



EMPLOYMENT TRIBUNALS

Claimant:
Mr S Rampuri

v

Respondent:
BFS Group Limited

JUDGMENT (COSTS)

The respondent's application for costs is refused.

REASONS

Background

1. The claimant presented this claim on 26 June 2024. At the time he was still employed by the respondent. The respondent defends the claim and presented its ET3 on 26 September 2024.
2. On 14 December 2024 the tribunal notified the parties that a preliminary hearing for case management would take place on 29 May 2025.
3. On 14 April 2025 the claimant was dismissed from his employment with the respondent.
4. On 6 May 2025 the claimant's representative emailed the respondent's representative to say that the claimant intended to make an application to postpone the 29 May 2025 preliminary hearing because he was seeking to pursue additional claims arising from his dismissal.
5. On 22 May 2025 the claimant's representative made an application to postpone the hearing because another claim was to be lodged by the claimant and the claimant's representative intended to ask for the claims to be consolidated.
6. On 27 May 2025 EJ Hutchings refused the claimant's application because of its timing and because the claimant had not yet submitted his further claim.
7. On 27 May 2025, the claimant's representative wrote to the tribunal to confirm that a second claim had been presented on 22 May 2025 and asked again for the hearing to be postponed.

8. On 28 May 2025 I allowed the postponement application. The parties were told that my reasons were to follow.
9. My reasons were: “a second claim has been lodged which seems likely to be consolidated with this claim. It is in line with the overriding objective to have one preliminary hearing at which case management for both claims can be discussed. A date will be set for a preliminary hearing to take place after July 2025 by which time the second ET3 should have been presented.”
10. The preliminary hearing has been re-scheduled for 9 October 2025.

The respondent's costs application

11. The respondent made a costs application on 2 June 2025. The application is made under:
 - 11.1. rule 74(2)(c) – postponement of a hearing on the application of a party made less than 7 days before the date of the hearing; and
 - 11.2. rule 74(2)(a) - unreasonable conduct of the proceedings.
12. The respondent says:
 - 12.1. the claimant should have made his application to postpone much earlier;
 - 12.2. the claimant should have told the tribunal on 22 May 2025 that he had submitted a further claim, as this would have avoided the need for the tribunal to make two decisions on the claimant's application.
13. The respondent says that as a result it has incurred costs which are not costs which will be attributable to the next preliminary hearing, as the claims against the respondent have been expanded and will require determination of different issues.
14. The claimant replied to the respondent's application on 9 June 2025. The claimant says the respondent was informed in advance of the intention to apply for postponement. The claimant says that the application was made on 22 May 2025, 7 days before the hearing, and that the request sent on 27 May was a renewal application, not a new application.
15. Neither party has requested a hearing to determine the costs application. I have decided this application on the basis of the parties' written representations, to save time and additional costs, in line with the overriding objective in rule 3.

The law

16. The power to award costs is set out in the Employment Tribunal Procedure Rules 2024. Orders for costs in the employment tribunal remain the exception rather than the rule. In the employment tribunal the general position is that parties bear their own costs, unless one of the grounds for

making a costs order is made out, and the tribunal decides to exercise its discretion to make an award of costs.

17. There are three stages for a tribunal considering a costs application. The first stage is for the tribunal to consider whether the ground or grounds for costs put forward by the party making the application are made out. If there is one or more ground to award costs, the second stage is for the tribunal to consider whether to exercise its discretion to make an award of costs. If the tribunal decides to make an award of costs, the third stage is for the tribunal to decide the amount of the award.
18. Rule 74(1) to (3) explains when a costs 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 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. In determining whether there has been unreasonable conduct, 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). However, it is not necessary to analyse each of these aspects separately, and the tribunal should not lose sight of the totality of the circumstances (*Yerrakalva v Barnsley Metropolitan Borough Council* [2012] ICR 420, CA). At paragraph 41 of *Yerrakalva*, Mummery LJ emphasised that:

"The vital point in exercising the discretion to order costs is to look at the whole picture of what happened in the case and to ask whether

there has been unreasonable conduct by the claimant in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it has."

Conclusions

20. I have applied these legal principles to decide the respondent's application for costs.

Stage 1: are there grounds for a costs order?

21. At this first stage, I consider whether there are grounds for a costs order against the claimant. The respondent relies on:

- 21.1. rule 74(2)(c) – postponement of a hearing on the application of a party made less than 7 days before the date of the hearing; and
- 21.2. rule 74(2)(a) - unreasonable conduct of the proceedings.

22. In relation to the postponement application, I accept the claimant's submission that the request for a postponement sent on 27 May 2025 was a renewal of the earlier application which was made 7 days before the hearing, not a new application made less than 7 days before the hearing. The 27 May email was updating and clarifying the earlier application. It was made on the same basis and for the same reason. Therefore rule 74(2)(c) does not apply.

23. As to the application under rule 74(2)(a), the conduct of the claimant and his representatives was not unreasonable because:

- 23.1. the claimant's representatives notified the respondent of the likelihood of a postponement application on 6 May 2025;
- 23.2. the timeframe between the claimant's dismissal and the preliminary hearing was tight and the claimant's representatives were preparing the second claim as well as corresponding with the respondent and the tribunal about the preliminary hearing;
- 23.3. it was reasonable to consider that there would be a time and costs saving from having a joint preliminary hearing, as it seems very likely that if the preliminary hearing had gone ahead on 29 May 2025 a further hearing would have been required in any event, to case manage the second claim;
- 23.4. it might have been better if the claimant's representatives had updated the tribunal immediately the second claim was presented, as this might have led to the application being granted on the first consideration by a judge, rather than on the second. However, the importance of this point may only have become apparent with hindsight and the claimant's representative's approach was not unreasonable in the circumstances;
- 23.5. the claimant's representatives not making the application sooner was also not unreasonable, given that they were preparing a second claim and the timeframe before the preliminary hearing was tight.

24. For these reasons, I have concluded therefore that grounds to make an award of costs against the claimant and/or his representatives are not made out.

Stage 2: should I make a costs order?

25. If I had found that there were grounds for making a costs order, I would not have exercised my discretion to make a costs order. This is because the costs incurred by the respondent arise from the fact that the claimant has presented a second claim, not from the late postponement of the preliminary hearing. The claimant could have delayed presenting his second claim until after the preliminary hearing, or could have chosen not to make any application for postponement of the hearing on 29 May 2025. In those circumstances the respondent would have incurred the same costs it now seeks to recover, as well as further costs arising from attendance at the 29 May 2025 hearing itself. The parties would then have incurred the additional costs of a second case management hearing in any event.
26. The claimant acted reasonably by presenting his second claim promptly and by pursuing the postponement application to save the time and costs of attending the first case management hearing.
27. Not all of the preparatory work carried out by the parties for the 29 May 2025 preliminary hearing will be 'wasted'. For example, the agenda and draft list of issues can be updated, rather than re-done; while there will be additional issues arising from the second claim, the issues in the first claim will remain the same.

Next steps

28. It is anticipated that the ET3 will have been presented before the next preliminary hearing on 9 October 2025, and that the next hearing will be effective to consider consolidation and deal with case management for both claims.

Approved by:
Employment Judge Hawksworth

Date: 24 July 2025

Sent to the parties on: 12 August 2025

For the Tribunals Office

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