



EMPLOYMENT TRIBUNALS

Claimant: Ms Sharon Duncan

Respondent: The London Borough of Ealing

Heard at: London Central Employment Tribunal
On: 16th July 2025

Before: Employment Judge Singh

Representation
Claimant: Ms L Millin (Counsel)
Respondent: Mr B Anunwa (Counsel)

JUDGMENT

1. The Respondent's application for costs is successful.
2. The Claimant is ordered to pay £20,000 in costs to the Respondent

REASONS

Background

1. The Claimant was employed by the Respondent from October 1988. On the 9th September 2021, she pursued claims for age and race discrimination against the Respondent in relation to a MUP process. At that stage the Claimant was still employed.
2. That claim was heard in June 2022 by EJ Joffe and a full tribunal, and the claims were not successful. The Claimant appealed to the EAT but that appeal was dismissed at a Rule 3(10) hearing in May 2023.
3. The Claimant appealed that decision but that was dismissed at a Rule 3(10) hearing in May 2023.
4. The Claimant was dismissed in August 2022 and submitted a claim for unfair dismissal and discrimination.

5. There was a Public Preliminary hearing on the 31st March 2023 at which EJ Klimov struck out part of the Claimant's claims, including some of allegations that formed part of the Unfair Dismissal claim and some of the discrimination claims.
6. The remaining discrimination claims were subject to a deposit order which the Claimant did not pay. As such, they were struck out in May 2023. The Claimant was left with only a claim for unfair dismissal.
7. One of the primary grounds for EJ Klimov striking out some of the claims or subjecting them to a deposit order was the principle of res judicata- that is that it appeared that those issues had already been dealt with by EJ Joffe in her judgment and therefore the Claimant should not be entitled to resurrect them and have them heard again.
8. The remaining claims were heard by me at a hearing that took place between the 15th-23rd April 2024.
9. The Claimant's claim for unfair dismissal was not successful. At the start of that hearing I made it clear that if an issue had already been determined by EJ Joffe, I would be deferring to that finding and not making a different decision about it.

The Respondent's costs application

10. The Respondent's application was based on 2 grounds
 - a. That the Claimant acted vexatiously, abusively or otherwise unreasonably in the bringing of these proceedings and, further, brought a number of claims which had no reasonable prospect of success.
 - b. That the Claimant acted vexatiously, abusively or otherwise unreasonably in conducting the proceedings.
11. In respect of the allegation that the Claimant had acted vexatiously or unreasonably in bringing the proceedings, the Respondent put forward several arguments. I made note of the following relevant points which I have drawn out.
12. The Respondent pointed to the claims that had been struck out or subjected to a deposit order as evidence of complaints that had been unreasonably brought or had no prospect of success.
13. The fact that some of the complaints had been struck out on the basis that they had no reasonable prospects, seemed to me to be clear grounds for the Respondent's arguments.
14. The Respondent also pointed to the fact that at the start of the hearing in April 2024, I had struck down some of the allegations either on the basis that they significantly overlapped with those claims that had been struck out by EJ Klimov or with those claims that had been dealt with by EJ Joffe.

15. The Respondent also submitted that the Claimant had attempted to re-open factual findings made by EJ Joffe, despite her prior judgment and the unsuccessful appeal. It was clear they said that the Claimant was not willing to let those matters lie and was seeking to have them dealt with again to obtain a different judgment.
16. In relation to the allegation that the Claimant had acted unreasonably in how she had conducted the proceedings, I made note of the following points.
17. The Respondent argued that the Claimant's costs application was unreasonable. The Claimant had made an application for costs against the Respondent which was dealt with at a hearing. The Claimant's application was dismissed in its entirety by EJ Tinnion. In their judgement several of the grounds for the Claimant's application for costs were deemed to be trivial.

The Claimant's response

18. The Claimant's counsel made the following oral submissions about the application.
19. The Claimant argued that the threshold for costs was high and hadn't been reached. They argued that the conduct complained of was all part and parcel of litigation.
20. Claimant's counsel also argued that it was not appropriate for me to exercise my discretion to award costs.
21. The Claimant's Counsel said that although she had represented her during the hearings, she did not supervise her case at other times and ask such she was a litigant in person. When questioned however the Claimant's counsel did agree that she gave the Claimant advice about her case either before or after the hearings.
22. It was also noted that the pleadings had been settled by the Claimant's counsel and so she was different from a litigant in person who had no legal support at all.
23. The Claimant said that in relation to the previous hearing, although that had been unsuccessful and the appeal had not been allowed, the President of the Employment Tribunal said at the rule(3)(10) hearing that the decision in the first claim was a bad decision and not one he would have made.
24. I questioned the truthfulness of this as we had heard no direct witness evidence about this comment, and I felt it was highly unlikely that the President would make such a comment about another judge's decision. He may have said he disagreed with it but even this appeared unlikely given this is not one of the grounds on which an appeal can be granted. I could not accept that he would make such a comment that crossed the line of judicial independence.

25. The Claimant also submitted that only some of the claims were struck out and the majority were subject to a deposit order. Had the deposit been paid, they would have continued. I pointed out that a deposit order is only made when a claim is deemed to have little prospect of success. The deposit is not meant to be a financial barrier to proceeding but an indication to the parties that they may wish to reconsider whether to continue with a claim the tribunal thinks has a high chance of failing at the final hearing.
26. In relation to the costs application by the Claimant, she argued that this was necessary because of the way that the Respondent had been acting.

The relevant law

27. Under Rule 74(2)(a) of the ET Rules of Procedure, the ET may make a costs order and shall consider whether to do so where it considers that (a) a party (or their 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.
28. In practice, the ET must follow a step-step process. First, the ET must decide whether a party or its representative has acted in the manner required by Rule 74(2)(a). Second, if the ET is satisfied they have, the ET must then decide whether it is appropriate in the circumstances and pursuant to the overriding objective of deciding cases fairly and justly to make a costs order, and if so, in what sum. Cost applications are ordinarily to be dealt with summarily, and are not a mini-trial.
29. In Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd [2014] 1 AC 160, the Supreme Court came to consider the principles underlying the concepts of res judicata and abuse of process.

“Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is cause of action estoppel. It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the Claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see Conquer v Boot [1928] 2 KB 336.”

30. When making a decision about whether it is appropriate to exercise discretion, this is a matter for the tribunal alone based on the facts of that particular claim and Claimant and therefore is not fettered by precedent cases.

Decision

Has the Claimant acted in the manner set out in Rule 74(2)(a)?

31. I found that the Claimant had acted vexatiously, abusively or unreasonably by bringing the claims she submitted in 2022.
32. The principle of res judicata, set out above, effectively states that a Claimant cannot try and bring the same complaints twice.
33. EJ Klimov determined that some of the complaints that the Claimant were a repetition of those that had been pursued in the first claim that she had issued in 2021 and had been dealt with by EJ Joffe. I found that that was unreasonable conduct. It is unreasonable for a party to try and re-litigate claims that have already been decided.
34. In the hearing that I presided over, I determined on more than one occasion that the Claimant was attempting to re-open the findings made by EJ Joffe.
35. Although I accept the test for an unfair dismissal claim is different to the discrimination claims, it was not the case that the Claimant was accepting EJ Joffe's findings and just trying to argue that they met the test for unfair dismissal, even though they had not met the test for discrimination. Instead, it was clear to me in the merits hearing that the Claimant was trying to argue that a different decision should be made by this tribunal about the facts. This I felt was unreasonable conduct.
36. I also found that the Claimant's costs application was unreasonable conduct.
37. In defence of the allegations of unreasonable conduct against her, the Claimant's counsel argued that the Claimant's actions were no more than part and parcel of normal litigation. The Claimant not following the directions to the letter or make arguments with the Respondent about documents or the contents of the bundle were normal parts of the cut and thrust in litigation.
38. I found that the same could and should have been said of the issues that the Claimant raised about the Respondent's conduct which formed the basis of her costs application. As set out above, the test for costs has a high bar as costs are not usually awarded in Employment Tribunal matters. Conduct has to be exceptional to warrant costs being awarded. Nothing I saw in the complaints the Claimant had had about the Respondent's conduct that formed the basis for her costs application was in any way exceptional and the entire application was, in my opinion, unreasonable and made in order to vex the Respondent.

Is it appropriate for me to exercise my discretion to award costs?

39. I found that it was. There were several factors I took into consideration

40. Although the Claimant was technically a litigant in person, given that she had no solicitors acting on her behalf. She was clearly different from someone who had no experience of tribunal proceedings and without any access to legal advice.
41. The Claimant had been through an entire claim before, in recent times, and had even gone to the EAT.
42. The Claimant also had instructed Counsel for each of the hearings in this claim (of which there were many). The Claimant had had advice from Counsel before and after each hearing and I do not conceive that Counsel would not have discussed the merits of the claims generally or the tactics that the Claimant was employing to pursue the claim.
43. I also took into account that costs are meant to be compensatory and not punitive. The Respondent is a local authority which is unlikely to have endless financial resources. It is likely that they would benefit from the compensatory aspect of recovering costs more than a wealthy private sector Respondent.
44. Finally, the Respondent also stated in their submissions that they wanted to cap the costs they were claiming to £20,000. The schedule of costs they had submitted was more than double this at £56,684.
45. My view on the likely costs had been that only a portion of the Respondent's arguments had been successful and only a portion of the Claimant's actions during the claim attracted a costs award. Certainly the claims that she had pursued up to the preliminary hearing with EJ Klimov and the actions up to and related to the costs application she had made. It was difficult to unpick the specific elements of the costs schedule that related to this conduct, but I felt that the Respondent's cap of £20,000 fairly reflected an amount that was reasonable. Had I carried out a forensic analysis of the schedule the amount would more likely than not have been higher than £20,000. On that basis, I further agreed that it was reasonable for me to exercise my discretion to award costs.

How much should be awarded?

46. The amount I considered to be appropriate was £20,000. This was based on the reasoning set out above.
47. The Claimant had initially submitted evidence of her financial means but then withdrawn this and said she did not wish to rely upon it.
48. After delivering my judgment, the Claimant's Counsel stated they wished to make submissions about the amount. I said they had had the opportunity to do so in the overall submissions they had made before the decision had been delivered. I had given no indication that I was going to deal with the issue of the amount of costs as a separate matter.
49. I did not consider it reasonable to allow the Claimant to be able to make further submissions on the level of costs. This was particularly the case when I had not carried out a detailed forensic assessment of the schedule

of costs myself and the award I had made was one based on an overall assessment of reasonableness.

50. I therefore did not allow the Claimant to make further submissions after the judgment had been delivered orally.

Employment Judge **Singh**

_____ 31st July 2025 _____

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

11 August 2025

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FOR THE TRIBUNAL OFFICE