



EMPLOYMENT TRIBUNALS

Claimant: Mr A Afzal

Respondent: Prestige BB Limited

DECISION – PREPARATION TIME ORDER, RULE 77

The respondent is ordered to pay the claimant's preparation time in the sum of £294.80, for preparation time incurred between 1 April 2024 and 28 September 2024 because of the respondent's unreasonable conduct.

REASONS

1. The claimant applied for the preparation time of his lay representative, Mr Iqbal, in an application dated 21 November 2024. Mr Iqbal was requested to provide a schedule of the preparation time spent and did so on 7 January 2025. The respondent was asked to provide a response to the claimant's application and did so on 4 April 2025.
2. Neither party requested a hearing to deal with this application and it has therefore been decided on the basis of the parties' written representations.
3. The claimant was successful in his complaints before the Tribunal following a hearing on 21 and 22 October 2024. The Tribunal provided a judgment with oral reasons at the end of the hearing on 22 October 2024 and a written judgment (without written reasons) was provided by the Tribunal the same day. Neither party asked for written reasons.
4. In the period between the ET1 claim form being presented to the Tribunal, and 27 September 2024, the respondent was a litigant in person, represented for the most part by Mrs Mayat. Her role in the respondent's organisation is not entirely clear, but what is clear is that she is the wife of the owner of the respondent and that she was engaged in a managerial capacity for the respondent, certainly by the time the claim was issued.
5. Mrs Mayat completed the respondent's ET3 response. The grounds of response do not particularly engage with the claimant's complaints but contain personal slurs about the claimant's behaviour not relevant to the claims, including about his personal life and his marriage. This was repeated during the proceedings, and particularly prior to the respondent's professional representative being engaged.

6. The early stages of the litigation were also notable for the frequency with which Mrs Mayat chose to email the Tribunal to remonstrate with the Tribunal for having accepted the claimant's claim and listed a hearing. She repeatedly complained that the claimant's claim had no prospect of success and that the claimant had not worked for the respondent for two years, so could have no prospect of success in an unfair dismissal claim.

7. Employment Judge Batten wrote to the parties on 1 February 2024 and noted the dispute about the claimant's length of service but told the parties that this issue would be decided at the final hearing in October 2024. Mrs Mayat wrote to the Tribunal twice on 1 February 2024 to complain about this. She said

"To whom it may concern. It's very clear that the claimant did not work for the period of two years at all. The claimant has worked for less than 2 years. I would be grateful if you would reconsider the hearing again."

8. The Tribunal replied that the matter would be considered at the hearing with evidence being taken under oath by both parties, but Mrs Mayat wrote again on 1 February 2024 some hours later and remonstrated again, asking why the hearing would not be cancelled and requesting an explanation be given. This repetitive behaviour was unreasonable, and a waste of Tribunal resources. By the time of her second email of 1 February, the issue had been explained to her twice already, including by a judge.

9. Case management orders had been given to the parties to prepare for the final hearing. On 2 February 2024, Mr Iqbal wrote to the respondent and noted that the order for exchange of documents had not been complied with and suggested a variation to the dates for compliance with the orders. By 1 April 2024, the first of the dates had passed and Mr Iqbal wrote to the respondent again asking when the claimant could receive the respondent's documents, the claimant having already provided his documents.

10. Mr Iqbal wrote to the Tribunal on 11 April 2024 asking for an Unless Order due to the respondent's non-compliance. This was declined by Employment Judge Buzzard who nevertheless wrote to the respondent requiring disclosure within 14 days.

11. On 15 May 2024 the claimant wrote to the Tribunal again at 05.41, noting that the respondent had failed to provide documents. The respondent replied at 09.16, repeating again the allegations about the claimant's length of service but providing no real explanation for the lack of compliance with the orders, including those of Employment Judge Buzzard. A suggestion was made by the respondent that the respondent had complied, but the claimant had not. The claimant wrote back some minutes later asking for evidence of compliance by the respondent, as they had received no disclosure, and the respondent's reply at 09.27 again did not address the issue but made vague and unsupported allegations about the claimant's conduct.

12. The claimant contacted the Tribunal again on 11 June 2024 as no documents had been received. The respondent's reply, at 21.47 that day, was lengthy and abusive, but still provided no documents, but it indicated that the claimant had already

received the respondent's documents at an earlier stage. The claimant wrote to the Tribunal again refuting this and repeated the request for an unless order.

13. Employment Judge Dunlop wrote to the parties in response to the claimant's second request for an unless order and explained that because the parties disagreed over whether there had been compliance with the order, it was not possible to issue an unless order. The respondent sent a further email which repeated the vague and somewhat nonsensical denials that there had been no compliance by them with the Tribunal orders, and consequently the Tribunal listed the matter for a two-hour case management hearing in person, due to the allegations of dishonesty and non-compliance made by both parties.

14. Mrs Mayat wrote to the Tribunal and asked that the hearing be by video, as she was "housebound" after an illness. Employment Judge Buzzard responded by refusing the request, as no medical evidence had been provided to substantiate Mrs Mayat's claim that she was unable to travel. The response from Mrs Mayat on 4 September 2024 was again indicative that she simply had not properly read any of the previous Tribunal correspondence, again repeated the allegations about the claimant's length of service she had been repeatedly told not to address in correspondence and did not address any of the issues. No sick note was ever provided. She wrote:

"Hi

I am sorry for the delay , our father was very serious and has now passed away please accept my apologies in the delay ,

I am waiting for a doctors appointment to provide a sick note that I can forward to the courts.

Please kindly and humbly accept our apologies , further to our conversation please can you suggest what we need to do, as the claimant did not work for a consecutive of 2 years for that reason and clearly explained the claimant clearly breached the contract.

I don't understand what's the reason you need a hearing and to continue the case as all holiday pay was paid the courts I'm sure have much importance to deal with.

According to our policy the claimant has breached our contract we don't feel the claimant has provided the wage slips of the second work place this has been asked numerous times

Please can the claimant send and forward via the email the second job during the time he was asked to remain home.

I do require this to be cleared as a matter of urgency."

15. The claimant, meanwhile, prepared a bundle of documents for the case management hearing. The respondent was represented by Mrs Mayat at the hearing

before Employment Judge Slater, who tried to clarify what the respondent's response was to the claimant's claims, with limited success. Employment Judge Slater's record of her discussion with Mrs Mayat notes the many inconsistencies in the information she provided and notes that a clear picture would need to be provided as to what the respondent's case was. Employment Judge Slater made orders that the respondent provide its documents to the claimant.

16. On 27 September 2024, the respondent instructed a professional representative and from then until the final hearing, the respondent's conduct was reasonable and co-operative.

17. The respondent was represented by a legal consultant at the final hearing, and the claimant by Mr Iqbal. The respondent's sole witness was Mrs Mayat. The Tribunal found that she was not a reliable witness. Her evidence was given without thought, in that she provided the answer at the time that she believed would assist the respondent in its case, not the answer that would assist the Tribunal in deciding the issues before it. Her evidence was contradictory and lacking in credibility.

18. The hearing had been listed for two days to deal with liability and remedy. The hearing was concluded, and the parties were given a decision, within that two-day window. This was despite the respondent's representative being instructed by Mrs Mayat at the start of the hearing to make an application that was found to be without merit.

The Claimant's application for a preparation time order

19. The claimant applies for a preparation time order on the following basis:

- a. The respondent made an application at the start of the hearing on 21 October that Mrs Mayat must have known to be false;
- b. The respondent did not comply with Tribunal orders;
- c. Mrs Mayat was a dishonest witness;
- d. The respondent's defence did not have reasonable prospects of success;
- e. Mr Iqbal and the claimant needed to take time off work to attend the hearing in October 2024; and
- f. Mr Iqbal also refers to a "wasted costs" order being sought but makes no allegations against the respondent's representative that may form the basis of such an application.

The Law

20. It is a well-established principle that costs in the Employment Tribunal are the exception and not the rule. (*Yerrakalva v Barnsley Metropolitan Borough Council and another* 2012 ICR 420, CA). The costs provisions of the Employment Tribunal Rules of Procedure 2024 make clear that even if grounds for making a costs order are made out, the Tribunal is not obliged to make an order and has discretion whether or not to do so.

21. Rule 74 provides that a Tribunal may make a costs order or a preparation time order (“PTO”) for representatives who are not legally qualified, and shall consider doing so in the following circumstances:

- *a party (or that party's representative) has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or*
- *any claim or response had no reasonable prospect of success....*

22. In assessing whether a party or representative has acted unreasonably, in *Yerrakalva* the Court of Appeal held that when exercising the discretion to order costs (or a PTO) the Tribunal must look at the whole picture. The Tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

23. Persistent failure to provide information is another example of the type of conduct that has led to a finding of unreasonable conduct (*Kaur v John L Brierley Ltd EAT 783/00*)

24. the Tribunal must not judge a litigant in person by the standards of a professional representative *AQ Ltd v Holden 2012 IRLR 648*

25. When assessing the amount of a preparation time order, Rule 77 of the 2024 ET Rules states

“(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.”

26. It is well established that an award of preparation time should be compensatory not punitive. Costs should be limited to those “*reasonably and necessarily incurred*”. The conduct of the receiving party may also be relevant to the amount of a costs order. The amount ordered must obviously reflect the actual costs incurred. The Tribunal must explain on what basis it arrives at a sum.

27. For all types of costs order, the paying party must have had a reasonable opportunity to make representations in writing or at a hearing, as the Tribunal may order before the order can be made.

Decision

28. The claimant's costs between 1 April 2024 and 28 September 2024 were inflated on account of Mrs Mayat's unreasonable conduct of the proceedings. She did not comply with case management orders, repeatedly. There appeared to be no good reason for that non-compliance. The claimant's representative reasonably attempted the Tribunal to assist him in obtaining compliance. Mrs Mayat did not co-operate despite the Tribunal becoming involved in the issue.
29. There was then a case management hearing held, which I find was only listed and only took place because it had become impossible to progress the matter in correspondence. The fault was not the claimant's; he had, I accept, provided his documents to the respondent and had attempted to keep matters on track by trying to vary the case management orders by consent, which was not successful.
30. Had Mrs Mayat complied with her duty to co-operate with the claimant and the Tribunal, the work done by Mr Iqbal between 1 April 2024 and 20 September 2024 (the date of the case management hearing) would not have been necessary. He also needed to contact the respondent afterwards and read the Tribunal's record of the hearing, and so the costs were incurred as a result of Mrs Mayat's behaviour in the period 1 April 2024 to 28 September 2024. After that the respondent instructed a professional representative and the parties were able to co-operate properly to prepare for the hearing in October 2024.
31. I find it is therefore appropriate to exercise my discretion to award preparation time in favour of the claimant and Mr Iqbal in relation to this period of time.
32. Mr Iqbal spent 6.7 hours working on the case during that time. He is not entitled to recover time spent at the case management hearing itself, or travelling to and from the Tribunal, as the order is for "preparation time" only.
33. Of those 6.7 hours, assessing the amount of correspondence on the Tribunal file and considering his costs schedule, it was reasonably and properly incurred. He assembled the bundle for the case management hearing. He attempted to procure compliance by making reasonable applications to the Tribunal. He can recover that time spent. The rate in 2024 was £44. He can recover £294.80.
34. Mr Iqbal also claims for attendance at the final hearing for him and the claimant. This would have been necessary without the unreasonable behaviour of Mrs Mayat. He cannot recover for this.
35. What of Mrs Mayat's conduct during the hearing, and as a witness? The Tribunal needs to assess the unreasonable behaviour and what impact it had on the proceedings. Mrs Mayat was not a reliable or credible witness, but the impact this had on the proceedings was that the claimant was able to establish on the balance of

probabilities that his version of events was the more credible and so won his case. The failed application at the start of the hearing did not delay the judgment being delivered and so had no additional impact on the hearing.

36. As for whether the proceedings had no reasonable prospect of success, the parties were engaged in a dispute about the nature and duration of the claimant's employment that the Tribunal resolved by taking evidence under oath, as Employment Judge Batten indicated would be done in her letter in February 2024. The response as put forward at the hearing in October 2024 did have some potential merit, but the claimant was successful in persuading the Tribunal to find in his favour.

37. Therefore, the effect of the respondent's conduct at the final hearing did not increase the claimant's preparation time, to the extent that the Tribunal is prepared to exercise its discretion to award any order for payment of preparation time.

**Approved by Employment Judge
Barker
13 May 2025**

Order sent to the parties on:
17 June 2025

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For the Tribunal:



NOTICE

THE EMPLOYMENT TRIBUNALS (INTEREST) ORDER 1990

ARTICLE 12

Case number: **2411345/2023**

Name of case: **Mr A Afzal** v **Prestige BB Limited**

Interest is payable when an Employment Tribunal makes an award or determination requiring one party to proceedings to pay a sum of money to another party, apart from sums representing costs or expenses.

No interest is payable if the sum is paid in full within 14 days after the date the Tribunal sent the written record of the decision to the parties. The date the Tribunal sent the written record of the decision to the parties is called **the relevant decision day**.

Interest starts to accrue from the day immediately after the relevant decision day. That is called **the calculation day**.

The rate of interest payable is the rate specified in section 17 of the Judgments Act 1838 on the relevant decision day. This is known as **the stipulated rate of interest**.

The Secretary of the Tribunal is required to give you notice of **the relevant decision day**, **the calculation day**, and **the stipulated rate of interest** in your case. They are as follows:

the relevant decision day in this case is: 17 June 2025

the calculation day in this case is: 18 June 2025

the stipulated rate of interest is: **8% per annum**.

Paul Guilfoyle

For the Employment Tribunal Office

GUIDANCE NOTE

1. There is more information about Tribunal judgments here, which you should read with this guidance note:

www.gov.uk/government/publications/employment-tribunal-hearings-judgment-guide-t426

If you do not have access to the internet, you can ask for a paper copy by telephoning the Tribunal office dealing with the claim.

2. The payment of interest on Employment Tribunal awards is governed by The Employment Tribunals (Interest) Order 1990. Interest is payable on Employment Tribunal awards if they remain wholly or partly unpaid more than 14 days after the **relevant decision day**. Sums in the award that represent costs or expenses are excluded. Interest starts to accrue from the day immediately after the **relevant decision day**, which is called **the calculation day**.
3. The date of the **relevant decision day** in your case is set out in the Notice. If the judgment is paid in full by that date, no interest will be payable. If the judgment is not paid in full by that date, interest will start to accrue from the next day.
4. Requesting written reasons after you have received a written judgment does **not** change the date of the **relevant decision day**.
5. Interest will be calculated as simple interest accruing from day to day on any part of the sum of money awarded by the Tribunal that remains unpaid.
6. If the person paying the Tribunal award is required to pay part of it to a public authority by way of tax or National Insurance, no interest is payable on that part.
7. If the Secretary of State has claimed any part of the sum awarded by the Tribunal in a recoupment notice, no interest is payable on that part.
8. If the sum awarded is varied, either because the Tribunal reconsiders its own judgment, or following an appeal to the Employment Appeal Tribunal or a higher court, interest will still be payable from **the calculation day** but it will be payable on the new sum not the sum originally awarded.
9. The online information explains how Employment Tribunal awards are enforced. The interest element of an award is enforced in the same way.

