



EMPLOYMENT TRIBUNALS

Claimant: Mr D Mogg

Respondent: Prestige Network Limited

Heard at: Reading **On:** 3 November 2025

Before: Employment Judge Gumbiti-Zimuto

Representation

Claimant: Written representations

Respondent: Written representations

JUDGMENT

The respondent's application for costs is dismissed.

REASONS

1. The respondent makes an application for costs. The grounds of the application are set out in a letter dated 6 June 2025 and an email dated 22 August 2025. The claimant resists the application in a letter dated 11 June 2025 and a further letter dated 24 August 2025. The parties are content that the application is considered based on their written representations and without the need for an oral hearing.
2. Regrettably there has been some delay in my dealing with this application, I apologise to the parties for that delay.
3. The Employment Tribunal Rules of Procedure 2024 provide for when a costs order or a preparation time order may be made at Rule 74, the relevant part of which provides as follows:

74.—(1) The Tribunal may make a costs order ... on the application of a party ...
(2) The Tribunal must consider making a costs 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) ...

4. In exercising the discretion to order costs it is necessary to look at the whole picture of what happened in the case and to ask whether there has been unreasonable conduct by (in this case) the claimant in bringing or conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had.¹ While it is not necessary to determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed, the Tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of the discretion.
5. I have considered the case of Daleside Nursing Home Limited v Mathew UKEAT/0519/08 where at the heart of a claim was an explicit lie alleging racial abuse, the Employment Tribunal was found to be in error for failing to find that the claimant acted unreasonably in bringing or conducting the claim and should have made an order for costs against her. I also bear in mind that the case did not raise any issue of principle of general application and was decided on the clear-cut facts of that particular and was not intended to set out any general statement of legal principle. The approach to an application for costs where a party has lied illustrated in that case has however been of assistance. Lying in evidence will not automatically result in a finding of unreasonable conduct. A false allegation at the heart of the claim may do but a lie of less gravity and effect may not be unreasonable conduct signalling a costs order.
6. The respondent makes an application for costs on the grounds that the claimant's conduct was unreasonable because (i) the claimant was untruthful in giving evidence, (ii) the claimant committed sabotage and lied to the Tribunal about it, (iii) the claimant's whistleblowing claim had no reasonable prospects of success.
7. The respondent says: "*The Respondent's position is as follows. In summary, throughout the trial, it was made abundantly clear that the Claimant knew he had lied about sabotaging the Respondent's business and still failed to admit such conduct at an early stage. This ultimately resulted in more time and costs for evidence relating to whether such conduct had taken place when the Claimant knew that he had acted dishonestly and unreasonably, particularly where EJ Gumbiti-Zimuto determined that it was inevitable he would be dismissed. In similar terms, the Claimant pursued a claim for whistleblowing when he knew there was no merit in this claim and to assist him with having standing to pursue a claim for unfair dismissal. Similarly, if such claim had not been pursued, then the trial listing could have likely been reduced by two days, reducing such costs for the parties and precious tribunal resources.*"
8. The claimant contends that bringing the unfair dismissal claim, which was well founded, was not unreasonable conduct. As to the whistleblowing claim this was "*pursued at the same time as the unfair dismissal complaint and was based largely on the same facts, with e alleged protected disclosure happening less than a month before his dismissal on 17 March 2022.*" The claimant believed that there was a genuine health and safety

¹ Yerrakalva v Barnsley MBC [2012] ICR 420

risk at stake. The claimant states he was “*entitled to have the issue explored by the tribunal: just because he was unsuccessful in this regard it does not follow that there were no reasonable prospects of success.*”

9. By 24 August 2025 the claimant was acting in person. The claimant made further written submissions including the contention that his award of compensation was reduced by reason of applying the *Polkey* principle and therefore to order the claimant to pay cost would mean that he is being punished twice.

Conclusion

10. This decision on the cost application should be considered alongside the judgment and reasons sent to the parties in this case. I made clear findings that the claimant's claim of unfair dismissal based on section 103A of the Employment Rights Act 1996 was not well founded, I concluded that there was no protected disclosure made at a meeting on the 28 March 2022. This was in the context of a claim for unfair dismissal where the defence relied upon included the contention that the claimant was for a significant period not an employee at all. This was of relevance to the question whether the claimant had the right not to claim unfair dismissal pursuant to section 94 and 98 of the Employment Rights Act 1996, had the alleged whistleblowing claim not been pursued in my view the overall length of time that the case is not likely to have taken wouldn't have been significantly shortened if at all.
11. In respect of the complaint about whistleblowing this was not a case where the findings I made against the claimant, on which the respondent relies, were based on rejecting a lie that was central to the case. Having heard the claimant's evidence I was not satisfied that the claimant had illustrated that there was at the meeting of the 28 March 2022 a protected disclosure. There was a conflict of evidence in that the claimant stated that I should find that in the meeting there was information that the health and safety of employees was raised by him, and this was denied by the respondent. The way that the claimant sought to show a qualifying disclosure being made at that meeting did not involve an allegation that necessarily involved a lie. The respondent in this respect does not rely on a lie as unreasonable conduct, they say the case was one where the contention that there was a protected disclosure had no reasonable prospect of success.
12. I am not satisfied that the respondent has shown that claimant pursuing the claim of whistleblowing allegations unsuccessfully justifies a conclusion that the claimant's conduct was unreasonable. I considered the evidence and rejected the claimant's argument on this issue.
13. The claimant's denial of the allegation of sabotage was fatal to the claimant's ability to secure a full award of financial remedy for the loss he incurred on dismissal. This is because this alleged conduct was so egregious it would have in any event have resulted in his dismissal were it known of before his dismissal.

14. My View was that the claimant did act in a way that aimed to sabotage the respondent, however this was not the basis of the dismissal or the central ground of dispute between the parties in respect of the question whether there was an unfair dismissal. The more significant issue between the parties which arose for determination was the question whether the claimant was an employee throughout the relevant period. Had that issue not been in dispute the claimant's position on the whistleblowing claim and also his denial of allegations of sabotage might have had a more significant impact of the length of the hearing, but as the employment status issue was live because of the stance adopted by the respondent, I am not satisfied that the case was not significantly different in length because of the claimant's stance.

15. Attempting to give consideration to the case overall, bearing in mind the way it was conducted by the parties and my conclusions, I am not satisfied that overall that this is a case where the claimant should be required to be ordered to pay costs. The respondent's application for costs is dismissed.

Approved by:
Employment Judge Gumbiti-Zimuto

3 November 2025

JUDGMENT SENT TO THE PARTIES ON

..20 November 2025.....

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FOR THE TRIBUNAL OFFICE

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 here:

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