



EMPLOYMENT TRIBUNALS

Claimant: Mr M John

Respondent: Nicholls Countryside Construction Limited

At: London South Employment Tribunal, Croydon (without a hearing)

Before: Employment Judge Abbott

JUDGMENT ON COSTS

The Claimant's application for a preparation time order is refused.

REASONS

1. On 2 May 2025 following a two-day final hearing I approved a Judgment in favour of the Claimant on his unfair dismissal complaint but dismissing his complaints in respect of unpaid holiday pay and deductions from pay. In awarding compensation I made considerable reductions to both the basic and compensatory awards as a consequence of the Claimant's contribution to his dismissal and in respect of *Polkey*. Oral reasons were provided on 2 May 2025. The Judgment was sent to the parties on 4 June 2025.
2. By an email dated 5 June 2025, the Claimant asked for a preparation time order to be made, claiming 5 hours per week from 1 February 2024 to 30 April 2025. No basis was advanced for the making of this order, nor any explanation of the hours claimed. On my instructions, the following letter was sent to the Claimant on 2 July 2025:

"In order that I can consider your application for a preparation time order, you need to explain the basis upon which such an order is sought.

The grounds upon which such an order can be made are set out in Rule 74 (<https://www.legislation.gov.uk/ukxi/2024/1155/rule/74/made>). Please identify which circumstance you rely upon, why you say it applies, and explain why you say the Tribunal should exercise its discretion to award costs against the respondent. Please do so within 14 days of this letter.

The respondent will then be afforded a chance to respond, as is required by Rule 75(2). I direct that the respondent is to provide any representations within 14 days of the claimant providing the information requested above.

I do not consider a further hearing to be necessary to determine this application but, if either party disagrees, they should explain why in their written submissions."

3. The Claimant responded on 18 July 2025 in the following substantive terms:

“Unfortunately, I have not documented precisely how much time I spent on each aspect of my case. I feel that one hour per day, or part thereof, would be sufficient to cover all emails, Court instruction and assembling my case.

I note that any award must not be unfair, but if you were to look into the Respondent's costs, they were substantial. It is only right that what sauce is good for the goose, is good for the gander.”
4. The Respondent objects to a preparation time order being made. It submits that no basis for such an order being made has been put forward by the Claimant despite ample opportunity to do so.
5. Neither party has requested a hearing of the Claimant's application, and I am satisfied that it is fair and just to determine the application without a hearing. Both parties have had the opportunity to make their submissions in writing.

The law

6. Rule 73(2) defines a ‘preparation time order’ as follows:

A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative.
7. Rule 74 provides for the circumstances where a ‘preparation time order’ may or must be made. Rule 74(2) is of most relevance here:

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, [...]
8. There is a three-stage process. First, I must ask whether there is conduct falling within Rule 74(2); if so, I must go on to determine whether it is appropriate to exercise my discretion in favour of awarding costs against the offending party; and if so, I must quantify the order (Rule 77).
9. Rule 82 provides that, in deciding both whether to make a costs order, and if so, in what amount, the Tribunal may have regard to ability to pay.
10. Costs orders in the Employment Tribunal are the exception rather than the rule (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420, CA at [7]).
11. ‘Unreasonable’ in Rule 74 has its ordinary English meaning and 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: *McPherson v BNP Paribas (London Branch)* [2004] ICR 1398, CA.

12. Under Rule 74(2)(b) the focus is simply on (here) the response itself.

Application of the law

13. The first stage is to ask whether there is conduct falling within Rule 74(2)(a) or Rule 74(2)(b) is engaged. I have considered what the parties have said in their submissions in this regard, as well as the full Tribunal file and the materials that were before me at the final hearing.
14. I find no evidence on file to support a conclusion that the Respondent acted “*vexatiously, abusively, disruptively or otherwise unreasonably*” in its conduct of the proceedings. The Claimant has not pointed to anything specific in this regard. In my judgement, there has been no conduct of the Respondent falling within Rule 74(2)(a).
15. I do not accept that the Respondent’s response to the unfair dismissal complaint had no reasonable prospect of success. It is right to record that it was clear that the ACAS Code of Practice on Disciplinary Procedures had not been followed by the Respondent – as I noted in my oral reasons, there was an almost total failure in this regard. Faults in this regard were accepted in the Grounds of Resistance (para 20). The Respondent’s submission was that this was one of those exceptional cases where, notwithstanding such procedural failings, it is open to the Tribunal to find the dismissal nevertheless to have been fair. Though I rejected that argument, it was not an argument that was so bad that it can be regarded as unreasonable for the Respondent to have run it. Equally, it was not in my judgement unreasonable for the Respondent to argue for a 100% reduction in his basic and compensatory awards (as it did in the Grounds of Resistance at paragraphs 22 and 23). Again, though I rejected that argument, I did make very substantial reductions in the Claimant’s award. Accordingly, Rule 74(2)(b) is not engaged.
16. It therefore follows that there is no basis upon which a preparation time order can be made. The Claimant’s application is refused.

Approved by:
Employment Judge Abbott
Date: 15 September 2025

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