



EMPLOYMENT TRIBUNALS

Claimant: Samantha Honey

Respondent: Ideagen Software Limited

Heard at: Nottingham **On:** 30 April 2026

Before: Employment Judge McTigue sitting alone

Representation

Claimant: Written representations

Respondent: Written representations

JUDGMENT AT A COSTS HEARING CONDUCTED ON THE PAPERS

1. The Claimant is ordered to pay the Respondent £2,000 as a contribution towards costs.

REASONS

Introduction

1. The Claimant commenced Tribunal proceedings against the respondent on 25 October 2024. She averred that the Respondent directly discriminated against her because of her sex in relation to a role as Executive Vice President for Europe, Middle East and Africa (EMEA). In short, she said she was not invited to apply for the role or fairly assessed in relation to it; and not offered an alternative role because she is a woman.
2. The 6-day final merits hearing of this matter took place between 12 to 20 March 2026 before Employment Judge McTigue. The respondent was represented by Ms Duane of Counsel. The Claimant represented herself. Judgment in respect of liability was given orally on the final day, and the Claimant's claim was dismissed. Neither party requested written reasons.

3. The Respondent made an application for costs against the Claimant pursuant to Rule 74(2)(a) and (b) of the Employment Tribunal Procedure Rules 2024 namely, that:

3.1. The Claimant 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; and/or

3.2. The Claimant's claim had no reasonable prospect of success.

The hearing

4. The Respondent was happy for the matter to be decided on the papers. The Claimant provided no opinion despite being asked, on 26 March 2026, to indicate whether she wished the respondent's application to be dealt with at a hearing or on the papers. The Claimant did not respond to that specific query and I determined that it was in accordance with the Overriding Objective to determine the matter on the papers due to the complexity of the issues and in order to save expense.
5. I have taken into account all representations made by all parties before determining the application and reaching my decision.

The Issues

6. The relevant issues were as follows:
 - (a) Whether the respondent had proven that the threshold for a costs order had been met;
 - (b) If it had been met, whether the tribunal should exercise its discretion as to whether to take into account the means of the claimant;
 - (c) Whether, exercising its residual discretion, there should be an award of costs;
 - (d) If there should be an award of costs, the amount of costs to be ordered to be paid.

The Law

7. The Employment Tribunal Procedure Rules 2024 ('ET Rules') came into force on 6 January 2025, replacing the Rules previously set out in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. Rules 72 to 82 of the ET Rules deal with the question of whether an Employment Tribunal should make an Order for costs.
8. Rule 74 sets out the relevant circumstances in which an Employment Judge or Tribunal can exercise their discretion to make an Order for costs. That states:

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

- (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.*
- (3) *The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned.*
- (4) *Where in proceedings for unfair dismissal a final hearing is postponed or adjourned, the Tribunal must order the respondent to pay the costs incurred as a result of the postponement or adjournment if—*
 - (a) *the claimant has expressed a wish to be reinstated or re-engaged which has been communicated to the respondent not less than 7 days before the hearing, and*
 - (b) *the postponement or adjournment of that hearing has been caused by the respondent's failure, without a special reason, to adduce reasonable evidence as to the availability of the job from which the claimant was dismissed or of comparable or suitable employment.*

9. **Milan v Capsticks Solicitors LLP & Others UKEAT/0093/14/RN** sets out that a structured approach should be taken in relation to an application for costs where the then President of the EAT, Langstaff J, described the exercise to be undertaken by the Tribunal as a 3-stage exercise at paragraphs 52:

“There are thus three stages to the process of determining upon a costs order in a particular amount. First, the tribunal must be of the opinion that the paying party has behaved in a manner referred to in [Rule 74]; but if of that opinion, does not have to make a costs order. It has still to decide whether, as a second stage, it is “appropriate” to do so. In reaching that decision it may take account of the ability of the paying party to pay. Having decided that there should be a costs order in some amount, the third stage is to determine what that amount should be. Here, covered by Rule [76], the

tribunal has the option of ordering the paying party to pay an amount to be determined by way of detailed assessment in a county court."

10. The structure approach that should be taken was also outline more recently by Mrs Justice Eady in **Carroll-Cliffe v Pembrey and Burry Port Town Council [2024] EAT 125**.
11. As the Court of Appeal reiterated in **Yerrakalva v Barnsley Metropolitan Borough Council and anor 2012 ICR 420**, CA, costs in the employment tribunal are still the exception rather than the rule. Given that costs are compensatory, and not punitive (**Lodwick v Southwark London Borough Council 2004 ICR 884**, CA) it is necessary to examine what loss has been caused to the receiving party. In this regard the Court of Appeal in **Yerrakalva** held that costs should be limited to those 'reasonably and necessarily incurred' and also made clear that whilst there is no requirement for the Tribunal to determine whether there is a precise causal link between the unreasonable conduct in question and the specific costs being claimed, that does not mean that causation is irrelevant
12. When the tribunal is considering an order under rule 74(2)(b), the guidance offered in **Radia v Jefferies International Ltd (2020) IRLR 431**, EAT and **Opalkova v Acquire Care Ltd EA – 2020 – 000345 – RN**, EAT is that where there is an overlap between unreasonable bringing of or conduct of the claim and no reasonable prospect of success, the key issues for consideration by the tribunal are in either case likely to be the same. Thus at paragraph 64 in **Radia** HHJ Auerbach posited three questions that should be addressed - Did the complaints, in fact, have no reasonable prospect of success? If so, did the complainant in fact know or appreciate that? If not, ought they, reasonably, to have known or appreciated that? **Radia** also notes that tribunals should focus on what the parties knew about their cases at the time, not what the tribunal knows after hearing the evidence.
13. In terms of abusive, disruptive or unreasonable conduct, "unreasonableness" bears its ordinary meaning and should not be taken to be equivalent of "vexatious" (**National Oilwell Varco UK Ltd v Van de Ruit UKEAT/0006/14**).
14. Guidance has been given by the Court of Appeal in **Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78** on the approach to assessing unreasonable conduct:

"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".
15. The tribunal does not need to identify a direct causal link between the unreasonable conduct and the costs claimed (**MacPherson v BNP Paribas (London Branch) (No 1) [2004] ICR 1398**).
16. With regard to litigants in person the Employment Appeal Tribunal stated in **AQ Ltd v Holden 2012 IRLR 648**, at paragraph 32, that in assessing whether the

threshold for liability to pay costs had been crossed:

A tribunal cannot and should not judge a litigant in person by the standards of a professional representative. Lay people are entitled to represent themselves in tribunals; and, since legal aid is not available and they will not usually recover costs if they are successful, it is inevitable that many lay people will represent themselves. Justice requires that tribunals do not apply professional standards to lay people, who may be involved in legal proceedings for the only time in their life.

17. Once it has been established that the threshold for cost has been met, the tribunal has a wide discretion in respect of whether or not to make a costs award: **Barnsley Metropolitan Borough Council v Yerrakalva [2012] IRLR 78**. Furthermore, there must be some element of causation between the threshold being met and the costs incurred.

18. Rule 82 states:

82. Ability to pay

In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such order, the Tribunal may have regard to the paying party's (or, where a wasted costs order is made, the representative's) ability to pay.

19. The fact that there is an absence of precise figures does not prevent the tribunal from drawing conclusions as to whether the paying party has sufficient means to pay a costs order: **Brookes v Nottingham University Hospitals NHS Trust UKEAT/0246/18/JOJK**.

Submissions

20. I have carefully read and considered the application and sent by the Respondent on 24 March 2026 together with the accompanying attachments, and the Claimant's response sent on 2 April 2026 together with the accompanying attachments. I incorporate those submissions here by reference.

Conclusions

21. In order to reach its conclusions, the Tribunal now turns its attention to the relevant issues.

(a) Whether the respondent had proven that the threshold for a costs order had been met.

Did the Claimant act unreasonably in the conduct of proceedings or by bringing the proceedings?

22. I find that the Claimant did act unreasonably in the conduct of proceedings. I reach that conclusion as the allegations the claimant made against TB were wholly without merit and to pursue them was unreasonable. The Claimant's central case was that sex was a factor in determining the appointment of TB to

Executive Vice President for EMEA and she chose to make a very serious allegation regarding TB. She claimed in paragraph 5f of her grounds of claim, submitted at the outset of these proceedings, that she was “*subjected to unwanted conduct by TB who would stroke her left arm very firmly and repeatedly, feeling her muscles under her silk shirts. This happened on at least 5 occasions. The claimant’s arm was stroked on three occasions during separate executive dinners, once in her office and once in the canteen. The claimant relies upon this as further evidence of the “laddish attitude” within the Respondents business.*”

23. However, what the Claimant entirely omitted from her evidence was that TB has a hearing impediment. The Claimant chose to ignore how proximity to a conversation and an ability to lip read is paramount for TB. She also chose to ignore how TB might tap an individual’s arm in order that they might face him and so enable him to lip read better.
24. No witness corroborated the Claimant’s version of TB’s actions. Instead, the evidence heard highlighted that whilst TB may lean in or touch the arm of someone, that was done purely to attract someone’s attention and aid his ability to lip read.
25. I accept TB touched the Claimant’s arm. I accept he may have done that on 5 occasions. However, that was merely to get the Claimant’s attention and aid his ability to lip read when having conversations with the Claimant. There was certainly nothing sexual in relation to these actions. The Claimant’s grounds of claim and subsequent account sought to recast TB’s actions.
26. Again, apart from the Claimant’s assertion, there was no evidence that TB “would stroke her left arm firmly and repeatedly, feeling her muscles under her silk shirt.” However, those are the words that the Claimant chose to use to describe TB’s actions in her grievance letter of 20 June 2024 which was drafted for her by professional legal representatives. There was simply no rationale for TB to have behaved in the manner suggested by the Claimant. In his evidence, which I accepted, TB was categoric that the events suggested by the Claimant never occurred, or certainly not in the manner suggested.
27. The pursuance of those allegations against TB was unreasonable and had a profound impact on TB and also repercussions for his marriage, his confidence, and the manner in which he now interacts with people.
28. I therefore find that the Respondent has proven that the threshold for a costs order had been met and now move to the next issue.

(b) If it had been met, whether the tribunal should exercise its discretion as to whether to take into account the means of the claimant.

29. The Tribunal has decided to exercise its discretion to consider the means of the Claimant. The Respondent has not objected to that approach. Indeed, on 26 March 2026, I provided the Claimant with the ability to provide documentary evidence of her financial means if she wished them to be taken into account. She also provided with an N245 form, used by the civil courts, to record information of her means. She completed that form, but no documentary

evidence of means was provided.

(c) Whether, exercising its residual discretion, there should be an award of Costs.

30. I have decided to exercise my discretion to make an award of costs for the following reasons.

31. I recognise that costs in the Employment Tribunal are still the exception rather than the rule, but in this case the Claimant was placed on notice of the Respondent's intention to pursue costs on 21 March 2025. Then, following exchange of witness statements a further costs warning was sent on 23 December 2025. The Claimant therefore received these warnings, weighed up the consequences and chose to proceed.

32. I also take into account that the Claimant had received legal advice and at various times had been legally represented. The Claimant submits that she had obtained a merits assessment from counsel which supported her understanding that the claim was properly arguable. She also claims that she relied on that advice in deciding to proceed. I observe that in **Brooks v Nottingham University Hospitals NHS Trust EAT 0246/18** the EAT noted that positive legal advice will not necessarily insulate an unsuccessful claimant against an award for costs. In addition, although not represented at the final hearing, the Claimant was previously represented by Kingsley Napier and Irwin Mitchell. I therefore conclude that the Claimant must have been properly and carefully advised as to the risks and weaknesses of her case and the potential for an adverse costs order against her.

33. I have also decided to exercise my discretion as I conclude that the Claimant has the ability to pay a costs order. Although, it was submitted to the Tribunal by the Claimant that her means are very limited, she has provided stated in the N245 form that her bank account is in credit by £1509.74 and that her savings account has £528.85 in it. The Claimant was also able to take a consulting engagement that lasted for 20 days through a limited business. The limited business account balance is £13,712.31.

34. However, even if the Claimant's means were limited I take into account the Respondent's submission that the fact a party's ability to pay is limited does not require the tribunal to assess a sum that is confined to an amount that they could pay (**Arrowsmith v Nottingham Trent University [2011] EWCA Civ 797**, [2012] ICR 159, at [37]). Notably, the question of affordability does not have to be decided '*once and for all by reference to the party's means as at the moment the order falls to be made*', so that '*if there is a realistic prospect that the [claimant] might at some point in the future be able to pay a substantial amount it was legitimate to make a costs order in that amount so that the respondent's would be able to make some recovery when and if that occurred*'. The Claimant is an intelligent and articulate individual with considerable commercial acumen and experience. Based on her prior employment experience, It is likely she will acquire well remunerated work in the not-too-distant future.

(d) If there should be an award of costs, the amount of costs to be ordered

to be paid.

35. The Respondent has provided a costs schedule which demonstrates that it incurred fees of £24,000 excluding VAT for Counsel's preparation and attendance at the full merits hearing. It therefore invites the Tribunal to order the Claimant to pay £20,000 by way of a summary costs order as set out in the costs schedule.

36. I do not consider this to be a case where the Claimant's behaviour has been so unreasonable that she should be liable to pay the full £20,000 that the Claimant seeks. However, I take into account that the Claimant's allegations against TB were wholly without merit and that her continued pursuance of those allegations inevitably increased costs for the Respondent at the full merits hearing.

37. For those reasons, I therefore order that the Claimant should pay the Respondent a figure of £2,000 in respect of her unreasonable conduct. That reflects a small contribution towards the Respondent's substantial costs in defending this matter.

Approved by Employment Judge McTigue

Date: 2 May 2026

JUDGMENT SENT TO THE PARTIES ON
06.06.2026

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Hrishiraj Pramanik

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FOR THE TRIBUNAL OFFICE

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