EMPLOYMENT TRIBUNALS

Claimant: Mr Mohammed Tahir Bhatti

Respondent: GMB

Heard at: Watford Employment Tribunal
On: 10 April 2026

Before: Employment Judge Young
Non-legal members: Ms J Hancock
Ms A Telfer

Representation
Claimant: Litigant in person
Respondent: Mr Nicholas Bidnell-Edwards (Counsel)
Interpreter: Muazzam Ali Khan (Urdu)

JUDGMENT of Employment Judge Young, having been sent to the parties on 18 May 2026 and written reasons having been requested on 20 April 2026 in accordance with Rule 60(4) of the Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

Introduction

1. The Respondent made an application for costs dated 21 March 2025 with a schedule of costs of £69,082.70 dated 24 March 2025 arising from the Employment Tribunal's liability judgment dated 6 February 2025. The Respondent amended their cost application on 31 March 2025 to claim costs of £67,882.70. In addition, the Respondent provided a costs bundle and an authorities bundle. The Claimant provided a statement on 1 April 2026 as his response to the Respondent's application. The Employment Tribunal read and considered all the material that they were referred to.

Application and submissions

2. The parties made oral submissions which were considered. In essence the Respondent's submissions were the application was made on the basis of rule 74(2) (a) Employment Tribunal Procedure Rules 2024 ("ETR") in that *"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,"

3. The Respondent stated that the Claimant's conduct was unreasonable. The Respondent was not relying on the other words in rule 74(2) (a) ETR. The Respondent's amended written application set out the Respondent's position in full. The Respondent made reference to paragraph 14 of their application which dealt with the Employment Tribunal's findings at paragraph 155 in relation to the wrongful dismissal claim, stating *"the Claimant was careless and negligent in how he handled the CAC application by not consulting his line manager before submitting the application and intentionally misleading the Respondent in not telling the truth at the investigation meeting and disciplinary when he denied he didn't tell senior management about the CAC rejection."* It was submitted that it was an involved topic for the hearing and it was the basis of much of the Claimant's claim. The Claimant said that he was dismissed for something he hadn't done when he knew he had done it (see paragraph 15 of Respondent's application).

4. It was submitted that this is a case where dishonesty is made out. The Respondent relied on other parts of the Claimant's unreasonable behaviour as being, firstly, the unreasonable rejections of settlement, the direct race discrimination complaints and the Claimant's pursuit of those allegations dating from 2009. The Claimant provided poor evidence in respect of his race discrimination complaint, and he seized on things unreasonably, such as the word lucrative.

5. The Respondent then moved on to dealing with the law. The Respondent stated that they accept that the presence of a lie does not automatically lead to costs, but neither does the absence lead to a finding of no costs. Mummery LJ in Barnsley Metropolitan Borough Council v. Yerrakalva [2012] IRLR 78 revisits his judgment in McPherson v BNP Paribas. The costs caused by particular conduct should be proportionate to that conduct. The particular amount awarded is specifically because of the conduct attributable. It is rare that the amount is specific to the particular conduct and particular costs. It is legitimate for the Employment Tribunal to take a proportionate approach, and one way is to consider that particular conduct as not accepting a reasonable offer. The Respondent acknowledged that Part 36 of the CPR does not apply. What the Respondent does say is that there are significant parts of the Claimant's case that were predicated on dishonesty (that is the most complicated parts); that proportion should be in the Respondent's favour. The Respondent claims 50% of total costs and that the Employment Tribunal should take a broad brush approach.

6. The Respondent then referred to the case of Beynon v. Scadden [1999] IRLR 700 at paragraph 22-23. The EAT rejects that Employment Tribunals have to take into account the means of the individual. The Claimant has not given much information about means. The Claimant questioned the proportionality of what the Respondent spent on the case. He valued his case at £150K. The Respondent is claiming less than half of that. The Respondent's schedule of costs shows a proportionate spend on the case.

7. The Respondent submitted that if the Claimant had admitted that he had

read the email, then it would have saved time. We would not have had to cross examine Mr Rai. If the Claimant had admitted these things, it would have been a substantially shorter case and an easier case to deal with. We think the case would have been a 2 day hearing. The Respondent added that they wouldn't have made an application for costs if it was a 2 day hearing. The Respondent had already taken into account that there is resilience. If it is believing something that is not the case. The Respondent communicated with the Claimant and offered him a settlement sum. The Claimant had been found to be dishonest, and so this is exceptional circumstances. The Claimant's witnesses were unreliable and stated what the Claimant said rather than what they saw for themselves. The Claimant has flouted and multiplied the length of the case by a factor of 5 or 6 by what it reasonably should have been. On taking instructions, the 50% of £62k is £31k and more than the Employment Judge Young's current powers, and so if costs were awarded it would need to be referred to a costs judge. The Respondent's response was they were prepared to limit their costs to £20k.

8. The Claimant's submissions were, in summary, that the fact that the hearing was a 10 day hearing was not his choice. The Claimant said that he had done all this reasonably. He said that when he received the result of the CAC application he was on sick leave on that day, and the same day he sent an email to his line manager, Keith Williams. The Claimant stated that when he was given an offer, the first offer was £5k. The second day that the hearing started, he was offered £10k; it was a verbal offer. The Claimant said that he asked whether they could send that offer in writing. The Claimant clarified that he was not saying that Counsel was making an offer he didn't have authority to make. The Claimant said that he didn't accept the offer because his losses were high. The Claimant stated that the Respondent could have given him the retirement documents before dismissing him. He said that after 26 years' service it was the first time someone was dismissed. It was admitted by the regional secretary and senior organiser. The Claimant said no case had reached this level. The Claimant said that it was his right after that much service to bring his case. The Claimant said that he was not able to pay any fines. He said that he did not have much capacity to work. He explained that he had a job of 17 hours per week and that he relies on his pension. The Claimant said that no one told him that he was at risk of costs. The Claimant said that he thought his case was reasonable.

9. The Claimant said that he could not afford to engage a barrister. The Claimant explained that he sought legal advice from a lawyer through his union Unite. Unite provided a representative called Rose Kipping. The Claimant did not know if she sought legal advice. Unite told him that they would not represent him; they told him that they would only take cases where there was a 60% chance of winning. The Claimant said that Unite told him that it did not mean that he would not win his case. The Claimant explained that the reference to Saeed Zafar on his claim form is a reference to a friend of the Claimant. Mr Zafar is an immigration lawyer who was just helping the Claimant. He wrote a letter to the Respondent on the Claimant's behalf. The Claimant did not pay Mr Zafar. The Claimant said that his friends recommended Mr Zafar to him; they had a mutual friend. The Claimant said that he believed that he could prove discrimination because, when he was working for the Respondent, there was another officer who was Indian, and they kept on getting them mixed up. The Claimant said that he did not

mention this because he was not asked a question about this. The Claimant said that he believed that he had been treated unfairly because of his background. He said that there was a white person who was not investigated and given benefits. Everyone is missing the point that he was appointed because of his language skills. The Claimant said that he was fighting for others and that is why he thought he was treated differently and badly. He believes that no one had been held previously accountable for those errors. He said that he is a heart patient, diabetic and the breadwinner of his family; any costs award would be a great burden on him. No one from the London region had ever been liable for costs. The Claimant explained that he did not take legal advice when he received the costs warning because he believed that the Respondent was harassing him in every letter. He was an ordinary worker and is a layman.

10. The Claimant explained that it was his daughter who had a law degree at the time who created his Schedule of loss. The Claimant did no legal research in respect of his case; he is not computer literate. He believed that he could represent himself in his case and can get help from an interpreter. The Claimant said that he approached a barrister, but he was given a quote of £3,100 plus VAT for 1 hour's advice.

<u>The relevant law</u>

11. Rule 74 in the Employment Tribunal Procedure Rules 2024 ("ETR") deals with when a costs order may or should be made. Rule 74 states:

"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.

(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…."

12. When an application for costs is made, the Employment Tribunal should follow through three stages to make the decision. The first stage being has one (or more) of the criteria (for costs to potentially be awarded) as set out

in the rules has been met. In this particular case, the Respondent relies upon rule 74(2) (a). If there is no criteria in the rules that is met, there can be no order for costs. But if there is criteria that is met, the Employment Tribunal must identify which rule or rules contain the criteria which have been satisfied (and why) ? The Employment Tribunal must ask if the rule that is met is one which requires the Tribunal to consider making an award or is it one which says the Tribunal "may" consider making an award. Either way, if the criteria for a costs order are met, that means that the Tribunal has discretion to make an award, but it is not obliged to. Then the Employment Tribunal should identify what the relevant factors are to be taken into consideration in the case, and, taking into account all of the relevant factors (and ignoring anything which is irrelevant), ask itself whether an award should be made.

13. Where the argument that there has been unreasonable conduct is made, then the whole picture of what happened in the case is potentially relevant. The Court of Appeal in McPherson v BNP Paribas (London Branch) 2004 ICR 1398, CA suggests that Employment Tribunals should have regard to the nature, gravity, and effect of a party's unreasonable conduct. But it is appropriate to avoid a formulaic approach and have regard to the totality of the relevant conduct. 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. As Mummery LJ explained in Yerrakalva v Barnsley MBC [2012] ICR 420, CA at paragraph 41:

    "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 […]"

14. For the purposes of rule 74(2)(a) ETR the word "unreasonable" is to be given its ordinary English meaning and is not to be interpreted as meaning something similar to vexatious (Dyer v Secretary of State for Employment UKEAT/0183/83).

15. It should, however, be noted that the Tribunal is not confined to making an award limited to those costs caused by the unreasonable conduct. As Mummery LJ confirmed in McPherson v BNP Paribas (London Branch) [2004] ICR 1398, CA:

16. The fact that a costs warning was made, even one which is clear, 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.

17. Whether a party is legally represented may be a relevant factor. unrepresented litigant may be afforded more latitude than a party who has the benefit of professional legal advice and representation (AQ Ltd v Holden [2012] IRLR 648, EAT).

18. If a party did receive advice, this may be a relevant factor too. The Employment Tribunal may ask what advice did the party have. And from whom? When was the advice given? Notwithstanding, it can be a double-

edged sword that a party has taken legal advice. If they seek to argue that since a lawyer advised them that the claim had merit, it was not unreasonable to pursue it, in all likelihood they will have to waive privilege over the legal advice to make such an argument. On the other hand, the opposing party might seek to argue that the fact that the paying party had legal advice available shows that they ought to have understood the claim was hopeless, and/or that their conduct was inappropriate, and/or that a settlement offer that had been made was a good one. However, there is no requirement to do so to defend itself against the latter inference; where privilege is not waived, the Tribunal will not make assumptions that the party specifically received advice that they were acting unreasonably, but the fact that advice was available to them is likely to undermine an argument that, as a litigant in person, they could not reasonably have been expected to anticipate the arguments being raised by the costs application.

19. Costs are the exception rather than the rule (see Yerrakalva v Barnsley [2011] EWCA Civ 1255). Thus the mere fact alone that the criteria under the rules have been met does not establish that there is a general rule that an Employment Tribunal is to make a costs order in such circumstances.

20. If the Employment Tribunal decides that an award is to be made, then the question is what is the amount of the award? (And what is the time for payment, etc).

21. Rule 82 ETPR states:

    "Ability to pay

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

22. As per rule 82 ETR, "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). The 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 firstly raise the point and then provide evidence to back up the argument.

23. Costs orders are intended to be compensatory, not punitive (Lodwick v Southwark LBC [2004] ICR 884, CA). Therefore, the extent of any causal link between the unreasonable etc conduct and the costs incurred will normally be a relevant discretionary factor (Yerrakalva), albeit there is no requirement to establish a causal link between the unreasonable conduct and the costs incurred before an order can be made (McPherson).

Conclusions

24. The Respondent's application was made under rule 74(2)(a) ETR and the Respondent relied on the Claimant's unreasonable conduct alone.

25. 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 either the bringing of the proceedings or the way that the litigation has been conducted. It is possible to establish this ground even where the paying party has been successful in the litigation. The precise details of the conduct in question will be relevant both to (a) whether the criteria in Rule 74(2)(a) are met and/or (b) whether, in all the circumstances, the Tribunal should exercise its discretion to make a costs order.

26. We considered the test in Yerrakalva in looking first at whether there was unreasonable conduct and what was unreasonable about the conduct and the effect that it had in the context of the case. We noted Mummery LJ's obiter comments that costs are the exception, not the rule.

27. We reminded ourselves that we must consider whether the threshold for r74(2) (a) was reached and if the threshold is reached whether we should exercise our discretion to award costs.

28. We agree with the Respondent and adopt the points that the Respondent makes in their written costs application regarding the findings that the Employment Tribunal made that clearly indicated that the Claimant's pursuit of the case was unreasonable for example, at paragraph 15 of our liability judgment where we found that the Claimant offered no evidence of having applied for work as a membership development officer, and no evidence that he was being discriminated against because he was Pakastani (paragraph 28 & 66). However, the case would have still proceeded regardless of the Claimant's discrimination complaints as the core of the Claimant's case was one of unfair dismissal.

29. Notwithstanding, although we consider that the threshold has been reached. But do not make a costs award for the following reasons:

30. We consider that the Claimant was reasonable in pursuing his unfair dismissal case, and whilst not all the Claimant's arguments were reasonable i.e. that he did not know about the facts that his CAC application had been rejected, it was reasonable for him to pursue a claim of unfair dismissal as a long standing employee who was close to retirement and where he had no experience of any one being disciplined for negligent behaviour in his 26 years of employment.

31. We considered that the Claimant sought advice from his union at an early stage and was told that his case would not be supported but that they only supported cases with 60% success and that it didn't mean that his case would not be successful.

32. And it is for those reasons, having regard to the overriding objective and the fact that the Claimant was a litigant in person without legal representation throughout the conduct of the proceedings, the Respondent's application for costs fails.

Post script

33. Mr Bignell- Edwards asked if the Employment Tribunal had found that the unfair dismissal was unreasonable. The Employment Tribunal clarified that

their findings were not saying anything about the unfair dismissal being unreasonable, just that the Claimant had reasonable arguments and so could pursue it.

Approved by:

Employment Judge Young

Dated 16 June 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
24 June 2026
....

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded, you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced, it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/