



EMPLOYMENT TRIBUNALS

Claimant: Saghir Ahmed

Respondent: Wincanton Holdings Limited

Heard at: Manchester **On:** 20 July 2026

Before: Employment Judge Lloyd

Appearances

For the claimant: In person

For the respondent: Ms Haye, Counsel

JUDGEMENT

The respondent's application for an order that the claimant pay the costs incurred in preparing for and attending an preliminary hearing and dealing with the claimant's non compliance is refused.

REASONS

Costs Application

1. The respondent applied for an order that the claimant pay the respondent's costs incurred in preparing for and attending a preliminary hearing and dealing with the claimant's non compliance.
2. The parties had attended a case management summary hearing on 2 February 2026. At that hearing, the Judge Porter listed the case for a further preliminary hearing to decide four matters:
 - (i) The claimant's application for leave to amend the claim to include the claims as identified in the draft List of Issues which appears in the Annex hereto together with the Additional Information provided by the claimant in accordance with the terms of this Order;
 - (ii) Finalising the List of issues;
 - (iii) Considering the respondent's application for a deposit order (if pursued);

- (iv) Making orders to progress the claim to a hearing.
3. Judge Porter discussed the issues in the case and noted that the claimant wished to amend his claim. In his ET1, the claimant had indicated that he was claiming unfair dismissal only. At the case management hearing, the claimant wanted to amend his claim to include complaints about race discrimination and whistleblowing.
 4. Judge Porter set out a draft list of issues and asked the claimant to provide additional information on sections indicated in red.
 5. The claimant was asked to confirm if he was to pursue a whistleblowing complaint, and to confirm if he was pursuing a claim for race discrimination. If the claimant was wishing to apply to amend his claim to add these complaints, he was asked to provide more information on them as set out in the draft list of issues.
 6. The claimant did not provide the information requested by Judge Porter.
 7. The respondent's solicitors chased the claimant by email on 5 June 2026 (page 79 of the preliminary bundle). They asked for the claimant to provide his loss of earnings information and a response to the draft list of issues. The claimant responded by email on 11 June 2026. He gave information on his loss of earnings but not on the list of draft issues. The respondent's representative chased the claimant by email on 17 June 2026 for the missing information. The representative also wrote to the Tribunal regarding the claimant's non-compliance on the same day.
 8. At the hearing today, the claimant said he had not received the Tribunal's case management orders. He could not open the copies sent to him by the respondent's representative on two occasions in June 2026. This was the reason he had not complied with Judge Porter's directions.
 9. I reject the explanation that the claimant never received or could not access the orders. The claimant has contacted the Tribunal and the respondent representative but he has not said he had not received the order or was unable to open it. He was able to give the information requested by Judge Porter on his loss of earnings.
 10. The respondent representative has asked for a costs order in the total sum of £2,914.20. This includes a sum of 3.4 hours (£856) for chasing the claimant, and counsel's fees of £1,300 for today's hearing. Other case management costs are also included (£405.80) and preparation for today (£241.20).
 11. I reserved my decision today and told the parties that I would provide my reasons in writing.

Legal Framework

12. The power to award costs is in the Employment Tribunal Rules of Procedure of 2024 ("Rules") at Part 13.

13. Rule 73(1)(a) provides that a Costs Order includes an order that a party makes a payment to another party "in respect of the costs that the receiving party has incurred while represented by a legal representative".

14. The circumstances in which a Costs Order may be made are set out in rule 74. Ms Kaye confirmed she was relying on Rule 74(2)(a). The relevant provision here is rule 74(2) which provides as follows:

"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.

15. The procedure by which the application of costs should be considered is set out in rule 75 and the amount which the Tribunal may award is governed by rule 76. In summary rule 76 empowers a Tribunal to make an order in respect of a specified amount not exceeding £20,000, or alternatively to order the paying party to pay the whole or specified part of the costs with the amount to be determined following a detailed assessment.

16. Ms. Kaye told me that the costs application was limited to £2,914.20. There would not therefore be a requirement for a detailed assessment of costs under Rule 76(1)(b)(i) of the Rules.

17. Rule 82 concerns ability to pay and reads as follows: "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 ability to pay."

18. It follows from these rules that the Tribunal must go through a three-stage procedure (see paragraph 25 of Haydar v Pennine Acute NHS Trust UKEAT 0141/17/BA). The first stage is to decide whether the power to award costs has arisen, whether by way of unreasonable conduct or otherwise under rule 74; if so, the second stage is to decide whether to make an award, and if the Tribunal does decide to make an award, the third stage is to decide how much to award. Ability to pay may be taken into account at the second and/or third stage.

19. The case law on the costs powers include confirmation that the award of costs is the exception rather than the rule in Employment Tribunal proceedings; that was acknowledged in Gee v Shell UK Limited [2003] IRLR 82.

20. An award of costs must be compensatory, not punitive; to compensate the party in whose favour the order is made and not to punish the paying party.

21. If there has been unreasonable conduct there is no requirement for the Tribunal to identify a precise causal link between that unreasonable conduct and any specific items of costs which have been incurred: McPherson v BNP Paribas (London Branch) [2004] ICR 1398. However there is still the need for some

degree of causation to be taken into account as the Court of Appeal pointed out in *Barnsley Metropolitan Borough Council v Yerrakalva* [2012] IRLR 78: “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.”

22. As to the question of means or ability to pay, in *Vaughan v London Borough of Lewisham & Others (No. 2)* [2013] IRLR 713 (“Vaughan”) the EAT said this in paragraph 28: “The starting point is that even though the Tribunal thought it right to ‘have regard to’ the appellant’s means, that did not require it to make a firm finding as to the maximum that it believed she could pay, either forthwith or within some specified timescale, and to limit the award to that amount. That is not what the rule says (and it would be particularly surprising if it were the case, given that there is no absolute obligation to have regard to means at all). If there was a realistic prospect that the appellant might at some point in the future be able to afford to pay a substantial amount it was legitimate to make a costs order in that amount so that the respondents would be able to make some recovery when and if that occurred....It is necessary to remember that whatever order was made would have to be enforced through the County Court, which would itself take into account the appellant’s means from time to time in deciding whether to require payment by instalments, and if so in what amount”.

Reasons

23. There are three stages in determining whether or not to award costs under Rule 74: first, whether the threshold has been met by establishing that a party has acted vexatiously, abusively, disruptively or otherwise unreasonably, or, that a claim had no reasonable prospects of success. Second, if the threshold has been reached, the tribunal will go on to consider whether it is appropriate to make an order for costs. Finally, if it is appropriate to make an order for costs tribunal will go on to consider the amount. Does one of the threshold criteria apply?
24. The Respondent submits that the Claimant was acting vexatiously, abusively, disruptively or otherwise unreasonably in failing to provide information on the draft list of issues. Even accepting that the claimant received the orders, I do not consider his failure to comply fully with those directions amounted to conduct that was vexatious, abusive, disruptive or otherwise unreasonable within the meaning of Rule 74(2)(a). In reaching this conclusion, I have borne in mind that he is a litigant in person and should not be held to such standards as if he was legally represented. I have also borne in mind that English is not his first language. I accept he speaks some English but he did use the Urdu interpreter for a significant amount of time at the hearing.
25. There has been non compliance with one set of directions by the claimant. Today’s hearing has been useful in narrowing down the issues to be decided at the final hearing. The claimant confirmed that he is not pursuing claims for whistleblowing or automatic unfair dismissal. The claimant's non-compliance did

not prevent a productive hearing taking place today. The respondent was inconvenienced but not significantly prejudiced.

26. Although the claimant's non-compliance created additional work and caused some inconvenience to the respondent, it did not prevent the Tribunal from effectively dealing with the matters listed for determination at today's hearing.
27. I regard the claimant's conduct as being open to legitimate criticism, but that it falls within the category of being the conduct of litigation by an inexperienced party lacking the correct skills to progress their case. The application has not persuaded me that this case falls outside the category of poor or ill-advised conduct by an inexperienced litigant in person and into conduct that is vexatious, abusive, disruptive or otherwise unreasonable.
28. As the gateway in rule 74(2) is not met, a costs order against the claimant is not appropriate. Accordingly I have not made any costs order. Had I concluded that the Rule 74 threshold was met, I would nevertheless have declined to make a costs order. The claimant's non-compliance caused inconvenience and some additional work for the respondent, but did not prevent the Tribunal dealing effectively with the matters listed for determination. I have also taken into account that the claimant is unrepresented, that English is not his first language and that the costs application was served shortly before the hearing
29. I also note that the costs application was sent to the claimant at 8pm on the Friday evening before a hearing listed for the following Monday. The claimant was working nights and he had very little time to respond or to consider the application for costs when he was working nights and sleeping in the daytime.

Judge Lloyd

20 July 2026

Sent to the parties on:

27 August 2026

For the Tribunal Office:

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