



EMPLOYMENT TRIBUNALS

Claimant: Ms Peak Ong

Respondent: Aberystwyth University

JUDGMENT ON COSTS

The Respondent's application for a Costs Order against the Claimant is refused

REASONS

Background

1. Following the claimant being successful in her complaint of unfair dismissal and one act of victimisation the Tribunal listed a one day Remedy Hearing on 31 July 2025.
2. At the Remedy Hearing on 31 July 2025, during cross examination the claimant explained she had not given full disclosure of all her mitigation documents specifically for the period April 2023 to May 2025. Consequently the hearing was adjourned to give the claimant a further opportunity to disclose these mitigation documents which the Tribunal considered were relevant to the assessment of remedy. The claimant was ordered to disclose these additional documents in readiness for the re-listed hearing on 14 October 2025.

The Costs Application

3. At the conclusion of the Remedy Hearing held on 14 October 2025 Miss Miller for the respondent made an application for costs against the claimant. The grounds of this application related to the claimant's unreasonable conduct in the following respects.
 - (i) the failure to give full disclosure of mitigation documents at the first Remedy Hearing held on 31 July 2025, which caused the adjournment. The respondent therefore incurred further legal costs for the reconvened hearing.
 - (ii) the claimant's additional disclosure consisted of 74 pages. There were less than 10 job applications disclosed. The respondent spent considerable time and expense in reviewing the additional disclosure for this hearing.

4. The respondent produced a Schedule of Costs for this adjourned hearing in the sum of £15,779.77. Miss Miller confirmed the respondent sought a contribution towards these costs which the Tribunal considers to be reasonable and appropriate.

The Claimant's response to the application

5. In accordance with Rule 75 the claimant was given an opportunity to respond to the application. On 29 October 2025 the claimant presented a written submission document dated 27 October 2025. In summary, the claimant submitted as follows:
 - a) She did not request an adjournment and was not given an opportunity to make representations before the Tribunal decided to adjourn the hearing. The respondent did not object to the adjournment.
 - b) The adjournment benefitted the respondent and not the claimant.
 - c) For the Remedy Hearing held on 31 July 2025, she prepared the disclosure herself without any advice or assistance. The documents were prepared in a hurry at a time when she was suffering from stress and anxiety.
 - d) The time estimate for the hearing of 1 day was insufficient. The hearing would have gone part heard given the time taken by Miss Miller in cross examination.
 - e) She disputed that her conduct was unreasonable. She is a litigant in person and should not be judged to the standard of a legally qualified representative.

The Law

6. The Tribunal's power to award costs is contained within The Employment Tribunals Procedure Rules 2024. (" ET Rules")
7. Rule 74(1) provides a Tribunal may make a costs order on its own initiative or on application of a party.
8. Rule 74(2) provides a Tribunal must consider making a costs 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) or the way that the proceedings (or part) have been conducted; 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.
9. Rule 74(3) provides a 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 over hearing has been postponed or adjourned.
10. Rule 75 provides that the paying party must be given a reasonable opportunity to make representations in response, in writing or at a hearing.

11. Rule 76(1) provides that 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 pay being determined –
 - (i) in England and Wales, by a detailed assessment carried out either by a county court in accordance with the Civil Procedural Rules 1998, or by the Tribunal applying the same principles.
12. Rule 76(3) provides that a cost order under sub-paragraphs (b) to (d) of paragraph (1) may exceed £20,000.
13. Rule 82 provides that in deciding to make a costs order the Tribunal may have regard to the paying party's ability to pay.
14. The award of costs is an exception, rather than a rule. Costs are designed to compensate the receiving party for costs unreasonably incurred, not to punish the paying party for bringing an unreasonable case, or for conducting it unreasonably. The assessment of the amount of costs to pay is a broad brush exercise and does not take the form of any sort of detailed assessment of cost. The assessment is made broadly to what would be reasonable in each case.
15. Lord Justice Mummery stated, at paragraph 31 of his judgment in Yerrakelva v Barnsley MBC [2012] ICR 420: *"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."*
16. The case of McPherson v BNP Paribas (2004) IRLR 558 established the need to consider the nature, gravity and effect of the claimed unreasonable conduct. There is no need to show a precise causal link between the unreasonable conduct and the costs incurred.
17. In Kapoor v Governing Body of Barnhill Community High School, UKEAT/0352/13 Singh J held that the receiving party does not have to prove that any specific unreasonable conduct by the paying party caused any particular costs to be incurred.
18. In Dyer v Secretary of State for Employment it was held whether conduct is unreasonable is a matter of fact for the tribunal; unreasonableness has its ordinary meaning and should not be taken by tribunals to be the equivalent of vexatious. This was accepted by the Employment Appeal Tribunal in National Oil Well Varco v Van der Ruit UKEATS/0006/14/JW.

Analysis and Conclusion

19. As stated in Paragraph 14 above, the correct starting position is that an award of costs is the exception rather than the rule.
20. We must have regard to the three stage process, namely:
- (a) is the cost threshold engaged, e.g. was the conduct of the party against whom costs is sought unreasonable? and if so,
 - (b) ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?, and if so,
 - (c) the amount of costs to be awarded.
21. We first considered whether the cost threshold is engaged under Rule 74(2)(a) &(c)
22. In considering this issue, we took into account, as we are required to do that the claimant is a litigant in person and has acted in person throughout these proceedings with some assistance intermittently from a friend Mr Dorman. (AQ Ltd v Holden 2012 IRLR 648, EAT)
23. We also noted the following summary quoted in IDS Handbook Volume 9 Para 18.130)
“An employment tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life. Lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional legal adviser. Furthermore, the EAT observed, even if the threshold tests for an order for costs are met, the tribunal has discretion whether to make an order, which will be exercised having regard to all the circumstances. In its view, ‘it is not irrelevant that a lay person may have brought proceedings with little or no access to specialist help and advice’.
24. We considered this application taking into account the claimant is a litigant in person and how the claimant has conducted this case. We have recognised English is not the claimant’s first language. We noted this limitation has caused the claimant some difficulty, confusion and misunderstanding in these proceedings. We have also observed the claimant presented documents and information freely and even after the claimant was informed not to disclose further documents without the permission of the Tribunal. We did not consider this to be deliberate or to seek an unfair advantage. We formed the view it was important to the claimant to bring to the Tribunal’s attention any document or information which she considered was relevant and necessary to rebut matters raised in evidence. We also observed that during these proceedings, without being critical of the claimant, that she is not well organised. However, this is understandable given the claimant’s own limitations; the volume of evidence and information she has gathered and presented which she has had to process and navigate in these proceedings.

25. We noted the claimant's failure to give full disclose of her mitigation documents for the first Remedy Hearing on 31 July 2025 was potentially a breach of the order for disclosure and therefore could be viewed as unreasonable conduct.
26. However, the claimant has raised an important and valid submission point, which we considered carefully. That is the claimant did not seek or make an application for an adjournment and neither did the respondent. The adjournment issue was first raised and mooted by the Tribunal panel. We agree with this point. Our reason for raising this issue was to ensure all material mitigation information was before us so that a fair assessment on remedy could be made and also to avoid any possible criticism by the claimant that she was denied a fair hearing. Miss Miller was invited to make representations, and following taking instructions confirmed the respondent reluctantly agreed to the postponement. Whilst we understand the catalyst for the adjournment was because of the claimant's failure in not having given full disclosure, we decided to exercise our discretion to adjourn the hearing in the interests of justice and fairness to both parties. We recognise that further costs were incurred by the respondent for the adjourned hearing, however, that is the vagaries of litigation which applies to both parties.
27. On the basis of our above stated observations, we do not consider the cost threshold has been met, and therefore do not need to consider this application further.
28. Even, if we determined the claimant's conduct was unreasonable we would not have exercised our discretion to award costs for the reasons stated. Accordingly, this application for costs is refused.

**Approved By
Employment Judge Bansal
10 March 2026**