



EMPLOYMENT TRIBUNALS

Claimant: Mr N Wignarajah

Respondent John Lewis Plc

JUDGMENT ON COSTS CONSIDERED ON THE PAPERS

It is the Judgment of the Tribunal that the respondent's application under Rule 74 (2)(a) of the Employment Tribunal Procedure Rules 2024 is successful.

The claimant is to pay the sum of £50 to the respondent.

REASONS

1. The background to the respondent's costs application is set out in the Judgment following the Preliminary Hearing on the 26 November 2025.
2. The respondent applied for its costs in the sum of £250 on the basis that the claimant's conduct was unreasonable.
3. The claimant had applied for a postponement of that hearing. As a result, the start time was changed. The claimant was informed of that. He knew the hearing had not been postponed, that the start time had changed and yet he did not attend. He did not provide written representations.
4. That led to his claim being dismissed under Rule 47 and it in the alternative, it was struck out under Rule 38.

The Law

5. The Employment Tribunal Rules of Procedure 2024 provide:

72. Definitions

In this Part—

“paying party” means a party liable to pay costs;

“preparation time” means time spent by the receiving party (including by any of the receiving party’s employees or advisers) in working on the case, except for time spent at any final hearing;

“receiving party” means a party entitled to be paid costs.

73. Costs orders and preparation time orders

- (1) A costs order is an order that the paying party make a payment to—
 - (a) the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative, or
 - (b) another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual’s attendance as a witness at a hearing.
- (2) A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party’s preparation time while not represented by a legal representative.
- (3) A costs order under paragraph (1)(a) and a preparation time order may not both be made in favour of the same party in the same proceedings.
- (4) The Tribunal may decide in the course of the proceedings that a party is entitled to either a costs order or a preparation time order but may defer its decision on the kind of order to make until a later stage in the proceedings.

74. When a costs order or a preparation time order may or must be made

- (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.
- (4) Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—
 - (a) the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and
 - (b) the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.

75. Procedure

- (1) A party may apply for a costs order or a preparation time order at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.
- (2) 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).

76. The amount of a costs order

- (1) A costs order may order the paying party to pay—
 - (a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party;
 - (b) the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined—
 - i. in England and Wales, by way of detailed assessment carried out either by a county court in accordance with the Civil Procedure Rules 1998, or by the Tribunal applying the same principles;
 - ii. in Scotland, by way of taxation carried out either by the auditor of court in accordance with the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019, or by the Tribunal applying the same principles;
 - (c) another party or a witness, as appropriate, a specified amount in respect of necessary and reasonably incurred expenses for the purpose of, or in connection with, an individual's attendance as a witness at a hearing;
 - (d) an amount agreed between the paying party and the receiving party in respect of the receiving party's costs.

- (2) Where the costs order includes an amount in respect of fees charged by a lay representative, for the purposes of the calculation of the order, the hourly rate applicable for the fees of the lay representative must not exceed the rate under rule 77(2) (the amount of a preparation time order).
- (3) A costs order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.

82. Ability to pay

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

6. When determining an application for costs, the Tribunal should apply a three-stage approach:
 - a. Is the relevant jurisdictional threshold in rule 74 met?
 - b. If so, should the Tribunal exercise its discretion in favour of making a costs order?
 - c. If so, what sum of costs should the Tribunal order?
7. For the purposes of rule 74(2)(a) the word 'unreasonable' is to be given its ordinary English meaning and is not to be interpreted as meaning something similar to vexatious (Dyer v Secretary of State for Employment UKEAT/0183/83).
8. The Tribunal should consider the nature, gravity and effect of the unreasonable etc conduct, but it is appropriate to avoid a formulaic approach and have regard to the totality of the relevant conduct. As Mummery LJ explained in Yerrakalva v Barnsley MBC [2012] ICR 420, CA at §41:

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 [...]
9. It should, however, be noted that the Tribunal is not confined to making an award limited to those costs caused by the unreasonable conduct (McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA).
10. Whilst the Tribunal is not limited to awarding those costs incurred by the receiving party as a result of the paying party's unreasonable conduct, the 'effect' of the unreasonable conduct will often be a relevant factor in the Tribunal's exercise of its discretion (Yerrakalva v Barnsley MBC [2012] ICR 420, CA).

11. In circumstances where the Tribunal finds that the jurisdictional threshold in rule 74 is met, the Tribunal retains a broad discretion as to whether to make a costs order and the amount of any costs awarded. Whilst there is no closed list of factors relevant to the exercise of the Tribunal's discretion, the following factors are often relevant:

- a. Costs orders are intended to be compensatory, not punitive (Lodwick v Southwark LBC [2004] ICR 884, CA). Therefore, the extent of any causal link between the unreasonable etc conduct and the costs incurred will normally be a relevant discretionary factor (Yerrakalva), albeit there is no requirement to establish a causal link between the unreasonable conduct and the costs incurred before an order can be made (McPherson).
- b. The paying party's ability to pay is a factor which the Tribunal is entitled, but not obligated, to consider (see rule 82). Where regard is had to the paying party's ability to pay, that factor should be balanced against the need to compensate the receiving party who has unreasonably been put to expense (Howman v Queen Elizabeth Hospital Kings Lynn UKEAT/0509/12).
- c. Any assessment or consideration of means need not be limited to the paying party's means as at the date the order is made. It is sufficient that there is a 'realistic prospect that [they] might at some point in the future be able to afford to pay' (Vaughan v London Borough of Lewisham [2013] IRLR 713, EAT).
- d. Where the Tribunal does decide to take the paying party's means into account, it must do so on the basis of sufficient evidence (for example by the paying party completing a county court form EX140) (Oni v NHS Leicester City UKEAT/0144/12).
- e. There is no requirement to limit costs to the amount the paying party can afford (Arrowsmith v Nottingham Trent University [2012] ICR 159, EAT).
- f. The Tribunal may have regard to the means of a party's spouse or other immediate family members (Abaya v Leeds Teaching Hospitals NHS Trust UKEAT/0258/16).
- g. Whether a party is legally represented may be a relevant factor. An unrepresented litigant may be afforded more latitude than a party who has the benefit of professional legal advice and representation (AQ Ltd v Holden [2012] IRLR 648, EAT).

12. Is the costs jurisdiction threshold met? Yes it is. It is unreasonable conduct not to attend a hearing. Particularly a preliminary hearing such as this one,

listed when the final hearing was due to start in seven working days and the claimant had refused to agree a bundle for that final hearing. There had been other disruptive conduct by the claimant during the run up to the final hearing. Not agreeing a bundle is unreasonable, as is not attending a hearing which the claimant was aware of. He deliberately chose not to attend.

13. The next question is whether the Tribunal should exercise its discretion in making a costs Order. The costs the respondent sought were modest - £250. Other far more significant costs must have been incurred by the respondent for what proved to be a futile exercise.

14. This is a claim presented on the 4 June 2022. The final hearing had been postponed previously upon the claimant's application. This preliminary hearing was a last ditch attempt to ensure the final hearing was effective. This hearing would not have been necessary if the claimant had complied with the overriding objective and had cooperated. All that was required of him was for him to attend the hearing in order that matters could be moved on. The Tribunal simply does not have capacity to keep postponing final hearings and for cases to linger on. The longer a case takes to reach a conclusion, the more costs are incurred. This is particularly an issue for the respondent. The claimant has not complied with the overriding objective.

15. In regard to the claimant's ability to pay any costs, he has said:

'I confirm that I am currently unemployed due to ongoing illness. I have reviewed County Court Form EX140, as referred to by the Tribunal. While I understand that I am not required to complete that form, I provide below information in line with the type of financial details it contains.

Employment / Income

I am not currently in employment due to illness and do not receive any earnings.

My only income is Universal Credit, which is paid jointly with my wife. I do not receive any separate or individual income.

I have no other sources of income.

Dependants

I have a dependent child aged 16, who is in full-time education.

Housing

I live in rented accommodation.

Savings / Assets

I confirm that I do not have any savings and do not hold any significant assets.

Essential Monthly Outgoings

The essential household expenses (including rent, utilities, food, and basic living costs) are met by my wife from her own income. I do not personally meet these expenses and do not have independent funds available to do so.

Statement

In light of my ongoing illness, lack of employment, absence of personal income or savings, reliance on joint benefits, and responsibility for a dependent child, I am not in a position to pay any costs order. I respectfully ask the Tribunal to take these circumstances into account when considering the respondent's application.'

16. There was no medical evidence or other documentary evidence provided.
17. There was no response from the respondent to the claimant's statement.
18. Notwithstanding the claimant has said he is impecunious, the Tribunal is prepared to exercise its discretion and to make a costs Order.
19. The final question is the sum which should be awarded? The claimant has referred to his wife's income. The Tribunal may have regard to that. The Tribunal is therefore satisfied the claimant has access to some funds, although they may be limited to his wife's income. It has also considered the need to compensate the respondent who has been put to expense as a result of the claimant's unreasonable conduct..
20. Tribunal will allow the respondent's application for a Costs Order and the claimant is Ordered to pay to the respondent the sum of £50.

15 January 2026

Approved by

Employment Judge Wright

JUDGMENT SENT TO THE PARTIES ON
30 January 2026

For the Tribunal Office

P Wing