application would not have been necessary. If I were exercising any original discretion I too would have concluded that the Respondent should pay the reasonable legal costs of the application itself. I would not have made any wider order.

10. I do not understand the parties to be suggesting any other approach. The issue between the parties appears to be whether any particular item in the Claimant's costs schedule is a cost of the application and/or whether it is reasonable for the Respondent to be ordered to pay the sum claimed.
11. I remind myself that an award of costs is intended to be compensatory and not punitive - **Lodwick v Southwark London Borough Council [2004] IRLR 554.**

The cost claimed – item by item

12. EJ Jones has ordered that the costs are assessed summarily. It is clear that she means that the costs should be assessed under rule 78(10(a) of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.
13. Under the Civil Procedure Rules 1998 a judge may make an order on either the standard basis or under the indemnity basis. On either basis costs will not be ordered which have been unreasonably incurred or are unreasonable in amount. I should take the same approach. I shall look at the costs on an item-by-item basis and then make a wholistic approach when assessing the total.
14. In the Respondent's representations no issue is taken in respect of the hourly rate charged by the Claimant's representative. I would accept that an hourly rate of £340 per hour is not excessive for a partner in Central London.

3 hours 'reviewing correspondence and Counsel's draft application for specific disclosure'

15. It is clear from the schedule of costs that the application sent on 7 July 2021 was drafted by Counsel and then approved by Ayesha Qureshi. The application itself is 11 pages in length. It sets out some basic legal propositions in relation to the principles to be applied on any application for specific disclosure and the relevant tribunal rule. It is an accurate although brief summary of the principles (although it omitted mention of **Santander v Bhara**). The application sets out rule 38 (unless orders) and refers to two relevant authorities.
16. Whilst I consider that it is generally unnecessary to remind an Employment Judge of the powers contained in the rules of procedure I cannot criticise a party who wishes to briefly set out any uncontroversial principles. I mention the basis nature of the legal submissions as it took me less than a minute or two to read the 4 introductory pages of the application.
17. The application then sets out a table of the documents sought by the Claimant. There are 13 categories of document and in each case the justification for seeking the document is set out by reference to the list of issues (which I assume had been agreed). I would accept that that is a proper and proportionate way to make an application. It is clear that in many if not all cases the table and schedule of documents sought refers back to previous correspondence between the parties. I am satisfied that compiling this table, and the schedule, would have entailed somebody reviewing that correspondence.
18. The application attaches a chronology dealing with correspondence about disclosure. The events set out in that chronology are then repeated in a witness statement of Ayesha Qureshi dated 6 July 2021. That witness statement does not

deal with why it is said that documents should be disclosed but focuses only on the timing of requests and responses. It quotes a great deal of correspondence. It is 12 pages long but can be read in about 15 minutes.

19. As I Ayesha Qureshi does not include an item for preparing a witness statement am going to assume that the witness statement was drafted by Mr Gillie.
20. In the Respondent's representations it is said, correctly that an application for specific disclosure can and usually will be made in correspondence. Whilst that is true there can be no objection to an application being made more formally provided that the costs of doing so are not unreasonable.
21. The difficulty I have with this item is that it appears to be a claim for 3 hours for reviewing the work carried out by Mr Gillie. Mr Gillie is a specialist Barrister who has charged fees of £2,005 for his work in preparing the application.
22. I would accept that it is not unreasonable for a solicitor to read through and check any document prepared by Counsel.
23. I consider the sums charged for reading and checking the application are excessive. I consider that there has been an unnecessary and disproportionate duplication of work. I consider that a competent lawyer, who had had conduct of the case, would take no more than 1 hour to approve this straightforward application.
24. I consider that 1 hour at £340.00 is a reasonable cost of this work.

Preparation – 3 hours

25. Apart from a suggestion that it took 3 hours to prepare a 3-page schedule of costs there is no indication of what work was done to justify a claim of in excess of £1,200. There was no hearing of this application and it is quite unclear what might be meant by 'preparation for court proceedings'. I am unable to identify any work falling within the scope of the order that was made.
26. I would accept that it is appropriate to award the reasonable costs of a costs application in these circumstances. I would therefore accept in principle that the Respondents should pay the reasonable costs of a schedule of costs. A solicitor is obliged to keep a record of the sums that a client is expected to pay. A simple schedule of costs such as the present one requires only that that information is extracted from that record.
27. I am surprised at the suggestion that exactly 3 hours were spent on a basic task of preparing a 3 page widely spaced schedule.
28. I consider that it is appropriate to award 20 minutes for this task at the rate of a partner. The task might have taken longer but could have been delegated to a more junior employee.

'Correspondence including e-mails to the Claimant., Counsel and the Tribunal' – 1 hour

29. I would accept that Counsel would have needed some written instructions. I would accept that the Claimant was entitled to know of and be consulted about the

application. I do not consider that a claim of 1 hour for this work is unreasonable (but see my comments on duplication below).

Telephone calls/Attendance – 2 hours

30. I consider that there is duplication between this item and the communications claimed for above. In reality this was a straightforward application. It required little explanation. I am surprised by the fact that there has been no breakdown of these telephone calls or why they took a total of exactly 2 hours.
31. Making an allowance for the overlap with the item above (which I have allowed in full) I consider that no more than 40 minutes should be allowed as a reasonable cost against this item. That would permit one 20-minute call to the Claimant and one to Counsel to supplement and explain any written communications. Any further costs are in my view unreasonable..

Counsel's fees.

32. I have noted Mr Gillie's expertise and whilst I consider that the basic task that he undertook was straightforward he did need to compile a great deal of information.
33. I consider that Mr Gillies fees are broadly in line with what is charged by many specialist barristers.
34. I do find that it was unnecessary to compile a chronology and then duplicate that work in a witness statement but would not imagine that that added to the overall length of the task undertaken.
35. I have significantly reduced the fees claimed by Mr Gillies instructing solicitors on the basis that it was unnecessary duplication. I have made some assumptions about who did what. Whether those assumptions are right, I am confident that overall there has been duplication of work claimed for that is unreasonable and unnecessary.
36. Overall I consider it appropriate to allow the fees claimed by Counsel as a reasonable cost. Any duplication is accommodated by reducing the costs claimed elsewhere.

Overall conclusions

37. I have allowed 3 hours (1 + 20 mins + 1 + 40mins) of Ayesha Qureshi's time at £340 per hour. I have allowed Counsel's fees of £2,005. Vat must be added as I assume that the Claimant cannot recover input VAT.
38. The total sum that I find that it would be reasonable for the Respondent to pay the Claimant in accordance with the Order of EJ Jones is £3025 + VAT of £605 = £3630.00.

39. I have looked at this sum as a whole and asked myself whether those costs were reasonably incurred and were reasonable and proportionate. I find that they are and therefore I award that sum.

**Employment Judge Crosfill**  
**Dated: 11 July 2022**