



EMPLOYMENT TRIBUNALS

Appellants

Respondent

Mr R Outlaw

v

Thomas Niamh Contracting Ltd

Heard: On the papers

On:

7 July 2025

Before:

Employment Judge JM Wade

JUDGMENT

The respondent's costs application is dismissed.

REASONS

Introduction

1. These proceedings have experienced unfortunate delay. In summary:

- 1.1. The claimant presented a claim form on 24 November 2023 in relation to his resignation on or around 29 August 2023. He raised both Equality Act and Employment Rights Act claims.
- 1.2. The claimant has (and had at the material times) PTSD and anxiety and depression. He secured new employment with no ongoing financial loss on or around 25 September 2023.
- 1.3. The employer's defence to the claims, in simple terms, was they were wholly without merit and the claimant's resignation came after he had been sent an invitation to a disciplinary hearing to address various allegations. Those matters included his inadequate attendance at site, and his use of the respondent's vehicle – the claimant had a company vehicle and was alleged to be using it at night for private investigation work. The claimant's position was that he had been open about having a second job.
- 1.4. As to remedy the claimant sought around three months' pay in his claim form and in his schedule of loss he sought around £24,000. He is represented throughout these proceedings by his partner, who has human resources and Tribunal experience.

- 1.5. The claims were vigorously defended and a case management hearing in March 2024 gave directions for a preliminary hearing (on disability and the ERA claims) and a five-day final hearing in October 2024.
- 1.6. At the preliminary hearing on 1 July 2024 the ERA claims (save for holiday pay) were struck out. Disabled person status had been conceded. The final hearing was reduced in length to four days (8 to 11 October 2024).
- 1.7. The claimant sought reasons and reconsideration of the preliminary hearing Judgment. Those matters, due to Tribunal delay, were not resolved until 1 October 2024 (the application for reconsideration being refused and reasons being given).
- 1.8. On 2 October 2024 the respondent made unless, deposit and strike out applications in relation to the remaining complaints. Those applications included because the claimant had not engaged with any case management orders since the preliminary hearing.
- 1.9. The final hearing was postponed on the respondent's application and new dates for directions were given.
- 1.10. On 6 October 2024 the claimant applied to withdraw his "constructive dismissal claim" ostensibly because of the failure in the preliminary hearing and a deterioration in his mental health said to arise from the proceedings.
- 1.11. On 8 October 2024 the respondent sought clarity and indicated it would be making a costs application.
- 1.12. On 11 October the claimant confirmed he was withdrawing all claims.
- 1.13. On 29 October 2024 the respondent presented its costs application to the Tribunal. The application was overlooked or did not reach the Tribunal's inbox.
- 1.14. On 12 December 2024 and 22 January 2025, the respondent chased its costs application.
- 1.15. On 14 January 2025 the Tribunal issued a dismissal judgment in connection with the proceedings and directions were given for the claimant to present his comments on the costs application and whether it could be addressed on the papers, by 6 February 2024. Information was also sought about the claimant's means.
- 1.16. On 5 February 2025 the claimant's partner, acting as his representative throughout, sent that response, with attached payslips, IVA ("individual voluntary arrangement") papers, a draft financial order in the claimant's divorce proceedings, details of income and expenditure, and evidence of an appointment (said to be medical).
- 1.17. On 6 February 2025 the respondent sent a reply to the claimant's opposition to a costs order.

- 1.18. On 20 March 2025 the Tribunal directed that the costs application shall be heard on the papers. Today was directed for a Judge to decide the matter.

The Law

2. The Tribunal's costs provisions are set out within Part 13 of the Employment Tribunal Procedure Rules 2024.

Application

3. The respondent's application was made in two parts:
- 3.1. Defence costs 29 April to 17 July 2024 of £9294.96 (inc VAT) relying on a cost warning letter (27 April 2024), identifying the weakness in the ERA/dependent's leave allegations; the fee earner is a senior legal executive and was, throughout, charged at £260 per hour plus VAT.
- 3.2. Costs in connection with applying for a strike out/unless order/deposit order said to arise from the claimant's failure to comply with case management orders made on 2 October 2024 - £1700 plus VAT.

Discussion and conclusions

4. These reasons are to be read with the Tribunal's two previous judgments in this matter – which set out the facts found to date and conclusions on the dependent leave part of the case.
5. It is clear that the respondent's April costs warning letter –written in commendably open and measured terms specifically addressed the problems in the claimant's dependent leave case (as well as the respondent's position on all aspects of his case) and invited withdrawal. There was a clear alert to the costs to the respondent if the case continued. The dependent leave problems were ultimately found by the Tribunal as predicted by the respondent.
6. The respondent's analysis was done on the basis of information the claimant had himself provided through his representative. In short, the fact that the claimant worked on the days he said he took dependent's leave was fatal to his claim – this is what the Judge found. Had the claimant been legally advised, likely that claim would have been withdrawn after the bundle was prepared – that is when emails and the like evidencing the work carried out confirmed his position in correspondence. The costs of the preliminary hearing could have been avoided.
7. It is also clear in the claimant's withdrawal communications, and opposition to this cost's application, that his advisor, also his partner, has not understood the complexities of the claims sought to be brought. The costs for the respondent (and this is said in terms in representations on its behalf) have been largely caused by the claimant and his partner's decision not to access legal advice. The reason, as is often the case, was said to be lack of funds.
8. I am satisfied, from the financial information provided, that the claimant's finances are strained such that legal advice was not affordable for him in these proceedings and he did not act unreasonably in that respect. No information is given about his partner's earnings or financial position, but in this endeavour, she has done a great deal of the work and has acted generally and diligently to the best of her ability and

for free – she has made an investment of her time in her partner's case, albeit she has not invested her money in paying for legal advice. Her investment has not born fruit.

9. The exception in that diligent approach, was the decision not to comply with final hearing case management orders, but instead to seek a reconsideration of the first judgment before withdrawing all claims (the July to October period). The claimant could have applied for a stay of those orders but again, I do not consider that unreasonable conduct for a lay representative.
10. The respondent was not put to additional expense of the strike out application because of that failure to comply with orders – likely it would have made the application in any event, bearing in mind the costs warning letter on the rest of the case. Further its witnesses could not attend the scheduled final hearing and postponement was required in any event.
11. There was a de facto stay, not by order, but because of the reconsideration application. For these reasons I do not consider it unreasonable conduct not to comply with the final hearing orders, or in the alternative I do not consider it in the interests of justice to make a costs order in respect of the failure to comply with orders pending receipt of the reasons, and reconsideration, in all the circumstances of this case.
12. Returning to the dependent leave part of the application, the respondent has been very well and robustly represented with a high degree of technical expertise; the claimant and his partner have decided not to access legal advice. I also take into account the difficulties for the claimant arising from his diagnoses.
13. Reasonableness has to take account of a person's abilities, and what they can reasonably be expected to find out. In the round I do not consider the claimant, by placing trust in his partner and representative, has acted unreasonably in failing to withdraw the dependent leave part of the claim from the expiry of the costs warning letter, notwithstanding the difficulty in the claim which then came to pass.
14. If I am wrong about that – because it may be considered a simple concept to understand that if you work on particular days, you have not taken leave – then I do not consider it is the right exercise of my discretion to make a costs order. The Tribunal is generally a costs free regime. The CAB generally provides excellent advice notes and help where it is available, but it is not always available, and parties without legal advice are often not on an equal footing with those who have it.
15. Given the circumstances above, while I understand the costs born by the respondent will be a frustration in all the circumstances of this case, Parliament gave Employment Judges a wide discretion in the Tribunal costs regime. Legal costs are an operating expense of a business, which will be set off against profit. Requiring a household with part time care of children, a parent with disability, in strained financial circumstances to expend sums and VAT for failing to withdraw a particular part of a claim, where the remaining claims were then withdrawn after a preliminary hearing - would appear to me to be contrary to the interests of justice in the round.

16. The application is dismissed.

Employment Judge JM Wade

7 July 2025

Judgments and written reasons are published on the Tribunal's website shortly after they are made available to the parties.