



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Rashid  
**Respondent:** Tesco Stores Limited

## JUDGMENT

No order for costs is made on the respondent's application for costs dated 14 April 2022.

## REASONS

### Introduction

1. This is the Judgment in relation to the respondent's application for costs following the dismissal of the claimant's claim on 28 March 2022.
2. This Judgment and Reasons are to be read in conjunction with the Judgment and Reasons dismissing the claimant claims pursuant to Rule 47 of the Employment Tribunal Rules of Procedure 2013 ("the Rules") sent to the parties on 29 March 2022 ("the dismissal judgment").
3. Following the dismissal of the claimant's claim, the respondent's solicitors applied for an order for costs against the claimant by email of 14 April 2022. On 27 April 2022 the tribunal wrote to the claimant informing him of the respondent's application and inviting him to make representations to indicate whether you wish the matter to be dealt with at a hearing.
4. Nothing was heard back from the claimant. The respondent's solicitors sent a chasing email to the tribunal on 17 August 2022, but regrettably this matter seems to have fallen between the administrative cracks and has not been actioned. I apologise to the parties for the delay.

### The application

5. The Respondent applies for an order under rule 76(1)(a) of the Rules that the Claimant pays its costs incurred in the period between 22 September 2021 and the date of its application, on the basis that he has acted vexatiously, abusively, disruptively or otherwise unreasonably in conducting the proceedings in that period.

6. The respondent supports its application with reasons set out in paragraph 2 of its application which largely mirror the facts set out in the Factual Background section of the dismissal judgment. These facts will not be repeated, but in essence the claimant applied for a postponement of the 28 March 2022 hearing on 29 March 2022. This was refused on 21 March 2022 by Employment Judge Spencer. The claimant renewed his application for a postponement at 7.57am on the morning of the hearing. The respondent and its witnesses and counsel attended the CVP hearing, while the claimant did not. A further email was sent to the claimant advising him that his latest application to postpone the hearing was not granted, and that the hearing would resume at 2 pm. The claimant sent a further email indicating that he would not be able to join the hearing at 2 pm.
7. The respondent applied for the claimant's claims to be dismissed under Rule 47, and the tribunal dismissed the claims.
8. In its application, the respondent observed the effect the claimant's conduct have had on it, causing it to incur costs for preparing for the hearing on 28 March 2022 which the claimant failed to attend, and further counsel's fees and costs for preparation of a cost application. The respondent observed that the claimant was warned through correspondence that unreasonable and disruptive conduct could lead to an application for costs being made against him. The respondent indicated that it would be content for the matter to be dealt with on the papers without a hearing.

### **The law**

9. Rule 75 ET Rules provides:

*(1) A costs order is an order that a party ('the paying party') make a payment to—*

- (a) another party ('the receiving party') in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative;*

10. The power to make a costs order is in Rule 76 which provides:

*(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;*
- (b) any claim or response had no reasonable prospect of success;*

11. Rule 84 ET Rules provides:

*"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".*

12. Costs orders are the exception rather than the rule in employment tribunal proceedings, but that does not mean that the facts of the case must be exceptional (*Power v Panasonic (UK) Ltd* UKEAT/0439/04).
13. Such awards can be made against unrepresented litigants, including where there is no deposit order in place or costs warning (*Vaughan v London Borough of Lewisham* UKEAT/0533/120). However, a litigant in person should not be judged against the same standards as professional representative (*AQ Ltd v Holden* [2012] IRLR 648).
14. In terms of abusive, disruptive or unreasonable conduct, “unreasonableness” bears its ordinary meaning and should not be taken to be equivalent of “vexatious” (*National Oilwell Varco UK Ltd v Van de Ruit* UKEAT/0006/14).
15. Guidance has been given by the Court of Appeal in *Barnsley Metropolitan Borough Council v Yerrakalva* [2012] IRLR 78 on the approach to assessing unreasonable conduct:

*“The vital point in exercising the discretion to order costs is to look at 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”.*
16. The tribunal does not need to identify a direct causal link between the unreasonable conduct and the costs claimed (*MacPherson v BNP Paribas (London Branch) (No 1)* [2004] ICR 1398).

### **Conclusions**

17. I do not find that the respondent has established that the claimant’s conduct reached the threshold of unreasonable and disruptive conduct which would then have allowed me to consider whether to exercise my discretion to award costs, and if so, in what amount.
18. The claimant was a litigant in person, and I do not judge him by the standards of a professional representative. The impression I gained of the whole of the claimant’s conduct was that he applied, unsuccessfully, for a postponement, which he sought to renew once more on the day of the hearing. A competent legal adviser would almost certainly have advised against such a tactic. It is understandable, however, that a litigant in person who was in the probationary period a new job, which he needed to keep to provide for his family might not take the sensible approach. A litigant in person almost certainly does not know that tribunals will not revisit a case management decision unless there has been a change of circumstances or the interests of justice demand it. A litigant in person might think they could chance their arm and have another bite at the cherry. While I find the claimant was imprudent, his conduct did not cross the threshold to warrant making an order for costs.
19. In the circumstances I make no order for costs against the claimant.

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Employment Judge **Heath**

Date 13 April 2023\_\_\_\_\_

JUDGMENT SENT TO THE PARTIES ON

.14/04/2023

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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