



EMPLOYMENT TRIBUNALS

Claimant: Mr H Ahmed

Respondent: Department for Work and Pensions

Heard at: Midlands West (on papers)

On: 28 March 2025

Before: Employment Judge Taylor

REPRESENTATION:

Claimant: Not required to attend.

Respondent: Not required to attend.

COSTS JUDGMENT

The judgment of the Tribunal is as follows:

1. The application for a Preparation Time order is refused.

REASONS

Background

1. The claimant seeks a "preparation time order for 100 hours at £42 per hour for case 1303773/2022.
2. There was a case management hearing in this claim on 01 March 2023. The case management order records that the response suggests that this claim is an attempt to re-litigate matters dealt with within an earlier claim. It was agreed by the respondent that that would be a matter to be dealt with at a final hearing and not as a preliminary point.

3. The claimant made an application to amend this claim (claim 7) on 08 June 2023.
4. In response to that application, on 13 July 2023, the respondent opposed the application to amend and made an application for the claim to be struck out. The basis of both applications was that the claimant was estopped, as a matter of law, from advancing such claims as they were determined in an earlier claim.
5. The respondent requested a preliminary hearing to determine the claimant's application to amend and the respondent's application for strike out.
6. On 20 November 2023 the claimant made an application to strike out the respondent's responses to, this claim (claim 7) and also to claim 3.
7. The claimant's position was that the response to claim 3 should be struck out because the respondent made an application for the estoppel and abuse of process issues to be considered at a preliminary hearing after agreeing, at the case management hearing, that those issues should be left for the final hearing.
8. On 06 October 2023, on the Tribunal's own initiative, the final hearing fixed for 28-30 November 2023 was postponed and re-listed as a 1-day preliminary hearing on 28 November 2023.
9. At that hearing it was found that the claimant was estopped from amending his claim and therefore the application to strike out the respondent's response was refused. The application to strike out the response to claim 3 was also refused.

Submissions

10. On 06 February 2024 the claimant emailed the Tribunal stating that he was making an application for a preparation time order. The Tribunal emailed the claimant on 12 February 2024 asking for a full written application. The claimant provided his application on 27 February 2024. The respondent's comments upon the application were requested on 04 March 2024 and received on 11 March 2024.

11. The claimant submitted as follows:
- (i) The respondent active unreasonably and abusively in applying to the Employment Tribunal for a preliminary hearing to deal with the issue of estoppel after agreeing in a case management hearing that the issue was best left for the final hearing.
 - (ii) In failing to mention in that application that they had agreed as above, the respondent behaved unreasonably and abusively.
 - (iii) The claimant's amendment application was immaterial to the respondent's application for a preliminary hearing because the basis of the respondent's objection to the amendment was estoppel which relied on the same reasons for the existing claim to be estopped.
 - (iv) The claimant expended time and effort preparing for a final hearing which did not take place. He had spent time gathering disclosure, producing a witness statement, researching the law, analysing the respondent's disclosure, preparing cross-examination of the respondent's witnesses and preparing himself for the respondent's cross-examination. This effort did not take less than 100 hours.
12. The respondent submitted as follows:
- (i) The grounds upon which the claimant sought strike out of the respondent's responses to claims 3 and 7 are the same, in all material respects, as the grounds on which he now seeks a preparation time order.
 - (ii) The claimant's strike out application was successful and the contention that the respondent acted abusively or unreasonably for the purposes of the strike out application was rejected.
 - (iii) The claimant now appears to be inviting the Tribunal to reach a different conclusion for the purposes of a his application for a preparation time order.
 - (iv) The claimant has not put forward any basis in fact or law for such an order to be made under the rules relating to a time preparation order given that the decision has already been made under the rules relating to strike out.

Law

13. Case law provides regular reminders that costs remain the exception not the rule in Employment Tribunal litigation. The relevant rules are Rules 72 to 77 of the Employment Tribunal Procedure Rules 2024. These provide Tribunals with the power to award a preparation time order in the circumstances set out in those Rules.

14. The rules set out as follows:

Rule 72: “preparation time” means time spent by the receiving party (including by any of the receiving party’s employees or advisers) in working on the case, except for time spent at any final hearing;

Rule 73 (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.

Rule 74:

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

- (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.

The amount of a preparation time order

- 77.**—(1) The Tribunal must decide the number of hours in respect of which a preparation time order should be made, on the basis of—
- (a) information provided by the receiving party on the preparation time spent, and
 - (b) the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time to spend on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required.
- (2) The hourly rate is £44 and increases on 6 April each year by £1.
- (3) The amount of a preparation time order must be calculated by multiplying the number of hours assessed under paragraph (1) by the rate under paragraph (2) which is applicable to the year beginning 6 April in which the preparation time was spent.

Conclusion

15. The claimant's application for a preparation time order is within the time limit provided for in the rules and the Tribunal finds that it is entitled to consider it.
16. The starting point is whether any of the grounds in rule 74(2)(a) are made out. If they are, the next step is to consider whether to make an order. It is not mandatory to make an order. If it is decided that an order should be made, the final step is to consider the amount to be paid.
17. The claim for a preparation time order relates to the respondent's change in position from the case management hearing, where it was agreed that the issue of estoppel would be better decided at the final hearing, to the response to the claimant's application to amend, within which the respondent argued estoppel.

18. I find, as I found in respect of the claimant's application to strike out the response, that the respondent did not behave unreasonably, nor abusively in changing their position.
19. I do not accept the claimant's submission that the request for the preliminary hearing was not predicated upon his application to amend claim 7.
20. The respondent's opposition to the amendment application was based in estoppel. The respondent's agreement that estoppel should be considered at the final hearing was given before the application to amend. The claimant's application to amend changed the circumstances and required the issue of estoppel to be considered earlier than the final hearing, and in response to the application to amend.
21. The respondent acted entirely appropriately in agreeing that estoppel should be considered at the final hearing. They also acted entirely appropriately in changing their position, following a change in circumstances and the application to amend.
22. There is nothing before me which leads me to reach a different conclusion when considering the respondent's actions within the context of costs, than within the context of strike out.
23. None of the grounds in rule 74(2)(a) are made out. The Tribunal is therefore not required to consider whether to exercise its' discretion to make a time preparation order.

Approved by:
Employment Judge Taylor
31 March 2025

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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