



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Kevin Legge  
**Respondent:** The Environment Agency

## FULL MERITS HEARING

**Heard at:** Norwich  
**On:** 16 January 2024 (Reading Day)  
17, 18, 19, 22, 23, 24, 26, 29, 30 and 31 January 2024  
**Before:** Employment Judge Postle  
**Member:** Mr D Hart (one Member sitting with the consent of the parties)

### Appearances

For the Claimant: In person  
For the Respondent: Mr Chegwidden, Counsel

## JUDGMENT

The Claimant is Ordered to pay a contribution towards the Respondent's costs in the sum of: **£20,000**

## APPLICATION for COSTS

1. At the conclusion of the Judgment, the Respondent's Counsel made an Application for Costs. The Respondent applying for an Order under Rule 76 of the Employment Tribunal Rules of Procedure 2013 that the Claimant pays a contribution to the legal costs since October 2022 in defending these proceedings (currently standing at over £106,000 ), the contribution required was £20,000.

2. The basis of the Application being:-
  - 2.1. As the Claimant's conduct of the Unfair Dismissal proceedings was unreasonable in that the Claim was withdrawn only on the last day of the evidence at the conclusion of the Full Merits Hearing, without there being any change in the parties' respective position since October 2022;
  - 2.2. As to the Discrimination Claims (sex and lack of belief) the Claims manifestly had no substantial connection to a protected characteristic and were brought unreasonably and vexatiously despite their having on the evidence no prospect of success;
  - 2.3. As to the Victimisation Claim, despite nominally bringing such a Claim and forcing the Respondents to defend it, the Claimant effectively abandoned the Claim at Trial, neither raising it by even a single question in cross examination or making any submissions upon it in closing. This Claim also was unreasonably and vexatiously brought with no prospect of success;
  - 2.4. Upon hearing in the Tribunal's Judgment, the findings and conclusion of the Tribunal support the fact that this Claim had no reasonable prospect of success and was a vexatious Claim; and finally,
  - 2.5. The Respondents, during the course of this Hearing, particularly on 19 January 2023, emailed the Claimant without prejudice save as to costs in that letter, inviting the Claimant to consider his position given the case had gone so far and if he was willing to withdraw his Claim and communicate such agreement to the Respondents by 12:30 on Tuesday 23 January 2023, the Respondents would not pursue the Claimant for any Costs. It was pointed out to the Claimant in this letter the reasons why the Claims would fail and that if the Claimant continued there would be at least another £6,000 in Counsel fees incurred for the remaining days left for Hearing.
3. As Counsel for the Respondents had provided a written Skeleton Argument on the Costs Application and after the Judge explaining to the Claimant the basis of the Application, it was agreed to allow the Claimant time to read the Respondent's Skeleton Argument and the matter was put back for half an hour.
4. Upon resumption, Mr Legge addressed the Tribunal. He accepted he was not really ready for the case, he genuinely believed he had a case, he has not taken any legal advice, he accepted he had not addressed the legal issues, he felt pressure in pursuing the case and he felt the case was complex. He did, during the course of the Hearing withdraw some of the victimisation and direct discrimination claims and indeed, ultimately withdrew the unfair dismissal case, though wanting to reinstate it as referred to in the Judgment.
5. The Claimant went on to say that he would suffer hardship, that he had no money, although he continues with his Psychotherapy business. He admitted, albeit reluctantly, on average his income from that was around £18,000.

Although it is suspected the Claimant may be being economical with the truth over the extent of his earnings. The Claimant believes as a result of this case he will lose clients and may well be investigated by the UK Council of Psychotherapy.

6. As previously indicated, the power to award costs or consider a Costs Application arises under Rule 76 of the Employment Tribunal Rules of Procedure 2013, which provides,

**A costs order or a preparation time order may or shall be made:**

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) 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

7. The procedure for making a Costs Application is set out in Rule 77, in particular, such Costs Application can be made at the conclusion of the Hearing after there has been an opportunity to make representations.

8. As to the amount of Costs, under Rule 78,

**The amount of a costs order**

78. (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.

9. Rule 84 provides, that the Tribunal may, I emphasise 'may', have regard to the paying party's ability to pay. It is put as follows:-

**Ability to pay**

84. In deciding whether to make a costs, preparation time order, 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.

10. The way Employment Tribunals approach consideration as to whether a Costs Order should be made is in effect a three stage exercise, which is as follows:-

10.1. Has the putative paying party behaved in the manner prescribed by the Rules?

10.2. If so, it must then exercise its discretion as to whether or not it is appropriate to make a Costs Order (it may take into account the ability to pay in making that decision); and

10.3. If it decides that a Costs Order should be made, it must decide what amount should be paid, or whether the matters should be referred for an assessment.

11. Unreasonable is to be attributed in its ordinary and natural meaning and not to be interpreted as if it means something similar to vexatious.

12. In the case of vexatious, that is where an employee has brought a hopeless case without any expectation of recovering compensation out of a spite to harass the employer or some other improper motive. However, there may be more to it than motive and it has been said the hallmark of vexatious proceedings is 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. It involves an abuse of process of the Court meaning that by a use of the Court process for a purpose or in a way which is significantly different from the ordinary and proper use of the Court process.

13. In relation to no reasonable prospects of success, this is an objective test. It matters not that Claimants may genuinely believe themselves victim of wrongdoing contrary to Law, or they were acting on legal advice.

14. Whether a party has been professionally advised or genuinely believes they have been the victim of illegal wrongdoing, will be relevant to the decision as to whether or not to exercise the discretion.

15. As to means, the Tribunal has a discretion not an obligation to take into account means to pay.

## Conclusion

16. The Tribunal were unanimously of the view that the Claimant had behaved in the manner prescribed by the Rules. Particularly, that it was unreasonable for the Claimant to withdraw the Claim for unfair dismissal at the last moment and that that Claim was doomed to fail from the outset and had simply no reasonable prospect of success.
17. As to the discrimination Claims, again when one looks at the Judgment, there was no substantial connection to the protected characteristic, the Tribunal believe that they and the Claimant's motives were brought unreasonably and vexatiously. There was simply no correlation between what the Claimant was alleging on the protected characteristics.
18. As to the victimisation Claim, there was absolutely nothing in it. What made it worse was the failure by the Claimant to pursue this in the course of a number of days of cross examination with the Respondent's Witnesses.
19. It has to be seen that the Claimant was a Senior Manager; in particular intelligent and if he had stood back and looked at the whole thing objectively he would have realised on the factual matrix of his Claims, they simply had no reasonable prospect of success.
20. The Tribunal therefore exercise their discretion and it is appropriate to do so. in doing so we have considered the Claimant's means. The Tribunal was satisfied that the Claimant is disingenuous and economic with the truth as to the extent of his earnings from the Psychotherapy business and in any event, there is ownership of a residential property which could be the subject of a Charging Order. Given Howman v Queen Elizabeth Hospital UK EAT0509/12, the Charging Order could be subject to any payments made by the Claimant in the meantime be on the basis that it is not enforced until the Claimant's son reaches the age of 18. Having said that, it is to be noted of course that the Claimant is not the sole carer of his son and he shares care with his ex-wife.
21. Accordingly, the Tribunal makes an Order that the Claimant pay what is in effect a very small contribution towards the Respondent's costs in the sum of **£20,000**.

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**Employment Judge Postle**

18 – 03 - 2024

Sent to the parties on:

25 / 3 / 2024

For the Tribunal:

T Cadman

**Recording and Transcription**

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>