EMPLOYMENT TRIBUNALS

Claimant: Mr Alan Morrow

Respondent: Totalserve (Wholesale) Ltd

HELD AT: Manchester (in person) **ON:** 8th September 2023

BEFORE: Employment Judge Kathryn Gibson (sitting alone)

REPRESENTATION:
Claimant: Not in attendance
Respondent: Mr Williams, Counsel

COSTS JUDGMENT

The Claimant shall pay the respondent the sum of **£8,779.50** (inclusive of VAT) in costs.

REASONS

Introduction

1. The claimant was employed by the respondent as a delivery driver between 1st February 2013 and 7th December 2021.
2. On 3rd November 2021 the claimant was involved in a road traffic incident whilst driving a vehicle owned by the respondent. He had driven the vehicle through flood water and the vehicle had become stuck. The claimant was suspended on 4th November 2021.
3. The claimant was subsequently dismissed on 7th December 2021 by the respondent for gross misconduct following a disciplinary hearing.
4. Taken from the claimant's particulars of claim dated 6th April 2022, the claimant averred that he was unfairly dismissed. His view was that the disciplinary procedure was flawed as he believed the disciplinary hearing lasted five minutes and relevant evidence was not obtained. He also believed that his actions did not amount to gross misconduct, as part of the road had collapsed, causing the vehicle to become stuck.
5. Taken from the respondent's grounds of resistance, the respondent averred that the claimant had taken a short cut, the road did not collapse and photographic

evidence had been obtained by the respondent to demonstrate that. The respondent did not obtain the Police report at the time of the disciplinary hearing as they did not believe it to be fundamental to the investigation.

6. The claimant did not appeal the dismissal, but he did subsequently make an application for unfair dismissal.
7. The claimant withdrew his application for unfair dismissal on 6th February 2023.
8. On 27th February 2023 the respondent made an application for costs. The respondent's application was in relation to costs incurred in responding to the claimant's claim for unfair dismissal and also the costs hearing itself.

This Hearing

9. A 74 page bundle of documents was provided that the respondent had prepared specifically for this costs hearing. A 221 page bundle was also provided that related to the unfair dismissal claim.
10. The claimant did not attend the hearing. Prior to the hearing starting, several attempts were made to contact the claimant by telephone and email. The Tribunal decided that this hearing could proceed in the claimant's absence and that it was in accordance with the overriding objective to do so for the following reasons –
    a. The notice of hearing was sent out to parties on 23rd March 2023.
    b. The claimant applied for a postponement on 4th September 2023, stating *"Would it be possible to postpone this hearing to enable me to gather further information. I currently don't have any legal representation and my previous solicitors are collating all the information relating to my case."*
    c. This application was refused by Judge Butler, on the basis that the claimant had known about the hearing since 22nd March 2023 and had ample time to prepare.
    d. Judgment was sent out to parties on 7th September 2023. However, this was sent to the claimant's previous solicitors. They attempted to forward this email to him, however it was sent to a different email address than the address the Tribunal have on record.
    e. The Tribunal did send the CVP link to the claimant on 7th September 2023 at the email address on record, which is the same as the email address he sent his request to withdraw from.
    f. The Tribunal made several attempts to call the claimant on the morning of the hearing and also emailed him. He did not answer or return calls, nor did he acknowledge receipt of the email.
    g. Submissions were made on this point by Mr Williams, who stated that the claimant had ample opportunity to prepare for the hearing, he was aware of the hearing and had chosen not to attend, he had been sent the CVP link and as such he should have attended today. He went on to say that the claimant had made requests to adjourn hearings throughout the proceedings, he has not engaged with the respondent when letters have been sent to him and he does not believe that the claimant could have reasonably believed that the hearing would be postponed, given the lateness of his application and also the CVP link being provided to him.
    h. Based on points a – g, the Tribunal made the decision to hear the application in the claimant's absence, as he had been given reasonable opportunity to make representations in response to the application for costs and had chosen not to attend.

Respondent's Position

11. Mr William's submissions were in large a repetition of the detailed application letter from Marsden Rawsthorn Solicitors Ltd on behalf of the respondent.
12. The respondent's position was that the claimant had acted unreasonably in bringing the proceedings, conducting the proceedings and that any claim or response had no reasonable prosects of success.
13. The costs total applied for was £10,847.50, covering the period from 17th May 2022 to 8th September 2023.

Unfair dismissal claim

14. The basis of the respondent's claim for costs in relation to the unfair dismissal claim was that the claimant had acted unreasonably in bringing the proceedings and in the way that he had conducted proceedings. The respondent is also of the view that the claimant had no reasonable prospects of success when making the claim.
15. In support of the application for costs the respondent set out a chronology of the proceedings and their submissions in relation to them.
16. Beyond the dates provided in the introduction to this Judgment, Mr Williams provided the following chronology and submissions –
    a. A hearing had been listed for 31st August 2022 to hear the unfair dismissal claim. The hearing was postponed for administrative reasons by the Tribunal and relisted to take place on 21st October 2022. Parties had been notified of the new hearing date on 21st June 2022 and at that time the claimant was represented.
    b. On 24th June 2022 the respondent sent a letter to the claimant detailing their position in relation to the collapsed road and their views on the merits of his case. They had now obtained a copy of the Fire Service report, which stated *"it was initially believed, based upon information provided by the driver of the vehicle that the road had partially collapsed. The scene of the incident was revisited two days later by Fire Service personnel, after the flood water had receded. There was no evidence that the road had in fact partially collapsed and it appeared the vehicle had been driven into a side ditch which had not been visible due to the flood water."*
    c. The letter of 24th June 2022 also stated *"should your client withdraw his Employment Tribunal claim by no later than 1st July 2022, it will not pursue your client for their legal costs incurred to date. If, however, your client continues with his claim, our client will seek recovery of all their costs incurred in defending these proceedings and we reserve the right to refer this letter to the Tribunal on the issue of costs."*
    d. The claimant did not respond to the letter and he did not subsequently withdraw.
    e. The respondent sent the claimant a second letter on 6th October 2022 by way of email at 10.34am, again advising on their views of the claimant's merits. The letter stated *"We will be sending our instructions to our client's barrister on 14th October 2022. Our client therefore invites your client to withdraw his claim by no later than 4pm on 13th October 2022 before our client incurs the brief fee. Should your client continue with his claim, we*

reserve the right to provide the Tribunal with a copy of this letter and our letter of 24th June 2022 on the issue of costs."

f. At 12.25pm on 6th October 2022, the claimant's solicitor submitted a request for a postponement on the basis that the claimant had Jury Service starting on 17th October 2022, the hearing being listed for 21st October 2022. The letter stated *"we enclose an email from HM Courts and Tribunals Service confirming the juror number, date, time and location."* However, as Mr Williams submitted and as was noted from this document, the date and time of the email was seemingly covered on the email header.

g. The respondent on 11th October 2022 consented to the postponement by way of email, to both the Tribunal and the claimant's solicitor. The email also expressed concern regarding the lateness of notice given by the claimant and requested that the claimant provide the dated he became aware of Jury Service.

h. On 12th October 2022 the claimant's solicitor sent an email to the respondent's solicitor stating *"We are instructed to make a counter-offer to your client, as follows:*

   i. *Your client pays our client £1,000 as damages*
   ii. *Your client agrees to withdraw his Tribunal claim*
   iii. *Your client agrees not to pursue our client in respect of allegation made in your client's letter before action dated 21st July 2022."*

i. Mr Williams submitted that this email did not respond to the issue relating to Jury Service, nor did it respond to the substance of the email of the letter dated 6th October 2022 and advanced that the respondent believed the claimant had deliberately not included or provided the Jury Service information and was hoping to now get a settlement. Mr Williams submitted that the claimant has never at any time since produced the information in relation to Jury Service.

j. The respondent wrote to the claimant on 18th October 2022 declining the offer to settle.

k. On 13th October 2022 the postponement was granted and a new Hearing listed for 15th February 2023.

l. On 30th January 2023 the claimant's solicitor came off record as acting.

m. On 6th February 2023, the claimant withdrew his application without reasons, the final hearing being due take place on 15th February 2023.

n. Mr Williams submitted that the claimant had behaved unreasonably in that he had waited since 13th October 2022 when the hearing was arranged to withdraw on 6th February 2023, close to the final hearing. The claimant had been in full possession of all the information during that time, including the Fire Service report, the respondent's position, he had the benefit of a solicitor throughout proceedings up to 30th January 2023 and as such will have had advice in relation to merits, which the respondent's had also included in their letters of 24th June 2022 and 6th October 2022.

17. Mr Williams submitted that the original application for unfair dismissal had no prospects of success. He submitted that it was made without the claimant appealing the respondent's decision to dismiss. It was also based on incorrect information, such as the claimant's position that the road had collapsed. The respondent had evidence to the contrary during the disciplinary hearing, by way of photographs of the road after the flooding had subsided.

18. Mr Williams however submitted that if a Tribunal had found in favour of the claimant during an unfair dismissal hearing, there would have been consideration given to the element of contributory fault and argued that the claimant drove the vehicle down a short cut he chose to take, then into a ditch having driven through flood water, as such any compensation would have been reduced accordingly.
19. Mr Williams also submitted that the Fire Service report was provided to the claimant during the proceedings, demonstrating that the information regarding a collapsed road had come from the claimant himself and upon further investigation by the Fire Service, it was found to be incorrect.
20. Mr Williams submitted that the claimant was given an opportunity to withdraw his application on 24th June 2022 but he did not withdraw, nor did he respond to the letter. Mr Williams accepted that the respondent would not have pursued costs at that point, should the claimant have withdrawn his application.
21. Mr Williams submitted that the claimant did not also respond to the second letter of 6th October 2022, instead requesting a settlement on 12th October 2022, suggesting that he was acting unreasonably and attempting to get settlement money in a case that had no merits.
22. In relation to the issue of the postponement request due to Jury Service, Mr Williams submitted that it is highly likely the claimant had more notice than he had given the Tribunal and believed there to be a deliberate failure to provide the date he was told about Jury Service.
23. Mr Williams submitted that the claimant had acted unreasonably in waiting until a few days before the final hearing to withdraw his application, given the number of months that had passed since the hearing date was set.
24. Mr Williams view was that the claimant had acted unreasonably throughout proceedings and should have known based on solicitor's advice, or having considered the evidence or the respondent's letters, that he had no prospects of success. Mr Williams view was that he had done this in the hope that the respondent would settle the claim.

Costs application

25. The basis of the respondent's claim for costs in relation to the application for costs was that the claimant had acted unreasonably in the way that he had conducted proceedings.
26. In support of the application for costs in relation to this hearing, the respondent set out a chronology of the proceedings and their submissions in relation to them.
27. Beyond the dates provided in the introduction to this Judgment, Mr Williams provided the following chronology and submissions –
    a. The respondent made an application for a costs order on 27th February 2023.
    b. The notice of hearing was sent to all parties on 22nd March 2023, listing the hearing for 8th September 2023.
    c. An email was received by the claimant's previous solicitors dated 17th August 2023 reiterating that they do not act for the claimant. This occurred because the Tribunal had mistakenly sent them some correspondence.
    d. The claimant requested to postpone the hearing on 4th September 2023.
    e. The request for postponement was refused on 7th September 2023.
    f. The claimant did not attend the hearing on 8th September 2023 and did not offer any explanation as to why.

28. Mr Williams submitted that the costs order application was as a direct result of the claimant's unreasonable behaviour in causing the claimant to incur further costs, having been advised of this risk on both 24th June 2022 and 6th October 2022 by the respondent's letters.
29. Mr Williams submitted that the claimant has continued to act unreasonably by way of not attending this hearing and also requesting that it be postponed on 4th September 2023, when he has had ample opportunity to prepare, attend and make representations.
30. Mr Williams again submitted that the claimant had continued to act unreasonably from the start of the unfair dismissal application, throughout the unfair dismissal proceedings and the costs application proceedings. He accepted that the Tribunal retains discretion as to whether to grant a costs order or not, but he argued that the threshold for doing so was clearly met in this case.
31. Mr Williams submitted that if the Tribunal does not find the claimant was unreasonable to bring the unfair dismissal case, it should find that the failure to withdraw when invited by the letter of 24th June 2022 was unreasonable, as was the lack of response to either letter, the lack of notice and evidence relating to the Jury Service and the lateness of which he was withdrew his case. Mr Williams referred the Tribunal to the case of **McPherson v BNP Paribas (London Branch) [2004].**

Ability to pay

32. In relation to the claimant's ability to pay should the Tribunal be minded to grant a costs order, Mr Williams submitted that the claimant has had ample opportunity to make representations in relation to his financial position and has not done so, as such he argued that the claimant's ability to pay should not be taken in to account.

Relevant Legal Framework

33. The power to award costs is contained in the 2013 Rules of Procedure. The definition of costs appears in rule 74(1) and includes fees, charges, disbursements or expenses incurred by or on behalf of the receiving party.

34. Rule 75(1) provides that a Costs Order includes an order that a party makes a payment to another party "in respect of the costs that the receiving party has incurred while legally represented".

35. The circumstances in which a Costs Order may be made are set out in rule 76. The relevant provision here was rule 76(1) which provides as follows:

> **"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."**

36. The procedure by which the costs application should be considered is set out in rule 77 and the amount which the Tribunal may award is governed by rule 78. In summary rule 78 empowers a Tribunal to make an order in respect of a specified amount not exceeding £20,000, or alternatively to order the paying party to pay the whole or specified part of the costs with the amount to be determined following a detailed assessment.

37. Rule 84 concerns ability to pay and reads as follows:

> **"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."**

38. It follows from these rules as to costs that the Tribunal must go through a three stage procedure: **Haydar v Pennine Acute NHS Trust UKEAT 0141/17/BA).** The first stage is to decide whether the power to award costs has arisen, whether by way of unreasonable conduct or otherwise under rule 76; if so, the second stage is to decide whether to make an award, and if so the third stage is to decide how much to award. Ability to pay may be taken into account at the second and/or third stage. The case law on the costs powers (and their predecessors in the 2004 Rules of Procedure) include confirmation that the award of costs is the exception rather than the rule in Employment Tribunal proceedings; that was acknowledged in **Gee v Shell UK Limited [2003] IRLR 82**.

39. If there has been unreasonable conduct there is no requirement for the Tribunal to identify a precise causal link between that unreasonable conduct and any specific items of costs which have been incurred: **McPherson v BNP Paribas (London Branch) [2004] ICR 1398**. However there is still the need for some degree of causation to be taken into account as the Court of Appeal pointed out in **Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78**:

> **"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."**

40. In relation to an application under rule 76(1)(a), according to the EAT in **Dyer v Secretary of State for Employment EAT 183/83 (20 August 1983)**, "unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to "vexatious".

41. Vexatious conduct was put in the following terms in **Attorney-General v Barker [2000] 1 FLR 759:**

> **"'Vexatious' is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly difference from the ordinary and proper use of the court process."**

41. In relation to an application under rule 76(1)(b) (no reasonable prospect of success), this test should be considered on the basis of the information that was known or reasonably available at the start of proceedings (see paragraph 67 of the

decision in **Radia v Jefferies International Limited [UKEAT/007/18/JOJ] ("Radia")**:

> **"Where the Tribunal is considering a costs application at the end of, or after, a trial it has to decide whether the claims 'had' no reasonable prospect of success judged on the basis of the information that was known or reasonably available at the start, and considering how at that earlier point the prospects of success in a trial that was yet to take place would have looked. But the Tribunal is making that decision at a later point in time, when it has much more information and evidence available to it, following the trial having in fact taken place. As long as it maintains its focus on the question of how things would have looked at the time when the claim began, it may and should take account of any information it has gained and evidence it has seen by virtue of having heard the case, that may properly cast light back on that question. But it should not have regard to information or evidence which would not have been available at that earlier time."**

42. The position where claims are withdrawn at the start of a hearing was considered by the Court of Appeal in **McPherson v BNP Paribas (London Branch) [2004] ICR 1398.** Mummery LJ observed that the question was not whether the withdrawal was unreasonable, but whether the proceedings had been conducted unreasonably. He went on to say the following:

> **"28. In my view, it would be legally erroneous if, acting on a misconceived analogy with the CPR, tribunals took the line that it was unreasonable conduct for employment tribunal claimants to withdraw claims and that they should accordingly be made liable to pay all the costs of the proceedings. It would be unfortunate if claimants were deterred from dropping claims by the prospect of an order for costs on withdrawal, which might well not be made against them if they fought on to a full hearing and failed. As Miss McCafferty, appearing for Mr McPherson, pointed out, withdrawal could lead to a saving of costs. Also, as Thorpe LJ observed during argument, notice of withdrawal might in some cases be the dawn of sanity and the tribunal should not adopt a practice on costs, which would deter applicants from making sensible litigation decisions.**
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> **29. On the other side, I agree with Mr Tatton-Brown, appearing for BNP Paribas, that tribunals should not follow a practice on costs, which might encourage speculative claims, by allowing applicants to start cases and to pursue them down to the last week or two before the hearing in the hope of receiving an offer to settle, and then, failing an offer, dropping the case without any risk of a costs sanction.**
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> **30. The solution lies in the proper construction and sensible application of [the rule]. The crucial question is whether, in all the circumstances of the case, the claimant withdrawing the claim has conducted the proceedings unreasonably. It is not whether the withdrawal of the claim is in itself unreasonable…"**

43. A well-argued warning letter can provide a basis for an order for costs if the recipient has unreasonably failed to engage properly with the points raised: **Peat v Birmingham City Council UK EAT/0503/1.**

44. As to the question of means or ability to pay, in **Vaughan v London Borough of Lewisham & Others (No. 2) [2013] IRLR 713** the EAT said this in paragraph 28:

> **"The starting point is that even though the Tribunal thought it right to 'have regard to' the appellant's means, that did not require it to make a firm finding as to the maximum that it believed she could pay, either forthwith or within some specified timescale, and to limit the award to that amount. That is not what the rule says (and it would be particularly surprising if it were the case, given that there is no absolute obligation to have regard to means at all). If there was a realistic prospect that the appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so**

that the respondents would be able to make some recovery when and if that occurred….It is necessary to remember that whatever order was made would have to be enforced through the County Court, which would itself take into account the appellant's means from time to time in deciding whether to require payment by instalments, and if so in what amount".

45. As noted by the EAT in **Howman v Queen Elizabeth Hospital Kings Lynn EAT 0509/12 (30 April 2013)** at paragraph 13, any tribunal when having regard to a party's ability to pay needs to balance that factor against the need to compensate the other party who has unreasonably been put to expense. The former does not necessarily trump the latter, but it may do so.

Discussion and Conclusions

46. Before addressing the main points of contention the Tribunal reminded itself that an award of costs is the exception in Employment Tribunal proceedings rather than the rule. The Tribunal has to be satisfied that there has been vexatious or unreasonable conduct, or that a case had no reasonable prospect of success, before the power to award costs arises.

Rule 76(1)(a)

47. The Tribunal considered whether the claimant was vexatious or unreasonable in bringing proceedings. The Tribunal was satisfied that proceedings were not pursued vexatiously or unreasonably at the time that they were brought.

48. The claimant brought proceedings on the basis that he found his dismissal to be unreasonable. The Tribunal cannot be satisfied as to whether he found it to be legally unreasonable or whether in layman's terms he found it to be unreasonable or unfair. He relied upon the procedure of the disciplinary hearing and the lack of what he considered to be relevant evidence. He subsequently engaged the services of a Solicitor who initiated unfair dismissal proceedings on his behalf, as is his right to do so.

49. The Tribunal finds however that the claimant was unreasonable in the way that he conducted proceedings.

50. During proceedings the claimant focused on his belief that the road had collapsed as opposed to any procedural issues with the disciplinary hearing. He was provided with clear evidence by the respondent on 24th June 2022, by way of a Fire Service report that was not available at the time of the disciplinary hearing. This report showed that the road had not collapsed and as such he had no further basis to continue with his claim. He was invited to withdraw his claim by 1st July 2022 by the respondent and assured they would not pursue costs if he did. The Tribunal finds that the claimant was unreasonable when he chose to ignore the letter and did not withdraw proceedings, as the collapsed road was the basis of his claim.

51. The claimant then ignored the content of a further letter sent on 6th October 2022, detailing that the respondent is going to incur further costs and requesting that he withdraw proceedings. The claimant did however request an adjournment on the same date due to Jury Service, but did not provide details of when he received the notice of Jury Service – which to date the claimant has not provided. The Tribunal also finds that ignoring the letter of 6th October 2022 and the circumstances

surrounding the adjournment request to be unreasonable. The Tribunal finds that the respondent should have responded to the second letter and also withdrawn proceedings at that time. The claimant should have at least been transparent in relation to when he received his notice of Jury Service.

52. The Tribunal finds the email sent on 12th October 2022 by the claimant, requesting settlement and assurances that the respondent will not pursue the claimant in the civil court to be unreasonable also. The email did not address either letter from 24th June 2022 or 6th October 2022, nor did it provide the requested evidence in relation to Jury Service. It could be argued that the offer of settlement was a commercial offer, however it is not one that the respondent needed to accept, on the basis that they were clear the claimant did not have any prospects of success, now that it had been proven the road did not collapse. The Tribunal finds that this was an attempt by the claimant to extract money from the claimant in the knowledge that his case had no prospects of success and to also attempt to save himself costs that could be awarded against him in the civil courts.

53. The Tribunal also finds that the submission of a request to withdraw on 6th February 2023, when the final hearing was arranged for 15th February 2023, to be unreasonable. The Tribunal finds that the claimant had ample time and opportunity to withdraw his claim prior to this date and had made a deliberate decision not to. Whilst his solicitor came off record on 30th January 2023, the Tribunal finds that the claimant should have and indeed could have withdrawn his claim many months earlier. The lateness of the withdrawal caused the respondent to incur significant costs preparing for a final hearing, as shown in their schedule of loss.

54. The Tribunal also finds that the claimant was unreasonable in his lack of engagement in the costs application proceedings. He has not provided any information in relation to his ability to pay nor has he engaged in the process at all. The claimant applied to adjourn the hearing four days before it was due to take place, which the Tribunal finds is unreasonable given that it has been listed since 22nd March 2023. He has also failed to attend the final hearing or to provide any explanation as to why he has not attended.

Rule 76(1)(b)

55. The Tribunal cannot be satisfied that the case had no reasonable prospects of success at the time that proceedings were brought. The Tribunal finds this based upon the claimant's belief at the start of proceedings - which was that the disciplinary procedure was flawed and that the road had collapsed, which he believed would have been supported by further evidence were it to be obtained, that was not produced during his disciplinary hearing. At the start of the proceedings the claimant argued that there was a lack of information available to him. This information did materialise during proceedings in the form of the Fire Service report and that report did at that point change the claimant's prospects of success, at which point the claimant should have withdrawn.

Costs warning letters

56. The respondent quite properly sent to the claimant an appropriate costs warning letter on 24th June 2022. The Tribunal finds that the claimant has unreasonably

failed to engage properly with the points raised by the date suggested to him of 1st July 2022. At that point it was clear that his case had no prospects of success. Had he have acted upon the points raised, the respondent would not have incurred further costs beyond that point and they would not have pursued costs against the claimant.

57. The respondent again quite properly sent a further letter to the claimant regarding costs on 6th October 2022. Again, the claimant failed to properly engage with this, causing the respondent to continue to incur costs.

Withdrawal shortly prior to final hearing

58. The Tribunal finds based upon the evidence considered that the claimant continued to pursue his case in the knowledge that he had no prospects of success. The Tribunal further finds that he pursued his claim almost to the final hearing in the hope of receiving a settlement offer. When this was not forthcoming, he withdrew his claim. The Tribunal finds that this was unreasonable conduct on the part of the claimant.

Ability to pay

59. Notwithstanding that the Tribunal does not have to have regard to the claimant's ability to pay, in this case the Tribunal has not had the ability to consider this. This is because the claimant has not engaged with the costs application proceedings, save for a last minute request to adjourn and he has not provided any information relating to his finances. The Tribunal has also had regard to the impact of the claimant's unreasonable behaviour in relation to causing the respondent to incur unnecessary and significant expense, far beyond the point that was reasonable.

Summary

60. The Tribunal finds that the respondent has been put to significant expense due to proceedings that continued beyond 1st July 2022. That being the point the Tribunal finds the claimant began to act unreasonably in his refusal to withdraw proceedings, his lack of engagement with the respondent and in his furtherance of pursuing proceedings up to almost the final hearing, at which point he withdrew on 6th February 2023.

61. The Tribunal orders the claimant to pay £8,779.50 (inclusive of VAT) in costs.

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Employment Judge Kathryn Gibson

19/09/2023

JUDGMENT SENT TO THE PARTIES ON

22 September 2023

FOR THE TRIBUNAL OFFICE

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.

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