



EMPLOYMENT TRIBUNALS

Claimant: Mr A Verbitskiy

Respondent: Alsico Laucuba Ltd

Heard at: Manchester Employment Tribunal

On: 11 February 2026

Before: Employment Judge M Butler
Ms S Howarth
Mr S Carter

Representation

Claimant: Not present

Respondent: Not present

COSTS JUDGMENT

It is the unanimous decision of the Tribunal that:

1. The claimant is ordered to pay the respondent £13,800 in costs.

REASONS

INTRODUCTION

2. It was unclear whether the parties were going to attend this hearing. In short, this was because of the following:
 - a. When giving case management directions for the costs hearing, the Tribunal anticipated that the claimant would invite the Tribunal to take into account his financial means when determining the costs application. Consequently, EJ Butler explained to the parties that the hearing would require the parties to be present so the Tribunal could hear the necessary evidence.
 - b. On 12 October 2025, in reply to the Tribunal, the claimant wrote to the Tribunal and, as part of a document, explained that he would not be relying on his financial circumstances.
 - c. In light of this, EJ Butler wrote to the parties to explain that given the claimant's position, which removed the need for the Tribunal to hear evidence, he was seeking permission from the parties to determine the application on the papers (a hearing without the parties present). For which the parties would be able to make further written submissions.
 - d. On 27 October 2025, the claimant sent to the Tribunal a document running to 53 pages. These were his submissions in objecting to the respondent's application for costs. This contained a series of documents in support of his position. In his detailed submission, the claimant wrote 'I acknowledge that the Tribunal may determine costs without a full hearing and based on the documents already provided.'
 - e. Although EJ Butler thought that this was the claimant giving permission to decide the application on the papers, he considered it too ambiguous to be certain.
 - f. The respondent replied on 30 October 2025 to give permission to the Tribunal to decide the application on the papers without the parties present. The respondent provided the Tribunal with its submissions alongside a Costs Hearing bundle.
 - g. EJ Butler gave directions for the Tribunal to send a further letter to the parties on 19 November 2025 (unfortunately this was not sent until 03 December 2025). He wrote the following:

"He further notes that the respondent has given permission for the costs application to be determined on the papers without a hearing. However, the claimant's correspondence is not clear on this. Employment Judge Butler directs that the claimant explains his position within 7 days of this communication. He is not being invited to provide further documents. Rather to simply state whether he gives permission that the costs application be determined without a hearing and based on the papers only, or whether he requires a hearing at which the parties will attend."
 - h. On 03 December 2025, the claimant emailed the Tribunal. This explained that he was confused by the Tribunal's directions. With respect today's hearing, he explained that 'In my letter dated 27/10/2025 point 1 says that

I acknowledge that the Tribunal may determine costs without full hearing'.

3. It was unclear to the Tribunal, because of the above, whether either party was going to attend today.
4. However, for the avoidance of doubt, the Tribunal was expecting both parties to be in attendance. This is because the hearing was listed with the parties due to attend. EJ Butler had informed the parties on 16 October 2025 that '...If the written submissions already received by the tribunal are all the submissions that the parties will be relying on, and if the parties expressly state that they give permission for the tribunal to determine the application on the papers, then the tribunal will convert the hearing accordingly'. And EJ Butler had not written to the parties to explain to them that the hearing had been converted to a hearing where the application would be determined on the papers. And this was because the claimant's response was too ambiguous.
5. The Tribunal made enquiries of the parties whether they were going to attend the hearing in the circumstances. At the time of completing this judgment, the Tribunal had been made aware that the respondent was not attending (as they thought that this was being decided on the papers) and the claimant had not responded.
6. The Tribunal, in the circumstances, taking into account the correspondence on the file, taking into account information that it had from its enquiries, and given it was in receipt of the written submissions of the parties, proceeded with the hearing in the absence of both parties (this being provided for under Rule 47 of the Employment Tribunal Rules of Procedure 2024). In short, the respondent's application for costs was decided based on the written submissions and supporting documents, without either party in attendance.
7. The Tribunal had the following documents when determining this application:
 - a. The Hearing Bundle used at the Liability Hearing.
 - b. Its Liability Judgment that was sent to the parties following the conclusion of the liability hearing (written reasons having been requested by the claimant).
 - c. The respondent's application for costs dated 12 September 2025, along with a costs bundle running to 39 pages.
 - d. The claimant's costs order response, dated 18 September 2025.
 - e. The claimant's Particulars of claim and detailed response to Submission by Martin Mensah, emailed to the Tribunal on 27 October 2025.

LIST OF ISSUES

8. To determine whether to make a costs order in favour of the respondent, and if so, at what level.

THE RULES

9. The power to award costs by the Employment Tribunal is contained within the Employment Tribunals Rules of Procedure Regulations 2024. Rule 74 specifically deals with the grounds for which a costs order can be made. Rule 76 deals with the 'amount' of a costs order and Rule 82 deals with the 'ability' of the paying party to pay a costs order.
10. Under Rule 74 (1) "a Tribunal may make a costs order or a preparation time order (as appropriate or on the application of a party...". Whilst under Rule 74(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) or the way that the proceedings (or part) have been conducted... or (b) where any claim [...] has no reasonable prospects of success”.

11. 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 ...”
12. 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.

RELEVANT PRINCIPLES

13. General principles that the Tribunal reminded itself of in advance of considering this matter included:
 - a. costs are the exception, not the rule;
 - b. 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.
 - c. The Tribunal should follow a 3-stage process: first, it should decide whether the threshold in Rule 74 had been crossed. Secondly, it should then consider as an exercise of discretion whether that conduct merited a costs order; it was not automatic that because the Tribunal had the power, it should exercise it. Thirdly, if it decided to make a costs order, it should consider the appropriate amount of costs incurred by the respondent in defending the unreasonable claims.
 - d. Litigants in person, or persons not professionally represented ought to be judge less harshly than those professionally represented.
14. “Unreasonable” has an ordinary, everyday, objective, meaning - **Dyer v Secretary of State for Employment EAT 183/73**. The question is whether the approach was objectively unreasonable. There will often be many different approaches available, all of which are reasonable. It is only if the conduct identified itself falls outside that objective range that the Claimant's conduct will be unreasonable - **Vaughan v Lewisham LBC [2013] IRLR 713 EAT** at [25] and **Solomon v University of Hertfordshire UKEAT/0258/18EAT**.
15. In **AQ Ltd v Holden [2012] IRLR 648, EAT**, the EAT stated that the threshold tests governing the award of costs or a preparation time order are the same whether a litigant is or is not professionally represented but that the application of those tests should take this factor into account. An employment Tribunal cannot and should not judge a litigant in person by the standards of a professional representative.

16. In determining whether there has been unreasonable conduct, 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**. However, it is not necessary to analyse each of these aspects separately, and the Tribunal should not lose sight of the totality of the circumstances
17. Lord Justice Mummery had set out the general principle to follow at this third stage, in his judgement in **Yerrakelva v Barnsley MBC [2012] ICR 420**, at paragraph 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 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. The main thrust of the passages cited above from McPherson’s case was to reject as erroneous the submission to the court that, in deciding whether to make a costs order, the employment Tribunal had to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed.’
18. With regard to the paying party's ability to pay, Rule 84 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 and Single Homeless Project v Abu UKEAT/0519/12**.

PARTIES SUBMISSIONS ON THE APPLICATION

19. The respondent made its application for costs, and made the following submissions (not exhaustive):
 - a. The application is made on 3 grounds: The claims had no reasonable prospect of success; The Claimant has acted unreasonably in relation to an offer of settlement, and The Claimant has behaved unreasonably in his conduct of the claim.
 - b. The respondent outlined that the claimant was found not to have been subjected to any detrimental treatments. And that the claimant had resigned some time after he had decided to leave the respondent's employment. This was in line with the Tribunal's liability judgment.
 - c. The claimant had not linked any treatment to a disclosure.
 - d. The claimant pursued his claim on with the purpose of demonstrating that the respondent had breached health and safety regulations, rather than the allegations that he had brought.
 - e. That the claimant had unreasonably rejected a settlement offer that matched the figure he was seeking, as set out in his Schedule of Loss.
 - f. That the claimant had conducted himself in an unreasonable manner throughout the litigation.
20. The claimant submitted the following (not exhaustive):
 - a. EJ Flangan at the Case Management Hearing did not consider his case to have no reasonable prospects of success, otherwise he would have been warned.

- b. That there is evidence to support that PIDs did influence actions.
- c. The claimant disagrees with findings made by the Tribunal and explains why.
- d. The Tribunal should have drawn adverse inferences from the respondent not calling decision makers to give evidence.
- e. The timing of events links them to PIDs.
- f. That he did not agree to the settlement offer as admission of guilt was important to him.
- g. The settlement offer was not a genuine settlement offer.
- h. The costs warning letter was a continuing detriment.
- i. The respondent obstructed me by not giving the necessary information to establish clear links.
- j. There was no unreasonable conduct.
- k. That the claimant thought he did not need to present a witness statement on his own behalf. He presented it promptly once he was told that he needed to produce one. And that the respondent had presented one late.
- l. It was the respondent who refused mediation.
- m. Documents were requested following the amended ET3, in which there were omissions and inaccuracies. The documents requested related to those.

ANALYSIS AND CONCLUSIONS

Has the claimant acted unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted?

21. The Tribunal has concluded that the claimant has acted unreasonably in bringing these proceedings. And this is for the following reasons:

- a. The claimant has pursued a claim that has no reasonable prospects of success (see below).
- b. On 12 August 2025, threatening to submit a “potential breach of conduct to SRA”.
- c. The claimant has pursued a claim to Tribunal with a view to trying to establish that the respondent was in some way in breach of health and safety regulations. This was clear in the claimant’s presentation of his case. This was not his allegation before the Employment Tribunal, and it is not one that the Tribunal can determine. He pursued this case on this basis despite the respondent having explained this to him in its open letter of settlement (pp.23-26).
- d. Rejection of the respondent’s offer of settlement, which was for the full amount set out in the claimant’s schedule of loss. Although parties are free to accept or reject offers of settlement, the Tribunal is limited in what powers it had with regards the allegations brought by the claimant. The

claimant would not have succeeded with a higher figure, even had he been successful on all aspects of his claim. The claimant rejected this offer some 6 hours later (p.28 of Costs Bundle), citing that he wanted to make the case public and 'encourage other Alsico workers to take their cases to Tribunal...' This was an unreasonable approach by the claimant, and deemed unreasonable conduct.

- e. The claimant sought to frame the costs warning as 'undue pressure and intimidation' (see p.29 of the Costs Bundle). This was an unreasonable interpretation of the costs warning that he had been given.
22. Given the above, and for the conduct outlined, the Tribunal considered the claimant to have acted unreasonably in pursuing these allegations.
23. For the avoidance of doubt, the Tribunal did not consider the claimant's approach to witness statements, disclosure of documents or the claimant's requests for information (where he thought there was an inaccuracy in the amended ET3) contributed to a finding of unreasonable conduct. This would be requiring the claimant to have a better understanding of Tribunal process. And the Tribunal is careful not to place too high an expectation on the claimant, as an unrepresented, non-legally qualified litigant.

Did the claim (or any part of the claim) have no reasonable prospects of success?

24. The claim in its entirety was considered by the Tribunal to have no reasonable prospects of success. The claimant should have been aware of this from the outset, and this is even allowing for the claimant being an unrepresented non-legally qualified litigant.
25. The claimant's allegations before the Employment Tribunal were all focused on treatment that the claimant says he was subjected to because of having made various Public Interest Disclosures. However, the claimant presented his case with a focus on whether the respondent was in breach of health and safety laws/principles. Although this was relevant insofar as his 'reasonable belief' for the purposes of establishing a Public Interest Disclosure ('PID'), the Tribunal was not going to (and does not have the jurisdiction to) determine whether the respondent did in fact breach health and safety regulations.
26. Taking a step back with respect each of the allegations he brings:
- a. Detriment 1, the exclusion from the Christmas Party. The claimant had no evidence (and he explained that he had no knowledge) of the Christmas Party Organizing Committee having any knowledge of his alleged PIDs. He knew the reason he was not given a space. And therefore, considering the claimant's status as an unrepresented claimant, he knew, or ought to have known from the outset that he had not been 'excluded' from the party and that there was an innocent explanation behind why he had not had a place reserved which was not connected to a PID. In short, the Tribunal considers that this allegation had no reasonable prospects of success from the outset of the claim.
 - b. Detriment 2, the meeting on 01 February 2024 with Mrs Rogers allegation. The claimant was present in that meeting. He knew that he had not been forced into the meeting and he voluntarily attended (this was the claimant's own evidence). And he knew that the contents of the meeting was to inform him that Mrs Rogers did not consider his letter of 22 January 2024 to fall within the Whistleblowing Policy but there were other processes and forums at which his complaints could be raised and that she could not

discuss other individuals' circumstances with him due to confidentiality. The claimant, even taking into account the claimant's status as an unrepresented claimant, either knew or ought to have known that this was not detrimental treatment and was because of his letter and the contents therein. The Tribunal considers that this allegation had no reasonable prospects of success from the outset of the claim.

- c. Detriment 3, the claimant being informed on 05 February 2024 of his conduct being investigated, with false allegations, and without information or evidence. The claimant knew that he had raised his voice in the meeting with Mrs Rogers. And he knew that he was acting in a way that Mrs Rogers perceived as being aggressive. And he was aware that it was his behaviour in that meeting as being the reason behind the investigation. This is consistent largely with the claimant's evidence at Tribunal. It is consistent with Mrs Rogers's account on p.233 and it is consistent in the letter. The claimant knew the reason why he was being investigated, and even taking into account the claimant's status as an unrepresented claimant, he either knew or ought to have known that this was not detrimental treatment, or because that he had made a PID. The Tribunal considers that this allegation had no reasonable prospects of success from the outset of the claim.
- d. The constructive dismissal claim. The claimant clearly has in his mind that he was no longer going to remain in the respondent's employment in October 2023. This was when he decided that he was going to leave to work elsewhere. However, this was reliant on him finding alternative work (which is what happened). The claimant knew at the time that he resigned because he had found alternative suitable work. This is something the claimant knew at the time he brought his claim. And also knew that the issues he was raising were all being resolved in some way (he knew this, as this was part of his email some time earlier, 20 July 2023). The claimant has produced no evidence to the contrary. The claimant has adduced no evidence to support that he resigned for treatment of him, that was on the grounds that he made a PID. So again, even giving some leeway for the claimant being unrepresented, he knew or ought to have known that the respondent was not subjecting him to conduct that was because of him having made a PID, which was such that reached the level of breaching the implied term of trust and confidence. The Tribunal, as with the other allegations, considers that this allegation had no reasonable prospects of success from the outset of the claim.

27. For the avoidance of doubt, the Tribunal concludes that the allegations brought by the claimant, in their entirety, had no reasonable prospects of success.

Should the Tribunal use its discretion to make an award of costs?

- 28. The Tribunal has concluded that the claimant has acted unreasonably in bringing this claim. And further, has also concluded that the claim in its entirety had no reasonable prospects of success.
- 29. Given the above, the Tribunal turns to consider whether it should use its discretion to award costs. There is no exhaustive list of factors that the Tribunal must take into account when reaching this decision. Rather, it takes into account factors that it considers relevant.
- 30. First, the claimant expressly told the Tribunal that he would not be inviting the Tribunal to take his financial means into account. Further, the Tribunal does not have any evidence before it relating to the Claimant's financial means. In the

circumstances, the Tribunal does not take into account the claimant's financial means in this decision.

31. Secondly, the Tribunal has taken into account that an order of costs is the exception rather than the rule.
32. Thirdly, the Tribunal has considered that the claimant has been put on notice of potential applications for costs on several occasions. This includes:
 - a. in the email of 06 May 2025 (p.18 of the Respondent's costs bundle), raised concerns about the claimant's conduct of the case and made it clear that the respondent 'reserves its position in relation to an application' for costs.
 - b. In the respondent's 'Open Offer of Settlement' (pp.23-27 of the Respondent's costs bundle), where at pp.25-27 the respondent gives a clear costs warning to the claimant. This is presented in some detail.
33. Fourthly, the claimant does not appear to have taken any legal advice.
34. Fifthly, the claimant was unrepresented. And the Tribunal has ensured that proper allowance has been made for the claimant's lack of experience and lack of objectivity in respect of Tribunal processes and his claims.
35. Sixthly, the claimant was made a settlement offer on 13 August 2025 (pp.23-27 of the Respondent's costs bundle). And this was for the full amount that the claimant was seeking in his Schedule of Loss (pp.3-5 of the Respondent's costs bundle).
36. Seventhly, the Tribunal has taken account the nature of the claims. Particularly, that the claim involved allegations of being subject to a detriment on the grounds of having made a PID. And the Tribunal was conscious that causation is something that is often only established through cross-examination, given that the focus is on an employer's reasons for the treatment.
37. Eighthly, it cannot be in the interests of justice to permit a claimant to bring and maintain a claim that they should know is not well-founded. And the claimant should have known either through disclosure, or when in receipt of the costs warning, which made it clear.
38. Having taken into account the above, the Tribunal has concluded that it will use its discretion and make an order for costs, to be paid by the claimant to the respondent.
39. The claimant appears to have lost all sense of proportion about the allegations he has brought. He appears to have lost sight that his claim was about treatment that he says was caused to him for having made a PID, and not whether he was right or wrong in alleging health and safety breaches. The claimant's case at its height was that he was a 'whistleblower'. And he had some treatments he disagreed with. He did not turn his mind to whether they could reasonably be viewed as detrimental treatment, and chose to ignore the innocent explanations behind the treatments in question.

What amount of costs should be awarded?

40. As explained above, the claimant did not seek to invite the Tribunal to take into account his financial means in determining this costs application. And nor did the Tribunal have such evidence before it. And therefore the Tribunal has decided that the claimant's financial means are not being taken into account when deciding on the amount of costs to be awarded.

41. The Tribunal has kept in mind that any award for costs is compensatory and not punitive.
42. And the Tribunal has also taken into account the conduct of the claimant in these proceedings, and particularly that the claimant has acted unreasonably. And none more so than when he rejected the offer of settlement made by the respondent, that was for the full amount the claimant was seeking.
43. The Tribunal notes that the respondent is limiting its application for costs incurred following the expiry of the settlement offer. That being 10am on 18 August 2025.
44. The Tribunal agrees that costs before this date should not be awarded to the respondent.
45. The respondent's costs schedule is at pp.1-2 of the Respondent's costs bundle (although this does include costs that are pre-18 August 2025).
46. It is unclear why the Respondent had both a barrister and a solicitor present for the entirety of the hearing. There was no specific need in this case to have both present. The Tribunal considers that to award costs to cover the attendance of both would be disproportionate. In short, there was no need to have Mr Mensah's instructing solicitor present.
47. In the circumstances outlined above, the Tribunal makes an award for costs to the Respondent in the figure of £13,800. The respondent restricted its application to that incurred to have counsel and solicitor both present for the duration of the hearing. And the Tribunal has decided that costs should not be awarded for the solicitor's attendance, as this appeared unnecessary.

Approved by:

Employment Judge **Mark Butler**

Date: 11 February 2026

JUDGMENT SENT TO THE PARTIES ON

7 April 2026

FOR THE TRIBUNAL OFFICE

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