



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Crisp

**Respondents:** CKO International Ltd

**Heard at:** Watford

**On:** 25 April 2025

**Before:** Judge Bartlett, Mr Boustred and Mr Wharton

**Representation**

Decided in chambers on the papers

## COSTS JUDGMENT

1. The respondent's application for a costs/preparation of time order is refused.

## REASONS

### The Application

1. In an email dated 11 April 2025 the respondent's representative made an application for a costs and/or preparation of time order under rule 74 of the Employment Tribunal Procedure Rules 2024. The claimant responded via email on 15 April 2025.

### Background

2. The substantive liability and remedy hearing was heard before the tribunal on 17, 18, 19, 20 and 21 March 2025. At that hearing the tribunal dismissed all of the claimant's claims giving oral judgement and reasons.
3. After judgement was given Mrs Andrew (the respondent's lay

representative) made an application for a costs/preparation of time order. The tribunal gave her a break and some time to make that application and she made it orally. What was said in that application did not engage with the factors set out in Rule 74 of the Employment Tribunals Regulations. Judge Bartlett read out rule 74 and explained that these were the criteria that the tribunal considered in making such orders. It was the tribunal's opinion that circumstances described at the hearing were complaints about the inconveniences of litigation rather than engaging with the criteria set out in Rule 74 Employment Tribunal Procedure Rules.

4. The tribunal offered the parties the option to make a written application after they had had some time to consider their positions. Mrs Andrew was happy to accept this route. Directions were issued and it was agreed that the decision would be made by the tribunal, on the papers without the appearance of any representatives for the parties. It is on this basis that the application comes before us.

#### The Tribunal Rules relating to costs

5. The Employment Tribunals Procedure Rules at rules 73 to 80 set out the principles and processes that must be applied in relation to costs/preparation of time orders.
6. Rule 75 sets out "*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 judgement finally determine the proceedings in respect of that party were sent to the parties.*"
7. Rule 74 sets out:
  - (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..*

Decision

8. The respondent's application relied on three separate grounds which are as follows:
  - a. the claim had no reasonable prospects of success Rule 74(2)(b)
  - b. the claimant acted unreasonably in bringing the claim Rule 74(2)(a); and/or
  - c. the claimant was in breach of case management orders relating to preparation of the case for the substantive hearing Rule 74(3).
9. We shall take each of these in turn.

*The claim had no reasonable prospects of success*

10. The application submits that the claimant refused to engage in any internal discussions and sent unsubstantiated email after email. This conduct relates to a period when the claimant was still employed by the respondent and we consider that this is an employment matter and not a matter related to the claim in the Employment Tribunal. We consider that it has no relevance to this claim.
11. The application submits that some of the claimant's claims had no reasonable chance of success. These are identified by reference to the list of issues as 2.2.3, 2.2.4, 2.2.6, 4.6 and 5.2.2.
12. Firstly, we note that the respondent made strike out and deposit order applications that were considered at a hearing and those applications were rejected. That decision does not bind us however it may have relevance.
13. We accept that the claimant had no real prospect of success of establishing the following factual allegations:
  - a. 2.2.3 this concerns the postponement of the disciplinary hearing on 19 July 2023;
  - b. 2.2.6 this concerns that the claimant's health was taken into consideration when issuing a disciplinary warning;
  - c. 4.6 the claimant was not issued with a written warning for absence.
14. We do not accept that the claimant had no real prospects of success of establishing the other factual allegations identified by the respondent namely:
  - a. 2.2.4 which relates to informing the claimant about all internal job opportunities whilst on sick leave. This was a factual dispute and it turned on evidence that was wholly within the respondent's gift. We find that it cannot be said that this had no reasonable prospects of success prior to the final hearing.
  - b. 5.2.2 which relates to the claimant being provided with transcripts. The actual facts concerning provision of the transcripts was not straightforward. The tribunal were provided with documentation that indicated the transcripts were available but we were not provided

with the actual transcripts. This was a factual allegation that was to be determined and was by the tribunal on the evidence before it.

15. As we have found that some of the claims had no reasonable prospects of success, we have gone on to consider whether to exercise our discretion to make a PTO.

16. We have decided not to exercise our discretion for the following reasons:

- a. as set out in full in our liability judgement, this case involved very careful consideration of knowledge of the disability on the part of the respondent. Our ultimate conclusion that the respondent did not have knowledge before a certain date led to the failure of certain claims. The claimant's position was highly arguable. There were substantial litigation risks on both parties;
- b. whilst we have found that a limited number of the factual allegations had no reasonable prospects of success, even if they had been excluded they would have made little difference to the preparation required for this case and they would not have resulted in a shortening of the final hearing. Those particular allegations were dealt with quickly by the parties and the tribunal;
- c. this case involved issues that it was quite proper came before a tribunal. The claimant had received a cancer diagnosis and from his perspective, as soon as this was communicated to the respondent, it embarked on a course of conduct which was discriminatory. For the reasons set out in our judgement the claimant's perspective was understandable and our decision turned on an analysis of the facts and an application of the various legal tests relating to discrimination to the facts as we found them to be.

*The claimant acted unreasonably in bringing the claim*

17. This appears to refer to the above and that the claimant refused the respondent's settlement offers. The tribunal is concerned that the respondent has disclosed without prejudice offers and if they were without prejudice then they should not have been disclosed to us. In any event, the tribunal considers that this was a finely balanced claim that was determined on a very careful assessment of all the evidence before the Tribunal including oral evidence and involved very careful consideration of legal concepts including adverse inferences.

18. We find that it cannot be said that the claimant acted unreasonably in bringing the claim. As was said in response to the applications for strike out and deposit orders this is a discrimination case and it raised important issues and they were to be determined by the tribunal. Our own judgement sets out that we understood that from the claimant's perspective he had informed the respondent that he was suffering from cancer and then they attempted to terminate his employment. It was only because of the careful consideration of all the evidence that was before us which was not available to the claimant that the claim was ultimately decided in the respondent's favour. In these circumstances it cannot be said that the

claimant acted unreasonably in bringing the claim. We consider that so far as an argument can be made that in respect of those limited parts identified in the previous section which had no reasonable prospects of success, that it was also unreasonable in bringing those parts of the claim we repeat our conclusions above and reasons for declining to exercise our discretion.

*The claimant was in breach of case management orders relating to preparation of the case*

19. We find that the claimant was in breach of some of the case management orders. We do not consider that the claimant disputes this. We accept that the claimant did not provide the documents in disclosure and for the bundle preparation on the dates required by the case management orders and he had also not prepared a witness statement. The claimant was given time at the start of the tribunal to prepare a witness statement. We understand that this placed considerable pressure on the respondent. However, the witness statement was reasonably short, the respondent was given time to prepare their cross examination and we do not consider that the respondent was prejudiced by this. We do not consider that the actions of the claimant increased costs in any way for the respondent. Mrs Andrew was an employee of the respondent and the time spent on these matters, she would have had to have spent on them at some point, it is simply a question of when she had to put that time in.
20. Rule 74(3) sets out the tribunal may make a costs/PTO where there has been a breach such as the claimant has committed. However, we have decided not to make an order under this rule. As we have set out elsewhere in this judgement, this was a finely balanced case which involved important issues relating to discrimination. The case was ultimately decided by very careful assessment of the evidence provided to the Tribunal including but not limited to an assessment of the oral evidence before it and a careful assessment of these facts and the various legal tests relevant to discrimination. In all the circumstances of the case, we decline to exercise our discretion.

Approved by:

Employment Judge **Bartlett**

Date 25 April 2025

JUDGMENT SENT TO THE PARTIES ON  
29 April 2025

FOR THE TRIBUNAL OFFICE

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