



EMPLOYMENT TRIBUNALS

Claimant: Mr Sukhvinder Johal

Respondent: Mitie Limited

Heard at: Midlands West Employment Tribunal (in person)

On: 24 April 2026

Before: Employment Judge Boyle

Representative

Claimant: in person

Respondent: Miss J Charamlambous (Counsel)

JUDGMENT ON COSTS

The respondent's application that the claimant pay its costs under Rule 74 Employment Tribunal Rules of Procedure 2024 is refused.

REASONS

Introduction

1. This was a hearing to hear the respondent's application under rule 74 Employment Tribunal Rules of Procedure (ET Rules) 2024. This followed the claimant's withdrawal of his claims before the Employment Tribunal on 12 November 2025.
2. The respondent applied for an order for payment of its costs under Rule 74 in writing in a letter dated 20 November 2025. They requested the matter to be dealt with on the papers, but a hearing was listed which came before me today.
3. The respondent confirmed their application is made both under 74(2)(a) and (b) of the ET Rules namely:

- a. the claimant (or his representative) acted vexatiously, abusively, disruptively or otherwise unreasonably in bringing or conducting the proceedings; and/or
 - b. the claim (or part of it) had no reasonable prospect of success.
4. Both parties made oral submissions. The respondent also referred me to a number of authorities. I do not summarise the submissions in detail; I address the substance of the respondent's grounds below.
 5. Both parties made submissions in support of this process and the respondent kindly referred to some case law.
 6. Following the hearing, the claimant made an application for written reasons on 29 April 2026. It is unusual for a "winning party" to make such an application but as one has been made, these are now being provided.

Law and conclusions

7. The law in this area is set out in the Employment Rules specifically rule 74.

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.

8. The parties are reminded (and the respondent accepted) that costs are awarded by Employment Tribunals only rarely, as the starting point is that this is a costs-neutral jurisdiction. and such orders will be made against an unsuccessful party only in the limited circumstances prescribed by Rule 74. That does not mean that costs will never be awarded., nor that a case has to be truly exceptional nor that litigants in person are protected from having costs awards made against them.
9. The costs exercise is commonly approached in two stages:
 - a. Stage 1 (threshold/gateway): Has Rule 74(2)(a) and/or (b) been engaged?
 - b. Stage 2 (discretion): If so, should the Tribunal exercise its discretion to award costs, and if so in what amount?

10. Therefore in considering Rule 74 (2) (a), I must first identify if any of the claimant's actions or conduct was either vexatious or unreasonable. With Rule 74 (2) (b) I must determine if the unfair dismissal claim had no reasonable prospect of success. In exercising discretion, I must consider the overall picture, including what effect any unreasonable conduct had.
11. Further, consistent with *Solomon v University of Hertfordshire* *UKEAT/0258/181*, it is not for me to substitute my own view for the claimant's decision to bring and proceed with his claim, but rather to review that decision and consider whether it was 'vexatious, abusive, disruptive or otherwise unreasonable' such as to engage Rule 74 (2)) in making a costs order.
12. It is also important to look at the whole picture in weighing the discretion to order costs, to identify any unreasonable conduct and what effect it had – *Barnsley MBC v Yerrakalva* [2012] IRLR 78.
13. The respondent advance six points which I address below in the same structure as the application.
14. **Ground 1 - Disability preliminary hearing evidence and preparation**
15. Ground 1 concerns the claimant's preparation of his impact statement, provision of medical evidence, and his evidence at the preliminary hearing on 27 May 2025 to determine disability status under the Equality Act 2010.
16. I noted the relevant passages relied upon from Employment Judge McCluggage's judgment and the respondent's submission that alleged inconsistencies were raised in writing with the claimant's representative in advance.
17. I have read the whole of Employment Judge McCluggage's judgment. While it contains criticisms of the claimant's evidence, taken as a whole it shows there was a genuine factual dispute requiring determination. The claimant plainly had health issues and the disability issue was not frivolous.
18. I asked the respondent why no application for costs was made immediately after the disability decision. Although I can understand why a party may choose not to do so, I consider it notable that the respondent relies now on that earlier hearing as a principal plank of the present application, particularly given that the outcome of the preliminary hearing narrowed the issues and reduced preparation for the final hearing.
19. Criticism of a party's evidence does not, without more, amount to unreasonable (still less vexatious) conduct for costs purposes. In my judgment, the claimant pursued the disability issue on legal advice and there is no sufficient basis for concluding that his conduct in doing so was vexatious or otherwise unreasonable.
20. Accordingly, Rule 74(2)(a) is not engaged on Ground 1.

21. Even if I were wrong about the threshold, I would not in any event exercise discretion to award costs on this ground. Costs are not awarded to punish a party for poor presentation of their case, particularly where the party acted on professional advice.

22. Grounds 2–4: Alleged lack of engagement July–October 2025

23. Grounds 2–4 were advanced together and relate largely to the claimant's alleged failure to engage with the respondent between July and October 2025, including in relation to the hearing bundle and case management compliance.

24. I accept that the respondent chased the claimant regarding agreement of the bundle. However, the bundle was nonetheless prepared and, overall, the respondent was not prevented from progressing preparation to an advanced stage.

25. The claimant responded on or about 14 October 2025 stating that he was awaiting a decision on a reconsideration application made in July 2025. It was not the claimant's fault that a decision had not yet been received, and he had actively chased the Tribunal.

26. The claimant had been a litigant in person again since 1 July 2025. I accept that the respondent may have found the claimant's communications frustrating at times. However, taking the period as a whole, I do not find the claimant's conduct to have been vexatious, abusive, disruptive, or otherwise unreasonable within Rule 74(2)(a).

27. I also consider the wider chronology. The claimant attended hearings, participated in case management, and withdrew his race and religion discrimination claims on legal advice when advised they were unlikely to succeed. The difficulties relied upon by the respondent were relatively short-lived and coincided with the claimant's transition to acting in person and pursuing a complaint about his former representatives.

28. I find here that the concluding that the claimant's conduct during this period was neither vexatious nor otherwise unreasonable.

29. Accordingly, Rule 74(2)(a) is not engaged on Grounds 2–4.

30. Ground 5: The reconsideration application

31. Ground 5 concerns the claimant's pursuit of (and stance in relation to) a reconsideration application.

32. I do not accept that the claimant acted unreasonably or vexatiously in pursuing reconsideration or in awaiting its outcome. It is a common misconception that reconsideration is an "appeal"; it is not, but the distinction is not always understood, particularly by litigants in person.

33. The claimant's evidence was that his union advised him to pursue that route. The fact that many reconsideration applications are refused does not of itself render the pursuit of reconsideration unreasonable.
34. I also note that the respondent accepted it too was awaiting the outcome. In those circumstances, I do not find the claimant's position on reconsideration to be unreasonable conduct engaging Rule 74(2)(a), nor do I find that it demonstrates that the claim had no reasonable prospect of success within Rule 74(2)(b).

35. Ground 6: Unfair dismissal / wrongful dismissal claim and withdrawal timing

36. Ground 6 concerns the claimant's pursuit of his unfair dismissal (and/or wrongful dismissal) claim, and the timing of his withdrawal.
37. I accept that, from the respondent's perspective, the unfair dismissal case may have been weak. However, weakness is not the same as unreasonableness, nor does it automatically mean the claim had no reasonable prospect of success.
38. The claimant felt strongly about his dismissal and had pursued an appeal. He began the claim as a litigant in person but sought union support, later obtaining representation through Thompsons. The claimant's evidence was that union support was meaningful to him and influenced his belief that the claim had arguable merit.
39. The respondent provided no evidence (beyond assertion) that the claimant was pursuing a knowingly hopeless claim to cause the respondent expense. If the respondent considered the claim truly hopeless, it was open to it to apply for strike out and/or a deposit order; it did not do so in respect of unfair dismissal.
40. I asked the claimant why he withdrew the unfair dismissal claim after the reconsideration outcome, pointing out that these were separate matters. The claimant said he believed the claims were linked and that, without a disability finding, there was no point continuing. While that may reflect a misunderstanding, it is understandable, particularly given his litigant-in-person status.
41. I do not consider the delay in withdrawing to be significant in context. The claimant withdrew all claims on 12 November 2025, thereby avoiding the time and expense of a final hearing and saving the respondent further costs.
42. It cannot be right to treat a withdrawal close to (but not immediately before) a hearing as automatically exposing a claimant to a costs order. If that were the approach, it would risk encouraging parties to pursue weak cases to a final hearing to avoid an adverse costs argument based on withdrawal timing.

43. For these reasons, Rule 74(2)(a) is not engaged on Ground 6. Nor am I satisfied that Rule 74(2)(b) is engaged: withdrawal does not of itself prove that a claim had no reasonable prospect of success, and I accept the claimant's explanation that his belief in the merits was genuine at the relevant times.
44. For all these reasons, I refuse the respondent's application in its entirety.

Employment Judge Boyle

Employment Judge Boyle

Date 8 May 2026

JUDGMENT SENT TO THE PARTIES ON
8 May 2026

FOR THE TRIBUNAL OFFICE