

Case No: 2305206/2023



EMPLOYMENT TRIBUNALS

Claimant: Creative Process Digital Ltd

Respondent: Mr T Tolhurst-Cherriman

Heard at: London South (by CVP)

On: 14 September 2026

Before: Employment Judge Yardley

Representation

Claimant: Did not attend

Respondent: In person

JUDGMENT

The Claimant shall pay the Respondent a preparation time order in the sum of £574.00.

REASONS

Background

1. These proceedings arose out of the Respondent's employment with the Claimant. The Respondent presented claims against the Claimant including a claim for breach of contract arising out of the termination of his employment.

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2. The Claimant subsequently brought an Employer's Contract Claim alleging that the Respondent had breached his contract of employment and seeking damages.
3. The Respondent's claims were eventually struck out. However, the Employer's Contract Claim was not affected by that decision and remained to be determined by the Tribunal
4. On 15 May 2024, EJ Burge directed the Claimant to provide further particulars including identification of the contractual breach relied upon, the loss alleged to arise from that breach, and the evidential basis said to establish causation.
5. On 25 June 2025 the Respondent applied to strike out the Employer's Contract Claim. The application challenged, amongst other matters, the legal viability of the claim, the contractual basis upon which losses were said to be recoverable and the adequacy of the evidential foundation for the claim. The application was copied to the Claimant.
6. For reasons which remain unclear and are not explained in the Tribunal file, this strike-out application was never formally determined by any Employment Judge.
7. The Employer's Contract Claim proceeded to a final hearing before EJ Martin on 12 January 2026. The claim was dismissed. EJ Martin found that the employment relationship had been terminated by the Claimant rather than the Respondent and identified difficulties concerning the losses relied upon by the Claimant, including issues relating to causation and quantification.
8. By an application dated 9 March 2026, the Respondent applied for a preparation time order following the dismissal of the Claimant's Employer's Contract Claim. The Claimant opposed the application by written representations and did not attend the hearing. I was satisfied that the Claimant had received notice of the hearing and had been given a reasonable opportunity to make representations.

Law

9. Under Rule 74, when making a preparation time order, the Tribunal must consider whether:
 - 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, response or reply had no reasonable prospect of success.
10. A preparation time order may be made even where a claim ultimately fails, provided one of these threshold conditions is satisfied. The burden lies on the party seeking the order to establish the requirements, assessed on the balance of probabilities.

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11. Rule 77 provides that the amount of a preparation time order shall be calculated by reference to a number of hours which the Tribunal considers reasonable and proportionate, multiplied by an hourly rate.
12. In considering whether to make a preparation time award, I adopted the two-stage approach identified in **Robinson v Hall Gregory Recruitment Ltd [2014] IRLR 761**): first considering whether a Rule 74 gateway was established and secondly whether the Tribunal should exercise its discretion to make an award.
13. I also took into account the further guidance on the approach that tribunals should take when considering making a costs order per **Radia v Jefferies International Ltd UKEAT/0007/18**. In particular, I noted that the Tribunal must be careful not to be influenced by the hindsight of taking account of things that were not, and could not have reasonably been, known at the start of the litigation. However, it may have regard to any evidence or information that is available to it when it considers these questions, and which casts light on what was, or could reasonably, have been known, at the start of the litigation.
14. In **Gee v Shell UK Ltd [2002] EWCA Civ 1479**, the Court of Appeal reiterated that orders for costs in employment tribunals remain the exception, rather than the rule.

Conclusion

Threshold Test

15. In considering the threshold question, I considered the Claimant's written representations.
16. I did not accept the submission that strike out of the Respondent's original underlying claim prevents a preparation time order being made in relation to the Employer's Contract Claim. This application concerns the conduct and prospects of the Employer's Contract Claim and not the merits of the Respondent's earlier claims.
17. Nor did I accept the submission that the fact the Claimant may have incurred its own costs or losses arising from the wider dispute as being relevant. The issue before me is whether the statutory test for a preparation time order has been established in relation to the conduct of these proceedings.
18. I did, however, accept the Claimant's submission that the fact the Employer's Contract Claim ultimately failed is not, of itself, sufficient to justify a preparation time order.
19. I then considered the Respondent's oral representations. He submitted that the Employer's Contract Claim was legally and evidentially deficient, that those deficiencies had been identified during the proceedings, and that the Claimant nevertheless continued to pursue the claim to a final hearing despite it having no reasonable prospect of success. He relied upon the matters previously raised in his strike out application of June 2025.

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20. The Respondent also alleged that the Claimant's conduct of the proceedings was motivated by personal animosity and referred to what he described as intimidating conduct following the termination of his employment. However, I was not provided with evidence sufficient to make findings to that effect
21. I took account of both EJ Burge's direction of 15 May 2024 and the Respondent's subsequent strike-out application. Together, they placed the Claimant on notice of concerns regarding the legal viability and evidential foundation of its claim. I make no finding as to whether the Respondent's strike-out application would have succeeded had it been determined
22. I also took account of the judgment of EJ Martin. In particular, EJ Martin found that the employment relationship had been terminated by the Claimant rather than the Respondent and identified difficulties concerning the losses relied upon by the Claimant, including issues relating to causation and quantification.
23. Taken together, I did not find that the Employer's Contract Claim was necessarily hopeless from the outset. The Claimant was entitled to pursue a claim for breach of contract, even though the claim ultimately failed. Nor do I find that the Respondent's strike-out application would necessarily have succeeded had it been determined.
24. However, I am persuaded that by the later stages of the proceedings the Claimant had been placed on notice of serious concerns regarding the legal and evidential basis of its claim. Those concerns had been identified both in the Respondent's strike-out application and through EJ Burge's directions that the Claimant address issues of breach, loss and causation.
25. The Claimant nevertheless continued to pursue the claim to a final hearing. The fact that similar issues were subsequently identified by EJ Martin reinforces the significance of the concerns that had already been raised during the proceedings.
26. To be clear, I do not rely upon the eventual outcome of the litigation as proof that continued pursuit of the claim was unreasonable. Rather, my conclusion is based upon what the Claimant knew, or ought reasonably to have appreciated, when those concerns were drawn to its attention.
27. In circumstances where the Claimant had been placed on notice of serious concerns regarding the legal and evidential basis of its claim, had been specifically required by the Tribunal to address issues of breach, loss and causation, and nevertheless continued to pursue the claim without resolving those concerns, I find that the continued pursuit of the Employer's Contract Claim amounted to unreasonable conduct in the conduct of the proceedings within Rule 74(2)(a).
28. I am therefore satisfied that the threshold requirement for a preparation time order under Rules 73 and 74 is met.

Exercise of Discretion

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29. I then considered separately whether I should exercise my discretion to make a preparation time order. I reminded myself that costs and preparation time orders remain the exception rather than the rule in Employment Tribunal proceedings and are not awarded merely because a claim fails.
30. In this case, however, I am satisfied that the Claimant's continued pursuit of the Employer's Contract Claim after the concerns identified above had been clearly articulated caused the Respondent to incur preparation time which ought reasonably not to have been required. Having regard to all the circumstances, I consider it just to make a preparation time order.
31. I also considered whether I should take the Claimant's ability to pay into account pursuant to Rule 82. The Claimant did not attend the hearing, did not provide evidence of its financial position and did not invite the Tribunal to take its means into account. In those circumstances, and having regard to the amount sought, I did not consider it appropriate to make any adjustment on that basis.

Quantum

32. The Respondent provided an oral breakdown of the time spent dealing with the proceedings. He claimed 20 hours, although he maintained that the time actually spent exceeded that figure
33. I accept that the Respondent spent at least 20 hours dealing with matters connected with these proceedings and may well have spent longer. However, Rule 77 requires me to make my own assessment of what is reasonable and proportionate. Not all of the work undertaken or identified was properly attributable to the unreasonable conduct identified above. Some preparation would inevitably have been required in responding to the Employer's Contract Claim, even had the Claimant not continued to pursue it in the manner I have found unreasonable. In reaching my assessment, I have had regard to the issues raised by the Employer's Contract Claim, including matters of breach, loss and causation, the witness and documentary material reviewed, and the work reasonably required to prepare a response. Doing the best I can on the evidence before me, I assess the reasonable and proportionate preparation time attributable to that conduct at 14 hours.
34. The Respondent limited his application to the statutory rate of £41 per hour, notwithstanding that part of the preparation work appears to have been undertaken during periods when a higher statutory rate may have applied. In those circumstances, I consider it appropriate to apply the lower rate sought by the Respondent.
35. The preparation time order is therefore calculated as follows:
- 14 hours × £41 per hour = **£574.00**
36. The Tribunal therefore makes a preparation time order in the sum of **£574.00**,

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Employment Judge Yardley

Date: 14 September 2026

Note

Public access to employment tribunal decisions

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