EMPLOYMENT TRIBUNALS

Claimant: **Mr S Quigley**

Respondent: **West Atlantic UK Limited**

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 21 July 2025

Before: Employment Judge Brewer
Ms F French
Mr C Tansley

Representation

Claimant: In person
Respondent: Mr J Heard, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that

(a) the respondent's costs application succeeds,
(b) the claimant shall pay the respondent the sum of £14,594.00.

REASONS

Introduction

1. This hearing was listed following the respondent's application for costs consequent upon our unanimous judgement delivered orally on 18 February 2025 and thereafter in writing that all of the claimant's claimed failed.

2. I should record that prior to today's hearing the claimant had sought my recusal from considering this application which application I turned down with reasons. He also sought to delay this hearing because he has brought a claim against the CAA in a County Court for disclosure of a particular document. The claimant

asserted that in some unspecified way this document would be relevant to his case but of course his case before the employment tribunal, other than this costs application, has been determined. The claimant has neither appealed our judgment nor even asked for reconsideration. That application was also refused.

3. The claimant renewed his applications today and the tribunal unanimously rejected them.

4. The claimant asked me to ensure that he received a transcript of today's hearing but as I explained to him that was an administrative matter and he would need to make an application in respect of which, if a transcript is to be provided, there would be a cost.

Issues

5. The issue is whether we should award costs in favour of the respondent on the basis that the claimant's conduct in continuing the proceedings beyond April 2024 was unreasonable and/or on the basis that the claims had no reasonable prospect of success.

6. The respondent seeks its costs from 24 April 2024 to the end of the final hearing but not including counsel's fees.

Law

7. We set out below a brief description of the relevant law.

8. The relevant part of the Tribunal Rules is as follows:

> "**When a costs order or a preparation time order may or must be made**
>
> **74.**— (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 …
>
> (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,
>
> **Ability to pay**
>
> **82.** In deciding whether to make a costs order, preparation time order,

> or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay."

9. We say here that in considering the application, we have had regard to the claimant's ability to pay.

10. The Tribunal Rules impose a three-stage test: first, the tribunal must ask itself whether a party's conduct falls within rule 74, in other words, is its costs jurisdiction engaged?; if so, second, it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party; the third stage is the determination of the amount of any award — see **Daly v Newcastle Upon Tyne Hospitals NHS Foundation Trust** EAT 0107/18.

Unreasonable conduct

11. It is appropriate for a litigant in person to be judged less harshly in terms of his or her conduct than a litigant who is professionally represented (see **AQ Ltd v Holden** 2012 IRLR 648, EAT).

12. In determining whether to make an order under this ground, a tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct (see **McPherson v BNP Paribas (London Branch)** 2004 ICR 1398, CA, but it is important not to lose sight of the totality of the circumstances (see **Yerrakalva v Barnsley Metropolitan Borough Council and anor** 2012 ICR 420, CA). 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.

No reasonable prospects of success

13. In **Radia v Jefferies International Ltd** EAT 0007/18 the EAT gave guidance on how tribunals should approach costs applications under rule 74(2)(b). It emphasised that the test is whether the claim had no reasonable prospect of success, judged on the basis of the information that was known or reasonably available at the relevant time.

14. Mr Heard drew our attention to three recent EAT decisions on costs which we have had regard to: **Mr M Willis v GWB Harthill LLP and ors** [2025] EAT 79, **Mr A Madu v Loughborough College** [2025] EAT 52, and **Mr V Iyieke v Bearings Point Limited** [2025] EAT 25.

Discussion

15. We turn now to our discussion and conclusions on the application for costs.

16. We intend no disservice to either party if we summarise briefly the submissions.

17. Mr Heard confirmed that the respondent seeks its costs only from 24 April 2024. That was the date of the first case management hearing at which. subject to

some further clarification from the claimant, the issues were set out and they were finally agreed shortly after the hearing concluded. The key point to note at this time is that the claimant was then legally represented and indeed Counsel attended the preliminary hearing on his behalf. Significantly the employment judge said this, recorded at paragraph 47 of his order,

> "The claimant's particulars of claim are 24 pages long and contain many appendices; the particulars contain a large amount of detail and background information but lack focus in setting out the legal claims. In parts, they erroneously suggest that the tribunal is seized with making decisions about general fairness in employment. I made it clear to the claimant that such an approach is not helpful to either party nor to the tribunal in preparing for the final hearing and may have the unintended and unfortunate effect of distracting focus away from the claims he wishes to make. I encouraged the claimant to maintain focus on the legal issues which the tribunal must decide…"

18. Mr Heard submits that the claimant's focus remained general and did indeed distract from the claims he wished to make, and he relies on our findings that, in effect, the claimant led no or no relevant evidence on the allegations we had to determine.

19. Following that preliminary hearing the claimant made three applications to the tribunal. The first was to add claims relating to perceived disability harassment, the second was to add a claim for misrepresentation and the third was an application for non-party disclosure.

20. I dealt with those at a preliminary hearing on 29 October 2024.

21. The claimant had only been legally represented to August 2024, but it is presumed that he discussed his claims with his legal representatives when the list of issues was finalised at or shortly after the first preliminary hearing.

22. The applications before me in October 2024 were dealt with quite briefly.

23. Because there was no pleaded application in relation to perceived disability harassment effectively no proper amendment application was made. I therefore refused this.

24. I explained to the claimant that the tribunal did not have jurisdiction to deal with claims of misrepresentation.

25. In relation to the application for non-party disclosure, this was an application that we order the CAA to disclose a confidential medical report on the claimant, assuming it existed. The difficulty for the claimant is that he said that was related to his claim of perceived disability discrimination and therefore in the circumstances it could not possibly be relevant to the issues which were then before the tribunal. For that reason, the application failed.

26. At that date the list of issues had been agreed between the respondent's solicitors and the claimant's solicitors before they came off record. However, as I noted in my record of the hearing the claimant said that the list of issues was not agreed and in the discussion which followed, the claimant agreed that the then current list of issues contained all of his direct age discrimination and harassment related to age claims but he argued and I accepted that he had pleaded, without labelling it so, a public interest disclosure detriment claim. I allowed that as an amendment.

27. Mr Heard then went through in reasonable detail the paragraphs in our judgment relevant to each of the allegations and, as we found, essentially the claimant at no point shifted the burden of proof to the respondent and effectively led no cogent or relevant evidence about any of the allegations he had made and I need not repeat our detailed findings here.

28. For his part the claimant has provided written submissions which we have of course read and taken into account. At the hearing he said that he had found today stressful, he confirmed that he had never received a costs warning and he said in relation to the CAA document, if we may call it that, that it would have proved age discrimination had it been available at the first hearing. The difficulty with that submission is of course that the purported reason for asking for disclosure of it as the preliminary hearing was in relation to a claim of perceived disability discrimination and not age discrimination. It is also difficult to see given our findings on the evidence we had at the substantive hearing how one single document which is apparently a medical report, could prove that the claimant suffered direct age discrimination in all of the different ways he alleged.

Means

29. it is unfortunate that in his written submissions the claimant gave no details of his means, nor provided any documents, and therefore the tribunal asked him some questions about that and although I am sure it was uncomfortable for the claimant, it was unfortunately necessary.

30. The salient points are as follows.

31. The claimant does not own or have any interest in any property. He pays £70.00 per month in respect of support for an adopted son cared for by his former wife, and his only significant expense is to run his car. He lives with his partner in her house and other than occasional contributions from the claimant, she pays for everything else.

32. The claimant will receive his state pension in around four months' time. He has a private pension pot and he does not at the moment draw down any income from that and so he has a pension pot available to him of just over £161,000. He has around £1,000 in his current bank account. He has no other assets.

Conclusions

33. We deal first with the threshold question.

No reasonable prospect

34. We deal first with the argument that the claims had no reasonable prospect of success.

PIDA detriment

35. The PIDA detriment allegation amounted to the claimant arguing that he was rostered to his detriment for having made a public interest disclosure. We found that there was no public interest disclosure but went on to make findings about whether, had we found there had been such a disclosure, the detriment claim could be made out.

36. The fundamental difficulty for the claimant is that he could not possibly show causation for the simple reason that the claimant was complaining about his rostering in exactly the same way prior to the purported public interest disclosure as he did afterwards. He was well aware of that fact at the outset of this litigation let alone by April 2024 and it remains surprising to this tribunal that such an allegation was made and persisted with through to the final hearing when it could not possibly succeed.

37. That does not even deal with the argument that the claimant's disclosure of what we have called the Aberdeen incident was very unlikely, without a considerable body of evidence, to cause the respondent to retaliate against the claimant. We say this for a number of reasons not least of which is that they already knew about the incident because it was in their incident management system which was specifically designed to allow staff to log adverse incidents. Not only that but the matter had been investigated, reported to the CAA and no issues were found and therefore it is entirely unclear why the claimant asserted that the respondent would retaliate against him for reporting something about which he had no first-hand information, which had no adverse consequences and which had been properly dealt with.

Direct age discrimination

38. In relation to the direct age discrimination claims, (and the same is true in relation to the harassment claims) we recognise that in many cases any given behaviour might be perceived by one party, perfectly reasonably, as non-discriminatory and by another, again perfectly reasonably, as discriminatory. Where motive is in issue it may be that a litigant in person is entitled to take the view that all of the evidence needs to be heard before a decision can be made about what the motive was in circumstances where the allegation of a discriminatory motive is not of itself wholly unreasonable.

39. That principle is more likely to be useful where, as is often the case in discrimination claims, what took place is not in issue but rather why it took place.

40. In the present case however, the circumstances are somewhat different, and we can deal briefly with the allegations and what the evidence, or in most cases lack of evidence showed.

41. The claimant criticised two of his colleagues for not responding to an e-mail they had not been sent and it is difficult to see how the claimant could sensibly allege that the reason they did not respond is because of his age rather than the simple fact that they were not sent the e-mail. The claimant was well aware that he did not send the e-mail to the two colleagues he criticised for not responding to the e-mail and pursuing this allegation was wholly unreasonable and doomed to fail.

42. The claimant alleged that he had been rostered a minimum simulator time of 29 days, but he brought no evidence of any difference in treatment, and he did not cross examine any of the witnesses on this point. The failure to provide or ask the respondents for any particular evidence was not reasonable.

43. In relation to the allegation about the removal of two rostered simulator duties, the claimant named a comparator who lived abroad and was clearly not in the same circumstances as himself. He named a second comparator but led no evidence and asked no cross-examination questions about him.

44. The final allegation of direct discrimination was that the respondent took no action in response to a requirement for a stress risk assessment.

45. Again, the difficulty for the claimant is that the contemporaneous documentary evidence shows that there was never such a requirement. The claimant said it appeared in an occupational health report, but a brief reading of that report shows that there was no such requirement suggested by the occupational health physician and we deal this in detail in our judgment. Again, the claimant was aware of this fact from the point at which he read the occupational health report and why he pursued an allegation based on a non-existent requirement is entirely unclear.

Harassment related to age

46. As we set out in our judgment, it is not sufficient for a claimant to state that a number of things happened to him which amounted to harassment without explaining the effect of the behaviour on him, but in this case the claimant did not. There was no evidence from the claimant about how he says his working environment became intimidating, hostile, degrading, humiliating or offensive nor did he explain how his dignity had been violated by anything that was done by the respondent.

47. The first allegation of harassment is about the rejection of the claimant's grievance. Of course, those who raise a grievance are often disappointed when the outcome is not in their favour but if it is to be alleged that the reason for that is in effect discriminatory, in this case discrimination by harassment, then some

evidence will need to be led on that assertion. The claimant bought no evidence to support the assertion that the grievance was rejected as an act of harassment related to age and the evidence was clear that the grievance was reasonably investigated, reasonably concluded and wholly untainted by any discriminatory motive. A simple reading of the report would have led a reasonable person to this conclusion and should have led the claimant to this conclusion.

48. The second allegation relates to the stress risk assessment but given that there was never a requirement to do such an assessment, failure to do it could not amount to harassment related to age in the same way that it could not be direct age discrimination. Again, at the risk of labouring the point, a simple reading of the occupational health report shows that there was no requirement imposed upon the respondent by the occupational health physician to undertake a stress risk assessment of the claimant.

49. The third complaint of harassment related to the removal of the claimant from base training in 2023. This is one of the most egregious complaints because the claimant has always known and accepted that he could not undertake base training because he did not have an unqualified medical assessment. Furthermore, even if he was unclear about that at the time, and we are clear that he was aware of it, the respondent spoke to the CAA and the CAA confirmed that the claimant could not undertake base training and so the claimant knew that this had nothing to do with his age long before these proceedings commenced.

50. The fourth allegation relates to the third and that is that the respondents did not get dispensation from the CAA to enable the claimant to undertake base training, but he knew at the time that save for very exceptional circumstances, which did not apply to the claimant or rather to the respondent, there were no exceptions to the rule. The claimant was well aware, or ought reasonably to have been, prior to commencing this litigation that there were no exceptions available to enable him to do base training in his circumstances, yet he persisted with this allegation all the way to the final hearing.

51. The fifth allegation relates to what the claimant said was an agreement for a specific roster for him which he asserted the respondent had agreed at a meeting with him but then reneged on. But the meeting at which this agreement was said to have been formed was noted and the claimant has never taken issue with those notes, never suggested that they were incorrect, and it is perfectly clear from a straightforward reading of those notes that there never was such an agreement. At its highest, there was a discussion with no conclusion about a roster the claimant would prefer, and as one of the people taking part in that discussion the claimant has always been aware of this and again it remains entirely unclear why he continued to assert something he could not possibly prove up to the final hearing of this matter.

52. The sixth allegation, which related to words attributed to Mr Heenan at a meeting at which the claimant was not present was also doomed to fail. Given that the claimant brought no evidence to support his allegation about what he says was said by Mr Heenan to some new recruits, this is particularly problematic because the only way the claimant could have known about this is if someone had told

him, so it is entirely unclear why that someone or someone else who was at that meeting was not called to give evidence, but they were not and therefore it was bound to be one person's word against another. It was not reasonable of the claimant to make this assertion without bringing any evidence to support what he said.

53. The seventh allegation related was that the claimant was not provided with particular work on particular dates but again the claimant brought no evidence about this and did not cross examine any of the witnesses about it and we repeat what we say above, that it was not reasonable for the claimant to pursue this allegation yet bring no evidence to support it and not challenge any of the evidence of the respondent's, witnesses.

54. The final allegation was that sim duties were offered to other staff along with external contractors but as we said in our judgment it is difficult to see how that could possibly amount to harassment of the claimant.

55. In our judgment none of the allegations ever had any reasonable prospects of success.

Unreasonable conduct

56. Given what we have set out above, what was in the claimant's knowledge even before he commenced this litigation and his persistence in bringing claims which had no prospects of success, we consider that the threshold for unreasonable conduct is also met.

Exercising our discretion

57. As we have set out above the threshold for an award of costs has been met. We turn now to consider whether to exercise the discretion to make the award.

58. The effect of this litigation has been to cause the respondent to expend a significant sum in legal fees, we have no doubt, well beyond the fees they are seeking today. It required the attendance over 5 days in tribunal of some of the most senior operational people in the business, their professionalism, honesty and integrity was called into question and given that they are part of a licencing regime that is a serious matter.

59. Looking overall at the claimant's conduct, we consider that this is a proud individual, highly experienced, educated and well trained and he did not like the fact that he was not allowed to work in the way he wanted to, in particular to undertake more training than flying and his disenchantment meant that he tried to shoehorn into legal claims facts which did not in any measure support such claims. In some respects the claimant failed to heed the words of Judge Milns when it was pointed out at the first preliminary hearing that the tribunal was not here to deal with general issues of fairness but to deal with specific legal complaints which required specific elements to be proved which in our judgment was never going to be the case given the largely agreed facts almost all of which, if indeed not all of which were within the claimant's knowledge even before he

commenced these proceedings, and in those circumstances we have no hesitation in exercising our discretion in favour of the respondent.

Amount of award

60. As we think we have made plain, it seems to us that these claims had no reasonable prospect of success, and the claimant behaved unreasonably in commencing the litigation let alone pursuing it to a final hearing.

61. The respondent has chosen April 2024 as the starting point for its application based on the fact that at that stage the claimant had agreed a list of issues, and we consider that to be perfectly reasonable in all the circumstances. For reasons known only to the respondents they are not seeking the cost of counsel but only solicitor's costs which is of course their choice.

62. We have set out the claimant's means above and we have, as we have said taken those into account, and whilst, as he stated, the claimant has no income that seems to us to be a matter of choice because he does have a reasonable pension pot from which he could obtain an income, but he has clearly chosen not to do so. He does have the pension pot as an asset and that is in the sum of over £161,000.

63. Whilst the claimant has as he puts it no income, he also has almost no expenditure and in the circumstances we consider that his means are not a bar to us awarding costs against him.

64. For all of those reasons we award costs against the claimant in the sum of £14,594.00.

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Employment Judge Brewer

Date: 21 July 2025

JUDGMENT SENT TO THE PARTIES ON

.....30 July 2025.....

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FOR THE TRIBUNAL OFFICE

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