



EMPLOYMENT TRIBUNALS

Claimant: Mr Barlow & Others

Respondent: Canterbury Environment Company

COSTS JUDGMENT

The Judgment of the Tribunal is that:

1. The Claimants are ordered to pay the Respondent the following costs arising out of the preliminary hearing on 30 October 2025:
 - 1.1 50% of the Respondent's solicitor costs of **£1,141 plus VAT**.
 - 1.2 100% of the Respondent's counsel costs of **£1,500 plus VAT**.

REASONS

INTRODUCTION

1. This Judgment considers the Respondent's application for costs in connection with the Preliminary Hearing on 30 October 2025 under rule 74(2)(a) (unreasonable conduct) or alternative rule 74(3) (breach of a tribunal order) for:
 - 1.1 Solicitor fees for preparing for the preliminary hearing of £2282 + VAT, and
 - 1.2 Counsel fees for attending the hearing of £1,500 + VAT.The total is for £3,782 + VAT.
2. With the consent of both parties this application has been determined on the papers.

BRIEF BACKGROUND

3. By a claim form issued on the 24 September 2024, Mr Barlow, on behalf of himself and 32 Claimants, brought a claim against the Respondent in respect of holiday pay. In section 8.2 of the claim form, under "Background and Details of Claim", Mr Barlow stated:

"My employer makes me take a day's annual leave for every Bank Holiday

Monday and then contracts me to work every Saturday after the Bank Holiday. Therefore I believe I am not receiving my statutory holiday entitlement for reasons given above.” I note that in fact no other reasons were provided. Mr Barlow further stated that *“By making me work the Saturday after every Bank Holiday, I believe the company are attaching strings to my statutory right to holiday entitlement.”* This was the totality of the pleaded case. Under section 9 Mr Barlow sought *“maximum compensation for the loss of statutory holiday entitlement”* but did not specify what that was. The Claimants were represented by Mr Macklin, an lay representatives for the GMB union.

4. At a Preliminary Hearing on 20 May 2025 Employment Judge Yardley commented that it was “unclear” to the Tribunal and the Respondent what the Claimants were alleging. The Judge ordered that “each of the Claimants” (my emphasis) provide the following information about their annual leave by 17 June 2025:
 - 4.1 *“The specific holiday year(s) to which their claim relates;*
 - 4.2 *What periods of annual leave the Claimant took during the relevant year(s), and whether these were paid;*
 - 4.3 *What periods of annual leave during the relevant year(s), are alleged to have remained outstanding and unpaid;*
 - 4.4 *Whether the Claimant made any requests to take annual leave which were refused by the Respondent. If so, the Claimant should specify the dates on which such requests were made, the individual to whom the requests were directed, and when and by whom the requests were refused; and*
 - 4.5 *The amount of holiday pay alleged to be owed, and the corresponding holiday year(s) to which that sum relates”.*
5. By that deadline Mr Macklin had only provided the ordered information in relation to one Claimant (Mr Mills) and that was partial. The Respondent informed Mr Macklin that the tribunal order required information to be provided in relation to “each” of the Claimants and requested that the information be provided by 4 July 2025, failing which they would be applying for an unless order. On 10 and 15 July the Respondent made an application for an unless order. On 17 July Mr Macklin on behalf of the Claimants opposed the application, providing details on loss of earnings for each Claimant but not providing the further and better particulars ordered. On the 24 July 2025 the Respondent made a further application for an unless order or for the claims to be struck out. On 17 October 2026 EJ Wright gave the Claimants a further 7 days to comply with the EJ Yardley order. On 22 October 2025 Mr Macklin provided a fuller list of loss of earnings for each Claimant but still did not provide the further and better particulars ordered.
6. At the Preliminary Hearing on 30 October 2025 before me, Mr Macklin on behalf of the Claimants applied to amend the claim, identifying 3 amendments. The first amendment was granted on the basis that this was just a clarification of the existing claim and did not need an application to amend. The other two amendments were refused because they concerned new complaints that had not been particularised.

7. The Respondent then applied for the Claimants' claims to be struck out on the grounds that they had no reasonable prospect of success or alternatively that there had been non-compliance with tribunal orders. I refused the application to strike out the claims on the grounds that they had no reasonable prospect of success since it was still unclear whether or not the claims had any merit. This was because Mr Macklin had still not fully complied with the order for further and better particulars. I refused the application to strike out the claims on the grounds of non-compliance with tribunal orders, because this should only be used as a last resort and I considered that costs was a "*more appropriate lesser sanction*" (para 48.7).. In reaching this decision I found that the failure to provide further particulars had been "*disruptive and unfair to the Respondent, since if the claim is not struck out then a further preliminary hearing will need to be listed to determine whether the Claimants have complied. Until the Claimants provide this information the Respondent is unable to provide an amended response, the tribunal cannot assess whether the Claimants have an arguable claim, and the proceedings cannot move on. This hearing has in effect been a wasted hearing*": para 48.3. However I declined to strike out the Claimants' claims on this ground because the failure was the responsibility Mr Macklin (the union representative) not the individual Claimants, Mr Macklin was at least trying to comply with the order and a fair hearing was still possible. I considered that costs was a more appropriate lesser sanction "*since it would address the disruption and unfairness to the Respondent*" whilst permitting the Claimants' case to continue.
8. On 16 January 2026 the GMB on behalf of the Claimants withdrew the claim, and the Preliminary Hearing listed for 28 January 2026 was vacated.
9. On 22 January 2026 the Respondent's solicitors applied for costs in connection with the Preliminary Hearing on 30 October 2025. On 27 January 2026 the GMB on behalf of the Claimants opposed the application.
10. By letter dated 2 March 2026, the parties were asked to confirm within 14 days whether they were content for the application to be dealt with on the papers and providing them with 28 days to make any further representations or provide any further documentation for my consideration.
11. On 9 and 12 March 2026 the Claimants' and Respondent's representatives, respectively, consented to the application being dealt with on the papers.
12. On 30 March 2026 the Respondent submitted further representations attaching their previous representations of the 22nd January 2026 and their cost schedule dated 27 November 2025. The GMB relied on the submissions made on the 27 January 2026.

RELEVANT LAW

13. Rule 74 of the Employment Tribunal Procedure Rules 2024 provides that:

 '*(1) The Tribunal may make a costs order on the application of a party*

- (2) *The 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 of it, or the way that the proceedings, or part of it, have been conducted,*
 - (3) *The Tribunal may also make a costs order on the application of a party where a party has been in breach of any order, rule or practice direction.*
14. This involves three-stages:
- 14.1 Whether one or more grounds for awarding costs are engaged i.e. whether the threshold for awarding costs has been met.
 - 14.2 If so, whether it is appropriate for the tribunal to exercise its discretion to award costs.
 - 14.3 If so, to determine the amount of costs to be awarded.
15. It remains the case that costs in the employment tribunals are the exception not the rule: **Gee v Shell UK Ltd** [2002] EWCA Civ 1479. An award of costs requires that a high hurdle is overcome: **Salinas v Bear Stearns International Holdings Inc and another** [2005] ICR 1117. In considering whether or not to exercise the discretion to award costs the tribunal should look at the whole picture: **Barnsley Metropolitan Borough Council v Yerrakalva** [2011] EWCA Civ 1255.
16. The amount of costs awarded should be limited to those '*reasonably and necessarily incurred*': **Yerrakalva**.
17. Rule 74(2)(a) applies not just to the conduct of a Claimant but also their representative. In **Beynon and Oths v Scadden and Oths** [1999] IRLR 700 costs were awarded against the paying party for the conduct of their representative (a trade union).
18. Rule 82 provides that the tribunal has a discretion, in deciding whether to make an order for costs and the amount of any costs, to take into account the Claimant's ability to pay. There is however no absolute duty to do so, nor is a tribunal required to limit any order for costs to an amount that a party can pay.

DISCUSSION AND CONCLUSION

19. The Respondent has applied for costs of the preliminary hearing on 30 October 2025 under rule 74(2)(a) (unreasonable conduct) or alternative rule 74(3) (breach of a tribunal order).

Whether threshold for awarding costs has been met

20. At the Preliminary Hearing on the 30 October 2025 I found that there had been non-compliance with an order from the tribunal, in that the Claimant's lay trade union representative had repeatedly failed to provide the further information ordered by EJ Yardley at the preliminary hearing on 20 May 2025. I noted that

the failure to provide further particulars ordered had been “*disruptive and unfair to the Respondent*” and that the hearing had “*in effect been a wasted hearing*”: para 48.3. In refusing the Respondent’s strike out application I considered the costs were a “*more appropriate lesser sanction*” permitting the Claimants case to continue whilst addressing “*the disruption and unfairness to the Respondent*”.

21. I therefore find that the high threshold for awarding costs has been met. I have already determined that the conduct of the Claimants’ union representative was disruptive and unreasonable. Had he complied with the request for further information then it would not have been necessary to list this matter for a further preliminary hearing in January 2026.

Whether to use my discretion to award costs against the Claimants

22. At the second stage, the tribunal has an unfettered discretion as to whether or not to use its discretion to award costs. The mere fact that the threshold for awarding costs has been engaged does not mean that costs should be awarded. Tribunals are ‘no costs’ jurisdictions, and costs remain the exception rather than the rule.
23. Given my findings at the Preliminary Hearing on 30 October 2025, I consider that it is appropriate to award costs in this case. This is because costs were seen as a lesser sanction than striking out the claims for non-compliance with tribunal orders.
24. Contrary to the submission of the GMB, I specifically found that the October hearing was a “wasted hearing”. I was unable to consider the Respondent’s application for strike out on the grounds that the claims had no reasonable prospect of success because until the further information had been provided it was unclear whether the claims had any merit (para 41). For the same reasons was not possible to make case management orders for the final hearing.
25. The GMB’s submission that the Respondent was also at fault since it could have provided this information misses the point. The order was made due to the lack of particulars in the Claimants’ pleaded case and both the Tribunal and the Respondent were unclear as to what the Claimants were alleging. That was the reason for the order for further particulars. The Respondent cannot be expected to disclose information until case against it is clear. The fact that the Claimant withdrew their claims when the merits became clear does not assist them, the further information sought was within the knowledge of the Claimants, had it been provided earlier as ordered by EJ Yardley and EJ Wright the claim may well have been withdrawn earlier and the Preliminary Hearing in October 2025 may not have been necessary.
26. I agree with the Claimant’s submission that Mr Macklin’s conduct was not intentional and that he was trying to comply with the orders made. That was the reason why the claims were not struck out at the October hearing and he was given one more change. However as I pointed out at that hearing, the

GMB has a legal department and he should have sought advice, if he was unclear as to what he needed to provide.

27. I therefore have decided to use my discretion in the Respondent's favour. The costs sought are only in relation to the hearing on the 30 October 2025 and therefore are compensatory not punitive.

What amount of costs to award

28. The Respondent has applied for costs of £3,782 for the work done in preparing for and attending the Preliminary Hearing on 30 October 2025. The Claimant's representative has disputed the hourly rates used by the Respondent's solicitors. The Claimant submits that since the offices are in Kent the appropriate hourly rates is National Band 1. The amount in dispute is £277 plus VAT.
29. This is a summary assessment of costs, and I am required to adopt a broad brush approach. I do not consider the difference in the hourly rate is significant and am prepared to accept the rate provided by the Respondent as the rate that they charged. However, I do consider that the Claimants should only be ordered to pay 50% of the solicitor costs of preparation. This is because a significant amount of the preparation done by the Respondent's solicitors would have had to have been be done for the extra hearing in January 2026 (had the claim not been withdrawn). The same considerations do not apply to Counsel's costs which are awarded in full.
30. Whilst I accept that the October hearing also dealt with the Claimants' application to amend I do not consider that this is a reason to reduce the amount of costs incurred. As I stated at that hearing it was not necessary for the Claimant to make the first application to amend, since this merely repeated the pleaded case. The other two applications were refused because they had not been particularised, which was again the fault of the Claimants' representative.
31. The GMB has adduced no evidence, and made no submissions, on ability to pay. I therefore do not take that into account in my decision to award costs and the amount of costs to be awarded.
32. The costs are awarded against the Claimants personally, but it is anticipated that the GMB will undertake to pay the costs. It is a large union and likely to have sufficient funds to pay the amount of costs awarded.

CONCLUSION

33. The Respondent's application for costs succeeds. The cost awarded is:
- 33.1 50% of the Respondent's solicitor costs of **£1,141 plus VAT**.
- 33.2 100% of the Respondent's counsel costs of **£1,500 plus VAT**.

To provide a total of £2641 plus VAT.

This Judgment has been approved by:

Employment Judge **Hart**
Date: **11 May 2026**

JUDGMENT & REASONS SENT TO THE PARTIES ON
26 May 2026

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