



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr M Mistry

V

Eon UK Plc

Heard at: Birmingham on the papers

On: 20 May 2026

Before: Employment Judge Broughton

JUDGMENT

The Claimant must pay the Respondent's costs in the amount of £8000.00

Reasons

1. The Tribunal may make a costs order, and shall consider whether to do so where, amongst other circumstances, a party 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".
2. It may be made on the application of a party or of the Tribunal's own initiative.
3. In considering a costs application, a three-stage test applies, requiring the Tribunal to consider: first whether the ground is made out; if so, second, whether to exercise a discretion to actually award costs; and third, if the above discretion is exercised in favour of making a costs order, the Tribunal needs to make an assessment of the sum to be awarded.
4. 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/or conducting the case and, in doing so, to identify the conduct, what was unreasonable about it and what effects it had.
5. In deciding whether to make a costs order, the employment tribunal does not have to determine whether or not there was a precise causal link between the unreasonable conduct in question and the specific costs being claimed which is not to suggest that causation is irrelevant or to lose

sight of the totality of the relevant circumstances.

6. The key issue in the respondent's application related to the Claimant's conduct centred around his continued pursuit of his claims in circumstances where they had set out in a Cost Warning Letter (CWL) why they considered the Claimant's claim had no reasonable prospects of beating the offer contained therein. The Cost Warning Letter was submitted alongside their application.
7. The final hearing in this matter took place on 10 to 17 June 2024 before a full panel including EJ Gaskell (now retired) and the remedy hearing took place on 30 January 2025.
8. The claimant had brought various discrimination claims which were all dismissed as "totally without merit". However, the Tribunal upheld aspects of the Claimant's unfair dismissal claim, based on severity of sanction, and awarded compensation totalling £20,145.20.
9. This sum was significantly lower than the Respondent's without prejudice save as to costs offer contained within a Cost Warning Letter dated 6 June 2024 of £45,000 ("the offer") which was sent to the Claimant's representative.
10. The Respondent submitted a Cost Application dated 27 February 2025 ("the cost application") applying for costs in the sum of £8,400.60 (excluding VAT), being said to be the total fees and disbursements incurred after 7 June 2024, which was the deadline given to the Claimant in the CWL.
11. The claimant has been given every opportunity to respond to the costs application but has not done so.
12. As per the Tribunal's correspondence dated 6 February 2026, the Hearing listed for 13 February 2026 was vacated with a determination that, in the absence of representations by the claimant, the application could be determined on the papers.
13. Under Rule 74(2)(a) of the ET Rules, the Respondent's cost application was made on the grounds that the Claimant acted "otherwise unreasonably" in the way that the proceedings had been conducted. This was said to be demonstrated by his refusal to engage constructively in settlement discussions, his rejection of the Respondent's £45,000 offer, and his subsequent continuation of proceedings despite receiving a clear and explicit CWL explaining that costs would be sought if he recovered the same or less at the final hearing, which he ultimately did.
14. It was contended that this unreasonable conduct triggered the Tribunal's obligation to consider whether a costs order should be made.

15. Rule 82 of ET Rules states “In deciding whether to make a costs order and if so the amount of any such order, the Tribunal may have regard to the paying party’s ability to pay”.
16. The respondent also submitted that
 - a. in *National Oilwell Varco UK Ltd v Van de Ruit* UKEAT/0006/14 the Employment Appeal Tribunal noted that “unreasonableness” bears its ordinary meaning and should not be taken to be equivalent of “vexatious”.
 - b. in *Barnsley Metropolitan Borough Council v Yerrakalva* [2011] EWCA Civ 2011, [2012] IRLR 78, the Court of Appeal stated (at [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.’
17. The Respondent’s principal contention in relation to the Claimant’s unreasonable conduct centres around his insistence on continuing with his claim even though it was brought to his explicit attention on 6 June 2024 via the CWL that the Respondent would seek costs if he recovered the same or less at the final hearing.
18. The Respondent submitted that the Tribunal should exercise its discretion to award costs because, they said, they had consistently acted pragmatically to avoid unnecessary expense and Tribunal time whereas the Claimant refused to engage sensibly throughout settlement discussions.
19. Their offer of £45,000 was significantly higher than the award received, yet the Claimant rejected it outright, made no realistic counteroffer, and withdrew all offers, despite previously indicating he would accept £48,000.
20. Within the Costs Warning Letter, it explained why his disability discrimination claim was unfounded, a position ultimately confirmed.
21. I note that, in those circumstances, the claimant’s compensation would have been capped at a years’ pay, significantly below the rejected offer.
22. In the absence of any representations from the claimant, my conclusions are based on my understanding of the case, the respondent’s submissions and the relevant law.
23. I remind myself that costs award in the employment tribunal are the exception rather than the rule. They are discretionary and compensatory, not punitive. Moreover, the *Calderbank* rule does not apply in tribunal proceedings but costs warning letters can be referenced in the context of alleged unreasonable conduct.

24. Whilst employees are entitled to seek declarations, there was no evidence before me that this case was about more than financial compensation, not least because of the claimant's failure to meaningfully engage in settlement negotiations and this costs process.
25. As a result, it seems to me that the claimant did engage in unreasonable conduct by
- a. Pursuing the discrimination complaints having been warned that they were without merit as ultimately confirmed by the tribunal
 - b. Failing to meaningfully engage in settlement negotiations, especially when offered almost as much as he was seeking and significantly more than he could hope to recover for unfair dismissal
26. This resulted in an unnecessary 6 day final hearing and subsequent remedy hearing, putting the respondent and the tribunal service to significant cost for no apparent justifiable reason. Had there been such a reason, the claimant should have advanced it, both in the negotiations and before me.
27. It also appears to me, in the absence of representations to the contrary, that it would be in the interests of justice to compensate the respondent for the costs that resulted.
28. As a result of the claimant failing to engage in this process, it is difficult to have regard to his means. That said, the tribunal awarded him over £20,000 and found that he had obtained alternative employment. In those circumstances, I am satisfied that he would be able to pay the full amount claimed.
29. The total claimed did not appear unreasonable in all the circumstances being limited to those costs incurred after the failure to engage with the respondent's last settlement offer. In any event, any costs awarded do not have to have a direct causal link to the unreasonableness, notwithstanding that they appear to in this case.
30. Had the claimant meaningfully engaged with the respondent's offer, however, some further costs would have been incurred in any event and so I limit the total costs award to £8000.

Approved by
Employment Judge Broughton
Date: 20 May 2026