



# THE EMPLOYMENT TRIBUNALS

In the London South Employment Tribunal

**Claimant:** Ms H Baldwin

**Respondent:** PVH UK Limited

## JUDGMENT ON COSTS

The respondent's application for costs is refused.

## REASONS

### Introduction

1. The claimant's complaint of unauthorised deductions from wages was struck out as having no reasonable prospect of success at a hearing on 7 August 2025.
2. The respondent's representatives submitted an application for costs on 14 August 2025, seeking an order for costs to be made against the claimant pursuant to "*Rule 76 Employment Tribunal Rules of Procedure 2013*". Those procedural rules have been superseded by the Employment Tribunal Procedure Rules 2024, the relevant provision being Rule 74(2), but the error in identifying the correct legal provision does not prevent me from considering the application.
3. The respondent asks for the application to be determined without a hearing. I have not received any correspondence from the claimant in connection with this application. By virtue of Rule 75(2) of the 2024 Rules, the Tribunal must not make a costs 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). Given I do not propose to make a costs order against the claimant, there is no requirement to provide an opportunity for her to make representations. I have concluded that it is in accordance with the overriding

objective to determine the application without a hearing, in particular to avoid delay and save expense.

**Key facts**

4. The claimant commenced employment with the respondent in December 2017, initially working full-time. Prior to returning to work in July 2021 following a period of maternity leave, the claimant made a flexible working application which was granted for a trial period initially before being extended generally. The claimant thereafter worked a 32 hour, as opposed to 40 hour, week and logged her hours of work accurately using a system called Storeforce. Through no fault of the claimant's, her part-time hours were not correctly reflected on the separate system used to calculate salary, Workday. The claimant queried whether her pay was accurate and received assurances it was. Overpayments were made to her in error over a significant period of time and opportunities to rectify the situation were missed over a number of salary increases and following a further period of maternity leave in late 2023. In July 2024 the claimant's salary was reduced without notice and the claimant raised a grievance that was partly upheld regarding the lack of written communication surrounding the salary reduction. In recognition of the fact there had been several administrative errors leading to the salary overpayment and opportunities for the employer to have identified its error sooner, the claimant was not required to repay the sums. The claimant appealed the grievance outcome and thereafter presented an appeal to the Employment Tribunal, remaining dissatisfied with her employer's response.

5. The claimant states her reasons for bringing proceedings to be –

*"I am bringing this case before the employment tribunal due to an unjust and abrupt reduction in my salary, implemented without prior consultation or adequate notice. This unexpected change has imposed considerable emotional and financial stress on me, raising serious concerns regarding adherence to fair employment practices and undermining the fundamental principles of trust and respect in the workplace".*

6. She further states –

*I am seeking the intervention of the employment tribunal to challenge the company's claims of overpayment, which I firmly believe are unfounded and inaccurately represent my salary history. Despite my sustained efforts to pursue grievances, appeals, and engage in mediation through ACAS, I have consistently felt unheard.....The acknowledgement of my struggles and the need for fair treatment are vital.*

**Respondent's application for costs**

7. The basis of the application is that it was clear from the respondent's pleadings, a costs warning letter sent to the claimant by the respondent on 18 December 2024 and ultimately the tribunal's oral 'dismissal' of the claim at the hearing, that the claim had no reasonable prospect of success.

8. It is stated in the application that the respondent set out the law clearly in its letter of 18 December 2024 and urged the claimant to take independent legal advice but the claimant continued to pursue her claim, despite the respondent's concerns and potential cost consequences to the claimant personally of continuing to pursue her claim. The claimant was invited to withdraw her claim by 4 pm on 6 January 2025 to avoid an application for costs being made, such costs likely to be in the region of £5000 - £7500 plus VAT.
9. The respondent contends the claimant acted unreasonably in refusing to take the time available to her to properly consider the contents of the respondent's letter, and to take advice upon the same if desired. It is argued that the claimant remained entrenched in her misguided position that due to the fact an error had been made in calculating her pay on a full time hours basis, she should continue to be paid in the erroneous higher amount. The respondent submits that a litigant in person acting reasonably in the claimant's position would have properly considered the respondent's letter and withdrawn the claim. Legal costs incurred from the date of the letter of 18 December 2024 to the date of the hearing on 7 August 2025 are applied for, in the sum of £7840 (excluding VAT).
10. Reference is made to my observation made at the conclusion of the hearing that it would have been open to the respondent to apply to have the claim struck out at a much sooner stage of proceedings, thereby avoiding or reducing costs. The respondent's representatives express a view that the absence of a strike out application does not mean that their costs application should be precluded. They state that a strike out application would have required a hearing and that it would not have been a good use of the tribunal's time and there was no guarantee of the application being successful. They maintain the costs incurred by the respondent were directly as a result of the claimant failing to withdraw her claim when informed of the potential consequences of not doing so, and submit her conduct in continuing to pursue the claim was unreasonable.

### **The law**

11. Rule 74(2) provides as follows –

*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.*

12. The following principles are derived from caselaw -

There is a two-stage exercise to making a costs order. The first question is whether a paying party has acted unreasonably or has in some other way invoked the jurisdiction to make a costs order. The second question is whether the discretion should be exercised to make an order - *Oni v Unison ICR D17*. When considering an application for costs the tribunal should have regard to the two-stage process - Is the cost threshold triggered, e.g. was the conduct of the party against whom costs is sought unreasonable? And if so, ought the tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?

In *Gee v. Shell UK Limited [2003] IRLR 82 CA*, the Court of Appeal confirmed that it is a fundamental principle that costs are the exception rather than the rule and that costs do not follow the event in Employment Tribunals. This was confirmed in *Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA*.

The fact that a costs warning has been given is a factor that may also be taken into account by a tribunal when considering whether to exercise its discretion to make a costs order. However, this is more likely to be a factor taken into account where the warning has been given by the tribunal, rather than the other side, as parties frequently make threats of costs applications against the other party prior to hearings - *OkoJaja v London Borough of Lewisham EAT 417/00*; *Lake v Arco Grating (UK) Ltd EAT 0511/04*.

Litigants in person should not be judged by the standards of a professional representative. An Employment Tribunal, when deciding whether or not to award costs is entitled to take into account the fact that no application had been made on behalf of party seeking costs for a Preliminary Hearing to determine the prospects of success of the claim. If the claim had truly been misconceived or vexatious, there could have been an application to strike out or for a deposit order to be made. This should not in any sense be decisive of the application for costs, but it is not irrelevant – see *AQ Ltd v Holden 2012 IRLR 648, EAT*.

'Unreasonable' has its ordinary English meaning - *Dyer v Secretary of State for Employment EAT 183/83*. A tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct - *McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA*. This was clarified by Lord Justice Mummery in *Yerrakalva*: "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."

## **Analysis and Conclusion**

13. I remind myself that costs are very much the exception rather than the rule in the Employment Tribunal.
14. The first stage of the process in considering a costs application involves a determination of whether the costs threshold has been triggered. If I find the threshold has been triggered, I must then move to the second stage of considering whether to exercise my discretion to make a costs order, having regard to all the circumstances.
15. It was immediately apparent to me, from an objective viewpoint, that the claim had no reasonable prospect of success, and also that the claimant ought reasonably to have appreciated that from the outset. The costs threshold has therefore been triggered.
16. The claimant had been misled, albeit inadvertently rather than deliberately, into believing her salary was accurate for a significant period of time. It was clear from the bundle and her witness statement that she held a genuine belief she had been treated unfairly in having the salary she had become accustomed to receiving, and had been repeatedly informed was correct, abruptly reduced. She misguidedly thought the Employment Tribunal could hold her employer to account for failings on their part and pursued an ill-conceived claim to seek justice. Although the claimant maintained she had a legitimate complaint at the start of the hearing, it did not take very long at all to explain and convince her of the real issues the tribunal would need to focus on in determining the claim.
17. The weakness in the claimant's case was evident at an early stage in proceedings, as opposed to being exposed further down the line upon disclosure or exchange of witness statements. I wholly agree with the respondent's position that the absence of a strike out application does not mean that their costs application should be precluded, but its failure to make any application is a relevant factor to be taken into account - *AQ Ltd v Holden* 2012 IRLR 648, EAT. The claim was clearly misconceived and there was a high likelihood of a strike out application being successful and bringing the proceedings to an early conclusion, thereby limiting costs incurred by the respondent. At the very least, an application for a Deposit Order, the making of which would have made the risk involved in pursuing the claim abundantly clear to the claimant, could have been made without the need for a hearing.
18. Set against a background of mistrust of the employer on the part of the claimant, she cannot be criticised for not succumbing to pressure from the party she is in direct conflict with to withdraw the claim. As can be seen from *OkoJaja v London Borough of Lewisham* EAT 417/00; *Lake v Arco Grating (UK) Ltd* EAT 0511/04, it is more likely to be a factor taken into account where the warning has been given by the tribunal, rather than the other side. The explanation given at the start of the hearing about the issues the tribunal would need to focus on in determining the claim could have been given much sooner had a request been made even for a Deposit Order. The fact that costs warnings went unheeded and the claimant was undeterred from continuing with the claim does not

amount to unreasonable conduct in the circumstances. As a point of procedure, I noted the respondent's request in January 2025 to extend the duration of the hearing from 2 hours to a full day, which is suggestive of concrete issues having to be resolved rather than of the claimant having no arguable case. This was an ideal opportunity for the respondent to have asked instead for the original 2 hours to be used to determine a strike out application.

19. In all of the circumstances, making proper allowance for the claimant's inexperience and lack of objectivity, I do not consider it appropriate to exercise my discretion in favour of making a costs order.

Employment Judge Moss

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON**

12 September 2025

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