EMPLOYMENT TRIBUNALS

Claimant: Mr A Breeden

Respondent: Full Fat Productions Ltd

JUDGMENT ON COSTS

The Claimant's application for a preparation time order and travel expenses against the Respondent is refused.

REASONS

Background

1. By a Claim Form (ET1) presented on 26 August 2025 the claimant made complaints for whistleblowing detriment, unlawful deduction from wages and other payments.

2. By an application dated 20 September 2025 the claimant made an application to amend his claim to include complaints for automatic unfair dismissal and Interim Relief. By Notice of Hearing sent to the parties on 29 September 2025 this application was listed for an in person hearing on 8 October 2025.

3. I was the presiding Judge at the hearing on 8 October 2025. The claimant was in attendance. There was no attendance on behalf of the respondent. Following enquiries made at the hearing contact was made with Mr Adams, sole Director of the respondent. Mr Adams explained he was unaware of the listed hearing as he was in France looking after his child who has special needs. After careful consideration of the issues to be determined I postponed the hearing and relisted it for 23 October 2025. I gave oral reasons for my decision which were confirmed in a Record of Hearing dated 8 October 2025 sent to the parties on 10 October 2025.

4. At the subsequent hearing held on 23 October 2025 the claimant's application for Interim Relef was refused.

The Application

5. By email dated 17 October 2025 the claimant made an application for a preparation time order together with reasonable travel expense in the sum of £472.50 against the respondent for the postponed hearing. The claimant has relied on the respondent's unreasonable conduct, namely (i) the failure of Mr Adams or a representative to attend the hearing and to provide evidence of Mr

Adams residing in France on the day, and the failure to take steps to ensure the respondent's post was monitored in his absence.

The Legal Framework

6. The Tribunal's power to award costs is contained within The Employment Tribunals Procedure Rules 2024.(" ET Rules")

7. Rule 74(1) provides a Tribunal may make a costs order or a preparation time order on its own initiative or on application of a party…

8. Rule 74(2) provides 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) or the way that the proceedings (or part) have been conducted; or

(b) any claim or response had no reasonable prospect of success.

(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.

9. Rule 74(3) provides 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.

10. Rule 77(1) provides the rules relating to amount of a preparation time order, and Rule 82 provides that in deciding to make a preparation order the Tribunal may have regard to the paying party's ability to pay.

11. The award of costs and preparation time orders is an exception, rather than a rule. Costs are designed to compensate the receiving party for costs unreasonably incurred, not to punish the paying party for bringing an unreasonable case, or for conducting it unreasonably. The assessment of the amount of costs to pay is a broad brush exercise and does not take the form of any sort of detailed assessment of cost. The assessment is made broadly to what would be reasonable in each case.

12. Lord Justice Mummery stated, at paragraph 31 of his judgment in Yerrakelva v Barnsley MBC [2012] ICR 420: *"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."*

13. 'Unreasonable' in Rule 74 has its ordinary English meaning and in determining whether to make an order under this ground, a Tribunal should take into account the 'nature, gravity and effect' of a party's unreasonable conduct: *McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA*.

Conclusion

14. As stated in Paragraph 12 above, the correct starting position is that an award of costs/preparation order is the exception rather than the rule.

15. In determining this application I must have regard to the three stage process,
    (a) is the cost threshold triggered, e.g. was the conduct of the party against whom costs is sought unreasonable? and if so,
    (b) ought the Tribunal to exercise its discretion in favour of the receiving party, having regard to all the circumstances?, and if so,
    (c) the amount of costs to be awarded.

16. I first considered whether the cost threshold is triggered under Rule 74(2)(a) & 74(3).

17. I have had regard to the guidance of Lord Justice Mummery given in Yerrakelva v Barnsley MBC [2012] ICR 420. I have determined the threshold test in Rule 74(2)(a) & 74(3) have not been met. I am satisfied Mr Adams absence was not intentional or deliberate. As Mr Adams explained to the Tribunal, on the date of the hearing he was already in France looking after his son with special needs. He did not have knowledge of the Notice of Hearing sent to the parties as the correspondence received at his office was not opened in his absence. The fact that Mr Adams made no provision to ensure any correspondence received was monitored does not constitute unreasonable conduct for the purpose of this application. However, had Mr Adams been aware of the hearing and then failed to attend without good reason, this would have amounted to unreasonable conduct and met the required threshold.

18. Even if I am wrong in my decision, I would not have exercised my discretion to make an order because the claimant would have had to prepare for the hearing and incur travel expenses to attend the hearing in any event, irrespective of the respondent's non-attendance.

19. Accordingly, this application is refused.

Approved By
Employment Judge Bansal
17 February 2026