Case Number: 3312385/2023

EMPLOYMENT TRIBUNALS

Claimant: **Mr T El-Tawil**

Respondents: **(1) AECOM Limited**
(2) Heathrow Airport Limited

Heard at: Watford Tribunal **On: 8,9,10,17 September 2026 and (14,15,16 September in chambers for deliberation)**

Before: **Employment Judge Cowen**
Mr D Bean
Mrs S Wellings

Representation

Claimant: Mr El- Tawil(in person) on first day, then Did Not Attend

Respondents: Ms Moss (counsel)

RESERVED JUDGMENT

Further to the oral judgment in this case, a costs application was made by the Respondents. This judgment addresses the costs application made at the end of the final hearing;

1 The Claimant shall pay the First Respondent £16,200 and the Second Respondent £12,360 in costs.

REASONS

Hearing

1. The Tribunal had notified all parties that they would give judgment in this case by CVP or in person (i.e. hybrid) on 17 September 2026. The Respondents attended by CVP, the Claimant did not attend at all.

2. The Respondents put the Claimant on notice of a costs application during the hearing of the claim (as well as having done so repeatedly during the preparation of this claim). The Tribunal were therefore satisfied that the Claimant had reasonable notice of the application being made.

3. The Respondents provided an 800 page bundle for the costs application and a chronology of events for the purposes of the costs application. The Respondents made submissions to the Tribunal.

4. The Submission made on behalf of both the Respondents was as follows:
    a. The Respondents understand that the deposit orders paid by the Claimant will now be paid out, but these do not reflect the costs incurred by the Respondents in dealing with the claims, which were ultimately found to be unmeritorious.

    b. The Respondents are aware that the limit of the Tribunal powers in respect of costs is £20,000 per receiving party, (see James v Blockbuster EAT 0601/2005), unless the matter is sent for detailed assessment. Neither Respondent wishes to go to detailed assessment and therefore accepts that even though they have incurred far in excess of the limit, they are content to be restricted to that.

    c. It is for the Tribunal to consider under r74 (2) or (3), whether;
        i. Whether rule 74 is engaged
        ii. Whether to exercise the Tribunal's discretion to make an award
        iii. Amount of costs

    d. The Respondents rely on all grounds under r74(2) and (3);
    e. Firstly, r.74 (2)(a)- The Respondent referred to the deposit orders which had been made, for each of the Respondents. Under r40(7)(a) there are automatic consequences, based on the fact that the allegations subject to the deposit orders were dismissed for reasons which are mostly the same as those given in the deposit orders. This applied in relation to the direct discrimination and harassment claims against the

First Respondent and all claims against the second Respondent. The Claimant is therefore automatically found to have acted unreasonably in pursuing these claims.

f. Furthermore, the Respondents asserted that the Claimant had been unreasonable in his conduct of the proceedings; despite being told by the Tribunal that they would proceed in his absence if he had no reason to fail to attend, the Claimant would not participate and did not produce a witness statement. The Respondent described the Claimant's actions as the epitome of unreasonable behaviour. Failing to provide a witness statement, refusing to give evidence and refusing to attend, but not withdrawing his claims, even where he has the primary burden of proof. This was said to be treating the Tribunal and the Respondent with contempt.

g. The Respondents also referred to the fact that the Tribunal's judgment referred to the fact that it was troubled by a number of points, such as 1.11 in the list of issues, where it was found that the Claimant had twisted the situation which was at his own instigation. Secondly in 1.12, where the Claimant complained of unfavourable treatment where it had been positive in the first place and also in 1.14 where the Claimant knew the allegation was untrue, but pursued it anyway.

h. The Respondents also referred to the procedural history of the case as being unreasonable; suggesting that the Claimant had deliberately increased the costs and disrupted the Tribunal proceedings; persistently refusing to comply with case management orders, causing an unless order to be made, consideration of a strike out to occur and having to be chased by both respondents in order to comply with orders.

i. Ms Moss gave examples of this behaviour such as objecting to the bundle being chronologically ordered, insisting on a large number of irrelevant documents being placed in the bundle; wanting to include unpleaded matters, or those which had been withdrawn in the list of issues and applying to reinstate claims which had been withdrawn earlier.

j. Finally Miss Moss referred to the fact that since May 2026 the Claimant made 14 applications to the Tribunal. These were for specific disclosure and other matters which were rejected by EJ Hawksworth. Although the Claimant said that these were the subject of the appeal which he relied upon in his application to stay, in fact this was not outstanding, as it had been refused. The Respondents asserted that making multiple applications so close in time to the final hearing was unreasonable conduct, particularly as many of them were

misconceived.

k. Ms Moss suggested that the Claimant's motivation in making his application to stay was to disrupt the Tribunal, something which she proposed the Claimant was apt to do and had done before, as his previous appeals had shown.

l. Ms Moss also referred to the fact that the Claimant had been given a number of warnings by both Respondents that they would pursue costs against him, most recently on 10 September 2026 and on 16 September 2026. As early as 16 January 2024, the Claimant was given the opportunity to 'drop hands' and withdraw. The second respondent warned the Claimant on 17 June 2024 about potential costs, when they offered a settlement. The Respondent also highlighted that by 21 January 2025 the Claimant had placed a value of £1.25 million on his claim, which the Respondents saw as unreasonable and once again warned the Claimant of his actions. It was also highlighted that there is an outstanding costs application by the second respondent in relation to the 14 applications made the Claimant which were heard by EJ Hawskworth. The costs associated with that hearing have been referred to EJ Hawksworth, as it would not be appropriate for this Tribunal to make a decision on that point.

m. Secondly under r74(2)(b)- that the claims had no reasonable prospect of success. The Respondents asserted that the Claimant provided no evidence to support his claims. On day 1 of the hearing he refused to take the oath to swear to his Particulars of Claim and refused to be cross examined. The Respondent asserted that where the burden of proof fell on the Claimant, he had failed to discharge that, and the Tribunal had set that out. Miss Moss also asserted that in the harassment claims, the Claimant had provided no evidence about the purpose or effect which the Claimant asserted and therefore it was clear such claims would fail. In relation to the whistleblowing claims she asserted that the Claimant had not shown that he had a belief in the information he asserted.

n. Ms Moss also asserted that all of the claims under the Equality Act were out of time against the First Respondent and all claims against the Second Respondent were out of time and that the Claimant had been aware of that for some time, but continued to pursue his claims. Furthermore, he gave no evidence as to why the claims were made after the time limit, or why the Tribunal should extend time.

o. In relation to the victimisation claims Ms Moss pointed out that there was no evidence from the Claimant which suggested that the Respondents had knowledge of his previous claims in the Tribunal.

These were therefore misconceived claims.

p. The Second Respondent also submitted that as none of the comparators relied upon were employed by them, this use of the comparators meant that the Claimant could not succeed.

q. In relation to the amount of costs – the Respondents asserted that given that rule 74 is engaged due to the deposit orders and that the Claimant has had clear warnings as well as the opportunity to have provided information with regard to his means, which he has failed to do, then the Tribunal should make an award without reference to the Claimant's financial position. Ms Moss then set out the respondent's schedules; first respondent £208,563 in total and the second respondent £72,730.

r. Ms Moss did direct the Tribunal to evidence about the Claimant's means in the bundle, such as was known at the time of the deposit order; he was not in work but received income from rental property. However, since then the Claimant has obtained a job and now has annual pay of approximately £83,200 gross plus a bonus. There is no evidence to suggest this job is not continuing and therefore the Claimant has funds to pay any costs order.

The Law

5. Rule 40
Deposit Orders
"(7) If the Tribunal following the making of a deposit order decides the specific allegation or argument against the depositor for substantially the reasons given in the deposit order—
(a) the depositor must be treated as having acted unreasonably in pursuing that specific allegation or argument for the purpose of rule 74 (when a costs order or a preparation time order may or must be made), unless the contrary is shown, and
(b) the deposit must be paid to the other party (or, if there is more than one, to such other party or parties as the Tribunal orders), otherwise the deposit must be refunded**."**

6. Rule 74
74.— When a costs order or a preparation time order may or must be made
"(1) The Tribunal may make a costs order or a preparation time order (as appropriate) on its own initiative or on the application of a party or, in respect of a costs order under rule 73(1)(b), 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, response or reply had no reasonable prospect of success, or
(c) a hearing has been postponed or adjourned on the application of a party made less than 7 days before the date on which that hearing begins.

(3) The Tribunal may also make a costs order or a preparation time order (as appropriate) on the application of a party where a party has been in breach of any order, rule or practice direction or where a hearing has been postponed or adjourned."

7. Rule 82 Employment Tribunal Rules 2024;
" In deciding whether to make a costs order, preparation time order, or wasted costs order, and if so the amount of any such 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."

8. Where a deposit order is made and the Tribunal decides against the paying party in relation to that allegation, for reasons which are substantially the same as those in the decision for the deposit order, that party is automatically treated as having acted unreasonably under Rule 74(2)(a). See rule 40(7)(a)

9. The Tribunal must bear in mind that costs are the exception and not the rule; Yerrakalva v Barnsley Metropolitan Borough Council [2012] ICR 420, CA. If a costs award is to be made, the Tribunal must ensure that costs are limited to those which are reasonably and necessarily incurred.

10. The purpose of costs is to compensate and not to punish; Lodwick v Southwark London Borough Council [2004]ICR 884, CA. The amount of costs should reflect those which are reasonably and necessarily incurred.

11. Tribunal must exercise a three-stage approach:

a. First, the Tribunal must consider whether a party's conduct meets the statutory threshold under Rule 74(2)(a) (i.e. whether the party's conduct was vexatious, abusive, disruptive or unreasonable); and

b. Second, if so, the Tribunal must ask whether it is appropriate to exercise its discretion in favour of awarding costs: Robinson v Hall Gregory Recruitment Ltd [2014] IRLR 761 at [15].

c. Third, and it is only when these stages are completed, the Tribunal considers the quantum and form of any award: Haydar v Pennine

Acute NHS Trust [2017] UKEAT/0141/17 at [25].

12. The Tribunal has a wide discretion to make findings of unreasonable conduct. Every aspect of proceedings is covered, from the inception of the claim to judgment. This is a question of fact for the Tribunal having regard to "the nature, gravity and effect of the unreasonable conduct": McPherson v BNP Paribas (London Branch) [2004] ICR 1398 at [40].

Decision

13. The Tribunal were satisfied that the Claimant lost his deposit in relation to his claims against both the First and Second Respondent and that the reasons why he lost were, at least in part, substantially the same as the reasons the deposit orders were made.

14. In particular the Tribunal noted that in relation to the First Respondent's deposit the Tribunal said "the claims are mere bare assertions without any factual basis and on the face of it would not be sufficient to shift the burden of proof to the first respondent for any explanation…… Further, the actual comparators relied upon by the claimant appear to have materially different circumstances to the claimant".

15. In relation to the Second Respondent, the Judge stated that " the Claimant has not provided a factual basis for his assertion that the second respondent had any involvement or participation in discussions and decisions about his role……. " he has struggled to articulate in the course of lengthy discussions about the issues in the claim any factual basis for saying that the treatment he complains about was because of race…. There will be a further issue in respect of the time limit, since the claimant had stopped working on the second respondent's project more than three months before he started early conciliation and brought his claim".

b) No reasonable prospect of success 74(2)(b)

16. The Tribunal also considered that the Claimant's behaviour by failing to provide a witness statement and failing to give evidence, meant that he had no reasonable prospect of success. The burden of proof, which is initially on him in the Equality Act claims, to show facts from which we could infer that discrimination had occurred, had not been met. In the whistleblowing claims, he also failed to discharge his burden of proof and in terms of harassment, he didn't give any evidence about purpose or effect of the actions of the Respondents.

17. The Tribunal concluded that the Claimant first failed to exchange witness statements on 29 May 2026 at a time when he was advised by solicitors and must have therefore known that the burden of proof would be on him was also

an unreasonable act in the course of litigation.

18. The Tribunal also noted that on the first day of the hearing, the Claimant refused to swear to his Consolidated Particulars of Claim (CPOC) and refused to stay and pursue his claims. This also meant that his prospects of success fell significantly, as he couldn't discharge his own burden of proof on any of his claims. This was an unreasonable act, as the Claimant had brought claims to the Tribunal, who were quorate and ready to hear the claims, but the Claimant decided not to participate in the hearing, but to refuse to withdraw his claims.

19. Furthermore, the Tribunal noted that as all the Equality Act claims were out of time against both Respondents and the Claimant knew he was not arguing that there was a continuing act, he knew that pursuing the claims was unreasonable. The Tribunal were satisfied that the Claimant knew what time limits were, due to his previous experience in the Tribunal and he did not give evidence about any just and equitable reasons to extend time.

20. The Tribunal also considered that the Claimant had ignored these jurisdictional points which were fundamental to the success of the claim. The Tribunal were satisfied that it was clear that the Claimant had no reasonable prospect towards the discrimination claims from the outset.

21. Furthermore, it was made clear in the deposit orders that this was the position, but still the Claimant pursued his claims.

22. In respect of the victimisation claims against the Second Respondent only, these were only based on the protected act of bringing previous Tribunal claims, but the Claimant has never asserted that the Second Respondent had knowledge of them and hence these claims were never likely to have any prospect of success.

74(3) Breach of Case Management Order

23. The Tribunal also accepted that the Claimant had clearly breached a number of orders, had not engaged co-operatively with either of the Respondents and had had legal representation and advice at the time.

24. In particular the Claimant had failed to provide particulars – resulting in an Unless Order and failed to provide witness statements – leaving the Respondent and the Tribunal in the dark as to basis for his claims.

25. The Tribunal noted rule3(4)(b) – parties must co-operate with each other and the Tribunal and considered that the Claimant had failed to do so on a number of occasions, rather wanting to control the manner in which the proceedings are progressed and where this has not been to his liking by withdrawing his

participation.

26. Examples of this behaviour included, in relation to the bundle by pre – objecting to the use of chronological order; wanting a large number of documents in the bundle which were irrelevant and refusing to agree a list of issues which they had been ordered to do by the Judge.

27. The Tribunal concluded that given the extent of the actions of the Claimant both at the final hearing and also throughout the proceedings, it was very clear that he had acted unreasonably on a number of occasions in different ways. The Tribunal were therefore satisfied that rule74 engaged, not merely due to the loss of deposits, but due to unreasonable conduct and breaches of orders.

Step 2

28. The Tribunal then considered whether it should apply its discretion to make a costs order.

29. The Tribunal reminded itself that costs orders are the exception rather than the rule and that they are not punitive, but are there to reimburse the receiving party for costs incurred as a result of the actions of the paying party.

30. The Tribunal noted that the Respondent had both given the Claimant multiple costs warnings and therefore, the Claimant was reasonably aware that his actions risked an order being made.

31. Furthermore, the Tribunal noted that the deposit order made it clear to the Claimant that he needed to consider rationally whether to continue with his claims and that there were significant risks associated with doing so.

32. The Tribunal also took into account that the sheer number of preliminary hearings showed that the Claimant was not providing a clear case. These meant that the Respondent had been put to additional work to respond to the Claimant's unreasonable behaviour over matters such as the bundle and the list of issues and that they have had to make applications where the Clamant has not complied with orders, or not co-operated.

33. The Tribunal also considered whether the Claimant had the ability to pay. They were told that the Claimant was in work and earning a substantial salary, and that he had a further source of income in rental property. Conversely, there was nothing from the Claimant to say that he would not be able to meet a costs order, or that it would have a detrimental impact on him or his family.

34. The Tribunal took into account all these points and weighed up the balance of prejudice in making or not making an order. The Tribunal also took into account that impact the Claimant's actions had had on the Respondent and

the fact that the Claimant had been aware of the possibility of a costs order. The Tribunal concluded that it was appropriate to exercise its discretion to make an award of costs.

35. **Step 3**
The Tribunal considered the Schedules of Costs provided by the Respondents. It noted that the First Respondent has borne the greatest cost. The Tribunal considered that the actions of the Claimant had led to the solicitors having to write to the Claimant more frequently, as well as write to the Tribunal more frequently. The Tribunal also considered that at least one extra preliminary hearing had taken place as a result of the Claimant's unreasonable actions and that counsel had also had to be instructed for that hearing.

36. The Tribunal considered the extent of the First Respondent's schedule and taking a part of the costs set out above, the Tribunal concluded that an amount of £13,500 plus VAT was representative of the amount of additional cost incurred due to the Claimant's actions. A total amount of **£16,200** was awarded to the First Respondent.

37. In relation to the Second Respondent, the Tribunal considered that the actions of the Claimant had led to further correspondence with the Claimant and the Tribunal and the attendance at at least one further preliminary hearing, including the cost of counsel. The Tribunal therefore took a proportion of these costs in the schedule and concluded that a sum of £10,300 plus VAT, a total of **£12,360** was an appropriate proportion of the costs incurred.

38. The total award of costs to be paid by the Claimant is therefore £28,560, but as this is to be paid to two different receiving parties, it is within the limit in rule 76 which says that the receiving party costs must not exceed £20,000. The Tribunal clearly understood that not to mean that the Claimant cannot be asked to pay more than £20,000.

Approved by

Employment Judge Cowen

29 September 2026

JUDGMENT SENT TO THE PARTIES ON
7 October 2026

FOR THE TRIBUNAL OFFICE