

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002296/2025 Hearing in Chambers

Employment Judge: M A Macleod

N Moore	**Claimant** **Per Written Submissions**
Peninsula Business Services Limited	**Respondent** **Per Written Submissions**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's application for a preparation time order is refused.

REASONS

1. The Tribunal issued a Judgment dated 8 May 2026 in which claimant's claim that he had been wrongfully dismissed was upheld, and an award of £2,759.24 was made to the claimant.

2. Following that Judgment, the claimant submitted an application dated 8 May 2026 in which he wished to claim against the respondent for costs incurred on a number of grounds:

    a. That it was vexatious and unreasonable for the respondent to make an unjustified threat of costs to him, by email dated 24 December 2025;

b. That the respondent had no reasonable prospect of defending the claim against them due to lack of evidence; and

c. That the claimant gave notice to the respondent on 26 December 2025 of his intention to seek costs against them, which was ignored.

3. He asserted that his costs incurred amounted to 60 hours at £80 per hour, amounting to £4,800.

4. The respondent opposed the application by email dated 15 May 2026.

5. The claimant then clarified the sum which he was seeking, by email dated 26 May 2026, claiming 78 hours at £46 per hour, totalling £3,588.

6. Both parties confirmed that they were content for the Tribunal to deal with the matter by way of written submissions alone.

The Relevant Law

7. The Employment Tribunals Rules of Procedure 2024 set out the basis upon which the Tribunal may make an Order in respect of expenses or preparation time. In this case, the claimant appears to be seeking a preparation time order, but it is important to note the way in which the Rules of Procedure distinguish between the two, in Rule 73:

(1) "A costs order is an order that the paying party make a payment to –

a) the receiving party in respect of the costs that the receiving party has incurred while represented by a legal representative or a lay representative; or

b) another party or witness in respect of expenses incurred, or to be incurred, for the purpose of, or in connection with, an individual's attendance as a witness at a hearing.

(2) A preparation time order is an order that the paying party make a payment to the receiving party in respect of the receiving party's preparation time while not represented by a legal representative."

8. Rule 74 sets out the basis upon which a preparation time order may be made, namely on its own initiative or on the application of a party. In this case, the appropriate Rule is 74(2):

"The Tribunal must consider making 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."

9. As to the amount of a preparation time order, Rule 77 provides that the Tribunal must decide the number of hours in respect of which an order should be made, on the basis of information provided by the receiving party on the preparation time spent and the Tribunal's own assessment of what it considers to be a reasonable and proportionate amount of time spent on such preparatory work, with reference to such matters as the complexity of the proceedings, the number of witnesses and documentation required. The hourly rate is £44 and increases each year by £1.

10. While this is not a case in which strike-out is sought by either party, the following authorities are helpful in their definitions of the meaning of "unreasonable" and "vexatious".

11. In **Blockbuster Entertainment Ltd v James 2006 IRLR 630 CA**, the Court of Appeal found that for a Tribunal to strike out a claim based on unreasonable conduct, it has to be satisfied that the conduct involved deliberate and persistent disregard of required procedural steps or has made a fair trial impossible; and in either case, striking out must be a proportionate response.

12. The court went on to say (paragraph 21): *"The particular question in a case such as the present is whether there is a less drastic means to the end for which the strike-out power exists. The answer has to take into account the fact – if it is a fact – that the tribunal is ready to try the claims; or – as the case may be – that there is still time in which orderly preparation can be made. It must not, of course, ignore either the duration or the character of the unreasonable conduct without which the question of proportionality would not have arisen; but it must even so keep in mind the purpose for which it and its procedures exist."*

13. The case of **Faron Fariba v Pfizer Limited & Others UKEAT/0605/10/CEA** was a case in which the EAT found that an Employment Judge was entitled to strike out claims by a claimant who had demonstrated by her disregard for Tribunal orders and the allegations made in correspondence against the respondent, their solicitors and the Tribunal that she was incapable of bringing her complaints to a fair and orderly trial.

14. In reviewing the claimant's conduct, Mr Justice Underhill noted: *"Dr Fariba said at this hearing that the Tribunal was being distracted from dealing with*

her employment claim. I entirely agree with that statement, but in my judgment it is Dr Fariba who has not been focussing upon the specific legal claims that she wishes to have the Tribunal determine, but has consistently sought to divert attention from them by raising peripheral issues and making extensive and excessive allegations."

15. At a later stage in the judgment, Mr Justice Underhill said: *"This is not… a case of the (not uncommon) kind where a litigant in person fails to meet deadlines and/or behaves unreasonably or offensively but is nevertheless doing his or misguided best to comply with the directions set by the tribunal in order to get to trial. Instead, the scatter of allegations of misconduct, the applications for a stay, the pursuit of other proceedings, the threats of resort to criminal or regulatory sanctions, clearly indicated that the Appellant's focus was entirely elsewhere and that if the case remained live she would, if I may use my own language, continue to thrash around indefinitely. That is why, and the sense in which, the Judge concluded that a fair trial was impossible."*

16. In **Beat v Devon County Council and anor EAT 0534/05**, the EAT held that an Employment Tribunal had erred by jumping from a finding that a party had made unreasonable and misconceived claims to an award of costs against that party. The Tribunal, having made such findings, should have stood back and looked at all of the factors to be taken into account when assessing the appropriate level of costs. This involved balancing the amount of the costs incurred by the unreasonableness of the conduct or the misconceived part of the claim (or, in this case, the response), and by taking into account the need for the receiving party to be compensated in respect of those costs.

Discussion and Decision

17. The basis of the claimant's application is set out in his email of 8 May 2026.

18. Firstly, he complains that the respondent acted vexatiously and unreasonably by sending him "an unjustified threat of costs" on 24 December 2025.

19. The terms of the letter by the respondent's agent on 24 December 2025 expressed the view that the claimant's claims of sex discrimination, sexual orientation discrimination, breach of contract and wrongful dismissal had no reasonable prospects of success, were vexatious and ill considered and that as a result, they were putting the claimant on notice that they intended to make an application for costs against the claimant.

20. The letter went on to specify the particular issues which the respondent considered they had identified with the claimant's claims. In doing so, they

continued to assert that the claimant was dismissed for gross misconduct, fairly, following a disciplinary hearing. They also criticised the lack of any link between the claimant's sex or sexual orientation and the claimant's dismissal or any other detrimental treatment alleged by him. The letter concluded with a section headed "Costs warning".

21. Clearly, the claimant's argument is that by threatening him with an application for costs (or, more properly in the Scottish Tribunal, expenses), the respondent acted in an unreasonable manner, and vexatiously.

22. In my judgment, the claimant's argument is not to be sustained. The letter sent by the respondent's representative on 24 December 2025 represents a familiar approach taken by respondents seeking to dissuade claimants from continuing with legal action. At that point, the claimant was making four claims: sex discrimination, sexual orientation discrimination, breach of contract and wrongful dismissal. The claimant subsequently withdrew the discrimination claims, and did not succeed in his breach of contract complaint. In one sense, the respondent's approach may be said to have succeeded.

23. It does not appear to me that this letter represents unreasonable conduct on the part of the respondent. It is a tactical device intended to obtain a positive outcome in the proceedings. There is nothing in the letter which is dishonest, on the face of it, and it is clear that the respondent has not sought to make application for expenses at any stage thereafter.

24. As to whether it amounted to vexatious conduct, which may be defined as conduct designed to harass, annoy or cause unnecessary expense to the opposing party, I do not consider that this letter met this test either. The respondent did succeed in defeating the claimant's breach of contract claim, and, while it is impossible to conclude that the claimant withdrew his discrimination claims because of the warning, he did so after the letter was received by him.

25. In my judgment, the letter was not designed to harass or annoy the claimant, but to seek to persuade him to give up part or all of his claim.

26. Accordingly, I am not prepared to find that a costs warning letter amounted to unreasonable or vexatious conduct by the respondent in this case.

27. Secondly, the claimant argues that the respondent had no reasonable prospect of defending the claim against them due to their lack of evidence.

28. The question before the Tribunal was twofold: whether the claimant was wrongfully dismissed, in that he was dismissed without notice for gross misconduct, and whether the claimant was subjected to a breach of contract, on a number of grounds.

29. The breach of contract claim was dismissed in the Tribunal's Judgment (paragraphs 64ff refer), based on the evidence which was led by the parties and which persuaded me that there was no such breach of contract. On this claim, it cannot be said that the respondent had no reasonable prospect of defending the claim against them due to lack of evidence, since they did so on the basis of evidence.

30. It should also be said that any criticism of a lack of evidence led by the respondent cannot apply to the discrimination claims, which were withdrawn prior to the Hearing.

31. The only claim which succeeded was the wrongful dismissal claim. The question in this regard is whether or not the respondent had no reasonable prospect of defending themselves against this claim due to a lack of evidence.

32. In my judgment, the respondent did produce evidence in support of its dismissal, making reference to the information which they had before them from the Spanish police and from an email from Mr Girdwood, the person who made the complaint against the claimant in the first instance.

33. While I did not accept that evidence as sufficient to support the respondent's contention that the claimant should be dismissed for gross misconduct, that was because the Tribunal had to determine whether, on the evidence before me, the claimant had committed gross misconduct on the balance of probabilities. I found that they did not, but it is plain that they had evidence before them on which they concluded that the claimant had acted in a manner which amounted to gross misconduct.

34. I have therefore concluded that while the respondent's defence was unsuccessful before me, that does not meant that they had no reasonable prospect of sustaining it before the Tribunal and it was important therefore to allow the matter to be dealt with on the evidence.

35. In any event, the respondent succeeded in defeating the breach of contract claim which was presented along with the wrongful dismissal claim, and therefore the picture is slightly more complicated than the claimant's application might suggest.

36. It is therefore my decision that the respondent cannot be said to have had no reasonable prospect of success in defending the claims, partly because they succeeded in defending one of the claims, and did present evidence in support of their defence of the other. That the Tribunal rejected the basis of their defence does not mean that it was doomed to fail, in my view.

37. Even if I were to find that the claimant's claims that the respondent's defence of the claims was unreasonable, vexatious and had no reasonable

prospect of success, I am not persuaded that it would be appropriate or in the interests of justice to award any expenses to the claimant under a preparation time order. The respondent presented their case concisely and with the benefit of experienced legal representation (counsel was instructed on their behalf and appeared at the Hearing), and did not seek to extend the Hearing unnecessarily, as a result of which it concluded within one day rather than the scheduled 2. They argued their case ("valiantly" as I described it at one point) but unsuccessfully. Nonetheless, expenses are not awarded automatically in the Employment Tribunal, and do not follow success in a claim.

38. Accordingly, it is my decision that the application made by the claimant for a preparation time order is refused.

Date sent to parties **23 September 2026**