



EMPLOYMENT TRIBUNALS

Claimant

AND

Respondents

Carla Dublin

London Borough of Ealing

JUDGMENT

The Respondent's application dated 6 August 2025 for costs in relation to the substantive claim heard on 12, 13, 14 May 2025 is refused.

REASONS

1. An oral judgment with reasons was given on the third day of the hearing 14 May 2025 dismissing complaints of direct race discrimination and harassment relating to race. The Claimant requested written reasons, which was provided in a document dated 9 July 2025.
2. The Respondent made an application for costs dated 6 August 2025 in relation to:
 - 2.1.a claim for unpaid notice pay struck out at a Preliminary Hearing by Employment Judge Smart following a hearing on 15 – 16 August 2024;
 - 2.2.the substantive hearing of the claim at a full merits hearing before a full panel presided over by Employment Judge Adkin 12 – 14 May 2025.
3. The Respondent requested that the costs application be dealt with as a paper exercise, to avoid the cost of a further hearing.
4. Following email correspondence between Employment Judge Adkin and the parties it was agreed that the costs application would be dealt with as two separate paper exercises by the two judges sitting alone, given that the issues related to each were distinct.

Application

5. The basis for the Respondent's application in relation to the substantive hearing is:
 - 5.1. The Claimant sought to relitigate the dismissed notice pay claim under a new head of claim, specifically, race discrimination, which amounted to an abuse of process as it fell foul of the principle of issue estoppel.
 - 5.2. The Claimant brought what the Tribunal described at paragraph 89 of its Judgment dated 9 July 2025 as a "misleading" allegation that certificate upload tasks were reserved to BAME members of staff. It is submitted that pursuing misleading allegations is, self-evidently, unreasonable conduct.

Law

6. The Employment Tribunal Procedure Rules 2024 contains the following provision:

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

(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
7. There is a two-stage exercise to making a costs order. The first question is whether a paying party has acted unreasonably or has in some other way invoked the jurisdiction to make a costs order. The second question is whether the discretion should be exercised to make order (*Oni v Unison* ICR D17).
8. Costs orders in the Employment Tribunal are the exception rather than the rule (*Gee v Shell* [2003] IRLR 82, *Lodwick v Southwark* [2004] ICR 844).

Conclusions

Abuse of process

9. The elements of the race discrimination and harassment relating to race complaints which related the dismissal without notice were:

1.1.16. Sharon Rooney and her manager Dawn Kent-Payne refused to consider an email from the Claimant with evidence showing their conclusion was incorrect or to speak with the Claimant further after her dismissal without notice on 22 September 2023;

1.1.17. Sharon Rooney did not give the Claimant any notice that her assignment would end on 22 September 2023.

10. The allegations that the way that the termination of the Claimant's temporary contract was dealt with were examples of harassment related to race or alternatively less favourable treatment because of race discrimination pursuant to sections 13, 26 and 39, 40 of the Equality Act 2010 are different legal claims to a claim for notice pay, which was struck out under the (old) **rule 37(1)(a)**. That latter complaint was struck out on the basis that the Claimant was not an employee of the Respondents.
11. The two allegations of race discrimination, allegation 16 & 17 in the substantive hearing were dealt with in the substantive merits, having heard live evidence from the Claimant and relevant Respondent witnesses and considered whether the evidence supported that the Claimant's race was a reason why the Claimant was treated less favourably or alternatively amounted to harassment related to race. These were different claims to which different legal tests applied, albeit that there was a common element of termination of the contract without notice.
12. The Claimant was entitled to bring those claims. I do not accept the argument that this was an abuse of process. This does not satisfy the threshold for the making of a costs order.

Misleading

13. The second part of the application in relation to the substantive hearing is brought on the basis that allegation three was described as "misleading". The allegation was:

1.1.3. In the first week of August 2023 Sharon Rooney gave the Claimant the task of uploading thousands of certificates to the system with a group of other non-white employees;
14. The reason that this was misleading was that although it was correct that the Claimant was carrying out this task with other non-white employees, the wider context was that there were three white employees who were also doing this task.
15. Going back to the narrative attached to the claim form, the Claimant wrote

"the members of staff chosen to this awful task were all non white, except the lady brought in to manage the team who was unavailable at all times i tried to contact her."

16. It follows that even in the way that the allegation was described by her in her claim form she acknowledged that there was at least one person who was white doing this case.
17. This was not a case of the Claimant *misleading* the Tribunal but telling untruths, but rather the way that the allegation of fact had been framed did not reflect the wider context.
18. In any event, it seems to me that this is not a case of the tribunal being misled and the threshold test is not met.

Discretion

19. In case I am wrong about the threshold tests for the making of costs orders being satisfied, I have considered whether in the circumstances I would have exercised discretion.
20. Even had the “abuse of process” argument succeeded, I would have to bear in mind that the claimant is a litigant in person. From her point of view these are two distinct things – there is the claim of unpaid notice and the race discrimination/harassment claims. It did not seem to be inherently unreasonable for her to pursue one after the other had been struck out. I would not be minded to exercise discretion to make a costs order in respect of that element.
21. As to the second argument about “misleading”, if there had been a genuine untruth told, this would be a different sort of situation and a costs might have been appropriate. I do not find that fairly characterises the situation. I have to bear in mind the way that claims set out by a non-lawyer as part of their claim form are then dealt with at a case management hearing. There is plenty of scope for claims to be framed or reframed in a list of issues in way that turns out not to reflect the reality, without a claimant really appreciating the consequences of it. It seems to me that that is probably the situation in the present case. I would not have been minded to exercise discretion to make a costs order in respect of this element.

Summary

22. For the reasons given the Respondent’s application for costs in relation to the substantive hearing is refused.
23. Employment Judge Smart will deal separately with costs at the Preliminary Hearing.

Employment Judge Adkin

3 November 2025

Case Number: 2216649/2023

Sent to the parties on:

20 November 2025

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For the Tribunal:

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