



Case No: 2502028/2024

EMPLOYMENT TRIBUNALS

Claimant: Mr J Stephenson
Respondent: J&B Recycling Ltd
Heard via: CVP
On: 22nd September 2026
Before: Employment Judge Legard (sitting alone)

Representation

Claimant: Mr Stephenson, father and Mackenzie friend
Respondent: Mr Kerfoot of Counsel

JUDGMENT

The Judgment of the Tribunal is as follows:

1. The Claimant is ordered to pay £5000 towards the Respondent's costs.

2. The date for complying with this Judgment be extended until 19th October 2026 in order to give time for the parties to agree terms of payment (rule 64 applies).

REASONS

1. Background

- 1.1 Following an in person hearing held at Teesside in January this year, I dismissed the Claimant's claims for unfair and wrongful dismissal.
- 1.2 The Respondent now seeks an order that the Claimant pays its costs although the claim is capped at £20,000 that being the summary threshold.
- 1.3 My written reasons promulgated on 25th February 2026 set out, in detail, both my findings of fact and conclusions. I do not propose to rehearse the same within the context of this Judgment in as much detail although I will briefly summarise the key points as follows:

Findings of fact

- In June 2024 the Claimant received a final written warning ('FWW') about his conduct and arose as a consequence of a the Claimant engaging in acts of what were termed 'horseplay' within the factory setting.

- During his disciplinary hearing in respect of the above, the Claimant admitted the conduct and accepted that it was ‘embarrassing’ and amounted to ‘complete stupidity’ on his part. He was asked whether he could provide an assurance that it would not happen again to which he answered:

“I understand the rules and procedures, and this is not usually me, I always put safety first...”

- The FWW was stated to remain on his file for a period of 12 months and he was warned that an immediate and sustained improvement in his compliance with standards and behaviour was required and that any further breaches would result in disciplinary action. In evidence before me, the Claimant candidly accepted that, on one view, it could be said that he was fortunate to have escaped with only a FWW. Although offered the right of appeal, the Claimant chose not to pursue the same.
- On 9th August 2024 (less than two months after having received the FWW) the baler incident took place. In broad terms the Claimant accepted that he did not speak to or attempt to contact the Shift manager either to seek authorisation to cut the chain or indeed to find out why it was there in the first place. He cut the chain and removed the padlock and set about his work. After working on the machine he failed to replace the chain and padlock.
- The following Monday, on being confronted about this, the Claimant said *‘Oh shit, I forgot... That’s me gone then.’* In his own statement taken as part of the investigation, the Claimant said:

'I hold my hands up, I forgot to reattach the key and chain.'

- An investigation, conducted by Mick Robinson, followed. He concluded his report by saying that:

'The possible consequences to this could have been catastrophic.'

- A disciplinary hearing took place on 15th August. The Claimant readily admitted not having a clue as to who had placed the padlock and chain on the machine before cutting it off or indeed why it was there (he had just 'assumed' it was a maintenance padlock). When questioned about his failure to replace the same, he said 'I've got no excuse.' When questioned about the potential consequences of his actions, he said that, whilst he did not agree that removing the padlock gave rise to a risk of death, he nevertheless accepted that it was more likely to break a person's legs.
- By letter dated 19th August, Ms White dismissed the Claimant for gross misconduct. The Claimant was offered a right of appeal and, notwithstanding the Claimant's refusal or reluctance to attend, an appeal hearing took place on 3rd September. The decision to dismiss was upheld.

Conclusions

- The Respondent held a genuine belief in misconduct; that it had reasonable grounds for sustaining that belief and that they acted reasonably within the meaning of s.98(4) of the 1996 Act in treating it as the reason for dismissal. A fair (indeed arguably overly thorough) procedure was followed at all stages, including the investigatory, disciplinary and appeal processes. The decision to dismiss fell

squarely within a *“range of reasonable responses.”*

- There was no suggestion that the FWW had been issued in bad faith or on a false factual premise. In any event the FWW was handed down for reckless and unsafe horseplay; it represented a clear breach of H&S as well as ordinary common sense; the conduct was admitted and there was no appeal. The Claimant could quite easily and reasonably have been dismissed for gross misconduct at that point.
- Turning to the index incident that gave rise to the subsequent disciplinary and dismissal. The Claimant again admitted the essential elements of the charges against him. This was an extremely serious breach - even the claimant conceded that unauthorised access could have led to leg breakage.
- The fact that C failed to discover why the padlock had been placed there in the first place is a key point. It is and was incumbent upon him, an experienced engineer, to ascertain precisely why that padlock and chain had been placed there; who had put it there and to seek express authorisation from a shift manager or above before attempting to cut it off. His actions were in blatant contradiction to the toolbox talk document that he had only read and signed in late June.
- There was no evidence, certainly none that could withstand scrutiny, of the Respondent operating a two-tier approach to H&S. The Respondent was faced with an experienced employee, on a FWW, who had, by his own admission, committed not one but two major breaches of H&S policy – there was no realistic alternative open to them other than to dismiss him.

- The investigation, disciplinary and appeal processes were all thorough, balanced and fair.

1.4 Other key elements of the litigation chronology are as follows:

- On 21st March 2025 there was a preliminary hearing held before Employment Judge Lancaster. Amongst other things, he included the following (in bold) within his written order:

“The Claimant was already on a final written warning so that any subsequent misconduct (not merely gross misconduct) put him at risk of being dismissed on notice. The Tribunal will only in exceptional circumstances seek to go behind a final written warning where as here it was not appealed.”

- On 3rd June 2025 there was a further preliminary hearing before Employment Judge Arullendran following which the unlawful deductions and H&S complaints were dismissed upon withdrawal. EJ Arullendran included the following within the written narrative of her Order:

“In terms of the unfair dismissal claim, as the claimant was already on a final written warning, it is difficult to see what alternative respondent had to the dismissal in circumstances where the claimant admitted the wrongdoing he was dismissed for.”

- On 6th June 2025 the Respondent's solicitors wrote to the claimant warning him that, in light of the above comments made by both EJs Lancaster and Arullendran, they would be seeking a costs order against him in the event that he continued to pursue his claims to a

final hearing.

- On 3rd July 2025, the complaint under s.103A was dismissed upon withdrawal.
- Further 'without prejudice' correspondence was entered into between the parties both in relation to costs and also with a view to settlement.

2. **Relevant law**

2.1 Regulation 74(2) of the 2024 Regulations provides as follows:

“74.—(2) A Tribunal must consider making a costs 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; or

(b) any claim or response or reply had no reasonable prospect of success.

...”

Caselaw

2.2 The general rule and underlying principle is that an award of costs in the Employment Tribunal is the exception rather than the rule (see *Gee v*

Shell UK Ltd [2003] IRLR 82). As it is put in the Presidential Guidance on General Case Management at para 10.8, 'Orders for costs are not the norm'. Nevertheless, the employment tribunal has a discretion to award costs if persuaded that a party has behaved unreasonably or that its claim or defence, as the case may be, has no reasonable prospect of success.

- 2.3 It may be a factor relevant to the exercise of the tribunal's discretion that the tribunal has warned a party concerned that it is at risk of a costs order or that a receiving party has put the paying party on notice that there may be an application for costs (see *Millin v Capsticks Solicitors LLP [2014] All ER (D) 12*).

Unreasonable conduct

- 2.4 When considering whether to award costs in respect of a party's conduct in bringing or pursuing a case that is subsequently held to have lacked merit, the type of conduct that will be considered unreasonable by a Tribunal will obviously depend on the facts of the individual case, and there can be no hard-and-fast principle applicable to every situation. In general, however, it would seem that the party must at least know or be taken to have known that his case is unmeritorious.
- 2.5 Even this needs to be applied with considerable caution, otherwise parties could end up being penalised for not assessing the case at the outset in the same way as a Tribunal may do following a hearing and evidence. As Sir Hugh Griffiths stated in *E T Marler v Robertson [1974] ICR 72, NIRC*:

'Ordinary experience of life frequently teaches us that which is plain for all to see once the dust of battle has subsided was far from clear to the combatants once they took up arms'.

In that case costs against the claimant were refused notwithstanding that, at the end of a nine-day hearing, he had admitted under cross-examination that the respondents had acted reasonably in dismissing him. Similarly, in *Lothian Health Board v Johnstone* [\[1981\] IRLR 321](#) the EAT (overruling an employment tribunal) held that it was a wrong exercise of discretion to award costs against the Respondents on the basis that they 'should have thrown in the towel' after the second day of a four-day hearing, as it had then become obvious that they were not going to establish their stated reason for the dismissal.

2.6 Under the old (but analogous) rules 'frivolous' conduct was interpreted narrowly, justifying an award of costs only if the party knew that his case lacked any substance, or if it was 'on the face of it so manifestly misconceived' that it could have no prospect of success at all (see *E T Marler - supra*), and, in this context, unreasonable conduct is to be construed in much the same way.

2.7 There is no general principle that an award of costs must follow when a party fails to establish a central allegation in their case – *HCA International Ltd v May-Bheemul* [\[2009\] All ER \(D\) 154 \(Jun\)](#).

2.8 In *Beynon v Scadden* [\[1999\] IRLR](#) Lindsay J stated:

"A party who, despite having had an apparently conclusive opposition to his case made plain to him, persists with the case down to the hearing

in the 'Micawberish' hope that something might turn up and yet who does not even take such steps open to him to see whether anything is likely to turn up, runs a risk, when nothing does turn up, that he will be regarded as having been at least unreasonable in his conduct of his litigation."

2.9 When making a costs order on the ground of unreasonable conduct, the discretion of the tribunal is not fettered by any requirement to link the award causally to particular costs which have been incurred as a result of specific conduct that has been identified as unreasonable (*McPherson v BNP Paribas*).

2.10. However, In *Barnsley MBC v Yerrakalva* [2012] IRLR 78, Mummery LJ stressed that *McPherson* was never intended to be interpreted as meaning either that questions of causation are to be disregarded or that tribunals must 'dissect a case in detail and compartmentalise the relevant conduct under separate headings, such as "nature" "gravity" and "effect.'" In *Yerrakalva* his Lordship stated (at para 41):

'The vital point in exercising the discretion to order costs is to look at the 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'.

2.11 A costs award of up to £20,000 can be summarily assessed by a tribunal or it can be the subject of a detailed assessment either in the county court or by a specially trained employment judge.

3. Submissions and evidence

- 3.1 Both Mr Kerfoot for the Respondent and Mr Stephenson provided oral and written submissions. They were extremely helpful. I have had my attention drawn to a number of documents (including 'without prejudice' correspondence) contained within two bundles, one from each party.
- 3.2 I have also read a witness statement and heard from the Claimant who gave brief oral evidence. He was not cross-examined. His evidence was primarily focussed on his means to pay. However he also wished to point out that one of the principal reasons for both bringing and persisting with his claims before the tribunal was in order to bring about improvements to H&S practices within the Respondent's undertaking.
- 3.3 Mr Kerfoot submitted that the claimant had acted unreasonably by bringing and continuing with his claims throughout or, in the alternative, from mid June onwards (i.e. the date that the costs warning came into effect). The claimant must have known that his remaining claims had no reasonable prospect of success because two Employment Judges had made that quite clear to him on two separate occasions. He was on a FWW; he had admitted the misconduct and there were no feasible options open to the respondent other than to dismiss him – something that he well knew or ought reasonably to have understood. Mr Kerfoot invited me to exercise my discretion in favour of an award of costs but, notwithstanding the fact that the costs bill significantly exceeded £20,000, to limit such an award to the summary 'maximum.'

- 3.4 On the issue of quantum, Mr Kerfoot was content to recalibrate the respondent's costs (in order to align the same with guideline rates and for grade redistribution reasons) but that still produced a figure in excess of the summary maximum, namely £27,400.
- 3.5 Finally Mr Kerfoot questioned the claimant's alleged impecuniosity and argued that he had deliberately understated his income/expenditure position.
- 3.6 On his part Mr Stephenson, the Claimant's father, submitted that a hearing was both necessary and proportionate in order to adjudicate the 'triable' issues of fact; issues that could only be determined on the 'balance of probability.'
- 3.7 Mr Stephenson contended that EJ Lancaster's comments were primarily focussed on the PID claim (which subsequently fell away) and that it was telling that EJ Arullendran also limited the deposit order to the same claim. That, he said, had had its desired effect.
- 3.8 The Claimant had identified serious H&S breaches at the Respondent's factory premises and there had been clear evidence of a two-tier system in play at the time of the claimant's investigation and subsequent dismissal.
- 3.9 In terms of quantum, Mr Stephenson brought my attention to the fact that, at one point close to Christmas 2025, the parties were very close to achieving a settlement and that it was unreasonable for the Respondent

not to have bridged the gap that remained but instead pursue the matter to a final hearing.

4. Conclusions

4.1 The claims for unfair and wrongful dismissal had no reasonable prospect of success. The claimant was on a FWW (which he had not appealed); the FWW had been issued for serious horseplay within a potentially dangerous factory environment; he admitted the misconduct alleged against him (namely in relation to the baler incident) and accepted that, by failing to secure the machinery, the consequences could have resulted in a fellow worker receiving serious injury. The Respondent had no option but to dismiss him and it is difficult to envisage what alternative action was open to them. Put simply, these claims were doomed to fail.

4.2 The claimant's father is CILEX qualified and represented him throughout. He is an intelligent man with a reasonable grasp of Employment Law and who also has experience of appearing before the Employment Tribunal. It ought to have been apparent to him (and by association his son) from the very beginning that these claims had dubious prospects. Both EJs Lancaster and Arullendran's comments (referred to above) will have reinforced that understanding. Giving the claimant the benefit of the doubt, I find that he acted unreasonably in persisting with his claims for unfair and wrongful dismissal from mid June 2025 onwards. His evidence before me today, namely that he wanted to highlight what he considered to be H&S shortcomings within the Respondent's factory I found to betray a fundamental misunderstanding on his part as to the purpose of Tribunal

proceedings. Tribunal proceedings are there in order for him to enforce his individual rights as a worker; they are not to be used in order to score wider, generalised, points.

- 4.3 Having decided to exercise my discretion in favour of the Respondent, I now turn my mind to quantum. The claimant is in work, earning approximately £750 per week. I recognise that he has a significant number of outgoings and expenditure and that his disposable income is therefore limited. However, that fact alone does not prevent me from making an order for costs. It is inevitable that any such order will expose the paying party to a degree of difficulty.
- 4.4 I am satisfied that the Respondent's reasonably incurred costs (calculated from mid June 2025 onwards) exceed £20,000. Indeed, I quantify them in the sum of £27,400. Taking into account the claimant's means and his ability to pay, I make an order that he pays £5000 towards the Respondent's costs.
- 4.5 Pursuant to rule 64, I will however stipulate that the date by which this Judgment must be complied with be extended until 19th October 2026 in order to give time to the parties to agree terms of payment.

Employment Judge E Legard

Date: 23rd September 2026

JUDGMENT SENT TO THE PARTIES ON

24th September 2026

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