



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms V Madhavji

**Respondent:** Watson Ramsbottom Ltd

## JUDGMENT

The respondent's application for an award of costs is refused.

## REASONS

### Background

1. This was an application made by the respondent for costs arising from an application for interim relief made by the claimant which was refused in a reserved judgment sent to the parties on 18 October 2024. By a judgment sent to the parties on 25 November 2024, I refused the claimant's application for reconsideration.
2. By a letter dated 29 October 2024, the respondent made an application for costs.
3. Unfortunately, the respondent's application was not referred to me until 10 February 2025.
4. The claimant opposed the application by letters dated 15 January 2025 (stating her intention to object to it but asking for more time to do so) and 31 January 2025.
5. I have dealt with this application on the papers, without a hearing.

### The costs application

6. The respondent sought its costs of £6,313 in relation to preparation for and attendance at the interim relief hearing held on 9 October 2024. The application was made under what was then rule 77(1)(b) of the 2013 Rules of Procedure. This is now rule 75 of the 2024 Rules, but there has been no change in substance to the rule.

7. The respondent submits that the application for interim relief had no reasonable chance of success.

### **The claimant's response to the application**

8. The claimant opposes the application in a detailed 19 page letter, including footnotes, with some additional documents enclosed.

### **Law**

9. Although this application was made prior to the coming into force of the Employment Tribunal Procedure Rules 2024 on 6 January 2025, the 2024 Rules apply to existing as well as new cases, so I deal with the application under the 2024 Rules. There are some changes in numbering, but the content of the relevant rules remains the same as in the 2013 Rules. Rule numbers in this section and in my conclusions relate to the 2024 Rules.

10. Rule 74(2)(b) provides that the Tribunal must consider making a costs order or a preparation time order where it considers: "any claim, response or reply had no reasonable prospect of success."

11. "Claim" is defined in rule 2(2) as: "any proceedings before the Tribunal making a complaint, and unless otherwise specified, includes an employer's contract claim."

12. "Complaint" is defined in rule 2(2) as meaning: "anything that is referred to as a claim, complaint, reference, application or appeal in any enactment which confers jurisdiction on the Tribunal."

13. Section 128 Employment Rights Act 1996 sets out the circumstances in which what is described as "an application for interim relief" can be made.

14. I understand from these definitions that "claim" in rule 74(2)(b) can include an application for interim relief and is not limited to heads of claim, such as unfair dismissal.

15. Rule 82 provides:

"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."

### **Conclusions**

16. References to paragraph numbers in these conclusions are to the paragraphs in the reasons for my judgment on the interim relief application.

17. In considering the costs application I need to decide:

17.1. whether I have the power to make an order for costs and, if I do,

17.2. whether to exercise my discretion to make such an order and, if I decide to do so,

17.3. how much the claimant should be ordered to pay.

18. In deciding whether to make a costs order and, if so the amount of any such order, in accordance with rule 82, I may have regard to the claimant's ability to pay.

19. The claimant has not provided any information as to her financial means and has not been invited expressly to provide any. However, as a solicitor who practised in employment law, I can expect the claimant to have been aware that she should provide such information if she wanted me to take it into account.

20. I decide first whether the application for interim relief had no reasonable prospect of success.

21. As I described in paragraph 11, the process for dealing with an interim relief application is supposed to be a summary one, conducted speedily and on the basis of limited information.

22. There is a high bar for success in an interim relief application. As set out in paragraphs 63 and 64, the test is whether the claimant has a "pretty good chance of success" that the Tribunal will find that the reason or principal reason for dismissal is one of the reasons where interim relief can be granted. This is a significantly higher threshold than merely "more likely than not" that the claim would succeed.

23. I do not intend to repeat the detailed reasons I gave in detail for refusing the application for interim relief but these include reference to the material which was before me and why I refused the application for interim relief.

24. Having regard to the nature of the summary assessment to be made, the high bar for success in such an application and the material that was before me at the interim relief application, I conclude that, objectively, the application for interim relief had no reasonable prospect of success. The requirement of rule 74(2)(b) is met.

25. I have, therefore, the power to order the claimant to pay costs. I must, therefore, consider whether to make an award of costs.

26. If the claimant was an ordinary litigant in person, I think it unlikely the respondent would have made the application for costs. However, as the respondent points out, the claimant is no ordinary litigant in person. She is a solicitor who has undertaken employment law work. They argue that the high bar needed for her to succeed in the interim relief application should have been apparent to her.

27. There is considerable strength in this argument. If the claimant was a solicitor advising a claimant in these circumstances, I would expect her to advise her client that an application for interim relief had no reasonable prospect of success. However, as someone acting in her own case, I consider it likely that she lacks the professional distance to be able to make an objective assessment of the situation.

This is particularly the case since the claimant shows signs of being, at the least, seriously distressed and possibly very unwell. As I noted in paragraph 7, the claimant had been distressed when waiting for the hearing. The claimant had been on sick leave for nearly two years before her resignation. In these circumstances, I am not satisfied that the claimant was aware that her application for interim relief had no reasonable prospect of success.

28. I exercise my discretion against making an award of costs and refuse the respondent's application.

Approved by:

Employment Judge Slater

Date: 13 March 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

1 April 2025

FOR EMPLOYMENT TRIBUNALS

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