



EMPLOYMENT TRIBUNALS

Claimant: Ms S Stewart

Respondent: Harris Solicitors Limited

JUDGMENT ON APPLICATION FOR COSTS

The claimant is ordered to pay the respondent £7,000 towards their costs.

REASONS

1. Judgment having been given on 7 January 2026 in which the claimant's claim of disability discrimination was dismissed and, by consent, the claim of outstanding holiday pay succeeded.
2. The respondent has applied for a costs order against the claimant.

The law

3. The Employment Tribunal is a completely different jurisdiction to the County Court or High Court, where the normal principle is that "costs follow the event", or in other words the loser pays the winner's costs. The Employment Tribunal is a creature of statute, whose procedure is governed by the Employment Tribunal Procedure Rules Regulations 2024. Any application for costs must be made pursuant to those rules. The relevant rules in respect of the application are rules 74(1) and (2). They state:-

When a costs order or a preparation time order may or must be made

74.—(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), a witness who has attended or has been ordered to attend to give oral evidence at a hearing.

(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 of it, or the way that the proceedings, or part of it, have been conducted,
- (b) any claim, response or reply had no reasonable prospect of success, 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.

4. The discretion afforded to an Employment Tribunal to make an award of costs must be exercised judicially. (**Doyle v North West London Hospitals NHS Trust** **UKEAT/0271/11/RN**). The Employment Tribunal must take into account all of the relevant matters and circumstances. The Employment Tribunal must not treat costs orders as merely ancillary and not requiring the same detailed reasons as more substantive issues.

5. There is no requirement that the costs awarded must be found to have been caused by or attributable to any unreasonable conduct found, although causation is not irrelevant. What is required is for the Tribunal to look at the whole picture of what happened in the case and to identify the conduct; what was unreasonable about the conduct and its gravity and what effects that unreasonable conduct had on the proceedings (**Yerraklava v Barnsley MBC** **[2012] IRLR 78**). As was said by Mummery LJ in **McPherson v BNB Paribas (London Branch)** **[2004] ICR 1398**, that there is a balance to be struck between people taking a cold, hard look at a case very close to the time when it is to be litigated and withdrawing, on the one side of the scale, and others, on the other side of the scale, who do what may be described as raising a "speculative action", keeping it going and hoping that they will get an offer. The same principle will apply in respect of respondent's conduct in cases of unmeritorious responses.

6. There is fundamental principle of costs in Employment Tribunals being the exception rather than the rule, as made clear by the Court of Appeal in **Gee v Shell UK Limited** **[2003] IRLR 82** and that the discretion of the Tribunal should only be exercised in exceptional cases. The onus was on the receiving party to make a compelling case that the costs threshold had been passed. Discrimination claims are very fact sensitive and usually require an oral hearing to determine the matters in issue.

7. That remains the case today. Costs are still the exception rather than the rule.

8. An apposite extract from the judgment of Sir Hugh Griffiths in **Marler v Robertson** **[1974] ICR 72** is:

'Ordinary experience of life frequently teaches us that that which is plain for all to see once the dust of battle has subsided was far from clear to the contestants when they took up arms'.

9. In this case it is notable that the claim for outstanding holiday pay was not resolved until the final hearing when the amount was agreed and judgment entered by consent.

10. In those circumstances, the claim was partially successful.

10. I have considered the respondent's application for costs and the claimant's written submissions.

11. Both parties agreed that the costs application should be determined on paper without the need for a further hearing.

12. The respondent's application was on the basis that the claimant was repeatedly and expressly warned that her claims were unmeritorious. Key elements of her case were conceded by the claimant herself, both during the hearing and in her written closing submissions. The claimant persisted regardless causing the respondent to incur substantial and avoidable costs and, most seriously, the claimant advanced a narrative designed to suggest that documentary evidence had been retrospectively altered.

13. The claimant submitted that she was a litigant in person in these proceedings although she was a qualified solicitor. She neither knew, nor ought to have known at the time of filing, or during the course of the proceedings, that her case had no reasonable prospect of success.

12. She referred to an Employment Judge, in an earlier preliminary hearing, stating that this was clearly not a deposit case and she took from that that it was not indicated that her case had little or no reasonable prospects of success.

13. There was an application to strike out the claim but this was not considered as it was submitted too late. The claimant referred to two failed applications to strike out.

14. I am satisfied that it was unreasonable for the claimant to proceed with the claim, certainly, to proceed to the full final hearing.

15. I have considered all the circumstances and I am satisfied that it is appropriate that the claimant make payment towards the respondent's costs.

16. I am satisfied that the claimant the claim of disability discrimination had no reasonable prospects of success and that the claimant should be ordered to pay some of the respondent's costs.

17. I do not accept that the claimant had acted vexatiously. She had considered that an Employment Judge had indicated that this was not a deposit case and two applications to strike out the claim had not succeeded. She made points with regard to the respondent's tardy compliance with case management orders. She continued with the claim unreasonably, naïvely and, possibly foolishly but not vexatiously.

18. The costs schedule provided by the respondent sets out the costs of various fee earners. This was a case in which the respondent firm of solicitors conducted its own defence of these claims. These costs should not be charged at a commercial rate in the circumstances. It is neither appropriate nor proportionate to carry out a detailed assessment of the costs claimed.

19. The claim for outstanding holiday pay did succeed. I note the respondent indicates that there was a proposed settlement in respect of this. However, the claim was still

extant at the final hearing. The claimant acknowledged that she had withdrawn from an agreed settlement but said that was after being contacted by ACAS.

20. I am satisfied that the claimant should pay a contribution to some of the respondent's costs but not all of the costs claimed. She did partially succeed in respect of the holiday pay claim. I accept that the claimant did believe, erroneously, that she had some prospect of success. However, the claim for disability discrimination had no such prospects for the reasons given with the judgment.

21. The Employment Tribunal is, essentially, a costs free jurisdiction and costs are the exception rather than the rule. They do not follow the event as in County or High Court proceedings.

22. I am satisfied that it is appropriate to exercise my discretion to order the claimant to pay some costs to the respondent. I have given careful consideration to the amount of costs to be paid. In the circumstances, I am satisfied that it is just and equitable to order the claimant to pay a contribution towards the respondent's costs in the sum of £7,000.

Employment Judge Shepherd

28 May 2026

JUDGMENT SENT TO THE PARTIES ON

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AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE