



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Allison

**Respondent:** Kingston upon Hull City Council

**Heard at:** Leeds (on the papers)

**On:** 14 August 2024

**Before:** Employment Judge Maidment

## JUDGMENT AS TO COSTS

The Claimant is ordered to pay to the respondent the sum of £1,500 in respect of its cost in defending these proceedings.

## REASONS

1. The tribunal having given its Judgment sent to the parties on 12 February 2024, the respondent made an application for costs on 13 February 2024. The tribunal notified the claimant of its intentions to determine the application on the papers, as requested by the respondent, but giving him an opportunity by 12 April to make representations and provide to the tribunal any relevant information as to his means to be taken into account, if relevant, in assessing his ability to meet any award of costs. Nothing was received from the claimant.
2. Pursuant to Rule 76 of the Employment Tribunals Rules of Procedure 2013 a tribunal may make a costs 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 bringing proceedings or the way that the proceedings have been conducted. The tribunal must first ask itself whether a party's conduct falls within the ambit of Rule 76. If so, it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party. Costs in employment tribunals remain the exception rather than the rule.

3. In the case of **McPherson v BNP Paribas 2004 ICR 1398 CA** Lord Justice Mummery expressed the view that it is not punitive and impermissible for a tribunal to order costs without confining them to those attributable to that conduct. The tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion, but that was not the same as requiring the receiving party to prove that specific unreasonable conduct by the other party caused particular costs to be incurred. While this view was clarified by him in the subsequent case of **Yerrakalva v Barnsley Metropolitan Borough Council 2012 ICR 420**, to recognise that causation is not irrelevant when deciding the amount of costs, he confirmed that the discretion to order costs involves looking at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct and in doing so to identify the conduct what was unreasonable about it and what effects it had.
4. The application here is on the basis of the claimant having behaved in a disruptive, vexatious or unreasonable manner (Rule 76(1)(a) or, alternatively, where he has been in breach of the tribunal's orders (Rule 76(2)).
5. The tribunal concludes that the claimant has indeed acted unreasonably in the conduct of these proceedings, which is in part illustrated by his failure to comply with the tribunal's orders on time or at all in terms of the provision of a schedule of loss, disclosure of documentation and the service of his witness statement. The claimant did ultimately send a brief email which the tribunal accepted as constituting a witness statement on 6 February prior to the commencement of the final hearing on 8 February 2024. The tribunal advised the claimant of the need to attend the hearing on that date at the Hull Employment Tribunal so that the claimant was in no doubt as to what was expected of him in circumstances where he had thus far failed to adequately engage with the proceedings he had brought and the requirements imposed by the tribunal's orders.
6. The claimant did not then attend the hearing on 8 February. The respondent had instructed counsel to appear on its behalf and had delayed those instructions until 6 February at which point it appeared that the claimant was at the very least presenting some evidence in support of his claims. Certainly, it incurred counsel's brief fee only at that very late stage in circumstances where it was seeking to avoid costs.
7. The expectation, therefore, which was known fully to the claimant was that he would attend the hearing on 8 February. He did not. He did not contact the tribunal to notify it that he would not be attending or to make any other application. In the circumstances of his failure to attend, his claims were dismissed.
8. To bring these proceedings and then failed to engage in them to the extent described up to a failure to attend a final hearing with no prior warning must constitute unreasonable behaviour. It is then in all the circumstances appropriate for the tribunal to exercise its discretion to award costs, the claimant having directly and obviously caused the respondent to necessarily

incur costs in circumstances where he has shown throughout these proceedings little willingness to actively pursue his claim.

9. In terms of quantification of costs, the amount of the brief fee sought as costs is entirely reasonable and those costs were reasonably incurred. It is appropriate that a costs order be made in that sum. This is in circumstances where the claimant has had an opportunity to make any representations both as to the respondent's application for costs and if his means/ability to pay any sum awarded against him ought to be taken into account. Again, the claimant has shown an unwillingness to engage with the proceedings.

Employment Judge Maidment

Date 14 August 2024

JUDGMENT SENT TO THE PARTIES ON

15 August 2024

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FOR THE TRIBUNAL OFFICE

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