



EMPLOYMENT TRIBUNALS

Claimant: Mr J Friend

Respondent: InvictaK9 Ltd

Heard at: London South Employment Tribunal (in chambers)

Before: Employment Judge Abbott

JUDGMENT ON COSTS

The Respondent's application for a costs order under Rule 74 of the Employment Tribunal Procedure Rules 2024 succeeds. The Claimant is ordered to pay the Respondent the sum of £1,500.00 in respect of costs.

REASONS

1. By its Judgment of 16 July 2025, for reasons given orally that day, the Tribunal struck out the complaint of unfair dismissal as having no reasonable prospects of success. The complaints of wrongful dismissal (breach of contract in respect of notice pay), unlawful deduction of wages and unpaid holiday pay were not struck out.
2. The Respondent has applied for a costs order. It contends that it should be awarded the vast majority (at least 85%) of its total costs incurred in the proceedings to date of £7,277.40 (exclusive of VAT) on the basis that the unfair dismissal complaint (which the Respondent says was the only substantive head of claim in the proceedings) had no reasonable prospect of success. It relies on warnings it repeatedly made to the Claimant that his unfair dismissal complaint was fatally flawed due to the Claimant not having been employed for at least 2 years.
3. The Claimant resists the application. He argues that the threshold for a costs order is not met and that, in any event, the Tribunal should not exercise its discretion to do so. He notes that costs awards in the Employment Tribunal are not usual, and has identified his limited financial means as a relevant factor.

4. The Respondent requested that the application be determined on paper and, in his response, the Claimant did not resist that. I am satisfied it is appropriate in the interests of justice and the furtherance of the overriding objective to determine the application on paper and have done so based on the written submissions of the parties.

The law

5. Rule 74(2) provides (insofar as relevant):

“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, [or] (b) any claim, response or reply had no reasonable prospect of success [...].”

6. In other words, there is a three-stage process. First, I need to determine whether rule 74(2) is met; if so, I must go on to consider whether it is appropriate to exercise my discretion in favour of awarding costs against the Claimant; and if so, I must quantify the order (Rule 76).
7. 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.
8. 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]).
9. The Employment Appeal Tribunal (HHJ Auerbach) discussed the approach to applications under this Rule in *Radia v Jefferies International Ltd* [2020] IRLR 431.
 - a. The EAT noted at [62-63] that “The Tribunal may consider, in a given case, under (a), that a complainant acted unreasonably, in bringing, or continuing the proceedings, because they had no reasonable prospect of success, and that was something which they knew; but it may also conclude that the case crosses the threshold under (b) simply because the claims, in fact, in the Tribunal’s view, had no reasonable prospect of success, even though the complainant did not realise it at the time. The test is an objective one, and therefore turns not on whether they thought they had a good case, but whether they actually did. ... However, in such a case, what the party actually thought or knew, or could reasonably be expected to have appreciated, about the prospects of success, may, and usually will, be highly relevant at the second stage, of exercise of the discretion.”
 - b. Regarding Rule 74(1)(b) arguments, the EAT explained at [65] that the Tribunal should first, at stage 1, consider whether, objectively, the claim “had no reasonable prospects of success” when it was begun. If so, then at stage 2 the Tribunal will usually need to consider whether, at that time, the complainant knew this to be the case, or at least reasonably ought to have known it. When considering these questions, the Tribunal must be

careful not to be influenced by the hindsight of taking account of things that were not, and could not have reasonably been, known at the start of the litigation. However, it may have regard to any evidence or information that is available to it when it considers these questions, and which casts light on what was, or could reasonably, have been known, at the start of the litigation.

10. Matters of causation may be relevant, per *Yerrakalva* at [41]: “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 had.
...”

Discussion

Stage 1: Conduct engaging Rule 74(1)?

11. The Respondent submits that it was clear from the outset of the proceedings that the Claimant did not have the requisite length of service to pursue a complaint of unfair dismissal.
12. I accept that submission. It is evident on the face of the papers that the Claimant’s first “contract of employment” commenced on 1 April 2024 and that prior to that he was working for the Respondent on a self-employer contractor basis (as shown by the invoices and bank statements provided). The Claimant’s representative accepted as much during his submissions on 16 July 2025. That is not inconsistent with the letter dated 6 August 2020 that the Claimant relies upon – in that letter the Respondent confirms that the Claimant “has worked for InvictaK9 for over two years”, but it does not indicate let alone confirm that he was an employee of InvictaK9. It is objectively clear, therefore, that at the time of his dismissal, the Claimant did not have 2 years’ continuous employment and therefore did not have the right to bring an unfair dismissal complaint.
13. Rule 74(1)(b) is therefore engaged.

Stage 2: discretion

14. I consider the following factors to be relevant to the exercise of the discretion in this case:
- a. That the Claimant was represented throughout the proceedings by a lay representative with extensive experience of employment law matters (albeit not a qualified lawyer). Accordingly, it can fairly be assumed that the Claimant was properly advised from the outset as to the fundamental difficulties he faced in respect of the continuous service point.
 - b. That the Respondent put the Claimant on notice of the fundamental flaw in his unfair dismissal complaint on multiple occasions, specifically (i) in the Grounds of Resistance dated 4 March 2025, (ii) in its application for strike out dated 24 March 2025, (iii) in a costs

warning letter dated 23 May 2025, but the Claimant proceeded to resist strike out of the unfair dismissal complaint to the hearing on 16 July 2025.

- c. That the Respondent was seeking strike out of all of the Claimant's complaints, not just unfair dismissal, though the overwhelming value of the claim as a whole lay in the unfair dismissal complaint.
 - d. The Claimant's limited financial means. There is limited evidence before the Tribunal, but there is support for the fact the Claimant does not have significant financial resources. For example, there is evidence that in March 2025 he still owed an individual he engaged to work for him in 2020-2021 the sum of £3,985 but had no means of paying (page 251 of the hearing bundle).
15. On balance, I am satisfied that this is an appropriate case in which to exercise my discretion to make an award of costs. The unfair dismissal complaint was obviously flawed from the outset, the Claimant must have been aware of this, and ought have narrowed the focus of his claim accordingly. I will take account of his financial means at the quantification stage.

Stage 3: quantification

16. The Tribunal can make a costs award of a maximum of £20,000 at this stage (Rule 76(1)(a)); the sum sought by the Respondent is under that threshold.
17. I accept that a very large proportion of the costs incurred to date will have been concerned with the unfair dismissal complaint. As I have already said, the overwhelming value of the claim as a whole lay in the unfair dismissal complaint.
18. The fees incurred total £7,277.50 (exclusive of VAT). By way of context, the Schedule of Loss claims a total of £24,750.00 (plus a possible 25% ACAS uplift, and a sum in respect of injury to feelings, though I cannot see on what basis such an award could have been made given the complaints brought). The invoices submitted do not breakdown the work done on a line-by-line basis. In my judgement, the fees incurred are on the high side in view of the value of the claim and the stage it has reached, and it would be appropriate to make a reduction in any event on grounds of reasonableness / proportionality as well as a reduction to account for the fact that the claim is not limited to the unfair dismissal complaint.
19. In quantifying the award to make, I do consider it appropriate to take account of the Claimant's limited financial means and seek to strike a balance against the obviously flawed nature of his complaint. In my judgement, taking account of all of the matters set out above, an award of £1,500.00 achieves an appropriate balance in this case.
20. Although this is not a matter for the Tribunal but for enforcement, if the Claimant does not consider that it is possible to pay the costs award as a lump sum, he would be well-advised to seek to agree a payment plan with the Respondent as soon as possible.

Case No: 2301160/2025

Approved by:

Employment Judge Abbott

Date: 20th August 2025

Judgment and reasons sent to parties on:

Date: 5th September 2025

For The Tribunal Office

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