



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Dale Robinson

**Respondents:** (1) Burtech Engineering Ltd  
(2) Burtech Precision Ltd

**Heard at:** Leeds (by video link) **On:** 13 May 2022

**Before:** Employment Judge R S Drake

**Representation:**

Claimant: In Person  
Respondent: Mr K Burnett (Director)

## JUDGMENT

1. Under Rules 75 and 76 I award to the Respondents and the Claimant shall pay to them solicitors the sum of £584.25.68 for preparation time costs incurred from the commencement on 22 May 2021 and pursuit of his claims vexatiously and unreasonably upto the date of their dismissal by withdrawal on 21 September 2021

### REASONS

2. I heard oral evidence from the Claimant in person (both in response to the costs claim and his ability to meet it and his income and means) and from the Respondents' director Mr K Burnett who both gave their testimony in solemn form on Affirmation and did so candidly.
3. The relevant law enshrined in the Employment Tribunals (Constitution and Rules) Regulations 2013 provides as follows:

“Rule 75(2) - a preparation time order is an order that a party make a payment to another party in respect of the receiving parties preparation time while not legally represented. Preparation time means time spent by the receiving party in working on the case except for the time spent at any final hearing.”

“Rule 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 party (or its representative) has acted vexatiously, abusively, disruptively, or otherwise unreasonably in either the bringing of the proceedings or the way that the proceedings have been conducted" (my emphases relevant to this case as per my findings below)"

4. The facts I found and the findings I make in applying the Rules are as follows:-

4.1 Before the claim was commenced by the Claimant, he was advised by an accredited representative of a trades union called Unionline and he continued to be advised by different representatives of that organisation up to the point in time in September 2021 when they declined to act for him because they advised him that his claims had no merit. Only evidence I find that they could have advised him of this before he commenced his claims and therefore should have done so. Furthermore, he is fixed with the fact that because he was represented in the issuing of his claim, he can be construed as understanding everything which his representative understood or should have understood.

4.2 The substantial bundle of documentary evidence made available by with the Respondents early this year related mainly to the issues in the claim but not the issues as to the costs they had incurred once the claim was commenced. Therefore, the absence of that evidence in documentary form today has no bearing on the key issues of what I had to determine

4.3 The key issues for me were whether the Claimant in issuing or concluding his claim had acted vexatiously, abusively, disruptively, or otherwise unreasonably, and if so whether I should therefore consider making a costs order against him, which in this case would be limited to preparation time costs because the Respondents were not professionally represented.

4.4 I concluded on the basis of the evidence before me that the complaints were doomed from the start eventually to fail, that his union had advised him of this part way through the proceedings and should have known to advise him of this before the proceedings were commenced. I therefore conclude that though he did not act abusively his doomed claim isn't and he continued to pursue it unreasonably Up to the point when he withdrew and his claims were dismissed on withdrawal.

4.5 The Respondents' claim for preparation time costs is fully set out in their letter to the Tribunal dated 5 October 2021. I concluded that it is clear that they are claiming for time engaged in investigating the basis of what they perceived to be a counterclaim for overpaid wages. I had already advised that because the Claimant was not pursuing a breach of contract claim, the Respondents could not pursue a counterclaim in this Tribunal for breach of contract claim themselves, and that much of the time they claimed for preparing their response was not allowable. I

assessed that of the 18 hours claimed, they could reasonably be attributed to 6 hours to their ET3 response pure and simple.

4.6 the respondents also claimed 14.5 hours four time engaged in surveillance of the claimant but I concluded that again this related to their counterclaim and their reason for dismissing the claimant but not to the claims he is actually pursuing in these proceedings. However, I concluded that beyond preparation of the response, the respondents were entitled to claim further 4 hours of preparation time to get the case ready for hearing and a further 4.25 hours 4 finished with a CAS and preparation for today's hearing.

4.7 thus that it was reasonable to allow costs for preparation time be assessed for a total of 14.25 hours at the current maximum statutory rate of £41.00 per hour and thus a total of £584.25

5. Accordingly, having assessed ability to pay and after limiting the Respondent's claims purely and only to time engaged in responding to the claim as distinct from researching the basis of the counterclaim the Tribunal does not have jurisdiction to hear, I assessed the Respondents' allowable preparation time cost that the Claimant shall pay to them in the total sum of £584.25. I give Judgment accordingly.

Employment Judge R S Drake

Date 13 May 2022

**Note**

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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