



EMPLOYMENT TRIBUNALS

Claimant: Mr A Estcourt

Respondent: Morrison Energy Services Limited

Heard at: Watford Tribunal **On:** 23 February 2026

Before: Employment Judge Cowen
Mrs A Brosnan
Mr A Scott

Representation

Claimant: Did Not Attend

Respondent: Mr Davis (in house counsel)

RESERVED JUDGMENT

1. The Claimant's application for costs is successful.
2. The Respondent shall pay the Claimant costs in the sum of £1,800

REASONS

1. Hearing

The Hearing was listed for 1 day to consider the Claimant's costs application. The application was initially made in writing on 4 July 2025, prior to the remedy hearing on 8 July 2025. However, the remedy hearing led to a reserved judgment and there was no time to hear the costs application.

2. The Claimant renewed the application in writing on 18 August 2025. The hearing date was set and the Claimant supplied written representations, indicating that they did not wish to attend, in order to conserve costs. The Claimant also provided a schedule of costs and a bundle of documents in support of their application running to 35 pages.
3. The Respondent did not respond in writing to the costs application, but chose to attend the hearing today. Mr Davis indicated that he did have a skeleton argument, but thought that as it was not ready to be served 7 days in advance of the hearing, he should wait to have the permission of the Tribunal to serve it. He had not sent it to the Claimant either (knowing that they would not be present today).
4. The Tribunal allowed Mr Davis to send in his skeleton argument and copy it to the Claimant, as this was essentially a written copy of what he would otherwise say to the Tribunal and therefore would be heard by the Tribunal in any event.
5. Mr Davis made short submissions which mirrored the content of his skeleton and also answered the Tribunal's questions.

Statutory Provision

6. **Rule 74 (2)** Employment Tribunal Rules of Procedure 2024;
"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."
7. Rule 75(2) " the Tribunal must not make a costs order or 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)"
8. The amount of a costs award may not exceed £20,000.
9. The test in relation to costs is a three- stage approach:
 - a. First, the Tribunal must consider whether a party's conduct meets the statutory threshold under Rule 74(2)(a) (i.e. whether the party's conduct was vexatious, abusive, disruptive or unreasonable); and
 - b. Second, if so, the Tribunal must ask whether it is appropriate to exercise its discretion in favour of awarding costs: *Robinson v Hall Gregory Recruitment Ltd* [2014] IRLR 761 at [15].

- c. Third, and it is only when these stages are completed, the Tribunal considers the quantum and form of any award: ***Haydar v Pennine Acute NHS Trust* [2017] UKEAT/0141/17** at [25].
10. The Tribunal has a wide discretion to make findings of unreasonable conduct. Every aspect of proceedings is covered, from the inception of the claim to judgment. This is a question of fact for the Tribunal having regard to “the nature, gravity and effect of the unreasonable conduct”: ***McPherson v BNP Paribas (London Branch)* [2004] ICR 1398** at [40].
11. As a general principle, costs orders are the exception and not the rule: ***Barnsley Metropolitan Borough Council v Yerrakalva* [2012] IRLR 78** at §7. However, as per *Yerrakalva* 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 party] in bringing and conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had.”
12. Costs are compensatory and not punitive: ***Lodwick v Southwark London Borough Council* [2004] IRLR 554** at [23]. Costs should be limited to those “*reasonably and necessarily incurred*”: *Yerrakalva* at [54].

First Stage

13. The Tribunal first considered whether the Respondent’s behaviour met the threshold of unreasonable behaviour. The Claimant’s submissions gave two specific examples of when it was said that the Respondent had acted unreasonably;
14. The first instance was in December 2024 when the parties had corresponded on a without prejudice basis in order to attempt to settle the claim. The Claimant made an offer on 5 December 2024, setting out the heads of claim, including “1 year loss of employer’s contribution”. On 10 December 2024 the Respondent replied, asking for details of what constituted “loss of employer’s contribution”, saying “This head has not been pleaded or explained to our satisfaction” and “Therefore whilst we remain open to explore the issue of negotiation further, we are unable to do so by [the deadline provided], or on the currently pleaded terms”.
15. In response to this on 12 December, the Claimant’s solicitor provided a full breakdown of the figure, in a table.

16. In response to this, the Respondent replied on 13 December ; “ whilst we appreciate your further clarification on the points below, and we remain open to *sensible* negotiation, we also remain currently unable to take instruction on your proposed offer as we do not concede that your assentions (sic) are correct - the evidence in several instances demonstrates that they are not, whilst in other instances, we lack sufficient basis to evaluate them”.
17. The Respondent goes on; “Given the above and that we continue to await further information on several matters, you will appreciate that your extension of 24 hours is of no practical value whatsoever, and demonstrates nominal *genuine* willingness on your part, to negotiate, given a remedy hearing listed for over 3 months away.” There was no other detail which the Respondent required at this point.
18. The Claimant immediately responded “ We are confused by your suggestion that you are unable to put the Claimant’s offer to the Respondent or take instructions from the Respondent on the Claimant’s offer (sic)”.
19. The Respondent appeared to ignore this and 3 days later made an offer of £15,000 which had no breakdown or explanation at all, in a very brief email. When the Claimant asked for a breakdown of the offer, the Respondent’s reply was that “ My client’s position is that your client suffered no financial losses”.
20. In submission, when asked about the wording on 13 December email and refusing to take instructions, Mr Davis said that was not what he meant at all in the email and said that he apologised if he had appeared to do so.
21. The Tribunal considered this exchange of correspondence in detail. They found that whilst it commenced in what would be a professional manner, the email of the Respondent on 13 December indicated to the Claimant that the Respondent’s representative was unwilling to take instruction on the settlement proposal. The Tribunal found this to be both inappropriate, as there was sufficient information to put to the relevant manager and also unreasonable from a professional point of view, in conducting litigation. The Tribunal were satisfied from the correspondence and the Schedule of Loss at that time, that the Respondent could have entered into meaningful negotiation, but chose instead to be obstructive to the litigation process.
22. The second instance, was the failure by the Respondent to adhere to the case management orders requiring them to co-operate with the Claimant to exchange documents by 16 December 2024, agree the bundle by 10 January 2025 and to provide a copy of the bundle for the remedy hearing by 17 January 2025.
23. The hearing listed on 27 March 2025 was vacated due to the unavailability of the Employment Judge. The parties therefore had to agree a bundle before the hearing in July 2025. Unfortunately the parties had been unable to do this together and the Claimant wrote to the Tribunal on 28 May 2025 applying for an unless order, to prompt the Respondent to create and serve the bundle. In

the application they referred to the Respondent's failure to reply to correspondence.

24. The Respondent's reply to this application was to request a postponement of the remedy hearing on the basis that they had made an application to the Employment Appeal Tribunal. This is not a reason to stay or postpone a remedy hearing in the Tribunal. The response was therefore to provide a warning to the Respondent that if they did not co-operate with the Claimant to produce the bundle, they may be debarred in the remedy hearing.
25. The Respondent's response was that correspondence from the Tribunal had gone to the wrong email address. This did not address the lack of co-operation with the Claimant, nor did it justify the stay of the claim pending an appeal.
26. The Tribunal concluded that the response and attitude taken by the Respondent, not to co-operate or actively engage in preparation until prompted by the Tribunal to do so, was not reasonable and professional behaviour in litigation. The Respondent's correspondence with the Tribunal did not address directly the issue raised, and tried to change the subject in an effort to avoid the criticism of the Respondent. Experienced representatives in a case which has been postponed, should know that they will need to prepare in time for the next hearing and it is not reasonable to fail to co-operate to the point where an application to the Tribunal is required. The application to the EAT in no way removes the requirement to prepare for the remedy hearing in the Tribunal.
27. In his submission Mr Davis indicated that it was excessive for the Claimant to be requesting 3 hours of preparation time for a bundle of 30 pages. This too is a mistake/disingenuous by the Respondent, as the relevant bundle was that for the remedy hearing, which was 298 pages long.
28. The Tribunal also noted that Mr Davis had failed to provide his skeleton argument to the Claimant in advance of today's hearing – knowing full well that the Claimant would not be attending the hearing. The Tribunal considered that the Respondent knew that it was possible for Mr Davis to have sent this in advance, but chose not to do so.
29. The Tribunal also noted that the Respondent's skeleton argument referred to awaiting "reconsideration". However, the Tribunal noted that no application has been made to the Tribunal for reconsideration, although an appeal has been made to the Employment Appeal Tribunal. Once again the Respondent's loose use of language has led to wrong facts being asserted.
30. The Tribunal concluded that the behaviour of the Respondent on a number of occasions throughout the preparation for the remedy hearing had been unreasonable and would be worthy of an award of costs.

Second stage

31. The Tribunal then went on to consider whether it should use its discretion to make an award of costs.
32. The Tribunal took into account the fact that even if the Respondent had behaved appropriately, it was not certain that a settlement would have been reached prior to the remedy hearing. The offers made by each party were far apart.
33. The Tribunal also noted that the use of language by the Respondent was said by Mr Davis to be an error, but that could not have been understood by the Claimant as recipient and was not explained by Mr Davis, even when it was questioned by the Claimant. The Tribunal considered that the tone and temperament of the Respondent's emails heightened the tension between the parties and errors led to the application for an unless order and the ending of any potentially useful negotiations.
34. The impact of the Respondent's tone and language and refusal to engage with the Claimant, who was trying to conduct the litigation appropriately, meant that additional time and cost was incurred as a result.
35. The Tribunal considered that this behaviour by the Respondent had therefore led to additional expense and work by the Claimant's solicitor and therefore were worthy of an order of costs, to compensate for the work which arose as a result of the position taken by the Respondent.

Third stage

36. The Claimant's schedule of costs included the costs of both solicitor and counsel. The Tribunal were of the view that nothing in the application, or the decision of the Tribunal indicated that additional costs of counsel had been incurred as a result of the unreasonable conduct of the Respondent.
37. In relation to the solicitor's costs, the Tribunal considered in detail the Schedule provided by the Claimant; The Tribunal were satisfied that the actions of the Respondent between 13 – 17 December 2024 caused the Claimant to incur costs in relation to additional correspondence. The Tribunal therefore allow 72 mins in relation to this period.
38. In relation to the requirement to apply for an unless order, the Tribunal considered that during Jan – Feb 25, only 1 hour of the 3 hours claimed was additional work which would not have been required in any event, for the Claimant to request the bundle. In the period of 15 February to 30 May 2025, the Tribunal were satisfied that this gave rise to additional work for the Claimant. This was an additional 168 minutes in total.
39. The Respondent provided no evidence about the means of the company, or its ability to pay. The Tribunal noted that it took until January 2026 for the Respondent to pay the Claimant's remedy compensation which was awarded

on 8 August 2025. However, there is no indication that there is any financial difficulty which would prevent the Respondent from complying with a costs order.

40. The Tribunal therefore concluded that it would be appropriate to award costs in the sum of 4 hours of additional work. A judgment for £1800 inclusive of VAT is therefore made.

Approved by

Employment Judge Cowen

23 February 2026

JUDGMENT SENT TO THE PARTIES ON
3 March 2026

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FOR THE TRIBUNAL OFFICE