



EMPLOYMENT TRIBUNALS

Claimant: Mr. O Iruagha

Respondent: Vale Cleaning Services Limited

Heard at: Cardiff

On: 29 and 30 January 2025

Before: Employment Judge Cawthray

Representation

Claimant: In person, not legally qualified

Respondent: Mr. Vines, Counsel

RESERVED COSTS JUDGMENT

Background to claim and costs application

1. The claim form was submitted on 23 April 2024. The claim form contained a complaint about money owed only.
2. On 2 July 2024 Respondent submitted a detailed factual response and set out its view that the claim had no or little prospects of success and applied for a strike out or in the alternative a deposit order. Within the response there was reference to the Respondent reserving its right to make a costs application.
3. On 4 July 2024 the Claimant applied to amend his claim to include a complaint of constructive dismissal.
4. A case management preliminary hearing was conducted by Employment Judge Russell on 13 July 2024. The application to amend the claim was permitted. At that hearing the Respondent asked Employment Judge Russell to issue a costs warning. She declined to do so, but did explain the powers of the Tribunal in relation to remedy, the need for the parties to cooperate and explain that without prejudice correspondence should not be sent to the Tribunal.
5. A two day final hearing took place on 29 and 30 January 2025.

6. After I gave oral judgment at the final hearing the Respondent said it wished to make an application for costs. The Respondent had prepared a costs application and bundle and a copy was handed to me and the Claimant. I explained the costs procedure to the Claimant and gave him an hour to consider and prepare.
7. Both the Respondent and the Claimant made oral submissions.
8. The Respondent seeks a cost order in relation to its legal costs, or a contribution towards its costs, in the sum of £14,897.00. The Respondent submitted that it would not seek to enforce an award on the Claimant in his current situation but that it considered an attachment to earnings order would seem appropriate. Enforcement of any award would of course be a matter for the Respondent, and is not something the Tribunal can or should seek to dictate.
9. Both parties gave oral submissions in relation to the application.
10. The Respondent made the application on five grounds, as set out in the Costs Schedule.
 1. *That the Claimant unreasonably failed to comply with the Orders of the Employment Tribunal thereby causing significant additional costs to be incurred by the Respondent.*
 2. *That the Claimant conducted the proceedings in an unreasonable manner particularly by sending excessive and unnecessary correspondence to the Respondent thereby causing significant additional costs to be incurred by the Respondent.*
 3. *The Claimant failed to engage in reasonable negotiations to settle the claims out of court.*
 4. *That during proceedings the Claimant acted vexatiously by making false and malicious allegation against the Respondent.*
 5. *That the Claimant's claims had no reasonable prospect of success and were vexatious/misconceived in law.*
11. The Respondent directed me to a number of documents they say support their application, which I have considered in full.
12. I note that the Respondent sent a measured costs warning letter on 17 July 2024 and made several commercial offers and repeated costs warnings until 9 December 2024.
13. The Claimant made wholly unrealistic settlement offers, starting at over £150,000 and then reducing to £48,000.
14. The Claimant's main submission appeared to be that he did not believe he done anything wrong and that he could not afford to pay anything as he was unemployed. The Claimant sought to repeat various points he made in the final hearing, and did not appear to have acknowledged my findings of fact. The Claimant is currently unemployed and is in receipt of Universal

Credit. He says he receives £419.00 per month and has four children to support. He says his wife work as a part time cleaner and works six hours a week. The Claimant lives in rented accommodation and has no savings.

Costs in the Employment Tribunal

15. The general rule is that the Employment Tribunal is a 'costs neutral jurisdiction'. This means that the loser in proceedings does not automatically pay the winner's costs, which is a divergence from proceedings which run in most of the civil court jurisdictions.

16. The rules relating to costs are found in The Employment Tribunal Procedure Rules 2024. Key extracts from the rules are set out below.

Costs orders and preparation time orders

73.

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

(a) the receiving party in respect of the costs that the receiving party has incurred while

represented by a legal representative or a lay representative, or

(b) another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at a hearing.

(2) A preparation time order is an order that the paying party make a payment to the

receiving party in respect of the receiving party's preparation time while not represented by a legal representative.

(3) A costs order under [paragraph \(1\)\(a\)](#) and a preparation time order may not both be made in

favour of the same party in the same proceedings.

(4) The Tribunal may decide in the course of the proceedings that a party is entitled to either a

costs order or a preparation time order but may defer its decision on the kind of order to make until

a later stage in the proceedings.

When a costs order or a preparation time order may or must be made

74.

(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under [rule 73\(1\)\(b\)](#), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(2) The Tribunal must consider making a costs order or a preparation time order 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 of it, or the way that the proceedings, or part of it, have been conducted,

(b) any claim, response or reply had no reasonable prospect of success, or

(c) a hearing has been postponed or adjourned on the application of a party

made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

(4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—

(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

Procedure

75.

(1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

The amount of a costs order

76.

(1) A costs order may order the paying party to pay—

(a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—

(i) in England and Wales, by way of detailed assessment carried out either by a county

court in accordance with the Civil Procedure Rules 1998(33), or by the Tribunal applying the same principles;

(ii) in Scotland, by way of taxation carried out either by the auditor of court in accordance

with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019(34), or by the Tribunal applying the same principles;

(c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;

(d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under [rule 77\(2\)](#) (the amount of a preparation time order).

(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may

exceed £20,000.

Ability to pay

82. *In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.*

17. It is, therefore, a multi-stage determination to awarding costs. First, at least one of the 'gateways' outlined by Rule 74(1) or 74(2) needs to be found to have been opened. In other words, I must be satisfied in this case that I have the ability to award costs.
18. If one of the gateways to award costs is opened, then I *may* award costs. There is a discretion. The next stage, therefore, is to decide whether or not this is a case in which I exercise my discretion to award costs, having in mind the circumstances of the case and the nature of the conduct that has led to the ability to award costs if decided appropriate.
19. The final stage, if I decide to exercise discretion, is to decide the amount of the costs to award. Where evidence about means is provided, this should be taken into account so long as I am satisfied I have an honest and full picture of the financial position. I must also consider the amount of costs requested in the application and decide whether or not the amount is appropriate, before deciding what amount should be paid towards those costs, or ordering that the whole of the costs are paid.
20. The assessment of the amount of costs to pay is a broad brush exercise and does not take the form of any sort of detailed assessment of cost. The assessment is made broadly in all the circumstances using my judgment of what would be reasonable in this case. Generally, I am trying to consider the proportion of costs incurred because of the criticised conduct.

Do I have the power to award costs?

21. I am not able to award costs unless one of the 'gateways' set out at Rule 74 is engaged.
22. The Respondent says Rule 74(2)(a) and Rule 74(2)(b) are engaged.
23. Given my decision, I consider that Rule 74(2)(b) is clearly engaged. In my view, as demonstrated by the fact that both of the Claimant's complaints were unsuccessful, the claim had no reasonable prospect of success.
24. I considered the documents in the costs bundle that I was directed, which were relevant in assessing the engagement or otherwise of Rule 74(2)(a).
25. I do not consider there was significant unreasonable compliance with orders of the Tribunal. I note the Claimant was told not to send without prejudice correspondence to the Tribunal and that he submitted his witness statement late. However, as a litigant in person I do not consider these behaviours to be at a level for which I should categorise them as

vexatious, abusive, disruptive or otherwise unreasonable. I have formed a similar view in relation to the correspondence sent to the Tribunal. The Claimant sent unnecessary correspondence, and this did increase the Respondent's costs, but as a litigation in person again I do not think this meets the threshold of vexatious, abusive, disruptive or otherwise unreasonable.

26. The Claimant was offered sums to settle this claim, the sums were all commercial in nature. The Claimant made highly inflated, unrealistic and unreasonable offers which had no bearing to any sensible calculation of compensation even if the Claimant had been successful. In this response, I do not consider the Claimant acted reasonably.
27. I was not directed to any specific allegations that the Respondent sought to rely on as being false and malicious.
28. On balance, noting the Claimant's approach to settlement being unreasonable, I consider rule 47(2)(a) was also engaged.
29. I have proceeded with determining the application on the basis of these two rules being engaged.

Do I exercise the discretion to award costs?

30. In considering whether or not to exercise my discretion, I have considered the entire situation, but consider there to be several key factors.
 - The Claimant was unrepresented when he submitted his claim and throughout the course of the litigation.
 - The Claimant was given clear warnings of the Respondent's view of the claim and warned him about costs at an early stage of proceedings.
31. I conclude that if the Claimant had undertaken a proper assessment of his claim, on the information known to him, it should have enabled the Claimant to form the view that there was no reasonable prospect of his unlawful deduction from wages claim and his constructive dismissal claim being successful, and that pursuing such claims would be unreasonable and vexatious.
32. I have reminded myself that costs are for exceptional instances. Litigants in person, on both sides, are common in the Employment Tribunal. Not understanding key aspects of complex legal claims and tests is equally common – as is an inability to make a judgment about the merits of a particular argument or case. However, this case did not involve complex allegations of discrimination or legal matters, it was about money they Claimant says he was owed relating to a shutdown period and the event that he says caused him to resign.
33. In this instance, I consider that the Respondent has been put to cost directly as a result of the Claimant pursuing a claim that had no reasonable prospect

of success and because he acted unreasonably in bringing and continuing to pursue the claim.

34. In my judgment, it is appropriate in relation to this issue to award the Claimant to pay a proportion of its legal costs.

What means do I take into account?

35. I have noted the information that the Claimant gave about his financial information, means as set out above. It is noted that there are no assets or savings and the Claimant is in receipt of benefits.

36. Consequently, I have taken means into account when considering the amount to be paid.

What is the amount of the costs awarded?

37. The Respondent has set out the sums that it has incurred in a Schedule of Costs. The legal fees incurred amount to £14,897.00 excluding VAT.

38. I consider the costs incurred appear to be proportionate and reasonable.

39. In my view, in the very least, the costs from 17 July 2024 onwards, namely those incurred after the first costs warning letter was sent to the Claimant, could have been avoided entirely by a much earlier withdrawal of the claim.

40. Deciding the amount of costs to be paid, having decided to exercise discretion to award costs and taken into account any means appropriate, is necessarily a broad brush assessment. Summary assessment of costs is not designed to be a detailed or forensic affair and is instead an approximation of costs which flow from the gateway identified.

41. I have considered what I deem reasonable in all the circumstances taking the situation into account, noting the extremely limited means of the Claimant.

42. In my judgment, that broad brush assessment leads me to make a costs award of £250. This must be paid by the Claimant to the Respondent.

43. The sum of £250 is only a very small proportion of the legal costs incurred, and the Respondent's cost are significantly more, but I have taken into account that at present the Claimant has no accessible income and was a litigant in person. I have also kept in mind that that costs are not designed to be punitive, and are an exception to the general rule.

Approved by Employment Judge Cawthray

Date 31 January 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

6 February 2025

Kacey O'Brien
FOR EMPLOYMENT TRIBUNALS

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