



# EMPLOYMENT TRIBUNALS

**Claimant:** Gavin Tickner

**Respondent:** DHL Services Limited

**Heard at:** London South (in chambers) On **23 February 2026**

**Before:** Employment Judge N Wilson

## Appearances

For the claimant: Mr G Tickner (in person)

For the respondent: Ms L Halsall (counsel)

## COSTS JUDGMENT

The respondent's application for costs is refused.

## REASONS

1. The respondent makes a costs application dated 16 January 2026 following the final hearing which took place on 14 January 2026
2. The claimant has filed a response to the application dated 20 January 2026. The claimant states he made the claim in good faith and based on a belief that his written contract of employment discloses he was entitled to be paid more than he was. I take note he is not legally represented.
3. This decision has been delayed because of an intervening period of leave from 5 – 20 February 2026 and other judicial commitments. I therefore apologise for the delay in providing this Judgment.

4. I consider the matter can be deal with appropriately on the papers without a hearing.
5. The respondent's application refers to Rule 74(1)(a) and 74 (1) (b) but there is no such provision.
6. Given the application states the basis of the costs order being sought is 'no reasonable prospects of success' and 'unreasonable conduct' I will permit it to proceed notwithstanding the incorrect Rule reference.
7. It is evident the application is made on the grounds that the claimant has acted vexatiously, abusively, disruptively or otherwise unreasonably in the way that the proceedings have been conducted (**pursuant to Rule 74(2)(a) of the ET Rules of Procedure 2024**) and/or that the claim had no reasonable prospects of success (**pursuant to Rule 74 (2) (b) of the ET Rules of Procedure 2024**).
8. Rule 74(2) provides that: "a 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; or (b) any claim, response or reply had no reasonable prospect of success.
9. Under Rule 76(1) a costs order may – (a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party; (b) order the paying party to pay the receiving party the whole or a specified part of the costs of the receiving party, with the amount to be paid being determined, 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 an Employment Judge applying the same principles ..."
10. Under Rule 82, in deciding whether to make a costs, preparation time, or wasted costs order, and if so in what amount, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.
11. Under Rule 74 (2) (a) therefore the tribunal must find that a party (or their representative) has acted '*vexatiously, abusively, disruptively or otherwise unreasonably*'.
12. Under Rule 74 (2) (b) the tribunal must decide whether or not the claim had reasonable prospects of success.

## The Relevant Legal Principles

13. The correct starting position is that an award of costs is the exception rather than the rule. As Sedley LJ stated at para 35 of his judgment in ***Gee v Shell Ltd [2003] IRLR*** “It is nevertheless a very important feature of the employment jurisdiction that it is designed to be accessible to people without the need of lawyers, and that in sharp distinction from ordinary litigation in the UK, losing does not ordinarily mean paying the other side’s costs ...” Nonetheless the Employment Tribunal has a wide discretion where an application for costs is made under Rule 76(1)(a). As per Mummery LJ at para 41 in ***Barnsley BC v Yerrakalva [2012] IRLR 78 CA*** “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 conducting the case and, in doing so, to identify the conduct, what was unreasonable about it, and what effects it had.” However, the Tribunal should look at the matter in the round rather than dissecting various parts of the claim and the costs application and compartmentalising it. There is no need for the tribunal to find a causative link between the costs incurred by the party making the application for costs and the event or events that are found to be unreasonable, see ***McPherson v BNP Paribas***, and also ***Kapoor v Governing Body of Barnhill Community High School*** in which 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.
14. When considering an application for costs the Tribunal should have regard to the two-stage process outlined in ***Monaghan v Close Thornton*** by Lindsay J at paragraph 22: “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?”
15. The Tribunal Rules under Rule 74 (2) (a) impose a three-stage test: first, the tribunal must ask itself whether a party’s conduct falls within rule 74(2)(a) — in other words, is its costs jurisdiction engaged?; if so, secondly, it must go on to ask itself whether it is appropriate to exercise its discretion in favour of awarding costs against that party. The third stage is the determination of the amount of any award.
16. In ***Brooks v Nottingham University Hospitals NHS Trust [2019] WLUK 271, UKEAT/0246/18*** the EAT confirmed that dealing with an application for costs requires a two-stage process. The first is whether in all the circumstances the

claimant has conducted the proceedings unreasonably. If so, the second stage is to ask whether the tribunal should exercise its discretion in favour of the claiming party, having regard to all the circumstances.

17. If a tribunal considers that there has been a marked failure by a highly experienced legal practitioner to apply the standard of judgement and legal expertise expected of such a person when representing a party in tribunal proceedings, this may expose the party concerned to an order for costs on the basis that the legal representative's conduct is 'otherwise unreasonable' within the terms of rule 74(2)(a).
18. A tribunal may also make a costs order against a party who has acted abusively or disruptively in bringing or conducting proceedings (or his or her representative has done so).
19. A costs order may also be awarded against a party under rule 74(2)(a) where the party (or his or her representative) has acted unreasonably in bringing or conducting proceedings. 'Unreasonable' has its ordinary English meaning and is not to be interpreted as if it means something similar to 'vexatious' — ***Dyer v Secretary of State for Employment EAT 183/83***. It will often be the case, however, that a tribunal will find a party's conduct to be both vexatious and unreasonable. In determining whether to make an order under this ground, 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***
20. The Court of Appeal in ***Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420, CA*** commented that it was important not to lose sight of the totality of the circumstances. The vital point in exercising the discretion to order costs (or a PTO) is to look at the whole picture. The tribunal has to ask whether there has been unreasonable conduct by the paying party in bringing, defending or conducting the case and, in doing so, identify the conduct, what was unreasonable about it, and what effect it had.
21. Under Rule 74 (2) (b) the key question to ask when deciding on 'having no reasonable prospects of success' is not whether a party thought he or she was in the right, but whether he or she had reasonable grounds for doing so. (***Scott v Inland Revenue Commissioners 2004 ICR 1410 CA***). The tribunal is therefore required to assess objectively whether the claim had any prospect of success at any time of its existence.
22. The fact that a party in question is a litigant in person may well be a factor that is taken into account by a tribunal when exercising its discretion to award costs.
23. With regard to the paying party's ability to pay, Rule 82 allows the tribunal to have regard to the paying party's ability to pay, but it does not have to, see ***Jilley v Birmingham and Solihull Mental Health NHS Trust [2008]***

**UKEAT/0584/06** and **Single Homeless Project v Abu [2013] UKEAT/0519/12**. The fact that a party's ability to pay is limited, does not, however, require the tribunal to assess a sum that is confined to an amount that he or she could pay- see **Arrowsmith v Nottingham Trent University [2011] ICR 159 CA; AQ Ltd v Holden [2012] IRLR 648** where the EAT upheld a costs order against a claimant of very limited means and per Rimer LJ "her circumstances may well improve and no doubt she hopes that they will." One reason for not taking means into account is the failure of the paying party to provide sufficient and/or credible evidence of his or her means.

24. VAT should not be included in a claim for costs if the receiving party is able to recover the VAT, see **Raggett v John Lewis plc** which reflects the CPR Costs Practice Direction (44PD).

## Conclusion

25. The claimant represented himself in these proceedings including at the final hearing.

26. The respondent is legally represented. The respondent's solicitors rely on the following grounds to make the application.

### 1. **No reasonable prospects of success**

*The Claimant did not advance any arguable basis for his claim of unlawful deductions. Despite having received repeated, clear, and documented explanations demonstrating no such deduction had occurred, the Claimant persisted, causing unnecessary additional costs and burden on Tribunal resources.*

### 2. **Unreasonable conduct**

*At the hearing, the Claimant was wholly unprepared, failing to pose even one question to the Respondent's witness. This passive stance confirmed the claim lacked any real foundation and manifested unreasonable conduct in the proceedings. EJ Wilson's oral Judgment noted the following:*

- *'Mr Penfold's evidence was not challenged'*
- *'The Claimant was unable to establish how he should be paid more'*
- *'The Claimant didn't lead any evidence on how he suffered loss'*

*It is also noteworthy that the Claimant freely admitted that he knew his breaks had never been paid, which was contrary to his pleaded position.*

27. The respondent's solicitors say this was unreasonable conduct and/or the claims had no reasonable prospects of success.
28. The respondent's solicitors are seeking the cost of counsel representing them at the hearings in the sum of £850 plus VAT
29. Insofar as the claimant not being prepared for the hearing, I take note as a litigant in person he appears not to have appreciated that he was required to cross examine the respondent's witnesses and challenge anything which was not agreed by him.
30. The respondent is correct that the claimant did not question the respondent's witness at all. I had to explain to him that this was his only opportunity to challenge the respondent's witness evidence.
31. In terms of his own oral evidence, it is clear he was convinced that the contractual position remained the same despite the introduction of the working time directive reducing his hours from a 50-hour week to a 48-hour week. Whilst he conceded in evidence he was not paid for breaks, contrary to his pleaded case, it is evident he did this having been taken to various documents by the respondent's counsel. It is also evident the claimant himself remained convinced certainly until he was taken through relevant documents in his cross examination of the initial basis of the claim namely that he was not paid for his contractual hours. His case is that he must have been losing wages because his annualised hours had reduced with the introduction of the Working Time Regulations. He was unable however to adduce any cogent evidence of such loss.
32. The respondent has not persuaded me his conduct meets the bar of being unreasonable so as to engage Rule 74. The claimant was not so much unprepared or taking a passive stance due to the claim lacking foundation as distinct from him clearly not understanding his employment contract and the impact of the Working Time Regulations. This coupled with him not having legal representation and likely not knowing what questions to ask resulted in him not challenging the respondent's witness. Many litigants in person do not fully appreciate the Tribunal will not exercise its own cross examination to establish any party's case for them. It became evident in his own cross examination that his breaks were not previously paid for, and he did concede this leaving him ultimately with very little to challenge the respondent about. However, I take note this is a complaint where there was a dispute about what had been properly payable to the claimant since changes to his contractual annualised hours. He was also pursuing a claim for weekend shifts. On the face of it his ET1 disclosed a cause of action.

33. I have considered the nature gravity and effect of the alleged conduct and find it falls considerably short of engaging Rule 74.
34. Having considered the claims brought by the claimant whilst he did not succeed with them, I have considered whether he had any prospects of success at any time of its existence. The ET1 on the face of it discloses triable issues. Objectively (at a high level) the claimant's case is that he was owed wages for breaks (which should have been paid) and that the reduction in annualised hours resulted in an underpayment of wages. It is evident he did not understand the impact of the Working Time Regulations. He also argued changes were made to his contractual wage entitlement without his agreement. However, it is clear that he had no reasonable grounds for believing this based on a) his own concession in evidence that he was never paid for breaks and b) he had previously raised a grievance where the same matters (as set out in the unchallenged evidence of Mr Penfold) were explained to him. Based on the unchallenged evidence of Mr Penfold it is evident the matters raised by him as part of this claim were raised and dealt with as part of a formal grievance the outcome of which was to inform him, he had never been entitled to paid breaks. The reduction in his annualised hours and the asserted loss of wages arising from this was also the subject of a grievance the outcome of which was that his pay had never been reduced and he continued to receive an annualised salary. I take note the grievance outcomes were not appealed by the claimant.
35. The claimant's claim appears to have been misconceived particularly around the basis upon which he assessed that over time he must have suffered a loss but was unable to explain how in evidence. Having heard the evidence, I did find the claimant had not suffered any unauthorised deductions. The claimant was unable to refer to any documents which supported his asserted position.
36. For these reasons I find Rule 74 is engaged. The first stage of the test for awarding costs under Rule 74 (2) (b) is accordingly met.
37. Standing back and looking at the background and history of the matter, I have not found the claimant acting unreasonably in the conduct of the claim. He brought the case in good faith. He clearly was unable to understand that the reduction in his annualized hours by the introduction of the Working Time Regulations had not resulted in a loss of earnings to him. The respondent themselves in their response stated that there were factual complexities in this case. He appears to have been confused by the contractual position. Whilst the respondent asked for a strike out and /or deposit order hearing in their response the matter proceeded straight to a final hearing without any

opportunity for prospects to be considered. The claimant was not legally represented throughout and although I accept this does not make him immune to a costs order I still need to take this into account.

38. It is vital to look at the whole picture of what happened in this case and having considered this I conclude it is not appropriate in the circumstances of this case to exercise my discretion in favour of awarding costs against the claimant.

39. Accordingly, the respondent's application for costs is refused.

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Employment Judge N Wilson  
Dated: 23 February 2026