



EMPLOYMENT TRIBUNALS

Claimant: Mr O B Ogedegbe

Respondent: Regulux Transport Ltd

Heard at: Teesside Justice Centre

On: 23 and 24 April 2026

Before: Employment Judge Heather

REPRESENTATION:

Claimant: in person

Respondent: Ms L Dawson (Counsel)

RESERVED JUDGMENT ON APPLICATION FOR COSTS

The judgment of the Tribunal is as follows:

Costs

1. The respondent's application for a costs order is well founded and succeeds.
2. The claimant is ordered to pay the respondent's costs, as claimed, in the sum of £18,148.50.

REASONS

The application for a costs order

3. By application dated 22 May 2026 the respondent applies for a costs order pursuant to Rule 74 of The Employment Tribunal Procedure Rules 2024.
4. The application follows the dismissal of the claimant's complaints of direct age discrimination and direct race discrimination after a final hearing conducted on 23 and 24 April 2026. The respondent contends that the claims had no reasonable

prospect of success and that the claimant acted unreasonably in continuing to pursue them following the making of a deposit order on 11 July 2025.

5. The claimant opposes the application.

Background

6. The claimant alleged that the respondent rejected his application to become a delivery driver because of his age and race. A preliminary hearing took place before Employment Judge Jeram on 10 July 2025. During that hearing Employment Judge Jeram examined the evidential basis of both discrimination complaints in detail. She explained the burden of proof applicable in discrimination claims and referred expressly to *Madarassy v Nomura International plc* [2007] EWCA Civ 33. Employment Judge Jeram explained that a difference in treatment together with a difference in protected characteristic is not, without more, sufficient material from which a Tribunal could infer unlawful discrimination. She further explained that a claimant must identify facts capable of supporting such an inference.
7. The record of the preliminary hearing records that when invited to identify material supporting an inference of discrimination the claimant relied upon:
 - 7.1 his belief that the respondent's explanation was wrong; and
 - 7.2 the fact that he believed himself to have been treated differently to another individual.
8. Following that analysis Employment Judge Jeram concluded that the discrimination complaints had little reasonable prospect of success and made a deposit order in respect of both complaints. In her written reasons Employment Judge Jeram found that:

"the claimant was unable to identify anything other than a simple disagreement with the respondent's explanation for the treatment" and that such material was *"insufficient to discharge the burden upon him to prove a prima facie case"*.
9. The claimant paid the deposit and elected to continue the proceedings.
10. I further found that the decision maker's reason for not progressing the application was her belief, based upon information which she had received, that the claimant was unreliable. I found that neither age nor race played any part in the decision.

Submissions

11. I have carefully read and considered:

11.1 the application and sent by the respondent on 22 May 2026 together with the accompanying attachments as well as the further document which was supplied to the Tribunal on 25 June 2026 in response to correspondence that I directed to be sent to the parties on receipt of the application; and

11.2 the claimant's response sent on 25 June 2026 together with the accompanying attachments;

12. I incorporate those submissions here by reference.

The issues

13. The issues to determine are:

13.1 has the threshold for a costs order had been met;

13.2 if so, should the Tribunal should exercise its discretion to consider the means of the claimant;

13.3 should the Tribunal exercise its jurisdiction to award costs;

13.4 if there should be an award of costs, how much should the claimant be ordered to pay to the respondent;

Relevant law and legal principles

14. Procedure in the Employment Tribunals is governed by The Employment Tribunal Procedure Rules 2024. Costs do not ordinarily follow the event in Employment Tribunal proceedings and costs remain the exception rather than the norm. The fact that a claim fails does not, of itself, justify a costs order. The onus is on the receiving party to make a compelling case that the costs threshold had been passed (*Gee v Shell UK Limited* [2003] IRLR 82).

15. Rule 74 of The Employment Tribunal Procedure Rules 2024 provides that the Tribunal may make a costs order where a party or representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing or conducting proceedings, or where a claim or response had no reasonable prospect of success.

16. The jurisdiction is discretionary. Even where one of the gateways in Rule 74 is established, the Tribunal must determine whether, in all the circumstances, it is just to make a costs order. In *Yerrakalva v Barnsley MBC* [2012] ICR 420 the Court of Appeal emphasised that costs decisions involve a broad assessment of what justice requires in the particular circumstances of the case.

17. The discretion afforded to an Employment Tribunal to make an award of costs must be exercised judicially (*Doyle v North West London Hospitals NHS Trust UK EAT/0271/11/RN*). The Tribunal must consider all of the relevant matters and circumstances.
18. *Milan v Capsticks Solicitors LLP & Others* UKEAT/0093/14/RN sets out that a 3 stage structured approach should be taken in relation to an application for costs;
 - 18.1 firstly, has Rule 74 been engaged by the behaviour of the paying party;
 - 18.2 secondly, is it appropriate to make a costs order;
 - 18.3 thirdly, what should the amount of the costs order be, or should the amount be determined by detailed assessment;
19. As costs are compensatory, and not punitive (*Lodwick v Southwark London Borough Council* 2004 ICR 884, CA) it is necessary to examine what loss has been caused to the receiving party. Therefore, costs should be limited to those 'reasonably and necessarily incurred' and whilst there is no requirement for the Tribunal to determine whether there is a precise causal link between the unreasonable conduct in question and the specific costs being claimed, that does not mean that causation is irrelevant (*Yerrakalva*).
20. Where there is an overlap between the unreasonable bringing or conduct of the proceedings and the complaint having no reasonable prospects of success the key issues for consideration by the Tribunal are in either case likely to be the same (*Radia v Jefferies International Ltd* UKEAT/0007/18/JOJ and *Opalkova v Acquire Care Ltd* UKEAT/0209/20/RN). The Tribunal should focus on what the parties knew about their cases at the time, not what the Tribunal knows after hearing the evidence. In *Radia* the EAT posited three questions that should be addressed:
 - 20.1 did the complaints, in fact, have no reasonable prospect of success;
 - 20.2 if so, did the complainant in fact know or appreciate that;
 - 20.3 if not, ought the complainant, reasonably have known or appreciated that;
21. In terms of abusive, disruptive or unreasonable conduct, "unreasonableness" bears its ordinary meaning and should not be taken to be equivalent of "vexatious" (*National Oilwell Varco UK Ltd v Van de Ruit* UKEAT/0006/14). There is no requirement that the costs awarded must be found to have been caused by or attributable to any unreasonable conduct found, although causation is not irrelevant (*MacPherson v BNP Paribas (London Branch) (No 1)* [2004] ICR 1398). What is required is for the Tribunal to look at the whole picture of what happened in the case and to identify (*Yerrakalva*):

- 21.1 the conduct;
 - 21.2 what was unreasonable about the conduct and its gravity; and
 - 21.3 what effects that unreasonable conduct had on the proceedings
22. The Tribunal may have regard to the paying party's ability to pay when deciding whether to make a costs order and, if so, how much the paying party should pay (Rule 82). The fact that there is an absence of precise figures does not prevent the Tribunal from drawing conclusions as to whether the paying party has sufficient means to pay a costs order (*Brookes v Nottingham University Hospitals NHS Trust* UKEAT/0246/18/JOJK).
23. A deposit order does not predetermine a subsequent costs application and does not create any presumption that costs will follow. However, it is a significant factor. The purpose of a deposit order is to warn a party that a claim has little reasonable prospect of success. Where a claimant elects to continue proceedings following such a warning and the claim is ultimately dismissed for substantially the same reasons as those identified when the deposit order was made, a Tribunal is entitled to regard that circumstance as a powerful factor when exercising its discretion to award costs (*Hemdan v Ishmail* UK EAT/00021/15 and Rule 40).
24. The law applies to unrepresented parties as much as it does to those who are legally represented. In relation to costs applications the Tribunal does not judge litigants in person by the strict professional standards of qualified legal representatives. The Tribunal has due regard to the inexperience and lack of legal objectivity of an unrepresented party (*AQ Ltd v Holden* 2012 IRLR 648).

Discussion and conclusions

Has the threshold for a costs order been met?

25. I have carefully considered the claimant's submissions opposing the costs application. I accept that the claimant genuinely believes that he was discriminated against. I also accept that throughout these proceedings he has sincerely maintained that position.
26. However, sincerity of belief is not the test. The question is whether the claims had reasonable prospects of success and whether it was reasonable to continue pursuing them.
27. In my judgment the discrimination claims had no reasonable prospect of success. That conclusion is reinforced by the analysis undertaken by Employment Judge Jeram at the preliminary hearing. The evidential deficiency identified by Employment Judge Jeram was not technical or procedural. It went to the very heart of the claims.

28. The claimant was unable to identify facts capable of supporting an inference that the respondent's conduct was because of age or race. Employment Judge Jeram explained that difficulty in considerable detail, referred expressly to the relevant legal principles and made a deposit order because of the resulting lack of reasonable prospects. The claimant nevertheless chose to proceed.
29. Importantly, the claims ultimately failed for substantially the same reasons identified by Employment Judge Jeram. The difficulty identified at the preliminary hearing remained the difficulty at the final hearing. The claimant never produced evidence capable of establishing a prima facie case of discrimination. The final hearing therefore confirmed the correctness of the assessment made when the deposit order was imposed.
30. Applying the approach identified in *Radia*:
 - 30.1 the complaints had no reasonable prospect of success;
 - 30.2 following the explanations given by Employment Judge Jeram and the making of the deposit order, I find that the claimant knew those difficulties existed; and
 - 30.3 if I am wrong about that, he ought reasonably to have known following the explanations given by Employment Judge Jeram and the making of the deposit order;
31. I am satisfied that this is precisely the type of case in which a deposit order becomes highly significant when considering costs. I do not find that the claimant acted vexatiously. Nor do I find that he acted in bad faith.
32. However, I do find that after the deposit order was made, and after the defects in the claims had been clearly explained, it became unreasonable to continue pursuing the proceedings without providing evidence capable of addressing those defects. I therefore find that:
 - 32.1 the complaints had no reasonable prospect of success; and
 - 32.2 the continued pursuit of the claims following the deposit order was unreasonable;
33. Having considered all the circumstances, including the fact that the claimant was unrepresented, I have decided that it is appropriate to exercise my discretion in favour of making a costs order because I am satisfied both that the complaints had no reasonable prospect of success and that it was unreasonable to continue pursuing them following the deposit order.

Should the Tribunal exercise its discretion to consider the means of the claimant

34. I have considered the claimant's means. The burden of providing evidence of means lies upon the paying party. No evidence of the claimant's current financial circumstances has been provided beyond the material available to Employment Judge Jeram when fixing a nominal deposit of £1. Whilst a Tribunal may take ability to pay into account when deciding whether to make a costs order or in what amount, it is not required to do so. In the absence of reliable and up-to-date evidence as to means, I do not regard the issue as a reason to reduce the award.

Should there be an award of costs

35. I am satisfied that there is a clear causal connection between the conduct relied upon by the respondent and the costs claimed. Once the deposit order had been made, the respondent was required to continue preparing for and attending a final hearing because the claimant elected to pursue claims which had already been judicially assessed as having little reasonable prospect of success. Had the claimant not done so, those costs would not have been incurred.
36. I have also considered the nature of the proceedings. These were not legally or factually complex discrimination claims. Equally, however, allegations of race discrimination and age discrimination are serious allegations. A respondent facing such complaints is entitled to obtain professional legal assistance and to prepare properly for a final hearing at which substantial compensation was being sought.
37. In all the circumstances, justice requires that a costs order be made.

How much should the claimant be ordered to pay to the respondent

38. The respondent seeks costs supported by a detailed schedule of costs, file ledger and counsel's fee notes. The costs claimed are confined to work undertaken after the making of the deposit order and the respondent does not seek to recover costs incurred before the Tribunal had formally indicated its view that the claims had little reasonable prospect of success. The respondent's application does not expressly address the treatment of VAT. I have therefore considered the schedules and fee notes to determine the total sum that the respondent seeks to recover. The time recorded in the file ledger totals £15,298.50 (exclusive of VAT). The fee note provided for Counsel's fees shows total fees of £3,500 plus VAT, albeit the fee of £650 plus VAT for Counsel's attendance at the preliminary hearing is not claimed. I therefore understand the respondent's application to be that it seeks costs in the total sum of £18,718.50 (being solicitor's costs of £15,298.50 (exclusive of VAT) and Counsel's fees of £2,850 plus VAT on Counsel's fees in the sum of £570).
39. I have scrutinised the schedule, ledger entries and fee notes with care. I am satisfied that the work undertaken was genuinely performed and was reasonably incurred in responding to the proceedings. The work reflects the ordinary steps

required to defend a discrimination claim proceeding to a two-day final hearing, including preparation of witness evidence, disclosure, preparation of the hearing bundle, preparation for trial and representation at the final hearing.

40. I have considered whether any reduction should be made to reflect the fact that a costs order in the Employment Tribunal is compensatory rather than punitive. In my judgment no reduction is required.
41. The respondent acted proportionately throughout the proceedings. It did not seek costs immediately upon obtaining the deposit order. Nor does it seek recovery of all costs incurred throughout the litigation. Instead, the application is confined to those costs incurred after the Tribunal issued its warning that the claims had little reasonable prospect of success. I regard that limitation as a significant indicator of reasonableness and proportionality.
42. I have considered whether the amount claimed appears excessive when viewed against the nature of the litigation. It does not. The work recorded in the schedules and fee notes appears commensurate with the procedural history of the case, the preparation required for the final hearing and the representation provided. The claimant's schedule of loss exceeded £186,000. The respondent therefore faced a claim of considerable value and seriousness. In those circumstances the level of legal expenditure incurred is unsurprising and proportionate to the issues at stake.
43. Standing back and applying a broad evaluative assessment, I am satisfied that the costs claimed were both reasonably incurred and reasonable in amount. I am also satisfied that the total sum claimed is proportionate having regard to:
 - 43.1 the seriousness of the allegations made;
 - 43.2 the value of the claims advanced;
 - 43.3 the procedural steps required by the litigation;
 - 43.4 the fact that the proceedings continued to a final hearing after the making of a deposit order; and
 - 43.5 the fact that the claims ultimately failed for substantially the same reasons identified when that deposit order was made.
44. The burden rests upon the respondent, as the receiving party, to establish the amount of costs properly recoverable. I have considered the position in respect of VAT. The fee notes provided by Counsel include VAT within the sums claimed. However, the respondent has not provided any evidence regarding its VAT status or whether it is entitled to recover input VAT in respect of legal fees. The purpose of a costs order is compensatory, not punitive. A receiving party should not ordinarily recover as costs VAT which it is entitled to reclaim from HMRC. In the

absence of evidence that the VAT incurred represents an irrecoverable expense to the respondent, I am not satisfied that VAT forms part of the respondent's recoverable loss and therefore I exclude VAT from the costs award.

45. The costs that the respondent has incurred are solicitors' costs of £15,298.50 and Counsel's fees of £2,850. I therefore award the respondent costs in the sum of £18,148.50.

Summary

46. The respondent's application for a costs order under Rule 74 of The Employment Tribunal Procedure Rules 2024 is well-founded and succeeds.
47. The claimant is ordered to pay the respondent's costs, as claimed, in the sum of £18,148.50 .

**Approved by:
Employment Judge Heather**

15 July 2026

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