EMPLOYMENT TRIBUNALS

Claimant		**Respondents**
Ms D Schwartzel	**v**	GMB Union

Heard at: Cambridge

On: 11 March 2024
(with members),
11 April and 30 April 2024
(before Judge L Brown sitting alone)
16 July 2024
(with members),
28 November 2025
(in chambers with members)

Before: Employment Judge L Brown

Members: Ms Davies and Ms Deem

Appearances

For the Claimant: In person (for the hearing on the 11 March 2024 only thereafter the Claimant did not attend)

For the Respondents: Mr Dunn, Counsel (apart from the 28 November 2025 which was in chambers).

RESERVED COSTS JUDGMENT

1. The Claimant is ordered to make a payment of **£4800.00** including vat to the Respondent in respect of the Respondent's application for costs for £7942.32 on the 29 July 2024 ('Costs Application').

REASONS

Introduction

2. By a Costs Application, dated 29 July 2024, the Respondent made their application for costs against the Claimant.

Other Claims

3. It should be noted that by way of background the Claimant had formerly brought another claim against GXO Logistics her former employer, and at the time she belonged to her Union, the Respondent in these proceedings. This was struck out by Judge Ord due to lack of jurisdiction.

4. In addition, a second claim before Judge Warren, and also a third claim was also brought against against her former employer GXO Logistics, which were respectively struck out by both Judge Warren and Judge Tynan for the reasons set out in those Judgments. As to Judge Tynan's decision dated the 17 of October 2022 it was struck out on the grounds that it had no reasonable prospects of success, i.e. she was simply repeating the claim before Judge Warren that had failed. That decision was appealed by the Claimant but the EAT rejected this at the sift stage stating that the appeal had no reasonable prospects of success.

5. The Claimant throughout all of these separate claims has variously referred to them all as though they were one claim, something which has taken up an enormous amount of judicial resource causing unnecessary correspondence.

Procedural History of this claim

6. The procedural background to this claim is complex. The Claimant brought this claim (case number 3304951/2022) against her union the Respondent, and also against Trade Union Legal LLP, and she alleged the way they treated her was discriminatory, unfavourable and was a detriment.

7. The claim was first listed for a preliminary hearing to take place on the 14 November 2022. Regional Judge Foxwell directed on the 20 August 2022 that any application for a postponement of this listed hearing on medical grounds by the Claimant must be supported by medical evidence. On the 10 November 2022 Judge Quill further refused the Claimants postponement request. On the 11 November 2022 Judge Tobin on further consideration then postponed that preliminary hearing on a date to be fixed.

8. It was then fixed for another date of the 21 February 2023. The Claimant once again applied for a postponement and the day before on the 20 February 2023 Regional Employment Judge Foxwell postponed that hearing.

9. The preliminary hearing was then listed once again for the 6 June 2023. The preliminary hearing was then once again postponed due to lack of judicial resources by Regional Employment Judge Foxwell the day before on the 5 June 2022.

10. On the 16 June 2023 the preliminary hearing was listed once more for the 25 August 2023.

11. This claim then finally first came before Judge Tynan for a preliminary hearing on the 25 August 2023 in relation to case number 3304951/2022 and he recorded as follows in his case management order: -

The Claimant presented her claim to the Tribunals on 17 April 2022, following ACAS early conciliation between 20 and 22 December 2021. She initially brought her claim against GMB Union GMB Union Trade Union Legal LLP. There is no such entity. The names of the Respondents were amended to GMB Union and Trade Union Legal LLP, though I struck out the claim as against Trade Union Legal LLP on the basis that the Tribunal has no jurisdiction to consider any claim against it. It was simply the GMB's legal advisor.

12. He defined the claim as one of harassment related to sex and refused the strike out application by the Respondents of the claim. The second Respondent, Trade Union Legal LLP, was then removed from the proceedings. Mr P Dunn represented the Respondents and the Claimant appeared in person at this hearing.

13. In discussion with the parties Judge Tynan said that the tribunal did have jurisdiction in respect of any discrimination claim against the First Respondent by virtue of section 57 of the Equality Act 2010, and specifically S.57 (3) in conjunction with section 57(7)(a).

14. He recorded that it remained open to the remaining First Respondent to contest jurisdiction at the final hearing but declined to strike out the claim against it or make a deposit order. He said as to the likely merits, the essential facts were in dispute, namely whether the Claimant was harassed by Mr Smith.

15. He then set out that although the Form ET1 was completed on the basis that the Claimant was pursuing a claim of disability discrimination, the Claimant clarified to Judge Tynan that she had come to believe that the alleged harassment in fact related to her sex notwithstanding the words used were potentially derogatory of mental health. He therefore allowed the Claimant to amend her claim to one of sex discrimination rather than

disability discrimination. He concluded that there was no hardship or prejudice to the Respondent in that regard as it amounted to a pure re-labelling of her claim. A Judgment dismissing her claim for disability discrimination was then issued.

16. He decided against listing the case for a further public preliminary hearing on time issues as this would not achieve any saving of time and expense and he concluded he did not consider it fair to the Claimant to determine the time issue, including any just and equitable extension of time.

17. The final hearing that he listed was recorded as follows: -

*All issues in the case, **including remedy if appropriate**, will be determined at a Final Hearing before an Employment Judge sitting with members …on the 11 March 2024.*

18. Following this hearing the Claimant then formed the erroneous impression that the only purpose of the hearing listed for the 11 March 2024 by Judge Tynan was to determine remedy despite it clearly stating it was to deal with all issues in the case including remedy if appropriate. This then became the main theme of all correspondence sent by the Claimant to the Tribunal thereafter.

19. On the 4 October 2023 however, the Claimant then issued a further claim against the Respondent with claim number 3311394/2023. In that claim the Claimant once again ticked the box for disability discrimination, despite it having been clarified before Judge Tynan that her claim was not about disability discrimination. She also ticked a box for sexual orientation.

20. She also ticked the box stating she was making another sort of claim and referred there to her claim for sexual harassment which was of course already contained in this claim further to the amendment allowed by Judge Tynan and the issues set out above.

21. Contained in the new claim form was a lengthy addendum to the ET1 setting out that she was being told by the court that her claim was not a disability claim and in terms asserted that she did have a claim for disability discrimination.

22. Regional Employment Judge Foxwell stayed this further claim (with case number 3311394/2023) and said it was clear the Claimant intended to submit an amended claim further to the case management orders of Judge Tynan in this claim, with case number 3304951/2022 and by using the online submission service had generated a whole case number and that for administrative purposes case number 3311934/2023 was consolidated with 3304951/2022 so that it can be considered as part of the outcome in this claim.

23. This claim, now with two case numbers to avoid any confusion, came before us on the 11 March 2024 for a final hearing, to determine all issues including remedy if appropriate. In the event we then adjourned it until the 16 and 17 July 2024 for a final hearing before this Tribunal. The reasons for that adjournment are set out in the previous case management summary. However, in brief the Claimant said that she was not prepared for that hearing, and she made allegations about the bundle not being delivered to her by the Respondents, something they denied. She said that it was also due to her now wishing to introduce a claim for disability discrimination despite her insistence before Judge Tynan that this was not about disability discrimination but was about sex discrimination. In addition, we were concerned that the Claimant may have communication difficulties, and we concluded that an intermediary report should be obtained to consider if she had communication difficulties that required adjustments for her to participate at the relisted final hearing.

24. The Claimant told us at the 11 March 2024 hearing that she had a hearing at the EAT on the 13 March 2024 and we deduced from that that she had been granted an oral hearing on an appeal against one of her other claims. It is not known to us what the outcome was but, in any event, it appeared to relate to the separate claim against her previous employer GXO logistics as opposed to this Respondent which is her trade union, and which was struck out by Judge Tynan and bore no relevance to the proceedings before us.

25. At the hearing on the 11 March 2024 we observed, in relation to her application to amend her claim to add back in the claim for disability discrimination, that the claims did not set out any discernible claim of disability discrimination as it did not set out any duty to make reasonable adjustments in relation to trade union membership as would be required under section 57(6) of the Equality Act 2010, and which deals with trade organisations making adjustments for their members.

26. In short at the hearing before us on the 11 March 2024 the Claimant struggled to explain what her claim for disability discrimination was about and we made efforts to explain to her that she must identify a provision criterion or practice ('PCP') in relation to her membership of the Respondent for any failure to make reasonable adjustments under section 57(6) of the Equality Act 2010.

27. It was also explained to her what a PCP meant and that there was somehow an obstacle placed in her way by the Respondent to obtain legal advice from the Respondents and that she needed to say what this PCP or obstacle was and what it amounted to, and that she should then say what reasonable adjustments to the PCP needed to be made.

28. We also noted that she said she had suffered with PTSD following the death of her mother. She also confirmed that her mental health team had said she would not be able to move on until this litigation was over. She said that as a result she had stopped receiving assistance from them. We also noted a reference in the bundle to her saying she would take her own life if she did not win this case.

29. Following clarification of the impairments relied upon, and after consulting with the Equal Treatment Bench book as well as the Presidential Guidance relating to Vulnerable parties and witnesses in Employment Tribunal proceedings, and other relevant guidance, we formed the view that an Intermediary Assessment was appropriate.

30. At the end of the hearing on the 11 March 2024, the Claimant suddenly stated that she didn't wish to waste everybody's time and was now considering withdrawing the amendment application to introduce a claim of disability discrimination. We were concerned that she was saying this under the pressure of the hearing and I stated that we would not act on that statement but that she should first try and access legal advice before making any decisions about withdrawing her amendment application to bring a claim for disability discrimination, and I suggested she should try and obtain advice from Citizens Advice.

31. Following the assessment by the Intermediary I said there may need to be a Ground Rules Hearing, and further case management, as it was clear the Respondent and this Tribunal needed to understand the PCP in her claim and any reasonable adjustments and I therefore listed a further hybrid hearing so that the Claimant and the Respondents representative could attend at the hearing at 10:00 AM on the 11 April 2024 for three hours.

32. Following the first hearing on the 11 March 2023 the Intermediary produced a report and concluded the Claimant would need to be asked shorter questions during cross-examination but other than that it was concluded she did not need an Intermediary at the final hearing.

33. This tribunal was therefore satisfied that the Claimant didn't suffer from an impairment which prevents her from understanding these proceedings and the need to attend hearings.

34. In any event the Claimant failed to attend that ground rules hearing. Mr Dunn attended that hearing. She had also failed to comply with the previous orders made by this Tribunal on the 11 March 2024 in relation to the clarification of her claim. I have noted that the record of that hearing was erroneously dated the 11 March 2024 and not the 11 April 2024 and for any confusion caused by this then I of course apologise. The parties were in any event advised that this was a typographical error with the correct date provided.

35. At that hearing which she did not attend I made further orders as follows: -

In any event it is ordered that by the 19 April 2024 the Claimant must either comply with my orders referred to in paragraph 4 above, which were set out in my previous case management order of the 12 March 2024 and which was emailed to her on the 12 March 2024 by this Tribunal, and she must comply with those orders by the 19 April 2024 but in any event she is ordered to explain to the Tribunal, and she must copy in the Respondent, why she has not complied with the orders I made on the 12 March 2024

36. I therefore listed another ground rules here to take place before me on the 30 April 2024 to consider the intermediary report and any adjustments that may be required for her to participate in the final hearing.

37. The Claimant then failed to attend the further ground rules hearing on the 30 April 2024 and once again Mr Dunn was in attendance. Ahead of that hearing various correspondence was received from the Claimant which made general criticisms of various Judges, questioned the purpose of the hearing, and also said she was not fit to attend, and would not be fit to attend future hearings either, and pasted into an email an email she had received from a doctor which said as follows, (and which specifically did not address her inability to attend court hearings): -

To: MK-TALKING-
THERAPIES (CENTRAL AND NORTH WEST LONDON NHS FOUNDATION TRUST); Denyse Schwartzel; MC, Sovereign (SOVEREIGN MEDICAL CENTRE); MK-TALKING-THERAPIES (CENTRAL AND NORTH WEST LONDON NHS FOUNDATION TRUST); MKMENTALHEALTHSPA (CENTRAL AND NORTH WEST LONDON NHS FOUNDATION T
RUST)

Dear Denyse,
Thank you for taking the time to speak with me last night. I am writing to confirm that a referral has been made on your behalf to the Primary Care Mental Health Practitioner associated with your GP surgery. The practitioner will contact you directly to arrange an appointment.
If you have any further questions or concerns, please do not hesitate to get in touch with me.
Please take care of yourself in the meantime.
Many thanks
Jake
Jake Thorpe
Team Manager
Milton Keynes NHS Talking Therapies – for anxiety and depression

38. In addition, the Claimant sent an email on the morning of this hearing at 9.17 am referring to her application to the strike out the Respondents defence on the grounds that they were in breach of court orders, and had not provided her with a bundle ahead of the last hearing.

39. The Claimant's criticism of the Respondent was simply not borne out by the facts. The Respondent provided its witness statement ahead of the hearing on the 11 March 2024 hearing and they also attempted to provide a bundle to her by post, but it appeared that someone who answered the door at her address had not taken delivery of it. She complained in the hearing that she had not received it and so during the hearing Counsel for the Respondent handed her another hard copy of the bundle.

40. I recorded in my case management summary of the 30 April 2024 that it was of concern that the Claimant had not complied with the orders of the tribunal made at the hearing on the 11th of March and at the further preliminary hearing dated the 11 April 2024 and that the claim remained listed for the final hearing on the 16 and 17 of July 2024.

41. I also recorded that if the Claimant wished to apply to postpone the final hearing listed for the 16 and 17 July 2024 on medical grounds the medical evidence of her inability to attend the hearing listed must be supplied by the Claimant to the Respondent and to this tribunal. Her copy email at paragraph 37 above from Milton Keynes NHS Talking Therapies did not address the issue of her inability to attend the final hearing listed for the 16 and 17 July 2024.

42. Despite it being made clear to the Claimant that if she was applying to postpone the final hearing she would have to do so supported by medical evidence, no application supported by medical evidence addressing her inability to attend the final hearing of the 16 and 17 July 2024 was made ahead of the hearing, and she failed to attend.

43. I instructed the Clerk to telephone her, and three telephone calls were made to enquire of her whereabouts at just after 10.30 am and each time the Claimants voicemail clicked in. I then asked the clerk to leave a voicemail message and to tell her that the Judge of this Tribunal wished to know where she was and that today was the final hearing of her claim listed for two days concluding tomorrow the 17 July 2024. This message was left at around 10:40 am. We then waited until 11:30 am for a response from the Claimant, and the e-mail inbox was checked but no response was received setting out why she was not in attendance.

44. We also noted there was no updated witness statement filed by the Claimant nor any impact statement about her disability nor was there any compliance with the case management orders made on the 11 March, the 11 April or the 30 April 2024.

45. As a result, for reasons set out in our written reasons we dismissed the claim under Rule 47 of Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013.'

The Costs Application

46. The basis of the respondents Costs Application was as follows: -

46.1 that the claimant had acted scandalously, vexatiously and unreasonably in these proceedings having failed to attend on no less than 3 occasions hearings ***(we assume this is a reference to the 11 April, 30 April and the 16 and 17 July 2024)*** *without any (let alone reasonable) excuse showing a lack of respect the tribunal in wasting its time and had also put the respondent to considerable expense in briefing council to attend. They set out that on two further occasions the case had been*

adjourned the day before the hearing by which stage the respondent was liable for counsels' fees in court.

43. We took the reference to *'two further occasions'* to mean the earlier preliminary hearings set out above.

44. In support of their application for costs they attached various invoices and the first was for the hearing on the 14th of November 2022. This was the preliminary hearing that was adjourned by Judge Tobin ahead of that preliminary hearing and was in the sum of £1200.00.

45. The second invoice they attached was in the sum of £1200.00, was for a hearing on the 21st of February 2023 in the sum of £1012.32. This was the postponement ordered on the 20 February 2023 by Regional Employment Judge Foxwell who postponed that hearing.

46. The costs of those two hearings amounted to a total of £3012.32.

47. For the hearing on the 4th of October 2023 in the sum of £480.00 there was no hearing in this claim on that date and any such costs application in relation to the relevant claim should be made to the Judge that conducted that hearing.

48. In summary for the hearing on the 11 April 2024 before me for which costs were claimed of £1800.00, for the hearing on the 30 of April 2024 in the sum of £600.00 before me, and finally for the hearing on the 15th of July 2024 in the sum of £2400.00, relating we assume to the hearing on the 16 and 17 July 2024 before this Tribunal, the invoices provided amounted to £4800.00 including vat.

49. Following this costs application, which was made on the 29 July 2024 but which was only brought to my attention on the 28 October 2024, some three months later, I was sent several items of correspondence by the administration team.

50. In short, the correspondence from the Claimant said as follows; -

    50.1 The Claimant on the 14 August 2024 applied to strike out the Response on wide ranging grounds in a seven-page document.

    50.2 On the 18 August 2024 she sent further confusing correspondence addressed to the EAT, me and various other recipients.

    50.3 On the 20 August 2024 she sent another email piece entitled 'Contempt of Court.'

    50.4 On the 22 August 2024 she again repeated amongst other things her claim for compensation in this claim.

    50.5 There then followed by another email on the 23 August 2024 again making wide ranging allegations.

50.6 On the 22 October 2024 she sent another email repeating her compensation claim. Amongst all this correspondence there was no reference to the application against her for costs.

51. On the 4 November 2024 I directed the following letter be sent to the Claimant in the following terms: -

The Respondent has applied for costs against the Claimant following the strike out of her claim. The Claimant is to by 12 November 2024 to advise the Tribunal, copying in the other side, stating clearly if she wishes the application against her to be dealt with on paper or whether she wishes for a hearing to be listed for three hours by CVP so that she can make written representations in response to the costs application against her.

If the Claimant is content for it to be dealt with on paper and does not require a further costs hearing then by 26 November 2024 she must set out in writing any objections to the application ***and she must also give details of her income and any savings in relation to her ability to pay any costs order****.*

This information must also be provided by 26 November 2024 if she wishes a hearing to take place.

If the Claimant requests a cost hearing to defend the application against her for costs, then by 10 December 2024 both parties must provide any dates to avoid for a further costs hearing.

In relation to other emails sent by the Claimant following the hearing on the 27 July 2024 wherein her claim was struck out by the Tribunal the Claimant is to make clear in writing sent to the Tribunal and the Respondent by 26 December 2024 whether she is asking for a reconsideration of the decision by the Tribunal to strike out her claims and in particular with reference to the claims with claim numbers 3304951/2022 & 3311394/2023.

52. The above letter was sent to the Claimant by the administration team the next day on the 5 November 2024.

53. On the 28 November 2024 the Claimant sent an email with a 49-page attachment. This document was not forwarded to me at the time by the administration team. It contained a section entitled *'Grounds for Disputing Costs.'* As to the application for costs this contained four paragraphs but repeated her assertion that the final hearing was a remedy hearing. She said she felt intimidated by five men in court and that she was ridiculed in court for being stupid. The rest of the document related to her dismissed claim.

54. Further various correspondence followed that I did not receive at the time dated the 1 January 2025, and 2 January 2025.

55. On the 30 January 2025 I was sent the file and asked to deal with the correspondence from the Claimant.

56. A letter was sent to her on my direction by administration on the 26 February 2025 which set out that the hearings before this Tribunal were not remedy

hearings only and were liability hearings, and that in any event her claim had been dismissed. As stated above the words used by Judge Tynan in listing a final hearing of '*All issues in the case, **including remedy if appropriate**,* …' led to her insistence it was a remedy hearing only. In any event the claim had been dismissed. I also directed her to say if she was applying for a reconsideration of the dismissal of her claim, and also whether she wished to attend a hearing in relation to the cost's application against her. I set a deadline of the 14 March 2025.

57. The Claimant sent an unhelpful and confusing reply on the 27 February 2025 which was forwarded to me by administration on the 18 March 2025. It failed to answer whether or not she sought reconsideration of the dismissal Judgment of this Tribunal. It also did not answer the question as to whether she wished to attend a hearing to defend the costs application.

58. I then moved to the Midlands East Region from the South East Region shortly thereafter and on the 8 April 2025, administration requested my directions. Due to pressure of work, I could not send further directions any sooner.

59. On the 19 April 2025 I directed a letter be sent in the following terms, and it was sent to her on the 22 April 2025, and it said in part as follows; -

This correspondence has become circular and there is no obligation on the Tribunal to debate the history of this case by correspondence.

The Claimant was asked to confirm if she was making an application for a reconsideration of the Judgment dismissing her claim under Rule 47 in the letter dated the 26 February 2025. She did not state that she was seeking a reconsideration of that dismissal Judgment in her reply.

She also failed to set out whether or not she wished the costs application against her in relation to the dismissed claim to be dealt with in writing or on paper in chambers before the Tribunal.

Accordingly in the interests of finality no further correspondence from the Claimant will be replied to in relation to her erroneous allegations that the hearing at which her claim was dismissed was a remedy hearing.

The application for costs against her will now be dealt with on the papers and a Judgment will then follow.

60. On the 28 May 2025 I directed that the matter be listed for a costs hearing in chambers with myself and members, and the Claimant was advised accordingly.

61. On the 30 May 2025 the Claimant sent two further emails requesting a remedy hearing despite knowing her claim had been dismissed.

62. A date was then identified when members and I could sit in chambers for the 7 July 2025 but in the event due to commitments I had in the Midlands East region I was unable to sit on that date. I sent the dates I could sit to the listing department on the 13 June 2025. The earliest date available for us to sit was the 28 November 2025.

63. Since the emails received and sent to me on the 30 May 2025, I was sent an email by administration on the 10 August 2025 attaching an email from the claimant which said as follows: -

Date : 9th July 2025

Dear Judge Brown, I write in relation to the above matter and the scheduled hearing of 28 November 2025. Upon contacting Watford Tribunal on 9 July 2025, I was informed for the first time that a costs hearing is listed for that date. I have received no prior notification, correspondence, or documentation regarding this hearing. Had I not made the enquiry myself, I would have remained entirely unaware of its existence. This is a serious procedural failing. Furthermore, I request immediate disclosure of any alleged costs application submitted to the Tribunal. I have never been served with any such application, nor given an opportunity to respond as required under Rule 75 of the Employment Tribunal Rules of Procedure 2013. It appears the issue of costs may have arisen during the hearing listed on 16 July 2024, which proceeded in my absence and without my knowledge. I remind the Tribunal that I had previously submitted medical evidence confirming I was receiving counselling and was not to attend or participate in any hearings during that period. In addition, I submitted a formal strike-out request prior to the remedy hearing of 11 March 2024, which the Tribunal confirmed was listed as a remedy hearing. Despite this, both hearings proceeded without my involvement, in breach of my procedural rights and contrary to the Tribunal's duty of care. My objections and submissions were ignored, and I was denied a fair opportunity to respond. I request that the Tribunal now:

1. Confirm whether any costs application have been submitted and, if so, provide a full copy within 7 working days being 17 th July 2025.

2. Provide a written explanation as to why I was not informed of the 28 November 2025 hearing in a timely manner.

3. Strike out any costs claim on the grounds of procedural unfairness, lack of service, and breach of Tribunal Rules. [however I still need transparency of what costs have been provide to court]

4. Convert these proceedings into a remedy hearing for compensation, based on sustained mishandling, breach of duty, and denial of access to justice.

5. Due to the continued lack of transparency and past history of the defence from 2019 to 2025 I now request the paper claims be provided for immediate transparency.

6. "While this hearing was not disclosed to me in advance, the Tribunal has also failed to establish any dates of unavailability from me as the claimant, should I have wished to attend via hybrid link. This further undermines my ability to participate fairly in the proceedings."

7. This matter is also under investigation following the hand delivery of a formal complaint dossier to the Royal Courts of Justice on 28 May 2025,

addressed to Lady Chief Justice Baroness Carr, supported by Jane Duckworth [Reform UK] with documented photo's of evidence.

8. I request confirmation that I may attend the hearing remotely via secure video [without guests and closed] if it proceeds, I maintain that in the absence of due process, the Tribunal must not determine any adverse costs or decisions against me in absentia.

9. "I request full transparency regarding who will be present in the hybrid hearing link, including a confirmed list of attendees and the reason for their attendance.

64. I then directed administration to send to the Claimant a copy once more of the cost's application against her. The following was sent to her on the 13 August 2025 as follows: -

A copy of the costs application against you and the reasons for it are attached.

This application was sent to you in prior correspondence and you were asked to indicate if you wished a costs hearing to be listed or for the Tribunal to deal with it in chambers on the papers. You failed to respond to this question and so the costs application has been listed to be dealt with in chambers on the 28 November 2025.

*If you wish a hearing to take place at which you can attend and make representations, then you must state this by the **19 August 2025.** If you do not, then the matter will be dealt with in chambers that day by the Tribunal.*

65. In reply by email on the 15 August 2025 as to attending the hearing on the 28 November 2025, which was still over three months away, the Claimant said as follows by email: -

'I formally dispute the costs application. Due to the short notice provided, I will submit a full supporting response with documentation prior to the scheduled chambers on the 28 November 2025.'

66. On the 14 and the 19 August 2025 the Claimant emailed once more, including making unhelpful and confusing assertions about Mr Dunn not being in attendance at the hearing on the 25 August 2023, and asserting the costs application be dismissed in its entirety.

67. I directed that a reply be sent as follows and it was sent on the 5 September 2025:

Your objection to the cost's application has been received. The Tribunal will determine this in chambers and not in a public hearing as the Claimant has not requested a public hearing to determine the costs application.

68. On the 28 August 2025 an email containing multiple attachments was sent to the Tribunal. Most of the attachments were simply repeats of what had already been sent to the Tribunal by the Claimant.

69. On the 5 September 2025 the Claimant sent an email where she requested the hearing on the 28 November 2025 take place in person and in public to ensure full transparency. At this time this correspondence was placed on the file for us to consider when we met in chambers on the 28 November 2025. She also said, **'I reserve my right to attend.'** This request for a public in person hearing did not come to our attention until after initial chambers discussions had taken place that day. It was then further discussed with members. We concluded that in any event adjourning the hearing in chambers would have led to further unacceptable delay i.e. in listing a public in person costs hearing, due to the fact I was now based in a different region and one of the members is currently unable to drive due to a health issue and can therefore only participate by video in any event.

70. On the 9 September 2025 she emailed and attached a report from a Dr A Z Nasiri dated the 29 June 2024 stating that she suffered with severe anxiety which seemed to have originated due to stress at the workplace. It also referred to possible PTSD and unprocessed grief from the death of her mother. It made no reference to her ability to attend court hearings.

71. On the 24 September 2025 the Claimant wrote to the Tribunal referring to 'Remedy Costs' the purpose of which was not at all clear, i.e. there is no discernible application for costs against the Respondent by the Claimant.

72. As to the preliminary hearings on the 14 November 2022 and the 21 February 2023 that were not before us, we have concluded that the assertion she was too unwell to attend was accepted by the Judges that postponed those hearings based on what was before them. 14 November 2022. Regional Judge Foxwell directed on the 20 August 2022 that any application for a postponement of this listed hearing on medical grounds by the Claimant must be supported by medical evidence. On the 10 November 2022 Judge Quill further refused the Claimants postponement request.

73. At the first hearing before us on the 11 March 2024 the Claimant had referred to wishing to make an application to amend to introduce allegations of disability discrimination and also that she had no bundle to enable her to participate in the hearing – this incurred costs of £1800.00.

74. However due to her problems with engaging with the proceedings we find that the Claimant did need that hearing to be adjourned and relisted, and in any event we concluded an intermediary be instructed to assess her before we could be certain she was able to participate in the hearings without assistance, and we also needed to ensure appropriate adjustments could be made for her.

75. Thereafter the Claimant was assessed by an intermediary, but she did not attend the following Preliminary Hearings on the 18 April 2024 (costs £1800.00), 30 April 2024 (costs £600.00), the final listed hearing on the 15 & 16 July 2024 (costs £2400.00).

76. We consider that unreasonable conduct was evidenced by both a failure to comply with case management orders made and to attend these three hearings despite knowing they were taking place and with no medical

evidence she was unfit to attend, and the total costs of these were the sum of £4,800.00.

77. The Respondents did not make the costs application on the basis the claim never had any reasonable prospects of success, and so this decision is based on the grounds of unreasonable conduct.

78. We find there was unreasonable behaviour when the claimant failed to comply with case management orders made and to attend these three hearings to attend the three hearings above which resulted in wasted costs in the sum of £4800.00.

The Law

79. Rule 75 ET Rules provides:

> *(1) A costs order is an order that a party ('the paying party') make a payment to—*
>
> *(a) another party ('the receiving party') in respect of the costs that the receiving party has incurred while legally represented or while represented by a lay representative.*

80. The power to make a costs order is in Rule 76 which provides:

> *(1) A Tribunal may make a costs order or a preparation time order, and shall consider whether to do so, 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) or the way that the proceedings (or part) have been conducted.*
>
> *(b) any claim or response had no reasonable prospect of success;*

81. Rule 84 ET Rules provides:

> *"In deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay".*

82. In *Gee –v- Shell UK Limited [2003] IRLR82* Sedley LJ said:

> *"It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to ordinary people without the need of lawyers and that in sharp distinction for ordinary litigation in the United Kingdom losing does not ordinarily mean paying the other side's costs".*

83. Costs orders are the exception rather than the rule in employment tribunal proceedings, but that does not mean that the facts of the case must be exceptional (*Power v Panasonic (UK) Ltd* UKEAT/0439/04).

84. Such awards can be made against unrepresented litigants, including where there is no deposit order in place or costs warning (*Vaughan v London Borough of Lewisham* UKEAT/0533/120).

85. In terms of abusive, disruptive or unreasonable conduct, "unreasonableness" bears its ordinary meaning and should not be taken to be equivalent of "vexatious" (*National Oilwell Varco UK Ltd v Van de Ruit* UKEAT/0006/14).

86. In *Millan v Capsticks Solicitors LLP & Others* UKEAT/0093/14/RN the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3-stage exercise, which in essence is as follows:

    87.1 Has the putative paying party behaved in the manner proscribed by the rules?

    87.2 If so, it must then exercise its discretion as to whether it is appropriate to make a costs order, (it may take into account ability to pay in making that decision).

    87.3 If it decides that a costs order should be made, it must decide what amount should be paid or whether the matter should be referred for assessment, (again the Tribunal may consider the paying party's ability to pay).

87. The tribunal does not need to identify a direct causal link between the unreasonable conduct and the costs claimed (*MacPherson v BNP Paribas (London Branch*) (No 1) [2004] ICR 1398).

88. In *AQ Ltd v Holden* [2012] IRLR 648 HHJ Richardson said:

    "… [32] The threshold tests in r 40(3) are the same whether a litigant is or is not professionally represented. The application of those tests should, however, consider whether a litigant is professionally represented. A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. … Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. As Mr Davies submitted, lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Tribunals must bear this in mind when assessing the threshold tests in r 40(3). Further, even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order. This discretion will be exercised having regard to all the circumstances. It is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice.

[33] This is not to say that lay people are immune from orders for costs: far from it, as the cases make clear. Some litigants in person are found to have behaved vexatiously or unreasonably even when proper allowance is made for their inexperience and lack of objectivity…"

89. The Tribunal has a discretion, not an obligation, to consider means to pay. This was considered in the case of *Jilling –v- Birmingham Solihull Mental Health NHS Trust* EAT 0584/06. It was established in that case that if we decide not to take into account the party's means to pay, we should explain why, and if we decide to do so, we should set out our findings about the ability to pay, what impact that has had on our decision whether to award costs and if so, what impact means had on our decision as to how much those costs should be.

90. In *Yerrakalva v Barnsley Metropolitan Borough Council* [2012] ICR 420 (paragraphs 39 – 41) it was emphasised that the tribunal has a broad discretion, and it should avoid adopting an over-analytical approach, for instance by dissecting the case in detail or attempting to compartmentalise the relevant conduct under separate headings such as "nature", "gravity" and "effect". The words of the rule should be followed, and the tribunal should:

"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".

91. The Court of Appeal in *Yerrakalva* made it clear that although causation was undoubtedly a relevant factor, it was not necessary for the tribunal to determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. Furthermore, the circumstances do not need to be separated into sections, each of which in turn forms the subject of individual analysis, risking the court losing sight of the totality of the relevant circumstances.

Conclusions

92. There are three stages in determining whether or not to award costs under Rule 76 ET Rules; first, whether the party has reached the threshold of establishing that a party had acted vexatiously, abusively or disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; and that a claim had no reasonable prospects of success. Second, if the threshold has been reached, the tribunal will go on to consider whether it is appropriate to make an order for costs. Finally, if it is appropriate to make an order for costs, the tribunal will go on to consider the amount of such order.

Threshold - Are There Grounds for Making a Costs Order?

(1) Conduct – Rule 76.1(a)

93. It is incumbent on the Tribunal to satisfy itself that the conditions in Rule 76(1) apply before any order can be considered.

94. We note that the Claimant was a litigant in person while the Respondents were professionally represented. We do not judge her against the same standards as we would a professional representative. We recognise that litigants in person can lack objectivity in relation to their own claims, and it is often not easy for them to feel a sense of trust towards a former employer or their professional representative during a legal dispute. In this particular case the Claimant was a person who demonstrated a lack of objectivity at levels that were extreme.

95. In these proceedings she repeatedly confused this case with previous proceedings before other Judges that had failed and sought to refer to these proceedings in justification for these proceedings before us. In addition, she refused to accept the clear fact that Judge Tynan had listed the hearing before us as a final hearing and that it was not to deal with remedy and compensation only. This was a Claimant who simply could not accept the reality of what had occurred in the proceedings to date i.e., no liability hearing had yet taken place.

96. The Claimant asserts she has mental health issues, something she herself referred to following not turning up to the final relisted hearing when she said that her GP had said ‘no more court hearings’ and she has herself referred to her own suicidal ideation. However no medical evidence of her inability to attend hearings has been provided, and the information referenced at paragraph 37 above did not evidence an inability to attend the hearings in this claim.

97. However, the Claimant’s conduct meant in not complying with case management orders not attending the three hearings meant that the Respondent attended three hearings which she did not attend, and which caused wasted costs for the Respondent of £4800.00 for those hearings. As to the first hearing before us on the 30 March 2025 she did attend and the reasons for the adjournment were partly due to our assessment that she need to be assessed by an Intermediary and that a further ground rules hearing needed to take place before the final hearing.

98. In the circumstances, the tribunal finds that the Respondents have established that the Claimant’s conduct was unreasonable as defined in

Rule 76 (1)(a) of the Employment Tribunal Rules of Procedure in respect of the Joint Costs Application, and that this threshold was met in terms of the test which was whether the Claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted, and we concluded that the threshold test was met.

Should a Costs Order Be Made?

99. We consider a number of factors in deciding whether to exercise our discretion to make an order for costs. Although there are grounds for making an order against the Claimant, the decision to do so is still at the Tribunal's discretion. As stated above, it remains the case that costs orders in the Employment Tribunal are the exception rather than the rule, and there are three factors we should consider.

100. Firstly, the Claimant is a litigant in person conducting her case against a professionally represented party, secondly, we should consider whether to take into account her financial means, although we don't consider the nature of the allegations made as this was not a ground asserted by the Respondents for this application.

101. As to the first factor Tribunals are prepared to give unrepresented parties more latitude in the way they conduct litigation. However, the Claimant's conduct of litigation has fallen drastically short of an average litigant in person. She refuses to accept the facts on the ground arguing irrationally that things were said, for example by Judge Tynan that were clearly not said i.e. he had listed a remedy hearing only, whereas he made clear that the final hearing was to deal with all issues including remedy if appropriate.

102. There was also a failure to engage with the process generally in complying with case management orders made on 11 Mar 24 and 11 April 24 to clarify her claims, and generally in failing to engage with the claim she had bought, such as failing to pick up the phone when the clerk telephoned her to enquire of whereabouts on the 16 July 2024 but would then immediately thereafter send emails asserting reasons to why she could not attend i.e. ill health, but with no supporting medical evidence, and generally failed to comply with case management orders made.

103. As for the second factor, i.e., the Claimants' ability to pay for any costs hearing this Tribunal gave the Claimant an opportunity to make representations about this but has not done so to date. Despite the Claimant being invited to make submissions about her ability to pay the cost's application against her she has not at any point done so.

104. Thirdly and looking at the whole picture, as *Yerrakalva* suggests we do, and the claims brought, we find that the Claimant acted unreasonably, in a nutshell, by attempting to repeatedly rewrite the history of this claim, and by repeatedly trying to bring previous claims back into this claim, such as her claim for disability discrimination after it was dismissed by Judge Tynan, and by failing

to attend hearings without supporting medical evidence as to why she could not attend. She also failed to comply with case management orders made.

105. Drawing all these factors together, and the medical evidence i.e., one referral to a mental wellbeing clinic, and a letter from a GP referring to her medical history, we were of the view that this was one of those rare cases where it was appropriate to make a costs order against the Claimant.

The amount of the order for costs

106. Given that costs are compensatory, and we remind ourselves that despite the Claimants unreasonable behaviour they are not punitive, it is necessary to examine what loss has been caused to the receiving party.

107. In part the Respondent claims in relation to the hearings she failed to attend the sum of £4800.00 including VAT. We find that this element of the costs claimed were reasonable and necessarily incurred and were proportionate.

108. As to the other preliminary hearings adjourned before they took place and the costs incurred for those, we were not of the view that costs wasted should be ordered for those as the Judges who adjourned those hearings had concluded they should be adjourned based on the Claimants representations before they took place.

109. The core unreasonableness of the Claimant in her conduct throughout started when she failed to attend the three hearings set out and when we then dismissed the claim. *MacPherson* makes clear that we do not have to identify a direct causal link between the unreasonable conduct and specific costs being claimed. It was also held that costs should be limited to those 'reasonably and necessarily incurred'. Furthermore, the amount of loss will not necessarily be determinative, since a tribunal may consider other factors, such as the means and the conduct of the parties. We have not taken into account the means of the Claimant as she failed to provide any information about her means.

110. Applying *Yerrakalva* and looking at the totality of the Claimants conduct of the proceedings from the outset to conclusion, including the hearings she did attend and did not attend, we award the sum of £4800.00 including vat.

Approved by:

Employment Judge Brown

3 December 2025

Judgment sent to the parties on:

3 December 2025

For the Tribunal:

Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

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/