



EMPLOYMENT TRIBUNALS

Claimant

Mr S Curran

v

Respondent

Direct Trade (Yorkshire) Ltd

Heard at: Sheffield

On:

24 October 2025

Before: Employment Judge James

Representation

For the Claimant: Did not appear and was not represented

For the Respondent: Mr A Gilchrist, solicitor

COSTS JUDGMENT

- (1) The claimant has acted unreasonably in the conduct of the proceedings and is ordered to pay to the respondent the sum of £2100 in respect of the respondents costs of preparing for and attending the hearing, and preparing the application for costs.
- (2) The sum should be paid to the respondent within 14 days of this judgment being sent to the parties.

WRITTEN REASONS

Introduction

1. The final hearing of this claim took place on 24 October 2025. The claimant did not attend the hearing. The solicitor acting for the respondent requested that the claim be dismissed. Judge James decided instead to hear the claim in the claimant's absence. Having done so, he decided to dismiss the claim of unfair dismissal. The judgment was sent to the parties on 18 February 2026.
2. Case Management orders were also made, to the effect that the respondent was to write to the tribunal on 24 October 2025, setting out briefly the legal and factual basis for the application for costs against the claimant and to provide details of the costs claimed. The claimant was to provide his written

response by 7 November 2025. The respondent duly made the request for costs on 24 October, the same day as the hearing took place.

3. No response has been received from the claimant. Although it is noted that although the orders were drawn up on 24 October 2025, they do not appear to have been sent to the parties until 18 February 2026. Employment Judge James apologises to the parties that it took so long for those to be sent to them.
4. The respondent having received no response to their application of 24 October, they wrote the tribunal again on 31 March 2026, in relation to the application, pointing out that it was nearly 6 months from the date of the application and they would be grateful for a response. That application was not referred to Employment Judge James until 1 May 2026. Again, he apologises for that delay.

The basis of the respondent's application

5. The Respondent applies for a costs order arising out of the Claimant's non-attendance at the final hearing listed on 24 October 2025. The Respondent contends that the Claimant's conduct in failing to attend, without explanation or prior notification, was unreasonable and caused unnecessary expense.
6. The respondent argues that the hearing date of 24 October 2025 had been clearly communicated to the Claimant. It was expressly identified by the Employment Judge at a previous hearing on 16 June 2025. In addition, the Respondent's representative emailed the hearing bundle to the Claimant on 21 October 2025, using an email address previously used by the Claimant, in which they expressly referred to the forthcoming hearing.
7. Despite this, the Claimant failed to attend. He did not apply for a postponement, nor did he provide any explanation either in advance of, or following, the hearing for his non-attendance. The Respondent, by contrast, attended fully prepared, represented, and with two witnesses available to give evidence.
8. As noted above, in the Claimant's absence, the Tribunal proceeded to hear the Respondent's evidence and dismissed the claim. The Respondent submits that the Claimant's non-attendance rendered its preparation for the hearing wholly wasted.
9. The legal basis for the application arises under Rules 74 to 78 of the Employment Tribunals Rules of Procedure 2024. Rule 74(2)(a) permits a costs order where a party has acted unreasonably in the bringing or conduct of proceedings. Rule 74(2)(b) also permits such an order where a claim has no reasonable prospect of success.
10. The Respondent relies on the established principle that "unreasonable conduct" is to be given its ordinary meaning, as confirmed in Ridehalgh v Horsefield [1994] Ch 205. (The tribunal notes that further, the court held that 'unreasonable' described conduct which not permit of a reasonable explanation). The respondent further relies on authority establishing that failure to attend a final hearing without explanation may amount to unreasonable conduct justifying a costs order, including Mirikwe v Wilson & Co Solicitors UKEAT/0025/11 and Garnes v London Borough of Lambeth UKEAT/1237/97.

11. The Respondent submits that the Claimant's conduct in this case was plainly unreasonable. He knowingly failed to attend a listed final hearing, gave no notice or justification, and made no attempt to engage with the Tribunal or the Respondent. This conduct led directly to wasted preparation costs and unnecessary expenditure.
12. The Respondent identifies the specific categories of wasted cost as including preparation time by its legal representative, the attendance and lost time of two witnesses, and travel and attendance costs for the hearing itself. It submits that these costs were wholly avoidable and were incurred solely as a consequence of the Claimant's default.
13. The Respondent further relies on the wider procedural history. It asserts that the Claimant had previously failed to comply with Tribunal Orders, including failing to produce a witness statement despite repeated requests and the making of an Unless Order. Although the Tribunal ultimately treated the Claimant's email and ET1 as sufficient, the Respondent contends that the Claimant's conduct throughout caused unnecessary work.
14. Notwithstanding this history, the Respondent confines its application to the costs associated with the final hearing, in the interests of proportionality. It seeks a summary assessment under Rule 76.
15. The costs claimed amount to £2,100 plus VAT (£2,520 inclusive), calculated at £350 per hour for six hours' work. This includes 1.5 hours' preparation, 2 hours' travel, 1.5 hours' attendance at the hearing, and 1 hour spent preparing the costs application. The Respondent submits that this sum is reasonable and proportionate.
16. In conclusion, the Respondent invites the Tribunal to find that the Claimant acted unreasonably within the meaning of Rule 74(2)(a), to make a costs order in the sum of £2,520 (or such other sum as it considers just), and to direct payment within 14 days.

The Law – Costs

17. Rule 73(3) The Employment Tribunal Procedure Rules 2024 provides that a costs order and preparation time order cannot both be made in favour of the same party in the proceedings.
18. Rule 74(1) provides:
 - (1) *A Tribunal may make a costs order or a preparation time order) as appropriate) on its own initiative or on the application of a party 1B, 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 or response had no reasonable prospect of success, or*

(c) a hearing has been postponed or adjourned on the application of a party made less than seven days before the date on which that hearing begins.)

19. A claim for costs over £20,000 needs to be dealt with by way of a detailed assessment, in the Employment Tribunal or the County Court.

20. Rule 76 provides that a costs order may order the paying party to pay:

(a) the receiving party a specified amount, not exceeding £20,000, in respect of the costs of the receiving party... .

21. Rule 82, headed 'Ability to pay', provides:

In deciding whether to make a costs, preparation time, or wasted costs order, and if so the amount of the 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.

22. The purpose of an award of costs is to compensate the party in whose favour the order is made and not to punish the paying party. Questions of punishment are irrelevant both to the exercise of the discretion whether to award costs under Rule 74(1) and to the nature of the order that is made (see Lodwick v Southwark London Borough Council [2004] EWCA Civ 306, [2004] IRLR 554, at para 23; and Davidson v John Calder (Publishers) Ltd and Calder Educational Trust Ltd [1985] IRLR 97, [1985] ICR 143, EAT).

23. The Court of Appeal in Yerrakalva v Barnsley Metropolitan Borough Council and ors [2012] ICR 420, CA, held that costs should be limited to those 'reasonably and necessarily incurred'.

24. If the Tribunal is satisfied that the claimant acted vexatiously or unreasonably etc, it must then consider separately whether to make an award and, if so, in what amount. At this stage:

the Tribunal must have regard to the nature, gravity and effect of the unreasonable conduct as factors relevant to the exercise of its discretion

although the respondent is not required:

to prove that specific unreasonable conduct by the [claimant] caused particular costs to be incurred". (Kapoor v Barnhill Community High School Governors (UKEAT/0352/13/RN at #15)

25. The Court of Appeal in Kovacs v Queen Mary and Westfield College and another [2002] EWCA Civ 352 held that although a tribunal may take a party's ability to pay into account, this does not mean that:

poor litigants can behave with impunity and without fearing that any significant costs order will be made against them, whereas wealthy ones must behave themselves because otherwise an order will be made.

26. As noted by the EAT in Sumukan (UK) Ltd and nor v Raghavan UKEAT 0087/09, the tribunal must state:

on what basis — and in accordance with what established principles — it is awarding any sum of costs;

on what basis it arrives at the sum; and

why costs are being awarded against the party in question.

27. The case of *Mirikwe v Wilson & Co Solicitors and others* UKEAT/0025/11 is authority for the making of a costs order in circumstances where the paying party has made no submissions as to their ability to pay costs or any appearance in the costs proceedings. The unreasonableness of a party's conduct can be taken into account in deciding whether to take ability to pay into account, and the failure to make submissions or take part is relevant conduct.
28. It has been held that VAT should not be included in a claim for costs if the receiving party is able to recover the VAT as input tax (*Raggett v John Lewis plc* [2012] IRLR 906, EAT). In this case Slade J applied the principle set out in the CPR costs practice direction (now CPR Pt 44 PD para 2.3) and held that to include VAT in such circumstances would be to offend the indemnity principle on which costs are awarded by giving the receiving party a bonus over and above compensating it for the costs incurred (at [52]). Accordingly, where the respondents were registered for VAT and were able to recover the VAT on counsel's fees and travel expenses, it was held that the VAT on those items could not be included as part of the costs which the claimant was ordered to pay.

Decision

29. The tribunal concludes that there has been unreasonable conduct of these proceedings by the claimant. Maintaining a claim all the way to a hearing and then failing to turn up for that hearing, knowing that in the absence of such indication, the respondent was bound to turn up ready to defend itself against the claim, is unreasonable, applying the ordinary meaning of that word. Put another way, the claimant has failed to put forward a reasonable explanation for his non-attendance.
30. Having decided that one of the conditions for making a costs order is made, the tribunal must then decide whether it is appropriate to make a costs order. In considering that question, any information as to the claimant's means can be taken into account. The claimant has not provided any response to the respondent's application for costs, and nor has he provided any explanation for his non-attendance at the hearing. Nor has the claimant provided any information in relation to his means. His means therefore are not taken into account.
31. The tribunal concludes that it is reasonable to make an award of costs against the claimant. If the claimant did not intend to come to the hearing to pursue his claim, he should have withdrawn the case, and notified the respondent's solicitors in good time of that fact. Due to his failure to do so, the respondent has incurred costs in relation to the hearing.
32. The tribunal concludes that the costs claims claimed are reasonable. However, bearing in mind the principle in the *Raggett* case, and assuming that VAT can be recovered by the respondent as input tax, the total costs awarded is £2100, which is payable within 14 days of this judgment being sent to the parties.

Employment Judge James
North East Region

Dated 13 May 2026

Sent to the parties on:

18 September 2026

Miss Denice Obeng

For the Tribunals Office

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