

Costs award was justifiable despite party's inability to pay

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Tribunals are able to make costs awards against parties who are unable to pay at that time, so long as the tribunal

considers that the party will be able to pay at some point in the future.

Mrs Chadburn brought an unfair dismissal claim and several race discrimination claims against her employer, an NHS Trust. The tribunal held that, whilst Mrs Chadburn's unfair dismissal claim was tenable, she had fabricated the race discrimination allegations. The tribunal found this to be unreasonable conduct and, accordingly, made a costs award of £10,000. Evidence was presented to the tribunal to the effect that Mrs Chadburn could not afford to pay as a result of debts of £600. Nonetheless, the tribunal found that as Mrs Chadburn is 39 years old, her finances are likely to improve over the many years' work she has ahead of her.

Mrs Chadburn appealed against the costs award on grounds that her debts actually amounted to £4,000 rather than the £600 taken into account by the tribunal.

The EAT upheld the costs award, finding that affordability is only one consideration as to whether such an award should be made. When affordability is considered, the tribunal can do so using a broad-brush approach, and taking into account future financial earning capacity, rather than undertaking a precise assessment of a party's current finances.

Chadburn v Doncaster & Bassetlaw Hospital NHS Foundation Trust and anor UKEAT/0259/14

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