Case No. 2403659/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr A Essa

Respondent: Abba Cars Warrington Limited

Heard at: Liverpool

On: In Chambers on 29th October 2025

Before: Employment Judge Anderson (Sitting Alone)

Representatives

For the claimant: Written Submissions

For the respondent: Written Submissions

JUDGMENT

1. The application by the Respondent for costs is refused.

REASONS

Introduction

1. The Respondent, Abba Cars Warrington Limited, makes an application for costs.

2. Applications for costs may be dealt with at a hearing or without a hearing. Following the application, I directed that an order be sent to the parties in the following terms:

   The Respondent has made an application for costs.

   Rule 75(2) of the Employment Tribunal Procedure Rules 2024 state:

   "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)."

   Employment Judge Anderson proposes to consider the application on paper without a hearing.

   Within 14 days of the date on which this order is sent to the parties, each party must set out in writing (with a copy to the other side)

   1. **Whether they agree with the application being considered without a hearing and if they disagree, why a hearing is preferable**

   2. **Any further representations they wish to make in the event the application is considered without a hearing. A party is not required to make further representations unless they wish to.**

3. No reply was received to this order from either party. The solicitors acting for the Respondent subsequently wrote to the Tribunal chasing consideration of the earlier application. Indeed, I infer from the subsequent emails received that neither party appears to have received this order, which is clearly shown on the file as being sent.

4. The Tribunal re-sent my earlier order and in response neither party objected to the costs application being considered without a hearing.

5. I considered that it was reasonable to proceed without a hearing. The Respondent had the opportunity to set out its application and the Claimant had the opportunity to respond. The application was not of a nature that required me to have a hearing, it was straightforward and I had all relevant information.

6. This is my Judgment following that application.

7. I record that I have had access to the electronic file, the costs application and subsequent emails, the documents available at the Public Preliminary Hearing and my note of my oral reasons given at the Public Preliminary Hearing.

The Application

8. By letter dated 9th July 2025, the Respondent applied for costs on the following grounds:

    a. Under Rule 74(1)(a), the Claimant acted unreasonably and vexatiously in the way in which the proceedings have been conducted. I will describe this as the first ground.
    b. Under Rule 74(1)(b), the Claimant's claims had no reasonable prospects of success. I will describe this as the second ground.

9. In respect of the first ground, the Respondent refers to a costs warning letter. It then goes through the history of the Claimant continuing with the litigation and then the progress of the litigation leading up to the preliminary hearing including a failed application by the Claimant to postpone the hearing on medical grounds.

10. In respect of the second ground, reference is made to the preliminary hearing and the comments attributed to EJ Aspinall. The application is made in broad terms rather than with reference to granular detail of specific evidential weaknesses.

11. The Claimant has responded twice to the application. His submission is that he wishes to put this matter behind him and move on. He resists the application.

12. Therefore, the issues for me to determine are as follows:

    a. Whether the threshold for costs has been met within the meaning of Rule 74 of the Employment Tribunal Procedure Rules 2024
    b. If the threshold for costs is met, whether to exercise my discretion in favour of making such an award.
    c. Whether or not to exercise my discretion to take into account the Claimants ability to pay any costs award.
    d. If there is to be an award of costs, the amount of costs to be ordered to be paid.

My Previous Judgment

13. At a Public Preliminary Hearing, I previously determined that:

    1. The Tribunal does not have jurisdiction to consider the Claimants complaint of unfair dismissal as it was presented outside relevant time limit and it was reasonably practicable for the claim to be submitted within time.

2. The Tribunal does not have jurisdiction to consider the Claimants complaints of direct race discrimination as they were presented outside the relevant time limits and it is not just and equitable to extend time.

14. Neither party requested written reasons.

15. The Claimant therefore lost because his claims were out of time. No determination was made on prospects. It is not suggested that this prohibits a costs application on the grounds of no reasonable prospects of success, I simply record that this finding was not made at the Preliminary Hearing because the time points were dealt with first.

The Law

16. Rule 74 of The Employment Tribunal Procedure Rules 2024 provides:

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 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,

(b) any claim, response or reply had no reasonable prospect of success, or

(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.

17. Once it has been established that the threshold for costs has been met, the Tribunal has a wide discretion in respect of whether or not to make a costs award: **Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78.** Furthermore, there must be some element of causation between the threshold being met and the costs incurred.

Conclusions

18. I first consider the issue of whether the threshold for costs has been met. In so doing, I go through a number of considerations. I do not treat any point as determinative, rather I am considering points at each stage of the test.

19. In respect of the first ground, the Respondent points to its costs warning letter. I agree that the fact that a party has been put on notice of the intention to claim costs is a relevant factor.

20. The application then makes the point that the Claimant was corresponding on irrelevant matters or not addressing the orders that had been made by the Tribunal. Whilst there is correspondence from the Tribunal, this is not a case whereby there is continued defiance of the Tribunal in the face of strongly worded condemnation.

21. I also remind myself that this case was able to follow a relatively straightforward process of there being a private preliminary hearing, which in turn lists a public preliminary hearing at which the parties have a fair hearing and the Respondent is successful.

22. The Claimants conduct of the litigation still resulted in the Respondent getting a fair hearing.

23. Sending too many documents, making a poor disclosure request, failing to obtain a medical postponement is the ill advised conduct of litigation. The fact that there are numerous worse examples of such conduct out there does not prevent the threshold being met, but it is relevant context.

24. I regard the Claimants conduct as being open to legitimate criticism, but that it falls within the category of being the conduct of litigation by an inexperienced party lacking the correct skills to progress their case. The application for costs has not persuaded me that this case falls outside the poor/ill advised conduct of litigation and past the 'unreasonable' threshold as provided for in the rules.

25. I do not consider that the threshold for unreasonable conduct of the litigation has been met.

26. In respect of the second ground regarding prospects, I would note that the case law regarding just and equitable extension of time has developed significantly over the last decade. Starting with the Court of Appeal **Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640 [2018] IRLR 1080** it is clear that there is the 'widest possible discretion'. Furthermore, at para 25 it was stated:

"There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any

explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard."

27. It Is also fair to say that the authorities tend to point towards considering forensic prejudice in more detail than would previously have been the case.

28. In **Jones v Secretary of State for Health and Social Care [2024] EAT 2** the EAT noted that the frequently cited case of **Bexley Community Centre v Robertson [2003] EWCA Civ 576** remained good law but that it should not be taken out of context or quoted selectively. This was subsequently undisturbed by the Court of Appeal.

29. This takes us to the point whereby; I reject the central thesis of the application that the Respondent was bound to win this hearing. I do not consider that to be correct. The Respondent won the hearing on time limits in the discrimination case, but it was much more finely balanced than is represented.

30. I would also add this, my recollection of the hearing itself was that whilst the Respondent was ultimately successful on the time point, the hearing was not straightforward from the perspective of the Respondent, there were problems addressing some of my questions and there were potential gaps or inconsistencies in the evidence, for example, the EDT potentially changing during submissions or the lack of clarity as to what was happening around 21st November 2023 and what decisions were being taken.

31. The position is somewhat different in respect of the claim of unfair dismissal and the test of reasonable practicability. Firstly, I found it was reasonably practicable for the claim to be submitted in time and then in any event, it was not submitted within such further period as reasonable. The Claimant knew that his claim had been rejected by the Northern Ireland Industrial Tribunal by 8th April and he then did not put his ET 1 in until 24th June. I consider the Claimant's position on this to be weak and fall within 'likely to fail'. However, it still needed to be determined with facts found. Overall, it does not fall within 'no reasonable prospects'.

32. One final point - the application appears to conflate matters which would be considered under each ground. I have dealt with this by taking all matters into account on both grounds so as to avoid any confusion and to interpret a broad interpretation of the application.

33. I therefore conclude that the threshold for costs is not met.

34. In the alternative, had it reached the issue of whether or not to exercise my discretion in favour of making a costs award, I would not have exercised my discretion in favour of making a costs award on either the first or second ground.

35. In respect of the additional weakness in the unfair dismissal time limit point, if that did meet the threshold for costs, I am not persuaded that it was causative

of any additional costs. Even with significantly different tests, I was still considering that same period of time in November 2023 onwards that I would still needed to have considered for the discrimination case.

36. As with many litigants, the Claimant has made some poor choices during the course of this litigation. There was a clear lack of objectivity. He faced clear problems with time limits. He lacked the necessary remoteness from the emotion of the situation to be able to dispassionately consider his approach. Whilst being a litigant in person is not a shield from an adverse costs award, it is also right to acknowledge the position the Claimant found himself in, without a legal representative.

37. There is a public interest in an accessible Tribunal able to resolve disputes that arise in the workplace. It is the intention of Parliament that there is a limited costs regime in place.

38. This case plainly falls within the range of cases in which there is a public interest in having access to the Tribunal and having a point determined. Too readily making costs awards risks creating a more punitive costs regime through the back door. That doesn't mean to say that a Judge should not make costs orders. They should make orders where appropriate and they do so. This is simply not the right case.

39. I therefore refuse the application for costs.

_____

Employment Judge Anderson

29th October 2025

JUDGMENT SENT TO THE PARTIES ON

10 December 2025

FOR THE TRIBUNAL OFFICE

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