EMPLOYMENT TRIBUNALS

Claimant: Mr P Western

Respondent: Cheshire Curtainsiders Ltd

Heard at: Birmingham **On:** 23 & 24 September 2025

Before: Employment Judge McGough

REPRESENTATION:

Claimant: Mr Austen (Counsel)
Respondent: Ms Neal (Consultant)

RESERVED JUDGMENT ON COSTS

The Claimant's application for costs is dismissed.

REASONS

BACKGROUND AND RELEVANT FACTS

1. The Claimant presented a claim on 17 August 2024 bringing complaints of unfair dismissal, age discrimination, disability discrimination and the Claimant sought unpaid notice pay.
2. A preliminary hearing was held before Employment Judge Perry on 17 April 2025. At this hearing the Claimant withdrew his complaints of age discrimination and disability discrimination and those complaints were dismissed. The Respondent conceded that the Claimant's dismissal was procedurally unfair. The Respondent also conceded that the Claimant should have been given five weeks' notice rather than the four days he was given, therefore the Respondent was ordered to pay the Claimant for the remaining 4.5 weeks' notice. The remaining issues in respect of the unfair dismissal complaint were identified and recorded as per the list of issues that came before the Tribunal at final hearing.
3. On the final day of a two day hearing held on the dates above, the Tribunal gave oral judgment upholding the Claimant's complaint of unfair dismissal and provided its reasons.

4. Mr Austen made an application for costs on behalf of the Claimant at the conclusion of the hearing under rule 74(2)(a) of The Employment Tribunal Procedure Rules 2024 (**ET Rules**). The Claimant sought costs of £2,460 (being Counsel's fees).

5. The Tribunal decided to hear the Claimant's application for costs at the hearing and any initial response from the Respondent. Given the Respondent had had no notice of the Claimant's costs application before the final day of the hearing and that the Respondent was not legally represented, it ordered the Respondent to provide any further information it wished (including regarding ability to pay) by 10 October 2025 and the Claimant to provide any response to that additional information by 17 October 2025. The matter would then be decided by the Tribunal on the papers.

6. The Respondent did not provide any additional information by 10 October 2025. The Claimant wrote to the Tribunal on 16 October 2025 noting the Claimant had not provided any further information. No further submissions were made by the Claimant but the Tribunal was referred to a number of pages in the hearing bundle to support the Claimant's application.

7. The Respondent then wrote to the Tribunal on 20 October 2025 (ten days after the deadline in the Case Management Orders) with its submissions. The submissions did not contain any detailed information on ability pay other than a statement that the Respondent is a small business.

8. The Claimant wrote to the Tribunal the same day objecting to the Respondent's submissions on costs as they were not submitted by the deadline, meaning the Claimant had had no opportunity to respond to the points raised by the Respondent.

THE ISSUES

9. The issues to be determined by the Tribunal were:

   9.1. Did the Respondent (or that party's representative) act vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings, or part of them, have been conducted?

   9.2. Should, in the Tribunal's discretion, a costs order be made against the Respondent?

   9.3. If so, how much should be awarded?

THE RELEVANT LAW

10. References to rules in this Judgment are to the rules under the ET Rules.

11. The relevant part of rule 74 of the ET Rules provides:

> *"(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,

[…]"

12. The relevant part of rule 76 provides:

"*(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;

[…]"

13. Rule 82 provides:

"*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. If a party's conduct falls within rule 74(2)(a), the Tribunal must then go onto ask whether it is appropriate to exercise its discretion in favour of awarding costs against that party. It is only when these two stages have been completed that the Tribunal may proceed to the third stage, which is to consider the amount of any award.

15. **Gee v Shell UK Limited [2003] IRLR 82** - The Court of Appeal confirmed that that costs are the exception rather than the rule and that costs do not follow the event in Employment Tribunals.

16. **Lodwick v Southwark London Borough Council [2004] ICR 884** - The Court of Appeal also confirmed that the purpose of an award of costs is to compensate the party in whose favour the order is made, not to punish the paying party.

17. **McPherson v BNP Paribas [2004] ICR 1398** - In determining whether to make an order under the ground of unreasonable conduct, a Tribunal should take into account the "nature, gravity and effect" of a party's unreasonable conduct.

18. **AQ Ltd v Holden [2012] IRLR 648** - The tests in rule 74(2) of the ET Rules are the same whether a party is or is not professionally represented, but the application of those tests should take this factor into account. A Tribunal should not judge a litigant in person by the standards of a professional

representative. However, lay people are not immune from orders for costs. Some litigants in person are found to have behaved unreasonably even when proper allowance is made for their inexperience and lack of objectivity.

SUBMISSIONS

Claimant's submissions

19. Mr Austen submitted in the hearing that the Respondent had acted disruptively and unreasonably in its conduct of the proceedings, and that consequently the proceedings had been an ordeal for the Claimant. Examples of disruptive and unreasonable conduct he gave were:

    19.1. Difficulties the Claimant had gone through to get the Respondent to disclose various documents;

    19.2. Allegations of capability were made by the Respondent at the start of proceedings but no documents about performance were ever disclosed by the Respondent despite repeated requests by the Claimant;

    19.3. Payslips were only provided by the Respondent two weeks before the hearing;

    19.4. The Claimant's log books had never been provided by the Respondent;

    19.5. The Respondent left it until late in the proceedings to argue the specialist tools that the Claimant had asked to be returned belonged to the Respondent, not the Claimant;

    19.6. The Respondent raised allegations about the Claimant having caused damage to his work van, but did not then bring any claim in respect of these allegations, which was disruptive;

    19.7. The Respondent did not provide any witness statement for the Respondent's key witness, Ms Griffiths, therefore the Claimant did not know who would be appearing as witnesses for the Respondent until the day of the hearing.

20. Mr Austen submitted in the hearing that this left the Claimant with no choice but to instruct a solicitor and Counsel for the hearing.

21. Correspondence from the Claimant's solicitor (paragraph 6) referred the Tribunal to the following pages of the hearing bundle: 124 – 131, 211 – 214, 219 – 220, 223 – 230, 384 – 387, 439 – 440.

Respondent's submissions

22. Ms Neal submitted in the hearing that the Claimant had also disclosed documents at a late stage in proceedings.

23. In terms of disclosure, she submitted that:

    23.1. A full payment history and P60s were disclosed by the Respondent as part of the disclosure exercise;

    23.2. The Respondent had disclosed receipts regarding ownership of the specialist tools after the Claimant alleged late in proceedings that he owned the tools;

    23.3. The Respondent had contacted the Claimant about who would be coming to the hearing as witnesses.

24. Ms Neal also submitted in the hearing that Ms Griffiths had suffered anxiety as a consequence of the proceedings and other actions of the Claimant. She explained that the Respondent is a small business and that the unfair dismissal award could end the business.

25. In its written submissions, sent to the Tribunal on 20 October 2025 (and to which the Claimant has objected), the Respondent added very little additional information, other than to:

    25.1. set out the law on rule 74 of the ET Rules and some applicable caselaw;

    25.2. state that the Respondent did not know the specific grounds on which the Claimant's application for costs was made (notwithstanding these were explained by Mr Austen when making the Claimant's application in the hearing);

    25.3. deny that there were grounds for making a costs order; and

    25.4. submit that the Tribunal should not exercise its discretion to award costs on the basis that the Respondent is a small business and was not legally represented.

26. The submissions referred the Tribunal to some of the same hearing bundle pages as the Claimant's solicitor's letter plus the P60s and payment history documents at pages 132 – 157.

CONCLUSIONS

Did the Respondent (or that party's representative) act vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings, or part of them, have been conducted?

27. The Tribunal must consider whether the Respondent acted disruptively or unreasonably as submitted by the Claimant.

28. In considering whether the Respondent's conduct was disruptive and/or unreasonable, the Tribunal has considered each party's oral submissions in the

hearing and the pages of the bundle referred to by both parties in their written submissions.

29. The Tribunal notes that the Respondent's written submissions were sent 10 days after the deadline and that this meant the Claimant did not have the opportunity to respond to any additional information from the Respondent. As such, the Tribunal has given less weight to those written submissions, although in practice this has had no real impact on the Tribunal's decision given the late submissions contained very little additional information on the points to be considered by the Tribunal.

30. Firstly, the Tribunal has considered the issues relating to disclosure. Various types of documents were requested numerous times by the Claimant:

    30.1. The Claimant's employment contract – This was included in the bundle. There was a misunderstanding between the parties about whether this was the correct contract. The Claimant considered that there must be an earlier contract, but the disclosed contract was in fact the only employment contract for the Claimant, which was confirmed by the Respondent on 10 June 2025 (pages 228 – 230 of the hearing bundle);

    30.2. Performance documents – The Claimant requested copies of documents relating to his performance. The Respondent responded on 4 June 2025 to explain that performance reviews were held verbally and not documented, save for the formal written warning issued in 2023, which was disclosed (page 131);

    30.3. Payslips – There was disagreement between the parties about who had copies of the payslips. The Respondent asserted that the Claimant's payslips were given to him in black bin bags when he collected his belongings from the Respondent's premises in early 2025. The Claimant denied that he had been given his payslips and asserted that the Respondent should have access to these in any event, which is accepted by the Tribunal. Nevertheless, pay information was provided by the Respondent in the form of payment history documents and P60s on 4 June 2025 and payslips were eventually included in the bundle (page131);

    30.4. Invoices / job sheets / log books – There was disagreement between the parties as to whether these documents were relevant. They were requested several times by the Claimant. The Respondent's position was that the log books had already been returned to the Claimant in black bin bags (with the pay slips – see above). The Claimant did not agree and said they had not been returned. In terms of invoices, job sheets and other documents relating to work done by the Claimant, the Respondent did not agree that these were relevant because work was allocated to employees equally. It also asserted that it could not disclose client invoices for data protection reasons. Whilst the Tribunal accepts there may have been some genuine disagreement between the parties as to the relevance of the documents, it does not accept that the Respondent could refuse to disclose documents on the data protection grounds that it raised. The

Tribunal concludes that the Respondent misunderstood its duty of disclosure and how this interacts with data protection obligations;

30.5. WhatsApp messages – The Claimant requested various WhatsApp messages between the Claimant and a number of the Respondent's employees, including Ms Griffiths. The Respondent disclosed messages between the Claimant and Ms Griffiths, but not any other individuals. The Respondent explained that other messages were on individuals' private mobile phones, to which the Respondent did not have access. It explained to the Claimant on 4 June 2025 that it would ask current employees for their consent to disclose the messages. The Respondent considered that the messages should also be on the Claimant's phone but, regrettably, the Claimant's phone had been stolen on July 2024 and the Claimant explained to the Respondent, which the Tribunal accepts, that he no longer had access to the messages. No further messages were disclosed by the Respondent.

31. Secondly, the Tribunal considered the issue relating to the ownership of the specialist tools that were in the Claimant's work van. It is clear that there was genuine disagreement between the parties as to who owned the tools. The Respondent provided invoices to show that it had purchased the tools. It was only in the letter from the Claimant's solicitor dated 11 September 2025 that the Claimant first asserted having "paid" for these tools by sacrificing holiday days was first raised. It was mentioned again in the Claimant's witness statement, which was provided one week before the final hearing. It is not therefore unreasonable that it was later in the proceedings that the Respondent put forward its arguments in respect of the ownership of the tools.

32. Thirdly, the Tribunal considered the issue of the Respondent alleging during proceedings that the Claimant had caused damage to his work van without then (at least by the time of the hearing) having brought a claim in respect of that damage. There is disagreement between the parties about how and when damage was caused to the van. The Tribunal does not find that it was disruptive to raise this with the Claimant, given the principal reason for his dismissal related to the condition of his work van.

33. Finally, the Tribunal considered the issue of the Respondent failing to provide a written witness statement for Ms Griffiths and uncertainty about who would be appearing as witnesses for the Respondent. It was clear from the Tribunal's discussions with Ms Neal at the start of the final hearing that Ms Neal and the Respondent had misunderstood the requirement for written witness statements to be provided for all witnesses upon whose evidence the Respondent intended to rely at the final hearing. Notwithstanding that this was clearly set out in the Case Management Orders dated 17 April 2025, Ms Neal explained in the hearing that she and the Respondent were not aware that a written statement would be required, given that Ms Griffiths would be attending the hearing in person to give evidence. The Tribunal accepts that this was a genuine error by Ms Neal and the Respondent. The Tribunal also notes that the Claimant himself only provided his witness statement one week before the final hearing, shortly after instructing solicitors in his case.

34. Taking all of these matters into consideration, the Tribunal does not consider that the Respondent acted vexatiously, abusively, disruptively or otherwise unreasonably in its conduct of the proceedings.

    34.1. In terms of disclosure, the parties disagreed about the relevance and existence of certain documents, which is commonplace in Tribunal proceedings. It is clear that there were times when the Respondent misunderstood its disclosure obligations, particularly in respect of documents it said it could not disclose for data protection reasons. However, the Tribunal finds that this was a genuine misunderstanding and is mindful that the Respondent was not legally represented (AQ Ltd v Holden, paragraph 18 above).

    34.2. In terms of allegations about the ownership of the specialist tools, the Claimant's assertion that they belonged to him due to sacrificing holiday days was raised late in the proceedings and so it was not unreasonable for the Respondent to therefore disclose documents about this at a late stage in the proceedings.

    34.3. For the reasons set out above, the Tribunal does not find it was disruptive for the Respondent to raise issues about the Claimant causing damage to the work van.

    34.4. In terms of not providing a witness statement for Ms Griffiths, for the reasons set out above and taking into consideration the fact the Respondent was not legally represented, the Tribunal finds this was a genuine error rather than unreasonable or disruptive conduct by the Respondent.

35. As the Tribunal has not found that the Respondent acted vexatiously, abusively, disruptively or otherwise unreasonably within the meaning of rule 74(2)(a) of the ET Rules, it does not need to go on to consider whether a costs award is appropriate and, if so, at what level it should be made. The Claimant's application for an award of costs is dismissed.

Approved by:
Employment Judge McGough
27 October 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

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