



EMPLOYMENT TRIBUNALS

Claimant: Mr M Saleh

Respondent: Global Support Services (UK) Ltd

JUDGMENT

(1) The Respondent's application for a preparation time order is refused.

REASONS

Introduction

1. I conducted a hearing on 27 August 2025. Judgment and written reasons were prepared the same day, and sent to parties on 16 September 2025.
2. I find that the Respondent made an application for a preparation time order on 17 September 2025, and that it was copied to the Claimant at the time. The procedural requirements for the application were therefore met.

The Law

3. In the Employment Tribunals Rules of Procedure, the section called "Costs Orders, Preparation Time Orders And Wasted Costs Orders" is Part 13 and includes Rules 72 to 82.
4. For brevity, I will simply use the word "costs" to refer to an application which is for costs or for preparation time order.
5. When an application for costs is made, or when the Tribunal is considering the matter of its own initiative, there are potentially the following stages to the decision.
 - 5.1 Has one (or more) of the criteria (for costs to potentially be awarded) as set out in the rules been met.
 - 5.1.1 If not, there can be no order for costs.
 - 5.1.2 If so, which rule or rules contain the criteria which have been satisfied (and why)?

- 5.2 Is the rule one which requires the Tribunal to consider making an award, or is it one which says the Tribunal “may” consider making an award.
- 5.3 Either way, if the criteria for a costs order are met, that means that the Tribunal has discretion to make an award, not that it is obliged to. So what are the relevant factors in this case, and, taking into account all of the relevant factors (and ignoring anything which is irrelevant), should an award be made.
- 5.4 If an award is to be made, what is the amount of the award? (And what is the time for payment, etc).

6. 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.

- 7. As per the rule, “ability to pay” is something that “may” be taken into account at each of the last two stages of the decision-making. That is: should an award be made at all; if so, what is the size of the award (and the timetable for payment). A tribunal is not obliged to take “ability to pay” into account, but should specify whether it has done so or not (and, if not, why not). Generally speaking, where a party wants the Tribunal to decide that they do not have the ability to pay, then the onus is on them to (i) raise the point and (ii) provide evidence to back up the argument. That being said, in accordance with the Tribunal's duty of fairness, and in accordance with Rule 2, it may be appropriate for the Tribunal to seek to ensure that a party (especially a litigant in person) understands that the onus is on them (at least, in cases where the order might be a large one): Oni v NHS Leicester City UKEAT/0133/14.

8. Rule 74, insofar as is relevant, 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.

9. So one set of criteria for a costs order to be made are those set out in Rule 74(3). The tribunal is not obliged to consider making an award in such circumstances, but it may make an order. These criteria cover breaches of orders or practice direction, and they also cover postponement/adjournment where the application was made more than 7 days before the hearing was due to start.
10. If the criteria set out in Rule 74(2) are met, the Tribunal must actively consider whether or not to make an award (though it is not obliged to decide to make the award). The three subparagraphs are each independent. It is sufficient that any one of (a), or (b) or (c) is met.
11. As was noted in Radia v Jefferies International Ltd [2020] UKEAT 7_18_2102:

63. ... earlier authorities, about the meaning of “misconceived” in Rule 40(3) in the 2004 Rules of Procedure, are equally applicable to this replacement threshold test in the 2013 Rules. See in particular Vaughan v London Borough of Lewisham [2013] IRLR 713 at paragraphs 8 and 14(6). However, in such a case, what the party actually thought or knew, or could reasonably be expected to have appreciated, about the prospects of success, may, and usually will, be highly relevant at the second stage, of exercise of the discretion.

64. This means that, in practice, where costs are sought both through the Rule 76(1)(a) and the Rule 76(1)(b) route, and the conduct said to be unreasonable under (a) is the bringing, or continuation, of claims which had no reasonable prospect of success, the key issues for overall consideration by the Tribunal will, in either case, likely be the same (though there may be other considerations, of course, in particular at the second stage). 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?
12. So there can be an overlap in the arguments about whether the party acted reasonably in bring the claim (or conducting the pursuit of the claim or response) [Rule 74(2)(a)] and about whether the claim or response had no reasonable prospects of success [Rule 74(2)(b)]. Both sets of arguments can (and should) be considered. See Opalkova v Acquire Care Ltd EA-2020-000345-RN at paragraphs 24 and 25.
13. As Radia makes clear (paragraphs 65 to 69), a tribunal deciding that the claim/response had no reasonable prospect of success for costs purposes is not conducting the same analysis as for a strike out application. The Tribunal is not necessarily obliged to take the paying party’s case at its highest, but rather can

assess what the paying party knew (or ought reasonably to have known), and when, about the strengths/weaknesses of its case. In terms of what they knew (or should have known), a party is “likely to be assessed more rigorously if legally represented”: Opalkova para 26.

14. As Opalkova also make clear, when there are multiple claims/complaints, the issue of bringing, or continuing, with a claim or response which had no reasonable prospect of success must be analysed separately for each complaint.
 - 14.1 The fact that one or more of the complaints succeeded would not – in itself - prevent a respondent from persuading the Tribunal that there were other complaints that had no reasonable prospect of success.
 - 14.2 Correspondingly, the fact that one or more of the complaints failed – that is that the response to that part of the claim succeeded - would not, in itself, prevent a claimant from persuading the Tribunal that part(s) of the response which dealt with the complaint(s) which did succeed had no reasonable prospect of success
15. Where the argument is that the party has acted “vexatiously, abusively, disruptively or otherwise unreasonably” then the only conduct that is taken into account is that which is (either the bringing of the proceedings or) the way that the litigation has been conducted. This ground can potentially be established even where the paying party has been successful in the litigation. The precise details of the conduct in question will be relevant both the (a) whether the criteria are met and/or (b) whether, in all the circumstances, the Tribunal should exercise its discretion to make a costs order.
16. If the criteria to potentially make a cost order are met, then the factors which are potentially relevant to the decision about whether to make such an order (and, if so, how much the award should be) include, but are not limited to, the following. However, the Tribunal’s primary duty is to follow the wording of the rules, and to make specific decisions on the merits of the case in front of it.
 - 16.1 Costs are the exception rather than the rule. A party seeking costs will fail if they do not demonstrate that the criteria for *potentially* making such an order (in the Tribunal rules) have been met. However, the mere fact alone that the criteria have been met does not establish that the general rule is to make a costs order in such circumstances.
 - 16.2 Costs, if awarded, must be compensatory, not punitive. If the argument that there has been unreasonable conduct is made then the whole picture of what happened in the case is potentially relevant. However, it is necessary to identify the specific conduct, and decide what, specifically, was unreasonable about it and analyse what effects it had. Some causal link between the conduct

and the costs sought by the other party is required. Yerrakalva v Barnsley [2011] EWCA Civ 1255.

16.3 Was the party warned that an application for costs might be made, and, if so, when, and in what terms.

16.3.1 The lack of such advance warning does not prevent an application being made (or the Tribunal granting it). Rule 77 gives a party up to 28 days after the date on which the judgment finally determining the proceedings was sent to the parties. Furthermore, while the rule give the other party the right to a reasonable opportunity to make representations in response to the application, it does not impose a requirement that they were warned before the application was made.

16.3.2 However, the issue of whether a party (especially a litigant in person) was aware of the possibility of having to pay costs is likely to be relevant. This can be demonstrated by something other than a costs warning from the opposing party: for example, comments made at a preliminary hearing; the fact that they had been involved an earlier case in which there was a costs application; the fact that they themselves had expressed an intention to seek costs from the other side.

16.3.3 If a warning has been made, its precise terms will be relevant. A simple boiler plate threat to apply for costs, which appears to a knee jerk response that the party (or its representative) always sends out is likely to be far less persuasive than a considered attempt to address the arguments raised by the other party, and explain why they have no prospect of success, or to explain why the particular conduct has been unreasonable, and what the rules or case management orders (specifically) require instead.

16.3.4 The timing of the warning will be relevant, as will the issue of whether the warning was updated and repeated at relevant stages.

16.3.5 The fact that a costs warning was made, even one which is clear and detailed and well-timed, and which identifies the precise basis on which the application was later made, does not guarantee that an order will be made.

16.4 What advice did the party have? Who from? When?

The application

17. The Tribunal file contains an email from the Respondent dated 9 April 2026 at 14:43. It does not appear to have been copied to the Claimant, which is a breach of the Tribunal's rules.

18. That email appears to forward a copy of an earlier email, 17 September 2025 at 17.25, which, on its face, was sent to the Claimant and the Tribunal on that date. The Tribunal file does not have a copy of that email (other than the copy forwarded on 9 April).
19. On 2 June 2026 (when I was on annual leave) the Tribunal administration made a referral to me with the file, including the 9 April email (and attachments). I saw that email on 12 June 2026, which was my first day back at the hearing centre.
20. I note that the application alerted the Claimant to the fact that “ability to pay” can be taken into account. The Claimant does not appear to have responded to the application at all, either to supply details of ability to pay, to object to (or consent to) the making of a preparation time order, or at all. That is,
 - 20.1 he did not reply after the 17 September 2025 email, as far as I know, although the fact that the Respondent’s email is not on the file means that I cannot confidently say that the fact there is no email on the file from the Claimant is conclusive proof that he did not write to the Tribunal. I accept that he did not write to the Respondent.
 - 20.2 he did not write after the 9 April email, thought that was not copied to him
21. The application says that there was 10 hours spent by the Respondent on the defence.
22. In terms of time reading the claim, drafting ET3 and submitting it, I have not heard evidence. Given the length of the ET1 and ET3, I would not be confident that it took any more than 1 hour in total, including the time spent reading the information with the Notice of Claim letter about how to respond to a claim.
23. Following the response, the Claimant was ordered to supply further information. By his email of 16 December 2024 and 16 January 2025 (seemingly not copied to the Respondent in either case), he did do.
24. A hearing was ordered, and the correspondence from the Claimant was forwarded to the Respondent with the notice of hearing. The notice of hearing, with case management orders, was sent to the parties on 13 May 2025. The hearing was for 27 August 2025 (three hour final hearing). Parties were supposed to send documents to each other by 27 May and witness statements (or summary of evidence, at least) by 10 June. These documents were supposed to be sent to the Tribunal by each side by 20 August 2025.
25. The Claimant sent nothing to the Tribunal at all. The Respondent sent nothing to the Tribunal until 15.20 on 26 August 2025, which was sent in response to the Tribunal’s chaser at 10.42am.

26. In other words, there was slightly more than 4.5 hours between the Tribunal's chaser and the Respondent's email.
27. I am not confident that these documents were prepared before the Tribunal's email earlier that day. Kevin Wooton forwarded the Tribunal's email to Daniel Mailly at 12.36 and so the documents themselves may have taken less than 3 hours to produce (though I accept that Kevin Wooton and Daniel Mailly may well have discussed the matter before the email).
28. Amongst other things, the Respondent sought a postponement which it said was made in the context of "*Unavoidable unavailability to attend in person*" and was being made "*made promptly upon unavailability becoming clear*". The application also sought that the final hearing be converted to a public preliminary hearing.
29. Given the contents of the application, I am not confident that the Respondent was preparing for the final hearing between 13 May and 26 August 2025 (or at all).
30. If I was otherwise minded to make a preparation time order, I would order a hearing at which I could pose questions to witnesses on oath about the length of time they actually spent on the case, and about how much of the documentation was produced using Artificial Intelligence. I note the breakdown in Schedule that forms part of the application, but I would not have been willing to accept those times as accurate without evidence on oath to explain them to my satisfaction.
31. The application is effectively what is written in paragraph 3: the Claimant failed to comply with orders; acted unreasonably; failed to attend the hearing.
32. I take into consideration the entirety of the information available to me, including what the Respondent wrote in the ET3, in the 26 August application, and in the preparation time order application / attachments.

Analysis and conclusions

33. The Claimant did supply the information which the Tribunal ordered in 2024. He alleged that he was owed 2 payments, one was for slightly more than £4000 and one was for slightly more than £3400.
34. I note that the preparation time order does not rely on Rule 74(2)(b). Nor do I, of my own initiative, consider that the criteria in that rule were met. The Respondent potentially had a good defence on the basis that (and these are my words, not the Respondent's) the Claimant might have been unable to show that his "employment status" was such that he could succeed in a claim before Employment Tribunal (see paragraph 7 of the reasons sent on 16 September 2025). The Respondent's defence to the Employment Tribunal claim is not that it paid what was due, or that nothing was due for the work that was performed (as identified by the Claimant's further information). The defence it relied on was that there was no contract

between the Respondent and the Claimant and the proper forum was a claim in the county court (by the Claimant's company, as claimant). ,

35. In terms of the Claimant's failure to comply with the orders which accompanied the notice of hearing, I have had no explanation from the Claimant for that. If he was not pursuing the claim, all he had to do was to write to the Tribunal to withdraw it. He could have done that either with no explanation at all, or, if he saw fit, on the basis that he intended to bring a claim in another forum.
36. In fact, the Respondent did not comply with the orders either. Furthermore, while the Claimant did not attend the hearing, nor did the Respondent.
37. I am not satisfied that the Respondent should be awarded any costs for filing the ET3. I am not persuaded that the Claimant never intended to pursue the claim when he submitted it. I note his comments in the ET1 itself and in the covering emails forwarding the further information.
38. It seems that some time after 16 January 2025, the Claimant decided not to actively pursue the matter. It was unreasonable not to inform the Respondent and the Tribunal. Other parties could have used the hearing slot that was wasted on this case.
39. However, costs are the exception rather than the rule. Given the Respondent's own breaches of the rules, and the orders, and what is – in my assessment – a fairly small amount of effort that was put into defending the claim, it would not be in the interests of justice to order the Claimant to make a payment to the Respondent in all the circumstances.
40. The application is refused.

Approved by Employment Judge Quill

Date 12 June 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
16 June 2026

FOR EMPLOYMENT TRIBUNALS