



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr. F. Van Staden

**Respondent:** Luftavia Limited

## JUDGMENT

The decision of the tribunal is:

The claimant's application for a Costs Order is refused.

### Reasons

#### Application for costs

1. In a judgment dated 14 May 2025 and sent to the parties on 12 June 2025 the tribunal upheld the claimant's complaints of breach of contract and failure to provide the claimant with a written statement of employment particulars.
2. On 29 June 2025 the claimant made an application for costs.
3. On 21 August 2025 I set out directions requiring the claimant to set out the grounds for his application by 4 September 2025 and requiring the respondent to respond by 18 September 2025. The claimant duly set out the grounds on 26 August 2025. Regrettably the respondent did not respond until 2 October 2025, 2 weeks after the date I directed. The claimant made further submissions in response to the respondent's response on 2 October 2025. The papers were not referred to me by the tribunal's administration until 9 October 2025.
4. In summary the claimant claims costs for work done by his solicitor before the issue of proceedings in the sum of £1000 plus VAT. He relies on an invoice dated 14 May 2024. His email dated 26 August 2025 sets out a chronology of events. It refers to dates in 2025 but I assume he means to refer to dates in 2024. He instructed solicitors on 7 May 2024, having tried to resolve matters himself with the respondent. His solicitors made an initial approach to the respondent on 10 May 2024 and when they received no response they made a further approach on 17 May 2024. On 3

June 2024 the respondent replied to say that they would not enter into further correspondence. The claimant decided to proceed without legal representation, contacted ACAS and issued proceedings. The ET1 was received by the tribunal on 21 June 2024.

5. The claimant argues that in a successful case 'there should be no cost to the claimant in my view'. The respondent says that the claim does not meet the threshold in rule 74 (2) and that in any event the respondent was not obliged to engage in discussions.

### Legal Principles

6. The range of circumstances in which costs are awarded in employment tribunals is narrower than in civil courts. Costs are the exception and not the rule. In Barnsley Metropolitan Council v Yerrakalva [2012] IRLR 78, LJ Mummery stated (para 7):

'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 for 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. If it does, it must act within rules that expressly confine the employment tribunal's power to specified circumstances, notably unreasonableness in the bringing or conduct of the proceedings.'

7. Rule 73 to 75 of the Employment Tribunal Procedure Rules 2024 provide as follows (so far as relevant to this application):

### **73. Costs orders and preparation time orders**

- (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,

.....

- (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.

### **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

...

- (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, ...

## **75. Procedure**

- (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).

8. Rule 74(2) provides for a 3-stage test. At stage 1 the tribunal must consider if identified aspects of conduct fall within 74(2) (a) or whether under 74(2) (b) 'any claim, response or reply had no reasonable prospect of success'. If stage 1 is satisfied the tribunal has a duty to consider making an order. At stage 2 the tribunal must consider whether it is appropriate to exercise its discretion in favour of awarding costs, taking into account factors relevant to discretion. The third stage is to decide how much to award in costs.

9. In Barnsley Metropolitan Council v Yerrakalva [2012] IRLR 78, LJ Mummery clarified that stage 2, the exercise of discretion, involves considering

"the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by the (paying party) in bringing and conducting the case and, in doing so, identify the conduct, what was unreasonable about it and the effect it had".

10. As set out in rule 74(2) (a) the conduct to be considered is 'either the bringing of the proceedings, or part of it, or the way that the proceedings, or part of it, have been conducted'. Rule 74(2) (b) specifically refers to the 'claim, response or reply'. Response and reply are defined in Rule 2 as a reply or response provided to the tribunal in accordance with the tribunal rules. Accordingly conduct prior to proceedings cannot form the basis for a costs order.

11. That was confirmed by the Employment Appeal Tribunal in Health Development Agency v Parish 2004 IRLR 550, EAT where the EAT stated at paragraph 21-22 in relation to the power (previously rule 14):

21. The Employment Tribunal's power in Rule 14 is founded upon a finding as to the way a party has brought or conducted proceedings. In our judgment the conduct of a party prior to proceedings or unrelated to proceedings cannot found an award of costs. In our judgment it is necessary for there to be a causal relationship between the conduct of a party in bringing or conducting proceedings and the costs which are awarded under Rule 14.

22. It follows that the Employment Tribunal has no power to award costs against a party until the time the party has brought or, as the case may be, conducted proceedings. We therefore accept Mr Porter's submission. The Chairman erred in law in awarding costs from 2 December 2002.

## **Conclusion**

12. The claimant made the application for costs within the required time period of 28 days from the Judgment being sent out. The respondent has been given an opportunity to respond.

13. In the employment tribunal costs are the exception and not the rule. An award of costs can only be made strictly within the power provided by the Employment Tribunal Procedure Rules 2024.

14. The Rules provide a discretionary power to award costs where a party 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. In addition, there is a discretionary power to award costs where a Response or Reply as defined in rule 2 of the Rules had no reasonable prospect of success.

15. The conduct about which the claimant complains was conduct which occurred prior to the proceedings. That is clear from the chronology he sets out and the invoice on which he relies. Further it does not relate to the Response or Reply as the costs were incurred before proceedings were commenced.

16. Therefore I find that rule 74(2) does not apply and accordingly I do not have the power to exercise my discretion to make a costs order.

17. The claimant's application for a costs order is accordingly refused.

Approved by:

**Employment Judge S. Matthews**

**28 October 2025**

Judgment sent to the parties on:

29 October 2025

For the Tribunal:

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#### 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.