



EMPLOYMENT TRIBUNALS

Claimant: Tion-Jay Brown

Respondent: Oxford Summer Courses Limited

JUDGMENT ON COSTS

The Respondent's application for a costs order is allowed.

The Claimant is ordered to pay costs to the Respondent in the total sum of £4,950.

REASONS

1. The case was listed for a preliminary hearing on 17 and 18 December 2025. The Claimant did not attend. This was the third preliminary hearing on this matter. The first preliminary hearing was held on 20 May 2025. The Claimant attended. At that hearing the Claimant was ordered to provide a witness statement by 25 July 2025 addressing the issues to be determined at a second preliminary hearing. On 08 July 2025 the Claimant provided a document responding to the orders made on 20 May 2025. This was not in the form of a witness statement.
2. The second preliminary hearing was held on 12 August 2025 before EJ Palmer. That hearing was to decide: (i) whether the claim should be struck out; and (ii) whether the Tribunal had jurisdiction to consider a complaint relating to communications with ACAS. The Claimant did not attend. They had applied for a postponement at 16:51 on 11 August 2025 on the basis that they were hospitalised. The Respondent did not object to that hearing being postponed but asked that the Claimant be ordered to provide medical evidence to support the postponement. EJ Palmer relisted the hearing. By 26 August 2025 the Claimant was ordered to provide (i) written medical evidence of their hospitalisation; and (ii) a witness statement dealing with the issues to be addressed at the preliminary hearing. The consequences of failing to comply with orders were set out in bold at paragraphs 5.5 and 5.6 of EJ Palmer's orders. EJ Palmer also noted that if the Claimant failed to attend a subsequent hearing, the claim may be struck out.
3. At the heart of this case is an email allegedly sent to the Claimant on 02 July 2024. The Respondent doubts its authenticity. It has sought access to the original email. The Claimant had been represented in the initial stages of this

litigation until 02 May 2025. On 10 February 2025 the Claimant's solicitor informed the Respondent that its client had gained access to the email address in question. At the preliminary hearing on 20 May 2025 the Claimant told the Tribunal that they had deleted the relevant email account between 10-12 February 2025.

4. On 17 July 2025 the Respondent wrote to the Claimant and explained the Tribunal's powers to award costs in certain circumstances. While the costs warning is given in the context of the contested email (*'Should it be found that you have unreasonably deleted relevant documents and/or doctored the 2 July Email this may constitute conduct warranting a costs order'*), the email explains the wider context in which costs may be awarded. It states:

You may not be aware, but under the Employment Tribunal Procedure Rules 2024, the Employment Tribunal has the power, in certain circumstances to order a party to meet the entire costs incurred by another, or to make a contribution to those costs. The Tribunal is under a duty to consider making a costs order in circumstances where a party has, in bringing or conducting the proceedings, acted vexatiously, abusively, disruptively or otherwise unreasonably and/or where the case is scandalous, vexatious or has no reasonable prospects of success.

5. Neither the Tribunal nor the Respondent has had further communication with the Claimant since the email on 11 August 2025 requesting that the second preliminary hearing be postponed until the morning of 17 December 2025. EJ Palmer's orders have not been complied with. No medical evidence has been provided following the second hearing to support the Claimant's hospitalisation.
6. The Respondent emailed the Claimant on 04 September 2025. It reminded the Claimant of the need to comply with orders, the consequences of not doing so, and suggested that the Claimant seeks legal advice. The Respondent wrote to the Tribunal on 24 September 2025 asking that the claim be struck out. It repeated its request to the Tribunal on 05 November 2025. It asked that the matter be dealt with on the papers to save expense.
7. On 09 December 2025 the Tribunal wrote to the Claimant to explain that EJ Hawksworth was considering striking out the claim due to non-compliance with orders and on the basis that it has not actively been pursued. The Claimant had until 16 December 2025 to object to this proposal. No response was received from the Claimant.
8. The Claimant did not attend the hearing on 17 December 2025. At paragraphs 12-21 of my judgment of 17 December 2025, sent to the parties on 23 December 2025, I recount in detail the steps taken by the Tribunal to inform the Claimant of the hearing and the subsequent steps taken by the Tribunal and the Respondent's solicitor on the morning of the hearing to contact the Claimant. I do not repeat these here. The Claimant, at 10:38 on the morning of the hearing, sent the following email after the Tribunal had reminded them of the hearing:

The pin appeared not to be working. I had been trying to join since 9.55am without success and I would request the hearing be postponed since neither party are able to join.

9. At paragraphs 23 and 24 of my judgment of 17 December 2025 I concluded:

I have considered carefully the Claimant's email to the Tribunal sent at 10:38 on 17 December 2025. While this email gives a reason as to why the Claimant was not ready to participate at 10:00, it does not explain why the Claimant has not actively pursued their claim, why they have failed to comply with the orders of EJ Graham and Palmer, and why they have not responded to EJ Hawksworth's letter of 09 December 2025.

It is also unclear why, when the Claimant had clearly received notice of the hearing and joining instructions, they had not contacted the Tribunal before 10:38 to explain their joining difficulties. They had access to email. Even if the Claimant had experienced technical difficulties with the video platform, this did not explain why they failed to inform the Tribunal of these difficulties (whether by telephone or email) at 10am when the hearing was due to start. It did not explain why they failed to reply to telephone calls or emails from the Tribunal and the Respondent over the course of the morning.

10. The Claim was dismissed pursuant to Rule 47 of the Employment Tribunals Procedure Rules 2024. Full reasons for doing so are contained in my judgment of 17 December 2025. In the alternative, the claim was struck out. I had concluded:

By a letter dated 09 December 2025 the Tribunal gave the Claimant an opportunity by 16 December 2025 to make representations or to request a hearing, as to why the claim should not be struck out. The Claimant has failed to make representations as to why this should not be done or to request a hearing. The claim is therefore struck out for the following reasons: (i) without explanation the Claimant failed to attend the hearing listed on 17 December 2025 at 10:00; and (ii) the claim has not been actively pursued.

11. I have checked the case file and the Claimant has not applied for a reconsideration of that judgment under rule 69.

Respondent's application

12. At the end of the hearing on 17 December 2025 the Respondent applied to the Tribunal for an order of costs to be made against the Claimant. In a letter sent by the Tribunal to the parties on 23 December 2025, details of the sums sought and the basis for the application were noted. The parties were given until 21 January 2026 to inform the Tribunal if they wanted the application to be considered at a hearing. The Claimant was also given until 21 January 2026 to make any representations on the Respondent's application and to provide details of their ability to pay. No response has been received from the Claimant. The Respondent provided oral submissions at the hearing on 17 December 2025 and asked that the matter be determined without a hearing.
13. The Respondent's application is made under rule 74(2)(a) of the Employment Tribunal Procedure Rules 2024, namely that 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. In particular, the

Respondent asserts that the Claimant has unacted unreasonably in the manner in which they have conducted proceedings.

14. The Respondent claims counsel's fees of £3,750 for their brief fee and attendance on day 1 of the hearing on 17 December 2025, solicitor's costs for attendance at the hearing on 17 December 2025 of £1,200, and solicitor's preparation time of £2,896. No VAT is claimed. The total claimed is £7,846.

Law

15. Costs are the exception and not the rule in employment tribunals (*Barnsley Metropolitan Borough Council v Yerrakalva* [2012] IRLR 78, CA).
16. Rule 73(1)(a) provides that a costs order is an order that a paying party makes a payment to the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative.
17. An employment tribunal may under rule 74(1) make a costs order on its own initiative or on the application of a party. Rule 74(2)(a) provides that the tribunal must consider making a costs order or a preparation time order where it considers that 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.
18. There is a two-stage test to the award of costs. First, a tribunal must ask whether a party's conduct falls within rule 74(2)(a). If not, no discretion to make an order arises and the application must be dismissed. Second, if the conduct does fall within rule 74(2)(a), the tribunal must consider whether it is appropriate to exercise its discretion to make a costs order.
19. In *Scott v Russell* [2013] EWCA Civ 1432, the Court of Appeal approved the definition of 'vexatious' given in *Attorney General v Barker* [2000] 1 FLR 759: 'the hallmark of a vexatious proceeding is... that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceedings may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant, and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process'.
20. Abusive or disruptive conduct has its ordinary meaning (*Garnes v London Borough of Lambeth and anor* EAT 1237/97).
21. 'Unreasonable' also has its ordinary English meaning. It is not to be interpreted as being similar to vexatious (*Dyer v Secretary of State for Employment* EAT 183/83). Whether a party's conduct has been unreasonable is a matter of fact for the Tribunal to determine. It should be considered in the round. Matters such as the nature, gravity and effect of a party's unreasonable conduct may be considered. The Tribunal must ask whether there has been unreasonable conduct in the bringing, defending or conducting of the case. It must identify the conduct, what was unreasonable about it, and what effect it had (*Yerrakalva v Barnsley Metropolitan Borough Council and anor* [2012] ICR 420, CA).

22. The Claimant was represented by a solicitor until May 2025 but is now a litigant in person. I reminded myself that lay people may not have much, if any, previous experience of legal proceedings and may lack the objectivity and knowledge of law and practice brought to bear by a professional legal adviser (*AQ Ltd v Holden* [2012] IRLR 648, EAT). This is relevant when considering whether the threshold of unreasonable conduct has been met and, if so, whether to exercise the tribunal's discretion to award costs. This does not, however, mean that lay people are immune from orders for costs (*Barton v Wright Hassall LLP* [2018] 1 WLR 1119, UKSC). Each situation depends on its own facts.
23. The tribunal need not determine whether there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed. However, causation is not irrelevant when deciding the amount of costs. The tribunal has a broad discretion, should take a broad-brush approach, and should avoid adopting an over-analytical approach (*Yerrakalva; Sud v Ealing London Borough Council* 2013 ICR D39, CA).
24. In addition to reminding myself that costs are the exception in employment tribunals, I also bore in mind that a costs order is to compensate the receiving party and not to punish the paying party (*Lodwick v Southwark London Borough Council* [2004] ICR 884, CA). It is necessary to examine what loss has been caused to the receiving party and costs should be limited to those reasonably and necessarily incurred.
25. In deciding whether to make a costs order and if so, in what amount, the tribunal may have regard under rule 82 to the paying party's ability to pay. A tribunal is not obliged to have regard to ability to pay. It is merely permitted to do so (*Jilley v Birmingham and Solihull Mental Health NHS Trust and ors* EAT 0584/06).
26. Under Rule 76 a costs order may order the paying party to pay a specified amount not exceeding £20,000 or alternatively order the paying party to pay the whole or a specified part of the costs with the amount to pay to be determined by detailed assessment. The Respondent's costs total £7,846. It is not seeking a detailed assessment.

Conclusions

27. I am satisfied that I am able to determine the Respondent's application without a hearing. The Respondent has not requested a hearing. The Claimant has not replied to the Tribunal's correspondence to either request a hearing or provide written submissions. In reaching this view I have had regard to the overriding objective to deal with cases fairly and justly. This includes avoiding delay and dealing with cases in ways which are proportionate. I was satisfied that the Respondent had clearly set out the grounds for its application and the costs it had incurred. I was also satisfied that the Claimant had been given a reasonable opportunity to make written submissions to the Tribunal including giving details of their means.

Do I have the power to award costs?

28. For the Respondent's application to succeed, it must first be shown that the Claimant has acted vexatiously, abusively, disruptively or otherwise

unreasonably. The Respondent relies on allegedly unreasonable conduct of proceedings including:

- a. The Claimant's breach of orders namely the failure to provide a witness statement as ordered by EJ Graham and EJ Palmer and the failure to provide medical evidence of hospitalisation;
- b. The Claimant's deletion of the relevant email account shortly after their solicitor had notified the Respondent that the Claimant had access to the email when the Claimant was aware that the authenticity of the 02 July 2024 email was central to the issues in dispute;
- c. The failure by the Claimant to actively pursue their claim; and
- d. The failure by the Claimant to attend two preliminary hearings including the hearing on 17 November 2025.

29. The alleged conduct upon which the Respondent relies was not in dispute. The Claimant has not, since 11 August 2025, taken active steps to pursue their claim. They have failed to respond to a letter from the Tribunal asking why their claim should not be struck out. They have failed to comply with orders made by the Tribunal including an order to provide medical evidence to support their non-attendance at a previous hearing. They have given no explanation for their non-compliance. It is also not in dispute that the Claimant has deleted an email account in circumstances where a central issue between the parties is the authenticity of an email sent from that account. By the Claimant's own account given at the preliminary hearing on 20 May 2025, the relevant account was deleted between 10-12 February 2025. This was during the period when the Claimant was legally represented. It is the deletion of this email that led to EJ Palmer ordering on 20 May 2025 that a preliminary hearing be held to determine whether the claim should be struck out due to the manner in which proceedings have been conducted and/or because it would no longer be possible to have a fair hearing. The Claimant has not attended subsequent hearings and so could not give a more detailed account of the circumstances in which the deletion occurred.

30. I have reminded myself of the need to focus on the effect of the conduct that has given rise to the claim for costs. In this case, this is the non-attendance at the hearing on 17 December 2025. Turning to what was allegedly unreasonable about this conduct, no satisfactory reason has been given for non-attendance. I am satisfied that the Claimant was aware of the date and time of the hearing. I am also satisfied that they had been sent the relevant CVP link. This is clear from their email of 17 December 2025 sent at 10:38 in which they say that the PIN is not working. There was no basis for the Claimant writing that 'neither party are able to join'. The Respondent was present. Even if the Claimant did have difficulties joining, there is no explanation for why emails and telephone calls from the Tribunal were not answered, why the Claimant did not alert the Tribunal to these problems sooner, and why the Claimant still had not joined by 12 noon.

31. I have considered the possibility that emails or telephone calls from the Respondent may have been missed by the Claimant and that they were ignorant that the hearing would take place. I do not consider such ignorance to be reasonable. 'Email' had been selected on the claim form as the

Claimant's preferred method of communication. That being the case, it was not unreasonable to expect that they would check their email inbox with a degree of care while the claim was ongoing. The Claimant was online on the morning of 17 December 2025. They could have contacted the Tribunal by email or telephone to check if they had joining difficulties. In the end, the Tribunal made all reasonable efforts to contact the Claimant and delayed the start of the hearing to 12 noon.

32. I consider that the Claimant's failure to attend the hearing on 17 December 2025 without explanation and after all reasonable attempts had been made by the Tribunal to contact them was unreasonable conduct.

33. Viewed in its entirety, the threshold requirements for consideration of a costs award are met. The question is whether the Tribunal should exercise its discretion to make a costs award.

Do I exercise my discretion to award costs?

34. In considering whether or not to make an order, I reminded myself that costs are the exception in employment tribunals and that they are not designed to punish the paying party.

35. The hearing was to determine strike out. The previous hearing to consider strike out could not proceed due to the Claimant's non-attendance. The Claimant was in receipt of a costs warning from the Respondent. I have considered that the Claimant is now a litigant-in-person. They have asserted that they have medical conditions and have previously been hospitalised. I have also considered that the Claimant has essentially been given a second opportunity to advance their claim after the previous preliminary hearing could not proceed, their repeated failure to comply with orders from the Tribunal, and their failure to actively pursue the claim. This includes failing to respond to EJ Hawksworth's correspondence regarding strike out on 09 December 2025.

36. I have looked at the matter as a whole when considering whether to exercise my discretion to order costs. In these circumstances I find that the Claimant's conduct of failing to attend the December hearing has been unreasonable and that the Respondent has been put to cost as a result of the Claimant's conduct. In my judgment, it is appropriate in relation to this issue to award the Respondent costs.

What amount should I award?

37. The costs sought relate only to preparation for and attendance at the 17 December 2025 hearing. While the Respondent argues that conduct occurring before this date has been unreasonable, it is the effect of the Claimant's non-attendance in December 2025 that forms the basis of its costs application.

38. In considering the level of award to make, I may have regard to the Claimant's means. The Claimant has not provided me with details of their means despite having been given an opportunity to do so. The claim form is blank as to whether the Claimant has found alternative employment. In the absence of any information about the Claimant's means, I do not take means into account when considering the amount to be paid.

39. Deciding the amount of costs to be paid is necessarily a broad brush assessment. It is an approximation of costs which flow from the identified conduct.
40. The Respondent's claim for costs is in three parts: (i) counsel's brief fee of £3,750; (ii) solicitor's attendance fee of £1,200; and (iii) solicitor's preparation of £2,896. I considered that the sum of £3,750 clearly relates to counsel's brief fee for attending day 1 of the hearing on 17 December 2025. These were costs that were reasonably and necessarily incurred. I have considered carefully the reasonableness of the solicitor's attendance fee. The solicitor is an Associate who, from the correspondence, appears to have been involved with the matter for some time. In the circumstances, it was proportionate for a solicitor at this level to attend as the instructing solicitor. On balance, the solicitor's attendance fee of £1,200 was reasonably and necessarily incurred.
41. I have not made an award of costs for the solicitor's preparation of £2,896. I have not been provided with a detailed breakdown in respect of the matters to which this preparation relates. The hearing listed for 17-18 December 2025 was a relisting of the hearing from August 2025 albeit that I acknowledge that further preparatory work will have been undertaken. I make no criticism of the Respondent but, when viewed holistically, do not consider it proportionate or reasonable to make an order that the Claimant pays these preparation costs.
42. The broad brush assessment leads me to make a costs award of £4,950. As I discussed above, I have been provided with no information from the Claimant as to their means despite having given the Claimant an opportunity to do so. I have therefore made no reduction.
43. The total sum of £4,950 must be paid by the Claimant to the Respondent.

Approved by:

Employment Judge Russell

23 February 2026

JUDGMENT SENT TO THE PARTIES
ON 24 February 2026

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FOR THE TRIBUNAL OFFICE

Notes

Written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

Judgments 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.