



# EMPLOYMENT TRIBUNALS

**Claimant**  
Mr K Locke

**Respondent**  
Global Business Sales Ltd t/a Flawless (R1)  
Ms Pauling Bradley (R2)

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

MADE AT NORTH SHIELDS  
EMPLOYMENT JUDGE GARNON

On 23 January 2019

### JUDGMENT

The claim is struck out in whole

### REASONS

1. Rule 2 of the Employment Tribunal Rules of Procedure 2013 ( the Rules) provides their overriding objective is to enable Tribunals to deal with **cases** fairly and justly which includes, in so far as practicable (a) ensuring the parties are on an equal footing (b) avoiding delay and (c) saving expense. Parties and representatives must assist the Tribunal to further the overriding objective and in particular co-operate generally with each other and with the Tribunal.

2. My reason for emboldening the word “ cases” is that it is not only this case the Tribunal has to deal with. The concept of ensuring just handling of cases is not confined to the case in question. Other litigant’s case must not be disrupted.

3. Rule 37 includes

*(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim .. on any of the following grounds—  
(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant .. has been.., unreasonable ...;*

*(c) for non-compliance with any of these Rules or with an order of the Tribunal;*

*(d) that it has not been actively pursued*

*(2) A claim ... may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*

4. Bolch-v-Chipman.2004 IRLR 140 held strike out should only be ordered where a fair trial of the action is no longer possible. The Court of Appeal appeared to agree in

Blockbuster Entertainment v James, 2006 IRLR 630. In Essombe-v-Nando's Chickenland a stricter line was taken where there was persistent failure without reasonable cause to comply with Orders. In Essombe Judge Clark said; *"We also accept the public policy argument ... Tribunal orders are there to be obeyed; otherwise cases cannot be properly case-managed and fairness achieved between the parties"*. That was approved by the Court of Appeal in Governors of St Albans Girls School-v-Neary 2010 ICR 473..

5. Article 6 of the European Convention on Human Rights provides everyone is entitled to a fair and public hearing **within a reasonable time**. In Riley v The Crown Prosecution Service 2013 IRLR 966 the Court of Appeal emphasised that is an entitlement of **both parties** to litigation. It is also an entitlement of other litigants not to be compelled to wait for justice more than a reasonable time. The claimant in that case was not deliberately in breach of orders. A four week hearing was scheduled to begin in May 2011 but she asked for it to be postponed on grounds she was mentally and physically unfit to attend. Having considered medical evidence an Employment Judge struck out the claims That was upheld by the Court of Appeal. Lord Justice Longmore said : *"It would in my Judgment be wrong to expect tribunals to adjourn heavy cases which are fixed for a substantial amount of court time many months before they are due to start merely in the hope that a claimant's medical condition will improve. If doctors cannot give any realistic prognosis of sufficient improvement within a reasonable time and the case itself deals with matters that are already in the distant past striking out must be an option available to a tribunal."*

6. This claimant says in the claim form he has mental health problems. In the Court of Appeal recently in J-v-K Underhill LJ, although it was not strictly necessary decide the case, considered whether an extension of time should have been granted to a claimant as a reasonable accommodation for his mental ill-health. He said the starting point should be to establish, preferably by way of medical evidence, whether the claimant was indeed suffering from mental ill-health at the relevant time. If he was , the next question is whether the condition in question explains or excuses the failure to appeal in time. If the failure to institute the appeal in time was indeed the result (wholly or in substantial part) of the appellant's mental ill-health, justice would usually (but not always) require the grant of an extension.

7. This claim was presented on 16 August 2018 and served on 19 September . A response was due by 17 October and arrived. It asked, understandably for more clarity of the claims. A preliminary hearing was conducted by Employment Judge Buchanan on 14 November 2018. He identified the claims and but could not identify the issues until the claimant complied with detailed orders he made and fully explained to him. The information was to be provided by 21 December 2018 and a public preliminary hearing was listed for 30 January 2019 .

8. On 3 January the respondent asked for a strike out because the claimant had not complied. **This was by email copied to the claimant.** The file was referred to me on

11 January and I believed strike out was premature. Accordingly I issued a strike out warning which was sent on 12 January saying if no response was received by 21 January the claim would be struck out for failure to comply with orders and/or actively pursue the case. No response was received. The claimant has not contacted the Tribunal to say why he cannot comply or asked for more time to do so. In short, since Employment Judge Buchanan's hearing he has done nothing and there is no sign of him doing so. I find this is an exceptional case warranting a strike out in whole.

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**TM Garnon Employment Judge**  
**Date signed 23 January 2019**