



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Thornton

**Respondent:** NSLX Ltd

**Heard at:** Liverpool

**On:** 13 March 2025  
(in chambers)

**Before:** Employment Judge Ainscough

## REPRESENTATION:

**Claimant:** Not in attendance

**Respondent:** Not in attendance

# JUDGMENT ON COSTS

The respondent's application for a preparation time order is unsuccessful.

# REASONS

## Introduction

1. Following a case management preliminary hearing on 6 January 2025, at which the claimant withdrew his complaint for unpaid expenses, the respondent made an application for a preparation time order in accordance with rule 75 of the Employment Tribunals Procedure Rules 2024. I agreed to deal with the application without a hearing following receipt of a written response from the claimant dated 9 January 2025.

## The Proceedings

2. The claimant submitted the ET1 form on 12 July 2024 and complained about unlawful deduction from wages, unpaid expenses, holiday pay and for his notice period.

3. Within the claim form the claimant set out the following as a summary of his complaints:

*"I am now seeking the tribunal's assistance to:*

*Recover unpaid wages for May and June 2024 (£6,666).*

*Secure notice pay for one month (£3,333).*

*Reimburse necessary operational expenses incurred during my employment.*

*Clarify my employment status, as I believe my role and responsibilities align more closely with those of an employee rather than a contractor, potentially entitling me to additional benefits and protections."*

4. In another part of the claim form the claimant quantified the value of the expenses claim as:

*"Operational costs for design software, remote office internet, and communication expenses: £2,400."*

5. The claimant also included a copy of his contract with the respondent as an attachment to the claim form. That contract provided for the reimbursement of expenses, subject to approval by the claimant's line manager.

6. On 30 July 2024 the Tribunal gave notice of the claim to the respondent and listed the final hearing on 6 January 2025 for 90 minutes.

7. On the same day the the respondent submitted a response denying the claim and made an application to strike out the claim.

8. In particular the respondent set out in the response that the claimant was a contractor and had undertaken to pay his own expenses. In the alternative, the respondent stated that the claimant had never sought approval of expenses in accordance with the contract.

9. The respondent contended the expenses complaint was *"vexatious, fanciful, scandalous and denied in its totality"*. The respondent required the claimant to prove the sum claimed.

10. In the application to strike out the claim, the respondent repeated that the expenses complaint was vexatious and bound to fail.

11. On 10 October 2024, Employment Judge Eeley directed that the final hearing be converted to a case management preliminary hearing *"at which the factual and legal issues in the claim and the counter claim can be properly identified"*. It was noted that neither party was legally represented and may need assistance to focus on the relevant issues.

12. The matter was subsequently listed for a case management preliminary hearing to take place on 6 January 2025 and for the final hearing to take place on 9 April 2025.

13. On 13 November 2024 the respondent's application to relist the final hearing was refused on the basis that the respondent had not provided a satisfactory reason to do so.

14. The case management preliminary hearing took place on 6 January 2025. At that hearing I determined that the essence of the respondent's application to strike out the claim was on the basis that the claimant was not an employee and because the parties were required to give evidence about this issue, it would be determined as a legal issue at the final hearing.

15. I did however agree to determine the respondent's application for a deposit order. In response to the respondent's application, the claimant conceded that it would be difficult to prove his expenses complaint and he confirmed he wished to withdraw that complaint.

16. A judgment was issued on 24 January 2025 confirming that the expenses complaint had been dismissed on withdrawal by the claimant.

### **Respondent's Application**

17. The respondent made an application for a preparation time order in accordance with rule 75 of the Employment Tribunal Procedure Rules 2024. The application was made on the basis that the claimant had acted vexatiously in pursuing the expenses complaint.

18. The respondent asserted that the claimant behaved vexatiously because he knew he could not provide evidence to prove his complaint.

19. The respondent submitted that it was absurd for the claimant to contend that because the expenses were incurred on his credit card, he could not provide the necessary evidence and that in order to calculate the sum claimed the claimant must have some form of record.

20. The respondent concluded that the complaint was vexatious because the claimant withdrew it as soon as he realised he would have to provide evidence to prove it.

### **Claimant's Response**

21. In response the claimant submitted that the respondent's application was vexatious in that it had been made to increase costs, complicate the issues and to disregard the overriding objective.

22. The claimant submitted that the respondent had not proven that the expenses complaint was vexatious because I had rejected the respondent's application for a deposit order.

23. The claimant maintained that the withdrawal of the expenses complaint was made in good faith to narrow the issues and was "*a strategic and proportionate decision made prior to any substantive hearing.*"

## Relevant Legal Principles

24. Rule 74(2)(a) of the Employment Tribunal Rules of Procedure 2024 states:

**“When a costs order or a preparation time order may or shall be made**

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.”

25. Rule 75 states:

**“Procedure**

- (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).”

26. Rule 82 provides the Tribunal can have regard to the paying party’s ability to pay, but the Tribunal is not obliged to take this into account when determining whether to make a costs order.

27. In **Lodwick v Southwark London Borough Council 2004 ICR 884, CA**, the Court of Appeal determined that at both stages of the Tribunal’s discretion to make a costs award, the fundamental principle that costs awards are compensatory not punitive, must be observed.

28. In **AQ Ltd v Holden (2012) IRLR 648, EAT**, the Employment Appeals Tribunal determined that a litigant in person should not be judged by the same standards as a professional representative.

29. In **Scott v Russell 2013 EWCA Civ 1432, CA**, the Court of Appeal cited the definition of vexatious determined in **Attorney General v Barker 2000 1 FLR 759, QBD (Div Ct)** as:

*‘the hallmark of a vexatious proceeding is... that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court,*

*meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'*

30. In **Yerrakalva v Barnsley Metropolitan Borough Council and others (2012) ICR 420, CA** the same court said a Tribunal must look at the totality of the circumstances and reiterated that costs in the Employment Tribunal are the exception rather than the rule.

### **Relevant Issues**

31. The issues for the Tribunal to determine were as follows:

- a) Was the claimant's complaint of unpaid expenses vexatious?
- b) If so, is it appropriate to exercise the discretion of the Tribunal to make a preparation time order?
- c) If so, how much should the Tribunal award?

### **Discussion and Conclusions**

#### Are the grounds made out?

32. I do not agree with the respondent's submission that the claimant's complaint for non-payment of expenses was vexatious or an abuse of the court process.

33. The claim pursued by the claimant is on the basis that he was an employee of the respondent.

34. The claimant contends that the contract was a contract of employment that provided for the payment of his expenses.

35. If the claimant persuades the Tribunal that he was an employee of the respondent the claim for his expenses would have been in accordance with the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994.

36. The respondent disputes that the claimant was an employee. This issue will be determined at the final hearing.

37. The respondent primarily submitted that the claimant agreed to cover his own expenses, but in the alternative, submitted that the claimant did not provide the respondent with evidence of his expenses in order for a payment to be made in accordance with the contract.

38. During the discussion about the respondent's application for a deposit order, I sought to clarify the issues and discussed the evidence available to the parties. Following that discussion, the claimant withdrew the expenses complaint.

39. The claimant, in response to a deposit order application made by the respondent for a £1000 deposit for each allegation, took the view that it would be hard to evidence all the expenses incurred.

40. The claimant's expenses claim was for "operational costs" incurred whilst carrying out work for the respondent.

41. I have determined that, whilst the claimant was able to quantify this part of his claim, the claimant realised during the discussion of the evidence required, that in order to prove each expense may require disclosure of his credit card statements, which he was reluctant to do.

42. Following appreciation of the evidence required, the claimant decided to withdraw this complaint before I determined if he should pay a deposit.

43. If the claimant proves that he was an employee, the expenses complaint had a sound legal basis. The contract also provided for payment of expenses, contrary to the respondent's primary position. The claimant is a litigant in person and did not appreciate what was required by way of evidence until the discussion during the preliminary hearing.

44. The purpose of the case management preliminary hearing was to clarify the issues for the claimant, as a litigant in person, and the respondent's lay representative. It is common during such discussions that the parties realise the extent of their complaints and often decide to pursue some, but not all.

45. The proceedings are acrimonious. The claimant took a view that he would need to disclose his personal credit card records and chose to withdraw the complaint rather than do this.

46. The claimant could have waited to see if a deposit order was made, and if so, not paid the deposit which would have resulted in a dismissal of this complaint. Instead, the claimant withdrew the complaint before any deposit order was considered and determined.

47. Therefore, the ground for making a preparation order is not made out and the respondent's application is dismissed.

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Employment Judge Ainscough

Date 22 April 2025

JUDGMENT AND REASONS SENT TO THE PARTIES ON  
28 April 2025

FOR THE TRIBUNAL OFFICE

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