



EMPLOYMENT TRIBUNALS

Claimant: Shannon Burns (1)
Mr. Engelhart Sprack (2)

Respondents: Gitpod GmBH (1)
Lets Deel Limited (2)

Considered on the papers

On: 3 August 2026

Before: Employment Judge Wedderspoon

Written representations considered

For the claimant: Mr. Engelhart Sprack

For the respondent: Ms. L. Bone

RECONSIDERATION : JUDGMENT ON WASTED COSTS

1. The Tribunal determined to reconsider its Judgment on wasted costs.
2. It was determined a reconsideration hearing was not necessary in the interests of justice and the reconsideration took place on the papers.
3. On reconsideration the first respondent's application for wasted costs against the claimant's counsel is well founded.
4. The claimant's counsel will pay the first respondent wasted costs assessed at £6,767.44.

REASONS

1. The Tribunal determined to reconsider its Judgment on wasted costs made against claimant's counsel in the interests of justice. The first respondent submitted that the reconsideration could take place on the papers. The claimant's counsel disagreed and requested an oral hearing. Both parties are professionally represented and have provided detailed written submissions. The Tribunal determined a reconsideration hearing was not necessary in the interests of justice and the reconsideration took place on the papers.

2. The Tribunal determined that as claimant's counsel had not intended his apology for appearing on a train in Germany to conduct the first day of a final hearing to be the totality of his submissions on wasted costs, the Tribunal should afford him an opportunity to provide further submissions. The claimant's counsel provided written submissions and the respondent replied to these submissions.

The history

3. By application the first respondent sought an application for wasted costs against the claimant/claimant's counsel for the aborted first day of the final hearing on 12 May 2025. The case was listed for final hearing from 12 May 2025. Judge Meichen had granted the claimant's counsel to conduct the first day of the hearing remotely by reason of child care commitments and the fact that the representative resides permanently in Germany with his family and practices in the UK.
4. The purpose of the first day of the hearing was to conduct housekeeping of the case which included the claimant's disclosure application which was contested by the respondent.
5. On the first day of the hearing both of the respondent's legal teams attended in person consisting of Ms. Bone of counsel and her instructing solicitor for the first respondent along with a trainee solicitor for the second respondent. Mr. Engelhart Sprack of counsel representing the claimant failed to initially appear on screen.
6. The case was postponed for 20 minutes and Mr. Sprack then appeared on the video link with his headphones on, travelling on a train in Germany. He assured the Tribunal he could conduct the case. Although claimant's counsel submitted in his written submissions he "found a quiet location" on the train, this was not the recollection of the Tribunal. It was not simply a connection issue; noise and passengers' conversations could be heard in the background. The Tribunal determined that it could not conduct the first day of a final hearing and a contested disclosure application in these circumstances; this was not a suitably quiet environment to conduct the hearing. The Tribunal enquired when the representative would be in a quiet environment. Mr. Engelhart Sprack thought he would get some time between trains in about 1 hour. However Mr. Sprack did not wait at the station or find himself a quiet environment to conduct the hearing but embarked a second train.
7. Mr Engelhart Sprack appeared again wearing his headphones on a second train in Germany seeking to conduct the hearing. The background noise of other passengers could be heard. The internet connection was poor and it was difficult to hear the representative above the other noise. The Tribunal determined it was totally inappropriate to conduct the hearing in this environment and the case was postponed to the next day when Mr. Engelhart Sprack appeared in person at the Birmingham Tribunal. Consequently one day of the hearing was aborted and wasted.

Submissions of the parties

8. Both parties made detailed written submissions and the Tribunal takes these into account.
9. Following the aborted hearing, the claimant's representative wrote to the Tribunal. He apologised. Counsel stated that when he applied to attend remotely he was intending to split his journey and secure a private room along the route. Due to the unavailability of child care this was not possible and he had to remain in Munich. There was no explanation as to why he had failed to alert the Tribunal or the respondent prior to the first day of the hearing.
10. In further written submissions it is stated *I had been granted permission to attend the hearing remotely for childcare and travel reasons. Due to childcare obligations I had to spend the weekend of 10 to 11 May 2025 in Munich. When making the application to attend remotely I had intended to split my journey from Munich to Birmingham and secure a private room for the hearing along my route. Unfortunately due to childcare difficulties I was unable to start my journey until the morning of 12 May 2025. Due to the need to travel from Munich on 12 May 2025 I was on a train when the hearing was due to commence. I found a quiet location and logged on within 5 minutes of being provided with the login details for the hearing. Unfortunately I experienced connection issues. I understand that other attendees including employment judge Wetherspoon struggled to hear me due to an unstable connection. The hearing was adjourned to allow time for me to finish the journey on my first train. After arriving at my first station I boarded the second train on my journey. I was concerned that if I had not ordered my second train I would not have arrived in Birmingham in time for day 2. My Internet connection remained unstable when the hearing recommenced I confirmed that I would be in attendance in person on 13 May 2025 day 2 and Employment Judge Wedderspoon adjourned the hearing until that date."*
11. The first respondent submits that the claimant's counsel made no contact with the first respondent until the morning of 12 May 2025 when he telephoned the first respondent's counsel's clerk. Essential housekeeping did not take place on the first day as envisaged and the day was wasted. Counsel and the respondent's legal team attended in person and incurred the cost of hotel accommodation and travel.

The Law

12. Pursuant to Rule 78 of the Employment Tribunal Rules 2024 it is stated

78(1) A Tribunal may make a wasted costs order against a representative in favour of any party (the receiving party) where that party has incurred costs –

(a) as a result of any improper, unreasonable or negligent act or omission on the part of the representative; or

(b) which in the light of any such act or omission occurring after they were incurred, the Tribunal considers it unreasonable to expect the receiving party to pay. Costs so incurred are described as "wasted costs";

(2)"Representative" means a party's legal or other representative or any employee of such representative but it does not include a representative who is not acting in pursuit of profit with regard to the proceedings. A person acting on a contingency or conditional fee arrangement is considered to be acting in pursuit of profit.

(3)A wasted costs order may be made in favour of a party whether or not that party is legally represented and may also be made in favour of a representative's own client. A wasted costs order may not be made against a representative where that representative is representing a party in his or her capacity as an employee of that party.

13. In the recent case of **Gurney v Randall & ors EAT 2025 154** HHJ Tayler provided a detailed guidance of the approach to be taken by the Tribunal considering a wasted costs order. Referencing the case of **Ridehalgh v Horsefield and another (1994) Ch** at paragraphs 23 of the judgment HHJ Tayler stated

"The Court of Appeal held.. Quotes should apply a three stage test when a wasted cost order is contemplated (1) **has the legal representative of whom complaint is made acted improperly, unreasonably or negligently** (2) **if so did such conduct cause the applicant to incur unnecessary costs** (3) **if so is it in all the circumstances just to order the legal representative to compensate the applicant for the whole or any part of the relevant costs?**

"Improper, unreasonable or negligent"

"Improper" means What it has been understood to mean in this context for at least half a century. The adjective covers but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practise or other serious professional penalty. It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgement limited to that. Conduct which would be regarded as improper according to the consensus of professional including judicial opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.

"Unreasonable" also means what it has been understood to mean in this context for at least half a century. The expression actually **describes conduct which is vexatious designed to harass the other side rather than advanced the resolution** of the case and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement but it is not unreasonable.

The term "negligent" what is the most controversial of the three. It was argued that the act of 1990 in this context as in others used negligence as a term of art involving the well known ingredients of duty breach causation and damage. Therefore it was said conduct cannot be regarded as negligent unless it involves

an actionable breach of the legal representatives duty to his own client to whom alone a duty is owed. We reject this approach (1) as already noted the predecessor of the present Ord. 62 r.11 made reference to reasonable competence. That expression does not invoke technical concepts of the law of negligence. It seems to us inconceivable that by changing the language parliament intended to make it harder rather than easier for courts to make orders. (2) since the applicants right to a wasted cost order against a legal representative depends on showing that the latter is in breach of his duty to the court it makes no sense to superimpose a requirement under this head but not in the case of impropriety or unreasonableness that is also in breach of his duty to his client.... We are clear that **negligent should be understood in an untechnical way tonight fail to act with the competence reasonably to be expected of ordinary members of the profession.**

In adopting an untechnical approach to the meaning of negligence in this context we would however fish firmly to discountenance any suggestion that an applicant for a wasted cost order under this head need prove anything less than he would have to prove in an action for negligence “advice acts or omissions in the course of their professional work which no member of the profession who was reasonably well informed and competent would have given or done or admitted to do”; an error such as no reasonably well informed and competent member of that profession would have made.

14. HHJ Tayler also referred to the Court of Appeal decision of **Persaud v Persaud (2003) EWCA Civ 394** which considered the definition of negligence; stating there must be something akin to an abuse of process if the conduct of the legal representative is to make him liable to a wasted costs order.

Conclusions

15. Presidential Guidance for remote hearings in the Employment Tribunal sets out how such hearings should be conducted. At paragraph 19(c) it is stated that witnesses should be made aware that they should give evidence without interruption in an environment that is suitable for the provision of remote evidence. At paragraph 20 it is made clear that the guidance applies equally to representatives.
16. Conducting a remote hearing whilst travelling by train is not in accordance with Presidential Guidance and is totally inappropriate and unprofessional. Furthermore failing to contact the Tribunal or the respondent's legal teams to warn that the first day of the hearing was likely to be aborted due to the inability to conduct the hearing in a quiet environment in accordance with the Presidential Guidance was unprofessional and inappropriate.
17. Judge Meichen when granting the claimant's counsel permission to appear remotely on the first day could not have envisaged that appearance would be whilst travelling on a train and not in accordance with Presidential Guidance.
18. The Tribunal does not find that there has been improper conduct here in accordance with the high threshold set out in **Ridehalgh** and has not been taken to the Code of Conduct of the Bar to establish any potential breach.

Unprofessional is used here by the Tribunal in the common parlance manner it is understood generally.

19. The Tribunal does not find that there has been unreasonable conduct here as defined in **Ridehalgh** namely conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case.
20. However the Tribunal does find there has been negligence as set out in **Ridehalgh** namely here the conduct of counsel was a failure to act with the competence reasonably to be expected of ordinary members of the profession in failing to comply with Presidential Guidance for the conduct of remote hearings by failing to conduct it from a quiet environment and/or in the alternative failing to alert the respondents' legal teams or the Tribunal there was a difficulty in conducting the hearing remotely on the first day because of travel. The Tribunal does not find there has been abuse of process as envisaged by **Persaud** but does not have to for the threshold of negligence in accordance with **Ridehalgh** to have been reached.
21. Although the Tribunal is sympathetic to counsel's childcare responsibilities over the weekend, he did not alert the respondent's legal team or the Tribunal as to his intention to travel by train on day 1 of the final hearing which could have avoided unnecessary attendance and cost incurred by the respondents.
22. The Tribunal finds that the negligent conduct of the claimant's representative did cause the respondent's legal teams unnecessary costs. The day was aborted and lost because of the inability of the claimant's representative to conduct the hearing remotely in accordance with Presidential Guidance. The respondents legal teams attended in person and incurred consequent costs.
23. The Tribunal finds it is, in the all the circumstances, just to order the claimant's legal representative to compensate the first (and second) respondents for the whole of the relevant costs due to the aborted hearing on the first day of the final hearing. If the claimant's representative had found a quiet environment to conduct the case or informed the respondents and the Tribunal in good time about difficulties of travel on the first day, the incurring of costs due to wasted time could have been avoided.

Assessment of wasted costs

24. The Tribunal having determined that it was appropriate to make an award for wasted costs assessed the amount of wasted costs to be paid. Counsel's fees were incurred for the aborted day of £4,000 plus travel on the day of £308; these are awarded. The first respondent's solicitor incurred travel and attendance for the aborted day of £1,500 this is awarded. Hotel costs were incurred for the extra day of £340 these are awarded. It is unclear to the Tribunal what further time at 3 hours was caused to the respondent's solicitor and this is not awarded.
25. The second respondent incurred travel on the day of £79.44 plus attendance of a trainee solicitor of £540 these are awarded. The first respondent's legal team are VAT free because they provide a service to an overseas client. The second respondent's costs include VAT. These are reimbursed by the first respondent

under the commercial agreement but the first respondent can not claim VAT. In the circumstances the sums are awarded in full as claimed.

26. The claimant's representative will pay £6,767.44 to the first respondent.

EJ Wedderspoon

Date: 3 August 2026