



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms T Watkins

**Respondent:** Whitbread Group plc

**Heard at:** in chambers **On:** 27 January 2026

**Before:** Employment Judge S Moore

**Representation:**  
**Parties not required to attend**

## JUDGMENT

The respondent's application for a costs order is refused.

## REASONS

### Background and Introduction

1. The claim was heard at Newport on 27 and 28 October 2025. The claimant's claim for unfair dismissal was dismissed. oral reasons were provided on 28 October 2025 and a written record of the judgment was sent to the parties on 28 October 2025.
2. On 31 October 2025 the respondent made an application for costs. The claimant objects.
3. On 6 January 2026 the parties confirmed they were content for the costs application to be dealt with without a hearing. A chambers hearing was arranged on 27 January 2026 for Judge Moore to reach a decision on the application.

### Grounds for the application

4. The respondent seeks the sum of £7,048.90 plus VAT, being the amount of costs incurred by the Respondent from the 24 July 2025, the day after the costs warning letter to date. The application was made on the basis that the Claimant acted unreasonably when she insisted upon moving to a final hearing in respect of her claim of unfair dismissal.

5. The respondent wrote to the claimant on 23 July 2025, setting out the factual and legal basis upon which they believed it was highly unlikely that she would succeed in her claim before the Tribunal and put the Claimant on notice that if she insisted upon pursuing her claim, and if they were dismissed for substantially the same reasons as envisaged, they would make an application for a costs order.
6. Further to the exchange of witness statements, the Respondent sent the Claimant a further letter reminding her of the costs associated with the claim and again pointed out the issues in her claim, being that dismissal for such a serious allegation which she had admitted to was not out of the band of reasonable responses.
7. The basis of the application was therefore on unreasonable conduct and the claim had no prospects of success.

#### Claimant's response

8. The claimant submitted that she genuinely believed she had a reasonable prospect of success in pursuing her claim and could not have known that her case would ultimately be judged as not well founded. The claimant relied upon advice and provided evidence she had an appointment with the Speak Easy Law Centre, a provider of free legal support and said she was encouraged to continue with her claim. Regarding the costs warning letters the claimant submitted that there is widespread concern that such letters may be used as a tactic to deter claimants from proceeding with claims and she did not disregard the Respondent's correspondence lightly.
9. I had limited information about the claimant's means other than she has only been able to secure a catering assistant role resulting in a significant reduction in income and financial strain on her household.

#### The Law

10. The power to award costs is set out in Part 13 of the Employment Tribunal Rules of Procedure 2024 ("the Rules"). The relevant Rules are 74, 76 and 78.

### **74 When a costs order or a preparation time order may or shall 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.

## 76 The amount of the 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.

11. I was not referred to any authorities by the parties. The following are the general authorities I have had regard to in reaching my decision.

12. **Radia v Jefferies International Ltd [2020] IRLR 431, EAT** sets out the approach to be taken when considering a costs order. The first question for a tribunal considering a costs application is whether the costs threshold is crossed, in the sense that at least one of r 76(1)(a) or (b) is made out. If so, it does not automatically follow that a costs order will be made. Rather, this means that the tribunal may make a costs order, and shall consider whether to do so. That is the second stage, and it involves the exercise by the tribunal of a judicial discretion.

13. **A Q Ltd v Holden [2012] IRLR 648, EAT** provides that the fact a party is a litigant in person is a factor to take into account when assessing the threshold test.

“Unreasonable” has an ordinary, everyday, objective, meaning (**Dyer v Secretary of State for Employment EAT 183/73**). It can include pursuing an unmeritorious claim and one can have regard to what the paying party knew or ought to have known: **Keskar v Governors of All Saints CofE School [1991] ICR 493**.

## Conclusions

14. This was a claim about the band of reasonable responses. The claimant pointed to other employees who had received lesser sanctions. In paragraph 48 of the judgment I concluded as follows:

*“In regards to the band of reasonable responses I remind myself that I must not substitute my decision with that of the employer. I took into account the claimant’s unblemished service long service record and the mitigating factors as well as the claimant’s acceptance of responsibility and that there was no evidence she would repeat the misconduct. Another employer may have decided not to dismiss the claimant. However in my judgment the decision to dismiss was within the band of reasonable responses when considering the potentially fatal consequences of the misconduct not only for the public staying at the hotel but the staff and the respondent if there had been a fire and it emerged the fire safety checks had not only not happened but that records had been falsified.”*

15. I consider that the threshold is met. It was objectively unreasonable to pursue a claim for unfair dismissal given the admitted misconduct.

16. I therefore go on to consider whether to exercise my discretion and order for costs and have considered the following factors when reaching my decision:

- a) The claimant was given a warning about the costs consequences of continuing to pursue the claim. However the claimant understood this was a tactic to persuade her to give up her claim and the claimant was a litigant in person and took advice and relied upon that advice;
- b) The claimant had a long standing and unblemished career and the issue over the range of reasonable responses along with differing sanctions to other employees led her to conclude her claim was with pursuing and in good faith decided to continue with her claim;
- c) It seems unlikely that the claimant does not have the financial means to meet a preparation time order even if made;
- d) Costs orders in the Employment Tribunal are the exception rather than the rule. The Employment Tribunal is not a jurisdiction where costs follow the event. There is no legal aid to enable litigants in person to obtain advice.
- e) For the above reasons I do not consider this claim falls into the exception.

17. Having balanced the above factors I have decided not to exercise my discretion and refuse the application for costs.

**Approved by Employment Judge S Moore on 16 February 2026**

## JUDGMENT SENT TO THE PARTIES ON

23 February 2026

Miriam Drake  
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/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)