



EMPLOYMENT TRIBUNALS

Claimant: Mr Badrul Islam

Respondent: Central Mosque Northampton

Heard at: Cambridge Employment Tribunal (in person)

On: 22 September 2025

Before: Employment Judge Hutchings
Ms L. Davies
Mr A. Hayes

Representation

Claimant: in person
Respondent: Mr Saeed, solicitor advocate

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JUDGMENT having been issued by the Tribunal at the hearing on 22 September 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure by the claimant on 24 September 2025, this request being referred to Employment Judge Hutchings on 10 October 2025, the following reasons are provided:

REASONS FOR REMEDY JUDGMENT

Introduction

1. Judgment on liability was delivered orally to parties on 17 June 2025 and a written judgment sent to the parties on 23 July 2025. Following a request by both parties for written reasons, written reasons dated 6 August 2025 were sent to parties on 11 August 2025.
2. The claimant's claim for unfair dismissal was upheld on the grounds that the respondent failed to follow a fair procedure in dismissing the claimant. As the Tribunal found that had a fair procedure been followed by the claimant the claimant would have been dismissed in any event, as a matter of law the

Tribunal concluded that the claimant was entitled to a basic award only, the compensatory award having been reduced by 100% applying the Polkey principles (which are explained in the liability judgment). The grounds for these decisions are detailed in the written reasons dated 6 August 2025.

3. In preparation for the remedy hearing, EJ Hutchings made orders dated 20 June 2025, which were sent to parties by Tribunal administration on 23 July 2025. In compliance with these orders the claimant sent the Tribunal and the respondent a schedule of loss setting out his calculation for the basic award. The respondent agreed the calculation of this award, as did the Tribunal in deliberations prior to the hearing, mindful that parties had agreed the figure in advance.
4. The following reasons for the calculation of the basic award, agreed by the parties and accepted as correct by the Tribunal, were sent to parties in the body of the 22 September 2025 judgment.
5. Basic award of **£830 gross** calculated as follows:
 - 5.1. The Claimant was 44 at the date of his dismissal and had completed 10 years' service. He is entitled to one and a half weeks' pay for each complete year of service as he was not below the age of 41 for the period of his employment, subject to the statutory maximum.
 - 5.2. Applying the agreed weekly wage, the total basic award before any deductions is therefore £830 gross.
 - 5.3. Interest is not payable on a basic award.

Procedure, documents and evidence

6. As parties had agreed the basic award the only document before the Tribunal was the claimant's schedule of loss and the respondent's written confirmation that it agreed the calculation and the amount.
7. Following the Tribunal's confirmation that the calculation and amount of the basic award was correct, we asked both parties if they had anything else they wanted to raise with the Tribunal. The claimant did not; the respondent made an application for its costs of the remedy hearing.
8. Mindful that the claimant did not have prior notice of this application and that he is not represented, we explained the rules governing cost applications and the process. Given this explanation, and mindful of Rule 3 of the Employment Tribunal Procedure Rules 2024, we considered parties to now be on an equal footing and that it was not in the interests of either party to delay this application to another hearing, particularly mindful of the wait times in the Tribunal for hearing dates. We explained to the claimant that once the respondent had made the application, we would allow the claimant some time to prepare a reply.

Respondent's application for costs

9. Mr Saeed made an oral application for the respondent's costs of the remedy hearing pursuant to rule 74(2) of the Employment Tribunal Procedure Rules

2024 submitting that the claimant not responding to the respondent's confirmation that it accepted the amount of the basic award set out in the claimant's schedule of loss unreasonable and / or vexatious behaviour. The respondent asserts that had the claimant replied to the offer of settlement, the remedy hearing would not have been necessary as the Tribunal could have issued an order by consent or parties could have signed a COT3 settlement agreement.

10. In making this application the respondent relied on the following chronology: the claimant sent the respondent his schedule of loss on 8 September 2025; on 10 September 2025 the respondent made an offer to the claimant to settle at the full amount in the schedule of loss; and on the same day the respondent approached ACAS with a view to preparing a COT3 settlement agreement. Mr Saeed told us the reason the respondent did so was to save the costs of attending the remedy hearing. On 15 September 2025 the respondent contacted ACAS again and, having not received a response from the claimant, reiterated by email to the claimant its agreement to pay the basic award in order to save the costs of remedy hearing. On 16 September 2025 ACAS confirmed to the respondent that the offer had been made to the claimant and that the claimant was considering his position. On 18 September 2025 the respondent emailed the Tribunal informing the Tribunal that an offer had been made. Mr Saeed told us that the only response the respondent received from the claimant was the claimant's agreement to convert the hearing to CVP.
11. The respondent submits that the claimant's behaviour is unreasonable and/or vexatious as he has known that the respondent agrees the amount of the basic award since 10 September 2025. Specifically, the respondent asserts that the claimant's lack of response to its emails seeking confirmation the basic award is settled is unreasonable and/or vexatious.
12. Having heard the respondent's application, and having explained the costs rules to the claimant a second time, mindful he is not represented, we took a 30 minute break to allow the claimant to prepare his reply. We are mindful that the claimant told us he would only need 10 minutes to prepare his reply. However, we considered 30 minutes necessary to ensure that the claimant had sufficient time to gather his thoughts and prepare his reply.

Claimant's reply to the respondent's application for costs

13. The claimant told us that the allegation by the respondent that he had a vexatious intention in not replying to the respondent's emails is a surprise and is absurd. He told us that this is not the first time the respondent has tried this approach, asserting that from an earlier stage in the proceedings the respondent tried to get costs out of him when the case was not clear and "to impose a fine on me."
14. The claimant told us that on or around 15 September 2025 (he could not recall the exact date) he did receive a phone call from ACAS but he explained that he was in the process of submitting an appeal of the liability judgment to the Employment Appeal Tribunal and that ACAS advised him not to accept the offer as this would "muddle the appeal application process as that would be indicative of [him] closing the case."

15. The claimant also told us that “before or after the conversation with ACAS” he sent an email to Employment Tribunal asking for the remedy hearing to be postponed pending the appeal hearing and the only reason for doing so was that he and the Employment Tribunal “be spared the costs.” In response the claimant says he received a letter saying the hearing will go ahead and he was also advised the same by Tribunal administration who told him that the appeal process is entirely separate.
16. Following the claimant’s reply the Tribunal took a 30 minute break to make our decision. Unanimously, we dismissed the respondent’s application that the claimant pay the respondent’s costs of today’s hearing for the reasons set out below.
17. As the respondent is seeking costs equal to the amount of the basic award, we do not need to consider the claimant’s ability to pay any costs awarded.

Findings of fact

18. We consider the following findings of fact (evidence by the dated correspondence) relevant.
19. On 18 September 2025 at 1.19pm the respondent made an application for the hearing to be converted to CVP to save costs as the respondent had agreed with the amount calculated by the claimant for the basic award. On 19 September 2025 at 12.54pm the claimant emailed the Tribunal and agreed with the request. This was referred by EJ Hutchings by Tribunal administration at 4.05pm, together with the respondent’s request. EJ Hutchings was on AL on 19.9 (Tribunal administration received an out of office reply). It was not referred to a duty judge. EJ Hutchings did not see the request until 22 September 2025 (the day of the hearing, 20 and 21 being a weekend) so there was insufficient time to agree to the conversion and notify the parties. This was explained to the parties by EJ Hutchings at the start of the hearing.
20. Prior to hearing (on morning of 22 September 2025) the Tribunal had first sight of the claimant’s schedule of loss. We agreed with the amount for the basic award for the successful claim of unfair dismissal calculated by the claimant. We confirmed that interest is not payable on this award and that there is no compensatory award as we had found 100% Polkey: had the respondent followed a fair procedure we found that the claimant would have been dismissed in any event given the content of his public communications about the respondent.
21. The timeline of events set out by the respondent in the application is agreed by the claimant and Tribunal, not least as the written communications evidence this timeline. We accept that the claimant contacted ACAS and that he understood the advice to be that he should not settle a claim if he has appealed the liability judgment. We consider this a reasonable conclusion for a non represented party to reach.

Relevant law

22. The application is made under the Employment Tribunal Procedure Rules 2024 (the “Rules”), Rule 74(1) and 2(a). Mindful the claimant is not represented this rule is set out below:

74. When a costs order or a preparation time order may or must be made

- (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,

23. The Tribunal has the power to order the payment of costs and witness expenses. The Employment Tribunal Procedure Rules 2024 (the "Rules") rule 73 sets out the nature of these orders:

Costs orders and preparation time orders

73.—(1) A costs order is an order that the paying party make a payment to—
(a) the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative, or
(b) another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at a hearing.
(2) 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.
(3) A costs order under [paragraph \(1\)\(a\)](#) and a preparation time order may not both be made in favour of the same party in the same proceedings.
(4) The Tribunal may decide in the course of the proceedings that a party is entitled to either a costs order or a preparation time order but may defer its decision on the kind of order to make until a later stage in the proceedings.

24. Rule 74 sets out when a costs order or a preparation time order may be made:

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 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.

(4) *Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—*

(a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and

(b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

25. The test for imposition of a costs order under rule 74 is a two-stage test:

25.1. First, a Tribunal must ask itself whether a party's conduct falls within rule 74; and

25.2. If so, it must go on to ask itself whether it is appropriate to exercise its discretion (including taking account of the conduct of the paying party (and their knowledge regarding the merits) in favour of awarding costs against that party.

26. Rule 74(2)(a) allows a Tribunal to make a costs order if it concludes the conduct of a claimant in bringing or pursuing the claim was unreasonable (a subjective assessment of the claimant's knowledge of the merits. Whether conduct is unreasonable is a matter of fact for the tribunal. According to the EAT in Dyer v Secretary of State for Employment EAT 183/83 (20 August 1983), "unreasonable" has its ordinary English meaning and is not to be interpreted as if it means something similar to "vexatious". It will often be the case, however, that a tribunal will find a party's conduct to be both vexatious and unreasonable. The Court of Appeal in Yerrakalva at paragraph 41 commented that it was important not to lose sight of the totality of the circumstances. A Tribunal must also consider whether it was thereafter properly pursued (Npower Yorkshire Ltd v Daly UKEAT/0842/04 (23 March 2005, unreported)). The test is objective and does not depend on whether the claimant genuinely believed in the claim (Vaughan v London Borough of Lewisham [2013] IRLR 713, EAT, at [14](6)).

27. The decision to make a costs order is the exception rather than the rule. This was made clear in Yerrakalva v Barnsley Metropolitan Borough Council [2011] EWCA Civ 1255; [2012] ICR 420 (3 November 2011) by Mummery LJ giving the lead judgment in the Court of Appeal at paragraph 7 as follows:

"The employment tribunal's power to order costs is more sparingly exercised and is more circumscribed by the employment tribunal's rules than that of the ordinary courts. There the general rule is that costs follow the event and the unsuccessful litigant normally has to foot the legal bill of the litigation. In the employment tribunal costs orders are the exception rather than the rule. In most cases the employment tribunal does not make any order for costs."

28. In considering whether to exercise its discretion to order costs, the Tribunal does not have to find a precise causal link between any relevant conduct and any specific costs claimed. In Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78 the Court of Appeal stated at [41] 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 had."

29. Rule 75 provides as follows in relation to the procedure for making a costs application:

Procedure

75.—(1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) The Tribunal must not make a costs order or a preparation time order against a party unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order).

30. Rule 76 provides as follows in relation to the amount of a costs order:

The amount of a costs order

76.—(1) A costs order may order the paying party to pay—

(a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;

31. It is fundamental that the purpose of an award of costs is compensatory not punitive (see *Lodwick v Southwark London Borough Council* [2004] IRLR 554, at [23]).

32. Ms Greenley directed me to the case Kopel v Safeway Stores plc [2003] IRLR 753, EAT, which I agree is relevant to my determination as the respondent made an offer to settle these proceedings, noting that:

"In Kopel, Mitting J stated that the tribunal 'must first conclude that the conduct of an appellant in rejecting the offer was unreasonable before the rejection becomes a relevant factor in the exercise of its discretion under [r 74(2)(a) of the 2024 Rules]'."

33. Ability to pay is a relevant factor for the Tribunal to consider. Rule 84 provides as follows in relation to ability to pay:

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.*

34. A tribunal is not obliged by rule 82 to have regard to ability to pay — it is merely permitted to do so. That said, in Benjamin v Interlacing Ribbon Ltd EAT 0363/05

(1 November 2005) the EAT held that where a Tribunal has been asked to consider a party's means, it should state in its reasons whether it has in fact done so and, if it has, how this has been done. Tribunals must always give reasons for a decision to take account or not take account of ability to pay — though the reasons can be brief (Jilley v Birmingham & Solihull Mental Health NHS Trust UKEAT/0584/06 (21 November 2007, unreported)).

35. As noted by the EAT in Howman v Queen Elizabeth Hospital Kings Lynn EAT 0509/12 (30 April 2013) at paragraph 13, any Tribunal when having regard to a party's ability to pay needs to balance that factor against the need to compensate the other party who has unreasonably been put to expense. The former does not necessarily trump the latter, but it may do so. The fact that a party's ability to pay is limited does not require the tribunal to assess a sum that is confined to an amount that they could pay (see Arrowsmith v Nottingham Trent University [2012] ICR 159, at [37]).

Conclusions

36. First we must consider whether the claimant's conduct in not replying to the respondent's request to agree the basic award is unreasonable. In doing so we reminded and directed ourselves that costs are the exception not the rule in the Employment Tribunal and unreasonable has its ordinary meaning. We asked ourselves whether it is unreasonable for a non represented party without legal advice to not accept an offer of settlement equivalent to an award parties have agreed as the correct figure because they interpret the ACAS guidance they have received as meaning that entering a settlement agreement would prejudice their appeal.
37. While as a matter of law and procedure it does not, we conclude it is reasonable for a non represented claimant without the benefit of legal advice to conclude it may and to be cautious in agreeing to the settle rather than having a hearing, particularly when they are appealing the liability judgment which resulted in that award. Was it unreasonable for the claimant to not reply to the respondent's email seeking agreement. We consider it impolite of him not to reply explaining why he is not agreeing to a settlement agreement but, taking account of all the circumstances, not unreasonable. Furthermore, when the respondent suggested a CVP hearing, the claimant replied the following day.
38. For these reasons we conclude that the claimant did not act in unreasonably in not replying to the settlement offer. As the test for vexatious behaviour is a higher threshold, we conclude his behaviour was not vexatious. As we have concluded the behaviour was not unreasonable, we do not need to consider exercising our discretion.
39. For these reasons the respondent's application for costs is dismissed.
40. It was brought to the attention of the Tribunal by Mr Saeed that the claimant has been posting on social media about these proceedings. The respondent asserts that comments have been made about the Tribunal panel and the judgment which are inaccurate.
41. We expressed the Tribunal's concern when any party in any proceedings is misrepresenting what happened in the proceedings or the decision made by an Employment Tribunal in a public forum.
42. Both parties requested written reasons of the Tribunal's decision and received these before the remedy hearing. Parties are reminded that there is a contemporaneous recording of all proceedings in the Employment Tribunal and that judgment and written reasons stand as the formal and accurate

records of these proceedings are public documents available on the public register of Employment Tribunal decisions. We make the observation that any public communications must be accurate and respectful of the Employment Tribunal and other party to these proceedings.

Approved by:
Employment Judge Hutchings

13 October 2025

REASONS SENT TO THE PARTIES ON

14 October 2025

FOR EMPLOYMENT TRIBUNAL