Case Number: 2404995/2022

EMPLOYMENT TRIBUNALS

Claimant: **Ms C Muswere**

Respondent: **University and College Union**

Heard at: Manchester **On:** 21 November 2025

Before: Employment Judge Serr, Mr Dobson, Ms Eyre

Representation
Claimant: In person
Respondent: Ms Ifeka, Counsel

JUDGMENT

1. The Respondent's application for costs under Employment Tribunal Rule 73 (1) (a) is well founded and succeeds.

2. The Claimant shall pay the Respondent's costs assessed under Tribunal Rule 76 (1) (a) in the sum of £19 000.

REASONS

Introduction

1. The Claimant was a member of the Respondent Trade Union. She brought claims for race discrimination, harassment and victimisation against the Respondent under s.57 Equality Act 2010. By a decision dated 31 January 2025 ("the liability judgment") the Tribunal dismissed all of the Claimant's claims. The reasons for doing so are fully set out in the decision of the Tribunal and are not repeated at any length in this decision.

2. The Claimant appealed the liability judgment of the Tribunal to the Employment Appeal Tribunal ("EAT"). By a decision dated 1 July 2025 the EAT under Rule 3 (7) of the EAT Rules indicated that the appeal disclosed no reasonable grounds for bringing the appeal. The Claimant has subsequently sought an oral hearing under Rule 3 (10) EAT Rules which has been listed for a hearing in October 2026.

3. The Claimant sought to have the Respondent's application for costs adjourned until after the Rule 3 (10) hearing. The Tribunal refused and the EAT subsequently refused to interfere with the Tribunal's case management decision by order dated 17 November 2025.

The Application for Costs

4. By a written application dated 10 March 2025 the Respondent made an application for costs under rule 74(2)(a) that the Claimant's conduct in the bringing of proceedings and the way in which she conducted part of the proceedings was unreasonable and under rule 74(2)(b), that her claim had no reasonable prospect of success.

5. The Application was detailed. The basis of the application may be summarised as follows:

   5.1 The Claimant had been warned on a number of occasions through costs warning letters that her claim had no reasonable prospect of success but she persisted.
   5.2 She produced no evidence of even an arguable case of discrimination at any stage.
   5.3 She was of a fixed mindset that her claim against the Respondent was linked with a claim against Burnley College.
   5.4 She unreasonably failed to attend 2 days of the hearing.
   5.5 The Claimant limited its claim to £20 000, despite the costs even at that stage being significantly excess of this figure.

6. There were other matters which the Respondent drew the Tribunal's attention to which while not strictly a basis for the costs application under Rule 74, were it was said relevant to 'stage 2' of the application, that is whether if one of the thresholds to making a costs under Rule 74 is satisfied the Tribunal should go on to exercise its discretion to make such an order.

7. The Tribunal provided an opportunity for the Claimant to respond in writing. She responded on 7 April 2025. Again this was a lengthy and detailed document running to over 60 pages. The Tribunal considered this document with care.

The Procedure

8. The Tribunal was presented with an almost 500 page bundle. Even allowing for the additional material related to the Claimant's means in the form of bank statements, this was excessive for a costs hearing.

9. The Tribunal had a skeleton argument from the Respondent and re-read the application and the Claimant's written response to the application. Ms Ifeka wished to ask the Claimant some questions on oath, largely related to her means. The Tribunal took the view this would be beneficial to the issues it had to decide and permitted limited cross examination.

10. The Tribunal heard oral submissions from both parties. The Tribunal took the provisional view that the key questions in the application were:

    10.1 On what basis did the Claimant think she had an arguable claim for discrimination, harassment and victimisation following the costs warning letters in August 2024 and then again on 10 and 14 January 2025?

    10.2 Why did the Claimant fail to attend two days of the listed hearing?

    10.3 What is the Claimant's current financial position, and so far as possible to ascertain future financial prospects?

11. The Claimant's lengthy written response to the application had largely failed to address these key questions (and had made a number of serious and baseless criticisms of Ms Ifeka's conduct). Applying the overriding objective under the Tribunal Rules the Tribunal sought to question the Claimant at some length to try and assist her in addressing the above crucial issues.

The Facts

12. The Tribunal made the following additional findings of fact relevant to the application:

    12.1 The Claimant is an intelligent and capable individual. She has a diploma in law and has undertaken legal work experience at barristers chambers.

    12.2 The Respondent through its representative wrote 3 costs warning letters to the Claimant on 6 August 2024 and 10 and 14 January 2025. The first and last of the letters offered the opportunity to 'drop hands' with no costs consequences.

    12.3 The August letter pointed out that Ms Gander and Mr Arrowsmith on behalf of the Respondent provided the Claimant with accurate and correct legal advice as to the claims she could bring, or not bring, given her qualifying service with the College and the limited information she had provided. Her allegations against them were said to be baseless

and her schedule of loss had no basis in fact. In addition the Respondent pointed out that the Claimant had compromised matters by seeking her own legal advice while asking the Respondent to assist her.

12.4 By early September 2024 the Claimant had received disclosure in the case from the Respondent. The disclosure exercise was concluded by on or around the end of September 2024.

12.5 The Claimant failed to attend days 2 and 3 of the liability hearing because she says she had started a course and the induction session was on day 2 and the first lecture on day 3 (based on an anonymised email dated 24/1). She gave no information whatsoever to the course provider about the forthcoming hearing before the Tribunal, or made any inquiries about the possibility of catching up with the induction/lecture on another occasion. The Tribunal reject the assertion that she would have been removed from the course had she failed to attend the induction and/or the first lecture. Alternative arrangements would have most likely been put in place for her.

12.6 The Claimant has, subsequent to the date of the liability decision, corresponded with the Respondent's legal representatives and the Tribunal in a highly intemperate and unreasonable fashion. She has asked inappropriate questions related to the lawyers families in March 2025, threatened to report Ms Ifeka to the BSB without any proper basis in April 2025 and has intimated complaints about solicitors and counsel to their managing partners/head of chambers.

12.7 The Claimant had a "barrister friend" who on 15 January 2025 sent her a costs judgment from the EAT.

12.8 On 9 April 2025 the Claimant wrote to the Tribunal indicating that if the Tribunal was to 'fix' its liability decision she would withdraw any complaints made to external organisation about the Tribunal (which the Tribunal understand to be the Judge and members rather than the administrative team). There is no real way to read this correspondence other than as a threat.

12.9 Determining with any accuracy the Claimant's means was difficult as the Tribunal find the evidence she provided was partial and somewhat contradictory. Doing the best it can the Tribunal determined the following:

- 12.9.1 She has a part time role as a building surveyor for which she receives approximately £2 000 per month. She also undertakes a study programme.
- 12.9.2 She lives at home with her parents but spends days in London for both work and for social reasons.
- 12.9.3 She provides £60 a month 'board' and a maximum of £150 per month contribution to household groceries.
- 12.9.4 She has life insurance costs of £26 per month.
- 12.9.5 She asserted she spends £400 a month on petrol driving to London (for which she receives no expenses from her employer). This seemed very high but the Tribunal was prepared to accept it at face value.

12.9.6 She has a loan of approximately £20 000 and savings of approximately £8-10 000. She makes monthly payments of £507 per month funded at present by savings.

12.9.7 She pays for her own hotel accommodation in London. This costs can vary but the Tribunal saw one example of a hotel costing approximately £30 for the night.

12.9.8 The Claimant asserted that she only has £200 per month spare after her living costs. The Tribunal rejected this on the figures provided. Even assuming she funds the loan out of her monthly earnings and allowing for socialising and other unnamed expenses the Tribunal concludes the Claimant has approximately £700-£800 per month over and above her living costs.

12.9.9 She is well educated and has no obvious impediment to increase her earnings substantially over time.

The Law

13. The power to award costs is contained in Part 13 of the 2024 Tribunal Rules of Procedure.

14. Rule 73(1) provides that a Costs Order includes an order that a party makes a payment to another party "in respect of the costs that the receiving party has incurred while represented by a legal representative".

15. The circumstances in which a Costs Order may be made are set out in rule 74. It states so far as is relevant:

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

16. The EAT recently considered the decision to award costs in the context of a discrimination claim brought by an unrepresented party in Madu v Loughborough College (2025) EAT 52. While not immune from costs orders, the fact that a party is a litigant in person will often be relevant to determining an application for costs. The question of whether a complaint had no reasonable prospects of success is wholly objective. However, the fact that a litigant acts in person may be relevant to whether he has acted unreasonably in pursuing the complaint. In many discrimination complaints the outcome turns on the Employment Tribunal deciding whether the claimant's treatment was materially influenced by the relevant protected characteristic. Much may turn on the performance of the person(s) alleged

to have discriminated against the claimant under cross-examination. It can be difficult for a claimant, especially if acting in person, to form a clear view of the likely prospects of success prior to the hearing and the Tribunal must bear this in mind.

17. The procedure by which the costs application should be considered is set out in rule 75 and the amount which the Tribunal may award is governed by rule 76. In summary rule 76 empowers a Tribunal to make an order in respect of a specified amount not exceeding £20,000, or alternatively to order the paying party to pay the whole or specified part of the costs with the amount to be determined following a detailed assessment.

18. Rule 82 concerns ability to pay and reads as follows:

    "In deciding whether to make a costs order, preparation time order 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."

19. It follows from these rules as to costs that the Tribunal must go through a three stage procedure (see paragraph 25 of Haydar v Pennine Acute NHS Trust UKEAT 0141/17/BA). The first stage is to decide whether the power to award costs has arisen, whether by way of unreasonable conduct or otherwise under rule 76; if so, the second stage is to decide whether to make an award, and if so the third stage is to decide how much to award. Ability to pay may be taken into account at the second and/or third stage.

20. The case law on the costs powers include confirmation that the award of costs is the exception rather than the rule in Employment Tribunal proceedings; that was acknowledged in Gee v Shell UK Limited [2003] IRLR 82.

21. If there has been unreasonable conduct there is no requirement for the Tribunal to identify a precise causal link between that unreasonable conduct and any specific items of costs which have been incurred: McPherson v BNP Paribas (London Branch) [2004] ICR 1398. However there is still the need for some degree of causation to be taken into account as the Court of Appeal pointed out in Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78:

    "The vital point in exercising the discretion to order costs is to 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."

22. A well-argued warning letter can provide a basis for an order for costs if the recipient has unreasonably failed to engage properly with the points raised: Peat v Birmingham City Council UKEAT/0503/1.

23. As to the question of means or ability to pay, in Vaughan v London Borough of Lewisham & Others (No. 2) [2013] IRLR 713 the EAT said this in paragraph 28:

"The starting point is that even though the Tribunal thought it right to 'have regard to' the appellant's means, that did not require it to make a firm finding as to the maximum that it believed she could pay, either forthwith or within some specified timescale, and to limit the award to that amount. That is not what the rule says (and it would be particularly surprising if it were the case, given that there is no absolute obligation to have regard to means at all). If there was a realistic prospect that the appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so that the respondents would be able to make some recovery when and if that occurred….It is necessary to remember that whatever order was made would have to be enforced through the County Court, which would itself take into account the appellant's means from time to time in deciding whether to require payment by instalments, and if so in what amount".

Conclusions

Stage 1

The Statutory Thresholds

24. The Tribunal considered whether the application passed the threshold under Rule 74 (2)(b) no reasonable prospect of success. The Tribunal considered whether the claim objectively viewed had no reasonable prospect of success and whether the Claimant in fact appreciated that it had no reasonable prospects of success, and if not should she have done.

25. The Tribunal found in the liability judgment that the Respondent had never discounted the possibility of the Claimant being the victim of race discrimination by her employer and nor could she have ever reasonably thought that it had, and gave her reasonable advice in the circumstances. It never gave her the impression it disbelieved her and nor could she ever have thought that it did. It was under no obligation to assist her in submitting SAR's to the college but nevertheless did provide her with assistance. It later asked her to send them herself as her requests were becoming too onerous. It gave her entirely correct advice indicating that the Trade Union would not provide advice to her if she was in receipt of separate legal advice from another source.

26. The Tribunal sought to understand why the Claimant had thought she had a claim of discrimination, harassment and victimisation against the Respondent at any point. Her answers to the Tribunal were largely unsatisfactory in persuading it that, even taking into account that she was unrepresented and this was a discrimination claim, she had any reasonable grounds for even a suspicion of discrimination, harassment and victimisation. She said she thought she was discriminated against because she wasn't believed by the Respondent when she said she had been dismissed by Burnley college but the Tribunal concluded she could never have reasonably thought that. She said she thought that she was being given inaccurate advice but in fact not only was the advice given accurate, there was nothing that could have ever made her think it was not. The Claimant continued to assert that her claim against UCU and Burnley College were linked, however the Tribunal had determined before the start

of the hearing they were not and in any event by the time of the hearing she had already had the judgment in her claim against the College in which she was unsuccessful.

27. In only one respect was the Tribunal satisfied that she arguably was not unreasonable in concluding that her claims had a reasonable prospect of success on presentation of the claim and when the first costs letter was written in August 2024. She said that she thought that Mr Arrowsmith may have influenced Ms Gander into changing her mind about assisting with the SAR's.

28. The Claimant never met Mr Arrowsmith and the Tribunal found he did not know her race. Most of the communications in this case were via email which so far as she was included in would have been in her possession on presentation of the claim. While the purpose of disclosure is not as a fishing expedition to make a case for a party, the Tribunal is prepared to accept that prior to disclosure the Claimant could not be entirely satisfied that something else had not passed between Ms Gander and Mr Arrowsmith that suggested at least an inference of discrimination. However, following disclosure the Claimant had all correspondence passing between not only herself but solely between Ms Gander and Mr Arrowsmith (of which there was almost none). Following disclosure the Claimant could not have reasonably held the view that she had any reasonable claim for discrimination, harassment or victimisation.

29. Accordingly from late September 2024 the threshold under Rule 74 (2) (b) is met.

30. The Tribunal also considered that the threshold under Rule 74 (2) (a) was met so far as the Claimant failed to attend for two days of the hearing. The Claimant had no good excuse for not attending her own claim which had been fixed for 8 months. She made no attempts to explain the position to her course provider and never explored whether in fact she could catch up with the missed induction and lecture. Simply not attending in the circumstances was seriously discourteous to the court, unfair on the Respondent's witnesses who had had allegations of discrimination against them for a number of years and clearly significantly reduced the prospects of succeeding in her claims.

Stage 2

The Discretion to award Costs

31. It is not enough for the statutory threshold to be met, the Tribunal must still consider whether to exercise its discretion to award costs. This is multi factorial and necessarily may include factors such as whether the Claimant was represented, whether she had access to advice, her conduct generally and her financial means.

32. The Tribunal notes that she was a litigant in person and this was a discrimination claim. Nevertheless it has decided to exercise its discretion to award costs in favour of the Respondent.

33. The Tribunal considers the following:

33.1 The claimant has legal qualifications and has undertaken work experience in barristers chambers.

33.2 The claim was directed against a teaching colleague who she had only had limited interaction with and was acting in a voluntary capacity to try and assist her, and someone she had never met.

33.3 She had access to at least some informal legal advice as recorded in the liability decision and during the costs proceedings.

33.4 She was warned though a costs warning letter on three occasions and had the opportunity to withdraw her claim. A number of the assertions made in the August letter were found as a fact in the liability decision.

33.5 The Tribunal finds that the Claimant had a fixed mindset. She simply would not countenance the possibility that she had not been discriminated against irrespective of the evidence (or lack of it).

33.6 She must have appreciated not attending the hearing would make succeeding extremely difficult. The Claimant failed to produce a witness statement although the Tribunal made adjustments to allow her evidence in another format.

33.7 The Claimant's conduct post the liability decision has been seriously unreasonable including a threat to the Tribunal.

33.8 The Claimant has some but not unlimited means at present, but she is in work, has limited expenses as she lives at home and clearly an increased earning capacity in the future.

Stage 3

Quantum

34. The Respondent seeks costs under Rule 76 (1) (a). This necessitates a broad brush assessment limited to a maximum of £20 000.

35. The Respondent asserted that its costs were at date of the costs hearing in excess of £56 000. It only sought costs up to the date of the costs application. It provided schedules with a break down as the authorities suggest a receiving party should. The Tribunal was broadly satisfied with the rates claimed.

36. The summary attached to the schedule shows a figure of £39 697.92 and the Tribunal has worked to that summary while considering the detailed breakdown.

37. The Tribunal has found that costs are payable from late September (allowing for the Claimant to at least consider the disclosure sent on or around 9 September). That then precludes £7 897 from presentation to the August costs warning. The next figure is £15 234.72 accrued from the August costs warning to the second costs warning in January 2025. This will by necessity have included the disclosure exercise which is likely to form a substantial part of the costs and which are not on the Tribunal's findings recoverable. The Tribunal allows £7 000 for this period.

38. There is then another £7 565 claimed in solicitors fees until the hearing itself. This seemed on the high side to the Tribunal as most of the work ought to have been done by January. The Tribunal accepts that the Claimant was being uncooperative as evidenced by her failure to exchange witness statements which will have increased the costs somewhat. The Tribunal allows £3 000 for this period.

39. Counsels fees were claimed at £9 000 being £5 000 and refreshers of £1250 per day. These fees are reasonable in the circumstances and are allowed in full.

40. Accordingly the Tribunal assesses the costs liability as £19 000. While the Claimant's means are such that this will represent a substantial debt that will no doubt take some time to meet, the Tribunal is satisfied that her means are not a reason to reduce the amount further.

Approved by:

Employment Judge SERR
26 November 2025

JUDGMENT SENT TO THE PARTIES
ON 13 January 2026

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/