



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Stimpson

**Respondent:** Blue Bay Building Products Ltd

**Heard at:** Cardiff (in public, by video) **On:** 26 and 27 April 2021

**Before:** Employment Judge C H O'Rourke  
Mr M Pearson  
Ms J Kieley

## Appearances

For the Claimant: In person

For the Respondent: Mr McTaggart – solicitor

## JUDGMENT

Subject to Rule 37(1) of the Employment Tribunal's Rules of Procedure, the Claimant's claim of disability discrimination is struck out.

## REASONS

### Background

1. The Tribunal struck out the Claimant's claim, at the outset of the second day of hearing of this matter.
2. This is the second such substantive hearing in this case, the first being on 2 February 2021. That hearing was adjourned, part-heard, due to the Claimant's inability to access the document bundle and his stated problems with his internet connection.
3. The re-convened hearing commenced yesterday and the Tribunal heard evidence from the Claimant and from the first Respondent witness (and part of the Respondent's second witness' evidence). It was clear to the Tribunal that the Claimant found the process difficult, showing impatience at being cross-examined and a desire to short-circuit the process. As stated, the Claimant's claim was for disability discrimination, (s.15 Equality Act 2010 – discrimination arising from disability), following his dismissal by the Claimant about fourteen months ago. The Claimant had been diagnosed with cancer. The principal

issue in the case was as to whether or not the Respondent knew, or could reasonably be expected to know that the Claimant had cancer.

4. When it came time for him to cross-examine the Respondent's witnesses, it was clear that either he was unprepared to do so, or, if prepared, was not willing or able to see the process through. He seemed to wish to get the matter over with, as quickly as possible, having to be reminded several times by the Tribunal to slow down his questioning, both to allow him to consider the answers given by the witness and the Tribunal to absorb the evidence and take notes.
5. He had very few questions for the first witness (the person who had decided to dismiss him) and after only a dozen or so questions to the second witness (his line manager and a person the Claimant asserted was well aware of his disability), he said he had no further questions, despite, by that point, having not touched on that witness' state of knowledge as to his cancer diagnosis. He was assured that he was under no time pressure and that if necessary that witness' evidence could continue the next day. The Tribunal ordered a ten-minute break for him to reconsider his decision to ask no more questions, but the Claimant did not re-join the Hearing after that break and despite phone calls and an email from the Tribunal, did not respond further. The Claimant having made no further contact, the hearing was adjourned, at 16.30, to the next day, to continue the second witness' evidence and the Claimant was informed of that decision by email.
6. At 09:18 today, the Claimant emailed the Tribunal (and which email has subsequently been copied to the Respondent's solicitor), referring to the pressures he has been under in bringing this claim and in particular in conducting this Hearing. He said that the first day of the Hearing had '*taken a massive toll on me and my mental health, anxiety and has contributed to my depression*' and the preparation for it had affected his sleep. He went on to say that he is '*depressed and I can't stop myself bursting into tears*' and he felt that '*this tribunal has taken over my life and my cancer diagnosis, where I should be concentrating on my cancer ...*'. He stated that he was '*in no fit state to join the hearing today and if the judge feels that he has to dismiss the case, then I understand.*'
7. Accordingly, once the Hearing commenced, the Tribunal notified the Respondent of this development and that it was considering striking out the claim. On the Respondent's behalf, Mr McTaggart confirmed that it had no intention, in response, of making any applications, to include one for costs.

### Conclusion

8. Accordingly, the Tribunal decided to strike out the claim, for the following reasons:
  - a. That it was not being actively pursued (Rule 37(1)(d)).
  - b. That it is no longer possible to have a fair hearing of the claim. It was clear to the Tribunal that due to his emotional state, the Claimant was

unable to conduct effective questioning of the Respondent's witnesses, or to take direction from the Tribunal. There is no indication that that situation is likely to change within any reasonable timeframe.

- c. It is, therefore, in the interests of justice that the claim be brought to an end. We note, in this respect that this is the second substantive attempted hearing of this matter and also that the 'interests of justice' apply to both parties, not just the Claimant. The Respondent has been waiting over ten months now to resolve this matter, having attended a case management hearing and two substantive hearings, incurring costs throughout and is entitled, therefore, to finality in this litigation.
- d. Finally, in considering the Tribunal's 'Overriding Objective' (Rule 2), to deal with cases fairly and justly, further consideration of this claim would be disproportionate, impose further delay (when the Claimant has had two opportunities now for 'proper consideration' of the issues) and incur further expense, both to the Tribunal and the Respondent.

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Employment Judge O'Rourke

Date: 27 April 2021

SENT TO THE PARTIES ON 28 April 2021

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FOR EMPLOYMENT TRIBUNALS Mr N Roche