



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Daniel

**Respondent:** Lidl Great Britain Limited

**Heard at:** Midlands East Tribunal via Cloud Video Platform

**On:** 11 April 2025

**Before:** Employment Judge Brewer  
Ms K Srivastava  
Ms J Dean

## Representation

**Claimant:** In person

**Respondent:** Mr L Mullholland, Solicitor

# JUDGMENT

The unanimous judgment of the Tribunal is that

1. the respondent's costs application succeeds, and
2. the claimant shall pay the respondent's costs in the sum of £10, 983.00

# REASONS

## Introduction

1. By a unanimous judgment delivered in writing and sent to the parties on 14 November 2024, the Tribunal rejected all of the claimant's claims.
2. By an application dated 11 December 2024, the respondent sought costs against the claimant in the sum of £10, 983.00 which represents all the costs it incurred in defending the claim.
3. Today's hearing was listed to deal with that application.
4. We had been provided with a bundle of documents from the respondent running to some 77 pages. Some of those documents relate to a company of which the

claimant is a sole director and a copy of the most recent accounts for that company filed in March 2024. The claimant wrote to the tribunal providing his own bundle which was the same as the respondent's bundled but missing these documents because he said they were not relevant. We find that they are of course relevant to his ability to pay and therefore we have taken them into account.

5. But we had written submissions from the respondent and from the claimant although his submissions did not engage with the application for costs and were centred on essentially abusing the solicitor who conducted the case on behalf of the respondent at the final hearing and objecting to the inclusion in the bundle of the documents referred to above.
6. We also heard oral submissions from Mr Mulholland and from the claimant.

## Issues

7. The issue before us today was whether we should award the costs sought by the respondent and we consider that we should ask ourselves three questions, which are:
  - 7.1. does the case meet the threshold for an award of costs,
  - 7.2. if so, should we award costs, and
  - 7.3. if so, how much should we award.

## Law

8. We set out below a brief description of the relevant law.
9. The fundamental principle remains that costs orders are the exception rather than the rule — see the statement to that effect in **Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012** ICR 420, CA.
10. Costs for these purposes means 'fees, charges, disbursements or expenses incurred by or on behalf of the receiving party (including expenses that witnesses incur for the purpose of, or in connection with, attendance at a tribunal hearing)' — rule 2(1) Tribunal Rules 2024.
11. The two grounds for making a costs order under rule 73(1)(a) of the Tribunal Rules 2024 relied on by the respondent are,
  - 11.1. that the claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in the bringing or conducting of proceedings (or part thereof) — rule 74(2)(a), and/or
  - 11.2. that the claim had no reasonable prospect of success — rule 74(2)(b).

## Ability to pay

12. We remind ourselves of Rule 82 of the 2024 Rules which is in the following terms:

“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.”

### **Unreasonable conduct**

13. It is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented. According to the EAT in **AQ Ltd v Holden** 2012 IRLR 648, EAT, an employment tribunal cannot, and should not, judge a litigant in person by the standards of a professional representative.
14. ‘Unreasonable’ has its ordinary English meaning and is not to be interpreted as if it means something similar to ‘vexatious’ — **Dyer v Secretary of State for Employment** EAT 183/83. It will often be the case, however, that a tribunal will find a party’s conduct to be both vexatious and unreasonable.
15. In determining whether to make an order under this ground, a tribunal should take into account the ‘nature, gravity and effect’ of a party’s unreasonable conduct — **McPherson v BNP Paribas (London Branch)** 2004 ICR 1398, CA.

### **No reasonable prospects**

16. Under the Tribunal Rules, the focus is simply on whether the claim reasonable prospects of success.
17. In **Radia v Jefferies International Ltd** EAT 0007/18 the EA gave guidance on how tribunals should approach costs applications under what is now rule 74(2)(b). It emphasised that the test is whether the claim had no reasonable prospect of success, judged on the basis of the information that was known or reasonably available at the start. Thus, the tribunal must consider how, at that earlier point, the prospects of success in a trial that was yet to take place would have looked. In doing so, it should take account of any information it has gained, and evidence it has seen, by virtue of having heard the case, that may properly cast light back on that question, but it should not have regard to information or evidence which would not have been available at that earlier time.

### **Discussion and conclusions**

18. We can in essence deal with this application quite shortly.
19. The claimant presented his claim to the tribunal on 2 May 2023. He was at the time employed by the respondent.
20. The claimant was dismissed on 25 August 2023. He appealed against that decision, and he received a detailed response to his appeal on 26 October 2023.

The relevance of this is that the grounds of appeal very closely mirror the allegations brought by the claimant in the employment tribunal and the respondents went through in detail each of the allegations and explained that in respect of all of them one or other of the persons the claimant was accusing of discriminating against him was not at work at the time the claimant was alleging the abuse took place and in one case the claimant himself was not at work when he says he was abused. In essence the appeal outcome, which I stressed the tribunal had not seen before today, very closely mirrors the judgement of the tribunal because the tribunal had before it the same time sheets that no doubt the appeal manager had before him when he investigated the claimant's appeal grounds.

21. The only logical conclusion to draw from this is that at the date the claimant submitted his claim form he was aware that he could not possibly substantiate his complaints given that at all of the material times either one or other or both of those people he was accusing of discriminating against him were not at work he was not at work.
22. When faced with this at the hearing the claimant's argument was that for long periods of time the respondent's time recording system was not working and therefore could not be relied upon. We dealt with that argument in our judgment and rejected it for the reasons set out therein.
23. In our view therefore the threshold for unreasonable behaviour and the threshold for that being no reasonable prospects of success in this claim are both met and therefore we should consider whether to exercise our discretion and award costs.
24. Given the factual scenario set out above as discussed in more detail in the original judgment, and even judging the claimant by the standards of a lay person, given what he knew at the time he presented his claim, and made his detailed allegations, we consider that we should exercise that discretion and award costs against him.
25. As to the amount of costs, we have awarded the full amount sought by the respondent. We have taken into account that the claimant told us that he was receiving £300 per month Universal Credit. As we set out in our original judgment we do not find the claimant to be a particularly credible witness of fact and he was asked by the respondent to provide documentation about his means fully bundle for today's hearing but he failed to do so. They respondent have included some documentation about a company which the claimant owns under the so director and shareholder. In fact the claimant vehemently objected to these documents appearing in the bundle and we can understand why.
26. Although the company is dormant, the fact is that when the company filed its last accounts, in respect of the period to 31 March 2024, it showed the company having fixed assets of £193,633. We note that the liabilities exceeded the assets. The liabilities are set at £363,493. However other than a £20,000 bank loan, the sole creditor is the claimant. In other words, even if the entire assets have been liquidated in order to pay the company's debts, the vast majority of that sum

would have been paid to the claimant, so either he has those funds, or the company still has assets worth almost £200,000 which the claimant controls.

27. We stress however that even if this is not the case, we would still award all of the costs sought by the respondent for the reasons set out above.

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Employment Judge Brewer

Date: 11 April 2025

JUDGMENT SENT TO THE PARTIES ON

.....15 April 2025.....

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FOR THE TRIBUNAL OFFICE

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