



EMPLOYMENT TRIBUNALS

Claimant: Mr. I Khan

Respondent: Metroline West Limited

COSTS JUDGMENT

The Claimant is ordered to pay a contribution to the Respondents costs. The total sum is £250.

REASONS

Background to claim and costs application

1. The claim from was submitted on 21 March 2024.
2. On 22 April 2024 Respondent submitted its response and within it set out its view that the claim had little or no reasonable prospect of success. It was expressly noted that the Claimant, who was subject to a live final written warning for misconduct, was dismissed with notice having committed further misconduct, which he admitted.
3. The Claimant was issued with a costs warning on 10 December 2024. The letter explained that the Respondent was of the view that his claim did not have any prospects of success, and that his continued participation in the claim was unreasonable given that he secured another job one week after he was dismissed. The letter also set out the Respondent's view on the factual matters, in short, that the Claimant was already under a final written warning and committed further misconduct and had, as part of the internal procedure, acknowledged that speeding was unacceptable. The letter set out that if the Claimant withdrew his claim, the Respondent would not seek to recover any legal costs.

4. The final hearing took place on 8 and 9 January 2025. The Claimant brought a claim of unfair dismissal. The claim was not successful.
5. On 28 January 2025 the Respondent made an application for costs. Unfortunately, due to administrative matters, there was a significant delay in the application being forwarded to me.
6. The application is made under Rule 74(1) and 74(2)(a) and/or (b) of The Employment Tribunal Procedure Rules 2024 ('Rules'), namely that the Claimant 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 and/or the claim, response or reply had no reasonable prospect of success.
7. The Respondent's primary submission is that there was no reasonable prospects of the claim being successful, and that the issues in the claim as raised with the Claimant were reflected in the judgment and factual findings. The Respondent's alternative position is that the Claimant conducted himself in an unreasonable manner during the hearing on 8 & 9 January 2025 by seeking to raise, for the first time, that it was common for bus controllers to instruct the Claimant to drive past bus stops without stopping to pick up waiting passengers; and it was not possible to speed in a bus because the buses were fitted with speed limiters.
8. The Respondent submits that the Claimant obtained and started a role with comparable pay one week after his employment with the Respondent ended.
9. The Respondent seeks to recover the sum of £2,612.50 for the time spent by Ms. Nicolaou, the Respondent's representative, for 7.5 days work at a fixed rate of £550 per day in relation to the preparation for and attendance at the final hearing.
10. The Claimant sent a response to the application on 1 August 2025. In short, he says he does not have the means to pay and needs to support two young children and that his earnings do not cover living expenses. His response set out that he earns £600 per week with overtime and he set out a list of his outgoings. He says he is at a deficit of almost £1,000 each month. He makes no comments on the substantive basis of the application. The Claimant also provided a number of additional documents in relation to his income and outgoings.
11. Both parties were content with me dealing with the application on the papers, without the need for a costs hearing.

Costs in the Employment Tribunal

12. The general rule is that the Employment Tribunal is a 'costs neutral jurisdiction'. This means that the loser in proceedings does not automatically pay the winner's costs, which is a divergence from proceedings which run in most of the civil court jurisdictions.
13. The rules relating to costs are found in The Employment Tribunal Procedure Rules 2024. Key extracts from the rules are set out below.

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.

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.

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).

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;

(b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—

(i) in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998(33), or by the Tribunal applying the same principles;

(ii) in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019(34), or by the Tribunal applying the same principles;

(c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;

(d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.

(2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under [rule 77\(2\)](#) (the amount of a preparation time order).

(3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

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.

14. It is, therefore, a multi-stage determination to awarding costs. First, at least one of the 'gateways' outlined by Rule 74(1) or 74(2) needs to be found to have been opened. In other words, I must be satisfied in this case that I have the ability to award costs.
15. If one of the gateways to award costs is opened, then I *may* award costs. There is a discretion. The next stage, therefore, is to decide whether or not this is a case in which I exercise my discretion to award costs, having in mind the circumstances of the case and the nature of the conduct that has led to the ability to award costs if decided appropriate.
16. The final stage, if I decide to exercise discretion, is to decide the amount of the costs to award. Where evidence about means is provided, this should be taken into account so long as I am satisfied I have an honest and full picture of the financial position. I must also consider the amount of costs requested in the application and decide whether or not the amount is appropriate, before deciding what amount should be paid towards those costs, or ordering that the whole of the costs are paid.
17. The assessment of the amount of costs to pay is a broad brush exercise and does not take the form of any sort of detailed assessment of cost. The assessment is made broadly in all the circumstances using my judgment of what would be reasonable in this case. Generally, I am trying to consider the proportion of costs incurred because of the criticised conduct.

Do I have the power to award costs?

18. I am not able to award costs unless one of the 'gateways' set out at Rule 74 is engaged.
19. The Respondent says Rule 74(2)(a) and Rule 74(2)(b) are engaged.
20. Given my decision, I consider that Rule 74(2)(b) is clearly engaged. In my view, as demonstrated by the fact that Claimant's claim was unsuccessful, the claim had no reasonable prospect of success.
21. In relation to rule 74(2)(b), I do consider the introduction of arguments that were untrue for the first time at the final hearing to be unreasonable in the general sense, however, I note that the Claimant was a litigant in person, and no case management hearing had taken place and therefore I do not consider the conduct relied on meets the threshold in 74(2)(a).
22. The Claimant was invited to withdraw his claim, with the offer of no costs being pursued.

23. I have proceeded with determined the application on the basis of rule 47(2)(b) being engaged.

Do I exercise the discretion to award costs?

24. In considering whether or not to exercise my discretion, I have considered the entire situation, but consider there to be several key factors.

- The Claimant was unrepresented when he submitted his claim and throughout the course of the litigation.

- The Claimant was given clear warnings of the Respondent's view of the claim at an early stage in the ET1 and before the final hearing and he was warned about costs prior to the final hearing.

25. I conclude that if the Claimant had undertaken a proper assessment of his claim, on the information known to him, it should have enabled the Claimant to form the view that there was no reasonable prospect of his claim being successful.

26. I have reminded myself that costs are for exceptional instances. Litigants in person, on both sides, are common in the Employment Tribunal. Not understanding key aspects of complex legal claims and tests is equally common – as is an inability to make a judgment about the merits of a particular argument or case. However, this case did not involve complex allegations of discrimination or legal matters, it was about the Claimant's conduct and the decision to dismiss him.

27. In this instance, I consider that the Respondent has been put cost directly as a result of the Claimant pursuing a claim that had no reasonable prospect of success.

28. In my judgment, it is appropriate in relation to this issue to award the Claimant to pay a proportion of its legal costs.

What means do I take into account?

29. I have noted the information that the Claimant gave about his financial information, means as set out above. I have no clear information about assets or savings, but the Claimant pays a mortgage which indicates he owns a property.

30. Consequently, I have taken means into account when considering the amount to be paid.

What is the amount of the costs awarded?

31. The Respondent does not seek all costs, only those relating to the final hearing.

32. I consider the costs incurred appear to be proportionate and reasonable.

33. In my view those costs could have been avoided entirely by a withdrawal of the claim.
34. Deciding the amount of costs to be paid, having decided to exercise discretion to award costs and taken into account any means appropriate, is necessarily a broad brush assessment. Summary assessment of costs is not designed to be a detailed or forensic affair and is instead an approximation of costs which flow from the gateway identified.
35. I have considered what I deem reasonable in all the circumstances taking the situation into account, noting the extremely limited means of the Claimant.
36. In my judgment, that broad brush assessment leads me to make a costs award of £250. This must be paid by the Claimant to the Respondent.
37. The sum of £250 is only a small proportion of the legal costs incurred (less than 10%), and the Respondent's costs are significantly more, but I have taken into account that at present the Claimant has significant outgoings, in particular his mortgage, and have also kept in mind that those costs are not designed to be punitive, and are an exception to the general rule.

Approved by:

Employment Judge Cawthray

26 September 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/