



EMPLOYMENT TRIBUNALS

Claimant: Robert Bennett

Respondent: Anderstore Limited

Heard: in Leeds

On: 29 May 2026

Before: Employment Judge Ayre

Representation:

Claimant: in person

Respondent: Paul Smith, counsel

JUDGMENT

1. The claimant is ordered to pay £15,000 (less the deposit of £100) to the respondent in respect of its costs.
2. The deposit paid by the claimant will be paid to the respondent.

REASONS

Background and history to the claim

1. The claimant was employed by the respondent from 6 September 2022 until 17 January 2024. On 18 September 2024 he presented a claim to the Tribunal following a period of early conciliation that started on 15 April 2024 and ended on 24 May 2024.
2. The case was listed for a Preliminary Hearing on 3 July 2025. The claimant attended that hearing from the driver's seat of a vehicle. The Record of that

hearing records that the claimant told the Tribunal that “*he had been “out and about” and had not got home in time to sit in a quiet room to participate in the hearing.*”. The Employment Judge was not prepared to proceed with the hearing given the claimant’s location and the hearing was postponed.

3. A second Preliminary Hearing took place on 23 November 2025. At that hearing the Tribunal found that the claim is out of time and the Tribunal does not have jurisdiction to hear it

Today’s hearing

4. In advance of the hearing the respondent had submitted a Schedule of Costs running to £61,090. The respondent had also made an application for specific disclosure which Mr Smith stated at the start of the hearing was not being pursued.
5. Mr Smith asked for time to discuss matters with his client at the start of the hearing. We adjourned and following the adjournment Mr Smith told the Tribunal that the respondent wished to limit its claim for costs to £20,000 and was not seeking a detailed assessment.
6. There was a bundle of documents running to 217 pages. I heard evidence under oath from the claimant and, for the respondent, from Alex Goodwin, Director. Both sides made oral submissions.

Findings of fact

7. The claimant was dismissed on 6 March 2024. He began early conciliation on 4 April 2024 and issued his claim on 28 May.
8. On 17 May 2024 the respondent’s solicitors sent a costs warning letter to the claimant. The letter was marked “*Without prejudice and subject to contract and save as to costs*” and set out in some detail why the respondent considered that the unfair dismissal claim had no reasonable prospect of success. It also put the claimant on notice that if he continued to pursue the claim the respondent would make an application for costs and indicated that if the claimant agreed not to pursue the claim, it would not pursue him for costs.
9. Having received this letter, the claimant then went on to issue his claim on 28 May.
10. On 22 October 2024 a Preliminary Hearing took place before Employment Judge Knowles. At that hearing a Deposit Order of £100 was issued in respect of the unfair dismissal claim. Employment Judge Knowles formed the view that the unfair dismissal claim had little reasonable prospect of success. His reasons for making the Deposit Order include the following:

“37. I do take on board that the snippet of video evidence presented by the Respondent is, absent any detailed understanding of the surrounding circumstances, supportive of their conclusions.

38. I appreciate that the claimant is claiming self-defence and he will have the opportunity to advance those arguments.

39. Nonetheless, given what appears to be on its face a one-sided violent attack on a third party whilst representing the respondent, I am in the round persuaded that the threshold of little reasonable prospects of success is reached in this matter.”

11. The claimant paid the deposit and continued to pursue his unfair dismissal claim.

12. On 25 April 2025, after the Preliminary Hearing at which the Deposit Order was made, the respondent's solicitors wrote to the claimant sending him another copy of the original costs warning letter, together with a Schedule of the respondent's costs in relation to the unfair dismissal claim. In the email they wrote:

“...our client has now incurred significant costs defending your claim, which (as stated in the Costs Warning letter we view to have no reasonable prospects of success and/or that you are acting vexatiously, abusively, disruptively, and unreasonably in seeking to bring your claim. You will recall that the Tribunal also required you to pay a deposit to continue with your unfair dismissal claim, reflecting the Tribunal's view at the Preliminary Hearing that there is little reasonable prospect of the claim succeeding.

Please note , should your unfair dismissal claim be dismissed by the Tribunal, our client will apply for its costs from you....

We urge you to seek independent legal advice if you are unsure of your position.”

13. In June 2025 the claimant was convicted of assault by beating for the incident which caused his dismissal. At the criminal trial the claimant ran a defence of self-defence, but it was not accepted by the Magistrates and the claimant was convicted.

14. On 9 December 2025, shortly before the final hearing, the respondent wrote to the claimant again, attaching a Schedule of costs and another copy of the costs warning letter. They warned the claimant again that if his unfair dismissal claim was unsuccessful, they would be making an application for costs and urged him to take legal advice.

15. Notwithstanding the fact that his self defence argument was not accepted in the Magistrates' court, the claimant continued to run it in the Employment Tribunal also.

16. The claimant told the Tribunal that he had not taken legal advice in relation to the cost warnings but had consulted on several occasions with a company called Valla, and with the Citizens' Advice Bureau.
17. Since leaving the respondent's employment the claimant has set up his own business, which is currently paying him £2,300 a month net.
18. At the time of his dismissal the claimant had approximately £36,000 in his current account. As at the 20 March 2026 he had approximately £500 in that account. There was no documentary evidence before the Tribunal as to where the money had gone. The claimant's oral evidence was that he used it to live on and to set up his business, and on balance I accept that evidence.
19. The claimant also has a savings account. As of 19 March 2026 there was £277.56 in that account. The claimant also has a business account in the name of 3 Elements Fire Protection. That is the business that the claimant has set up as a sole trader. It is not a limited company. As of 1 February 2026 there was £7,540.28 in the business account.
20. The claimant owns his own house. The current value of the house is estimated as being at least £110,000. The claimant has an outstanding mortgage of approximately £30,000, leaving the claimant with equity of approximately £80,000.
21. The claimant has a car, which he uses for his business, and a motorbike which has an approximate value of £8,500, although the bike is currently off the road needing repair.
22. The respondent's legal fees in defending this claim are in excess of £60,000. It appears from the correspondence in the bundle that much of the work was done by a partner, whose hourly rate was £475 plus VAT. The other fee earners involved in working on this case were a legal director who was charged out at £410 an hour plus VAT, solicitors charged out at £295 plus VAT an hour, and a trainee solicitor charged out at £225 plus VAT an hour.
23. The respondent's Schedule of Costs broke down the costs incurred by the respondent as follows:
 - a. Reviewing the ET1 and preparing the ET3 - £6,500;
 - b. Preparing for an attending the Preliminary Hearing - £5,500;
 - c. Work following the Preliminary Hearing and prior to disclosure - £5,494.50;
 - d. Disclosure - £6,500;
 - e. Work following initial disclosure - £5,500;

- f. Bundle preparation and work ahead of witness evidence - £6,940;
- g. Witness statements - £13,000;
- h. Trial preparation ahead of the hearing listed for April 2025 that was postponed - £3,725.50;
- i. Trial preparation for the December hearing - £6,570;
- j. Counsel's fees - £7,250 plus VAT;
- k. Costs hearing - £9,042.50.

The Law and submissions

24. The statutory provisions governing applications for costs are set out in Rules 72 to 76 and Rule 82 of The Employment Tribunal Procedure Rules 2024 (**"the Rules"**). The relevant rules for the purpose of this application are:

- a. Rule 75 (Procedure):

"(1) A party may apply for a costs order... at any stage up to 28 days after the date on which the judgment finally determining the proceedings in respect of that party was sent to the parties.

(2) The Tribunal must not make a costs order.... against a party unless that party has had a No such order may be made unless that party has had a reasonable opportunity to make representations (in writing or at a hearing, as the Tribunal may order)."

- b. Rule 74 (When a costs order or a preparation time order may or shall be made):

"(1) A Tribunal may make a costs order.... on its own initiative or 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,

(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 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...."

c. Rule 40 of the ET Rules (Deposit orders) contains the following:

"(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order –

(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and

(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders),

otherwise the deposit must be refunded.

(8) If a deposit has been paid to a party....and a costs order....has been made against the depositor in favour of the party who received the deposit, the amount of the deposit must count towards the settlement of that order."

d. Rule 76 (The amount of a costs order):

"(1) A costs order may order the paying party to pay –

(a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party...."

e. Rule 82 (Ability to pay):

"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."

25. Costs remain the exception rather than the rule in Employment Tribunal proceedings. In deciding whether to make an order for costs, the Tribunal must first consider whether the conduct of the claimant falls within Rule 74. If it does, the Tribunal must then go on to consider whether to exercise its discretion to make an award of costs and, if so, how much. The mere fact that a party's

conduct has been unreasonable or that a party has pursued a claim which did not have reasonable prospects of success does not mean that a costs award will automatically follow.

26. When considering whether to make a costs order under Rule 74(2)(a), the Tribunal must therefore apply a three-stage approach:

- a. Consider whether the grounds for making an order are made out;
- b. If so decide whether to exercise its discretion as to whether to actually award costs; and
- c. Decide the amount of the award.

(Daly v Newcastle Upon Tyne Hospitals NHS Foundation Trust EAT 0107/08)

27. In **AQ Ltd v Holden [2010] IRLR 648** the Employment Appeal Tribunal held that Tribunals should not judge litigants in person by the standards of a professional representative:

“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....lay people are likely to lack the objectivity and knowledge of law and practice brought by a professional adviser. Tribunals must bear this in mind when assessing the threshold tests....” [para 32]

28. In support of the application for a costs award Mr Smith submitted, in summary, that:

- a. The Tribunal has a wide discretion which must be taken by taking account of relevant factors and not taking account of irrelevant factors;
- b. Ability to pay can be taken into account at both the second and third stages of the consideration;
- c. The respondent pursues its application on two grounds: (a) the merits of the unfair dismissal claim and the Deposit Order and (b) the claimant’s conduct of the proceedings;
- d. The grounds upon which EJ Knowles made the Deposit Order are substantially the same as the grounds upon which the Tribunal dismissed the unfair dismissal claim;
- e. The unfair dismissal claim had no reasonable prospect of success and was bound to fail. It would have been astonishing and perverse if the Tribunal had found the dismissal to be unfair;
- f. The claimant continued to run the self defence argument after it was rejected by the Magistrates;

- g. The claimant has the ability to pay a costs award because he is the sole beneficial owner of his house and earns £2,300 net a month. He has money in his business bank account, a vehicle, and a motorbike; and
 - h. The application for costs is not made to punish the claimant but to compensate the respondent.
29. The claimant opposed the application for costs. He submitted, in summary, that:
- a. Costs are the exception rather than the rule in Employment Tribunals;
 - b. He did not act unreasonably in bringing or conducting the claim;
 - c. He raised genuine and lawful arguments and issues, and his claim did not have no reasonable prospect of success;
 - d. The respondent had failed to conduct an appropriate risk assessment or apply its own lone worker policy;
 - e. He had significant mental health issues which he had disclosed to the respondent before the incident, and appropriate support should have been considered;
 - f. He had raised concerns about the fairness of the disciplinary process which were relevant to the question of whether dismissal was within the range of reasonable responses;
 - g. There were legitimate issues for the Tribunal to consider in the unfair dismissal claim;
 - h. He brought his claim in good faith as a litigant in person and did not act vexatiously or unreasonably in the way he conducted the proceedings.

Conclusions

30. The first question I have considered is whether the grounds for making a costs order are made out. This is a case in which a Deposit Order was made in respect of the unfair dismissal claim. The Judge who made that Order had the benefit of viewing the CCTV footage of the assault committed by the claimant and concluded, having done so, that *“given what appears to be on its face a one-sided violent attack on a third party whilst representing the respondent, I am in the round persuaded that the threshold of little reasonable prospects of success is reached in this matter.”*
31. In the Reserved Judgment following the final hearing of the case I found that the claimant had:
- “...walked towards Mr Bonner and began punching and kicking him repeatedly. Mr Bonner turned his back on the claimant, and the claimant repeatedly punched him in the back. The claimant pulled Mr Bonner to the ground and kicked him again...”* [para 19]
- “I have no hesitation in finding that the claimant was dismissed because of his behaviour on 9 February 2024 when he assaulted a member of the public....”* [para 77]

“There was no dispute as to the key facts of the case. The claimant did not deny that he had hit and kicked Mr Bonner, and the CCTV footage shows him doing this” [para 81]

“The behaviour of the claimant on 9 February amounted to an assault of a member of the public. “ [para 91]

“The claimant showed no remorse for his behaviour and took no accountability for his actions.” [para 92]

32. I am satisfied that the unfair dismissal claim failed at the final hearing for substantially the same reasons as Employment Judge Knowles made the Deposit Order. Accordingly, this is a case falling squarely within Rule 40(7) of The Employment Tribunal Procedure Rules 2024. I find that the claimant acted unreasonably in pursuing his claim for unfair dismissal after the Deposit Order had been made, in accordance with Rule 40(7). The ‘gateway’ for making a Costs Order has therefore been crossed.
33. I have then gone on to consider whether or not to exercise my discretion to make a Costs Order, taking account of the fact that Employment Tribunals are generally a ‘no costs’ jurisdiction, and that costs are the exception rather than the rule.
34. In deciding whether or not to exercise my discretion I have taken account of the following factors:
- a. The claimant has never denied the conduct for which he was dismissed;
 - b. The respondent had clear and unequivocal evidence of the incident which the claimant was shown at the outset of the disciplinary investigation;
 - c. The claimant continued to run a self-defence argument even though it had been unsuccessful in the Magistrates’ Court;
 - d. The respondent informed the claimant, even before he issued proceedings, that it considered his unfair dismissal claim had no reasonable prospect of success;
 - e. The respondent sent repeated costs warning letters to the claimant putting him on notice of an application for costs;
 - f. The claimant, although a litigant in person, had advice from two different organisations in relation to the claim; and
 - g. The claimant has the means to be able to pay a contribution towards the respondent’s costs. He has equity of at least £80,000 in the house that he owns, has money in his business bank account and owns a valuable motorbike. He is currently earning, running his own business which is now profitable.
35. All of these factors, in my view, point in favour of exercising my discretion to make a Costs Order.

36. The final question, therefore, is the amount of the Costs Order. The respondent's costs for defending this claim are in excess of £60,000. Those costs are, in my view, excessive, for what is, in essence, a simple unfair dismissal claim. Moreover, there was partner involvement at £475 plus VAT an hour in a claim which could reasonably have been managed by a relatively junior solicitor. The hourly rates charged by the respondent's solicitors are substantially higher than the Solicitors' Guideline Hourly Rates.
37. Whilst I recognise that a respondent is entitled to representation by solicitors of its choice, parties to Employment Tribunal litigation are also expected to assist the Tribunal to further the overriding objective, which involves dealing with cases in ways which are proportionate to the complexity and importance of the issues. The respondent's legal fees are not proportionate to the complexity and importance of this claim.
38. The respondent has limited its claim to £20,000. In the circumstances I consider a Costs Order of £15,000 to be appropriate. That is in my view a sum which the claimant should be able to afford, taking account of his means, and is a reasonable sum.
39. I therefore make a Costs Order in the sum of £15,000. The first £100 of that Order will come from the deposit paid previously by the claimant, leaving a balance of £14,900 to be paid by the claimant.

Employment Judge Ayre

Date: 1 June 2026