Case Number: 3301233/2022

EMPLOYMENT TRIBUNALS

Claimant: **Ozgul Coban**

Respondent: **1. Manes Partners Limited**

2. Alper Ozceylan

Heard at: **in chambers** **On:** **4 July 2025**

Before: Employment Judge Freshwater

Representation
Claimant: **Written submissions only**
Respondent: **Written submissions only**

JUDGMENT

1. The claimant's application for costs is dismissed.

2. The respondent's application for costs is dismissed.

REASONS

Background

1. The claimant's claims of direct and indirect discrimination relating to disability were found to be well-founded by the tribunal following a liability hearing. The claimant's claim of harassment was found to be not well founded and was dismissed.

2. A remedy hearing took place on 3 August 2023. The claimant indicated at the end of the hearing that she intended to apply for costs. There was insufficient time to deal with that application and directions were made.

3. The remedy judgment was sent to the parties by the tribunal office on 20 October 2023.

4. On 16 November 2023, the claimant sent a written application to the tribunal seeking a costs order against the respondent.

5. On 16 November 2023, the respondents made an application for a

preparation time order against the claimant.

6. The respondents appealed to the Employment Appeal Tribunal and applied for the costs and preparation time order applications to be stayed. The stay was opposed by the claimant. The stay was granted by me until 13 September 2024 in the first instance. It is unclear whether there were any further applications to stay the proceedings, however none were received by me and so the reality was that the stay remained in place.

7. On 11 February 2025, an application by the claimant to lift the stay on the costs proceedings was referred to me. The application had been sent to the tribunal on 21 November 2024. The respondents replied on 26 November 2024, stating that it did not object to the stay being lifted but noted that the respondents had not yet had the chance to respond to the application.

8. On 25 February 2025, I issued the following directions:

    a. On 11 February 2025, two applications were referred to me in respect of this case. First, the claimant applied to the tribunal for reconsideration of the remedy judgment because, it is said, the tribunal failed to include an award in the sum of £1,584 for failure to provide written terms of employment. Second, the claimant applied for the stay on the costs proceedings to be removed and for that application to be determined.
    b. The respondent is to make any written representations about the claimant's application for reconsideration by 18 March 2024. These representations should include a view on whether the application can be determined without a hearing.
    c. The claimant is to set out her costs application using County Court Form N260 by 18 March 2025. This form is not an Employment Tribunal form, but is commonly used to assist the tribunal in determining the application.
    d. The respondent is to provide a response in writing to the costs application by 15 April 2025. This response should include any views on whether the application can be determined on the papers or if a hearing is needed.
    e. The costs application will be determined by the full tribunal, either on the papers or at a hearing. The parties will be informed if a hearing is necessary.

9. The parties made written submissions about the merits of both applications. It was said on behalf of both parties that the applications should be dealt with on the papers and that a hearing was not necessary (although, initially, the respondents had indicated there was insufficient information to express a view about the need for a hearing).

10. On 18 March 2025, the respondents' representative indicated that she agreed the tribunal could deal with both applications on the papers without a hearing. In the representations made, it was said that the respondents' application was no longer for a preparation time order but for a costs order. This was on the basis that, under the Employment Tribunal Rules of Procedure 2014, the respondents' representative met the requirements for a costs order instead of a preparation time order. Presumably the reference to 2014 was an error and should have been 2024 (as this was the change

in rules – from 2013 to 2024.)

11. I agreed that the applications could be dealt with on the papers and realised that I made an error in the directions that I issued initially. I had overlooked the fact that the Presidential Guidance on Panel Composition (which has effect from 29 October 2024) does not permit a full tribunal to deal with a costs applications on the papers (see paragraph 6 of that Guidance). I informed the parties of this error and invited further representations. None were received and I decided that it was in the interests of justice to determine the applications as a judge sitting alone without a hearing.

The claimant's application

12. The claimant's application was made on the basis that the respondents' conduct has been unreasonable pursuant to rule 76(1)(a) of the Employment Tribunal Rules of Procedure 2013 in that:

    a. The Respondent failed to engage in reasonable settlement discussions prior to the claim being issued or thereafter; and
    b. The Respondent unreasonably threatened a claim for breach of contract against the Claimant; and
    c. The Respondent unreasonably delayed in conceding that the Claimant had a disability for the purposes of the Equality Act 2010, section 6; and
    d. The Respondent unreasonably failed to concede that he had knowledge of the Claimant's disability prior to liability judgment.

The respondents' application

13. The respondents' application for a preparation time order on 16 November 2023 was as follows:

    "Pursuant to 76(1)(a) the Claimant has acted vexatiously, abusively, disruptively, or otherwise unreasonably in the way that the proceedings have been conducted. The Respondents rely specifically on the following behaviour:
    - The Claimant's unreasonable conduct in the settlement discussions between the parties
    - The Claimant's decision to pursue its costs application dated 3rd August 2023 which has no prospects of success
    - The Claimant's subsequent amending of her application for costs when the Employment Tribunal have not granted permission for the application dated 3rd August 2023 to be amended."

14. The costs application was made on the same basis.

15. The claimant opposed the application on the basis that the tribunal did not have the jurisdiction to hear it. It was said that the claimant's representative was not in the same position as an in-house lawyer and that the application was an attempt to claim costs that had not been incurred by the respondent. It was submitted that an in-house lawyer represented their employer, whereas the respondent's representative acted for external individuals and organisations on a fixed-fee retainer.

The law

16. This application was considered after the implementation of the 2024 rules, and it is those rules which apply in this case.

17. Rule 73(1) of the 2024 Rules states that:

"A costs order is an order that the paying party make a payment to—

(a)the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative, or

(b)another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at a hearing."

18. Rule 74 of the 2024 Rules states that:

"(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."

19. Rule 75 of the 2024 Rules states that:

“(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).”

20. Rule 76 of the 2024 Rules states that:

“(1) A costs order may order the paying party to pay—

(a)the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

(b)the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—

(i)in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998(1), or by the Tribunal applying the same principles;

(ii)in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019(2), or by the Tribunal applying the same principles;

(c)another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual’s attendance as a witness at a hearing;

(d)an amount agreed between the paying party and the receiving party in respect of the receiving party’s costs.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).

(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.”

21. The interpretation provisions of the 2024 Rules are found in Rule 2 and state as follows:

““lay representative” means a person who charges for representation in proceedings but is not a legal representative;

"legal representative" means a person (including an employee of a person who is entitled to be paid costs) who—

(a) has a right of audience in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates' courts,
(b) is an advocate or solicitor in Scotland, or
(c) is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland;..."

22. The Legal Services Act 2007 deals with the approval of reserved legal activities. Section 12(1) of the 2007 Act states that the exercise of a right of audience is a reserved legal activity. Section 13 of the 2007 Act deals with when a person is entitled to carry out a reserved legal activity, and states that a person must be authorised by an approved regulator or be an exempt person. Schedule 3 sets out who is an exempt person and does not apply in this case. Schedule 4 states that the Institute of Legal Executives is an approved regulator in respect of rights of audience.

23. Costs in the employment tribunal are the exception rather than the rule: *Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA*,

24. A failure to accept an offer of settlement cannot in itself constitute unreasonable action in bringing or pursuing the proceedings. *Lake v Arco Grating (UK) Ltd EAT 0511/04*

25. In the case of *Khan v Heywood and Middleton Primary Care Trust 2006 ICR 543, EAT*, the Employment Appeal Tribunal stated that whether conduct could be characterised as unreasonable required an exercise of judgment about which there could be reasonable scope for disagreement among tribunals, properly directing themselves.

26. A tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct: *McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA.*

27. In *Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA* it was said that it was important not to lose sight of the totality of the circumstances. The vital point in exercising the discretion to order costs (or a PTO) is to look at the whole picture. The tribunal has to ask whether there has been unreasonable conduct in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.

Conclusions – the claimant's application

28. The basis of the claimant's application is that the respondents' conduct was unreasonable, but not that it had no reasonable prospect of success. The law requires a three-stage approach under the 2024 Rules. First, the tribunal must consider whether the respondent's conduct falls under rule 72(a). Second, the tribunal must decide whether or not to exercise its discretion to make a costs order against the respondent. Third, the tribunal must determine the amount of the order (subject to a detailed assessment).

29. The parties engaged in settlement discussions before the liability hearing, and between the liability and remedy hearing. Ultimately, the claimant did not receive an award that met or was higher than her settlement offer. The claimant did not succeed in all of her claims before the tribunal and so it was not unreasonable for the respondents to reject the claimant's offer of settlement at a point in time when the factual basis of the complaints had not been aired before the tribunal. The parties had strong views about the merits of the case which was reflected in the settlement discussions.

30. It was not unreasonable in all the circumstances for the respondents to consider whether or not to bring a claim for breach of contract. There was a dispute between the parties about whether the claimant was dismissed or resigned. The tribunal found, on the evidence, that the claimant had not been dismissed. In any event, it was raised once in the context of settlement discussions before the respondents had sought legal advice. It was raised, on the evidence before me, just once and then not pursued. There was no ongoing threat or undue pressure arising from this part of the respondents' conduct.

31. The issue of whether a person is disabled under the Equality Act 2010 is not straightforward and requires consideration of medical evidence in the context of the complaints made. The respondents conceded this point once the view was formed the claimant was a disabled person for these purposes. The fact that it was not conceded earlier is not conduct falling outside the range of reasonable approaches to this case.

32. It is true that the tribunal found the claimant's evidence to be credible in respect of the fact that she had told the respondents of her illness during her job interviews and that the second respondent was evasive in his evidence. It is therefore necessary to take into account the nature, gravity and extent of the respondents' failure to accept this in evidence. It is not unreasonable for parties in a case to have a different view of the facts, and for the tribunal to resolve the dispute by making findings. As such, not every occasion where the tribunal finds one witness more credible than another leads to a finding of unreasonableness. The nature of this conduct is that it would have been better if the respondent had been more direct in his evidence, and less evasive. However, this was one part of a finely balanced case and so the gravity and extent of his conduct is not such that this makes his conduct unreasonable. The fact of knowledge of the disability was one part of the case dealt with in a straightforward manner during the course of the hearing. Acceptance of the fact would not have made a difference to the length of the hearing and the work involved in preparing for the hearing.

33. In all the circumstances of the case, the respondents' conduct did not fall under rule 72(a) and therefore the tribunal has no power to make a costs order.

Conclusions – the respondent's application

34. I find that the respondents' representative is not an in-house lawyer. She is not employed by the respondents. The issue is whether she is, otherwise,

a legal representative. The representative states that she an "Employment Tribunal Advocate" and Cilex Fellow with a charge out rate of £225 per hour. However, there is no evidence before me that the respondents' representative has been approved by the Institute of Legal Executives to exercise a right of audience either in the Senior Courts or generally in the county courts or magistrates' courts. This is distinct from being an advocate in the Employment Tribunal, where there are no reserved rights of audience. Therefore, I am not satisfied that she is a legal representative for the purposes of a costs order under the 2024 Rules (or earlier versions of the relevant procedure rules). However, she does then fall under the definition of lay representative and on that basis, the tribunal does have the jurisdiction to consider whether or not a costs order should be made.

35. The respondents' application for a costs order was not made until 18 March 2025. This is significantly beyond 28 days after the remedy judgment was circulated to the parties. Previously, the application was for a preparation time order. That application was in time. There is no difference between the 2013 and 2024 rules in respect of the difference between a preparation time order and a costs order and so the application for a costs order could have been made in time.

36. However, the basis of a costs order and preparation time order is the same and so I am prepared to allow the amendment to the application and consider whether or not the claimant's conduct was unreasonable.

37. In my view, the claimant's conduct is not such that it can be described as unreasonable. The costs application, although I have dismissed it, cannot be described as having no reasonable prospect of success. There are respectable arguments for both sides to put forward an application for costs in the context of a case which was finely balanced. This is reflected in the decision on liability because not all of the claim was found to be well-founded. The claimant's costs application changed between the remedy hearing and the promulgation of the remedy judgement, but the application was still made within time and there was no requirement to apply to amend the application.

38. In respect of the settlement discussions, both parties had – at points – set out unrealistic settlement offers. However, this is not uncommon in the course of litigation and, in this case, appears to be reflective of the view that each party took about the merits of their respective case.

39. Looking at the settlement correspondence in the round, it is not such that either party has been evidenced to be unreasonable. Both parties have been robust in how they have dealt with the case.

40. The respondents' application for a costs order is dismissed on the basis that the claimant's conduct did not fall under rule 72(a).

Approved by:

Employment Judge Freshwater
4 July 2025

JUDGMENT SENT TO THE PARTIES ON

18 July 2025

FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/