



Case Numbers: 3300059/2010  
2204878/2010

# EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

and

Respondent

Mr A A Kiani

Secretary of State for the Home Office

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central

ON: 29 October 2019

BEFORE: Employment Judge A M Snelson (in chambers)

On reading the documents on the Tribunal file, the Tribunal adjudges that the proceedings be struck out on the ground that it has not been actively pursued.

### REASONS

1. By these consolidated proceedings presented in December 2009 and October 2010 the Claimant brought a number of claims, the most important of which were for discrimination on grounds of race and religion and unfair dismissal. There was also a disability discrimination claim, which was withdrawn in January 2013.
2. The case has at all relevant times fallen within the scope of the national security provisions of the Employment Tribunals Rules of Procedure (now r94 of the 2013 Rules).
3. An issue arose in 2010 as to whether operation of the national security provisions denied the Claimant his right to a fair trial. That issue was decided against him by the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal, the latter giving judgment on 21 July 2015. The Claimant had the benefit of expert legal representation at those hearings.
4. On 5 May 2016 the Supreme Court refused the Claimant's application for permission to challenge the decision of the Court of Appeal. Not long afterwards, the Claimant's legal representatives ceased to act for him.

5. On 12 December 2016 the Respondent's representative applied for the proceedings to be struck out on the ground that they were not being actively pursued. The Claimant strongly resisted the application in a letter sent to the Tribunal two days later.
6. A case management hearing was held on 20 October 2017, before Employment Judge Hodgson. The Claimant did not attend.
7. By letters of 23 November 2017 and 20 December 2017 the Respondents' solicitor renewed the application for striking-out, observing that the Claimant had not responded to her letters and had not attended the October hearing.
8. Unfortunately, it seems that the Tribunal file was then archived or at least overlooked. I apologise to the parties on behalf of the Tribunal staff for this error.
9. As a consequence of a reference to it at the hearing of another case in May 2019, I asked to have the file produced. This resulted in renewed correspondence. Despite being prompted and made aware that silence might result in the claim being struck out, the Claimant did not respond. Chasing emails were sent on 21 August and 24 September 2019, the latter warning explicitly of the risk of a striking-out order being made. Accordingly, on my instructions, a further email was sent to the Claimant on 1 October advising that I was considering striking out the claim on the ground that it was not being actively pursued and requiring a response within seven days. By an email of 4 October the Claimant finally responded, in these terms:

**... I have been waiting for justice since 2009. If the honourable judge wants to strike off this case that is his discretion but I did try my best to get justice and failed.**

**I do not have money to spend as it has been over 10 years and I do not see getting justice.**

**I leave it to the honourable judges to decide as in my opinion justice delayed is justice denied.**
10. By the 2013 Rules of Procedure, r37 the Tribunal has power to strike out a claim on a range of grounds, including where it has not been actively pursued. The discretion<sup>1</sup> is wide but the higher courts have cautioned against use of the power, particularly in discrimination cases, except in the clearest of circumstances.
11. I am in no doubt that this case falls into the small category of discrimination dispute in which it is proper and just to make a striking-out order. I have several reasons. In the first place, it is plain and obvious that the language of rule 37 is met: the Claimant has repeatedly failed to live up to his responsibility to prosecute his claim. The very brief narrative which I have set out is sufficient to make good that finding. Secondly, the history causes

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<sup>1</sup> To be exercised in accordance with the 'overriding objective' of dealing with cases justly (see r2).

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me to think it highly likely that if an attempt were made by the Tribunal to inject new life in the case, the Claimant would not respond positively. Thirdly, the terms of his email of 4 October only serve to deepen my pessimism: it is not easy to extract from it any hope that he might change his approach. Rather, he gives the impression of a litigant who has given up. Fourthly, I must have regard to the interests of the flesh and blood individuals who face serious allegations of discrimination. It is high time that their exposure was brought to an end. Fifthly and more generally, the delay in this case is such that it is unlikely that a just hearing could be held in any event. Sixthly, the public interest in saving public resources, including the cost of representation on the Respondents' side and the hard-pressed Employment Tribunal service, argues strongly against prolonging this litigation any further.

EMPLOYMENT JUDGE Snelson  
29/10/2019

**Judgment sent to the parties on: 30/10/2019**

**For Office of the Tribunals**