



EMPLOYMENT TRIBUNALS

Claimant: Mr A Staniszewski

Respondent: Gwynedd Skip & Plant Hire Ltd

Heard at: Cardiff (fully remote CVP)

On: 11/03/2025

Before: Employment Judge Lloyd-Lawrie

Representation

Claimant: Ms Zdanowicz, Chartered Legal Executive

Respondent: Mr Mellis, Counsel

RESERVED JUDGMENT

1. The Claimant brought claims of unfair dismissal, wrongful dismissal and unauthorised deductions from wages relating to withheld holiday pay. Following a hearing on 18th and 19th November 2024, the Claimant was found to have not been dismissed and thus his claims relating to dismissal failed. The Claimant was successful in securing his previously withheld accrued holiday pay.
2. By application dated 28/11/2023, the Respondent applied for a costs order against the Claimant pursuant to Rule 76 Employment Tribunals Rules of Procedure 2013. The application, in essence, was two fold. Firstly that the Claimant and/or his Representative had acted vexatiously or unreasonably in bringing claims of unfair and wrongful dismissal and secondly, by the way proceedings were conducted.
3. In oral submissions, Mr Mellis essentially made the point that from the date of witness exchange, whereupon the Claimant and his witness contradicted each other, it should have been clear that the cases regarding dismissal would fail. Further, the repeated insistence of the Claimant's representative to reference a news article relating to the father of one of the directors of the company was highly unreasonable conduct, as it was simply an attempt to "sling mud". Further, that Ms Zdanowicz in making an application for the documents inclusion at the start of the hearing was further unreasonable conduct and then by raising the matter again in questioning again, after

being told categorially by me that the matter was not relevant was further evidence of unreasonable conduct.

4. Mr Mellis also said that the repeated allegations that the resignation acceptance letter was fabricated, particularly when the further meta data was provided, again was unreasonable conduct.
5. Ms Zdanowicz's thrust of submissions was that the Claimant reasonably believed that he had prospects of success. He had witnesses, emails and a call log. Further, any issues with discrepancies in his evidence were down to translations errors and that the witness statements had only been translated using Google Translate so errors may be present. Further, she made the point that not succeeding in a case does not mean that the Claimant lacked prospects in bringing said case or was unreasonable in bringing it. She advised that costs should be carefully awarded to avoid dissuading Claimants from bringing genuine claims.
6. Ms Zdanowicz, when asked, said that she concedes it was unreasonable of her to have raised the issue of the article's content to the witness but that the Claimant thought it was really relevant. She advised that the rest of the actions were actively bringing the case.
7. In considering making an award a costs, I am to impose a 3 stage test, as set out by the Tribunal Rules. Firstly, I must ask myself whether a party's conduct falls within rule 74 (2) (a). If the costs jurisdiction is engaged, I must then ask myself whether it is appropriate to exercise discretion in favour of awarding costs against that party and only if that test is also satisfied, do I then consider what amount should be awarded.
8. I find in this case that the Claimant failed to satisfy me, on the balance of probabilities, that he had been dismissed. I made no finding that he willfully lied. I find that just because the Claimant failed to satisfy the burden of proof does not, of itself, make his conduct vexatious or unreasonable in bringing the claim.
9. I find that the insistence of the Claimant's representative both in pre-hearing correspondence and at the hearing to raise the matters contained in the article were wholly unreasonable. The article and its contents were utterly unrelated to the case of the parties involved in this case. The entire exercise was designed to "throw mud" as stated by the Respondent's Representative. If the Claimant was a litigant in person, this may be understood as a misunderstanding of procedure. However, the Claimant's representative is a legal professional. It was unreasonable conduct on her behalf, particularly to then attempt to question a witness of the Respondent on the issue, after I had expressly refused her permission to adduce the article and told her, very clearly, that it was irrelevant.
10. I further find that the first questioning of the genuineness of the resignation letter, by reference to the meta data, whilst questionable by tone of email, was not unreasonable conduct. The first meta data did show that the document had been altered post date. The Claimant is entitled to robustly challenge evidence and I find asking for clarification on that was appropriate. However, I find that once evidence had been provided, alleging still that the document was fabricated was entirely unreasonable conduct

for a legal professional. That is a very serious allegation and any lawyer should know that they must have proof before they make such an allegation. Stating that the document had never arrived and asking how the document was said to have been sent, challenging even the lack of address would have been appropriate. Suggesting continually, including by using incorrect meta data, to the witness of the Respondent during the hearing, that the document had been fabricated, was unreasonable conduct.

11. I have then gone on to consider whether I should exercise my discretion. I take into account whether the unreasonable conduct has caused extra costs for the Respondent. Unfortunately, the Respondent has failed to provide a full costs breakdown, so I cannot see what costs were dealt attributable to certain emails. In any event, I find that for the vast majority of correspondence relating to the same, other matters were also discussed and thus not much actual work would have been caused by the behaviour of the Claimant's Representative. I further take into account that the hearing length would not have been dramatically shortened if these matters had not occurred during the hearing. I find that the hearing would have needed to go ahead for the Claimant to be paid his holiday pay as the Respondent had unlawfully withheld it, this caused cost for the Claimant. Lastly, in the Claimant's favour, I consider that his ability to pay any award currently, or in the future, is very limited by the fact that he has been without work for a year, without income for around 6 months and has no assets or savings. In favour of exercising my discretion, I consider that behaving unreasonably in conducting litigation is unacceptable and that both parties have the right to expect appropriate conduct from the opposing party. I find that allowing such behaviour to go unchecked, when it is found that the costs threshold is met, can lead to a continuation of the same.
12. Overall in this case, I have decided not to exercise my discretion to award costs. I cannot see that costs have actually been increased by the unreasonable conduct, the Respondent could and should have provided a detailed breakdown of what work was undertaken. I find that this is a case where analysing the pros and cons of making such a costs award comes down, just, in favour of refusing to make such an award.

Approved by:

Employment Judge Lloyd-Lawrie

11/03/2025

JUDGMENT SENT TO THE PARTIES
ON

19 March 2025

Kacey O'Brien
FOR THE TRIBUNAL OFFICE