



EMPLOYMENT TRIBUNALS  
London Central Region

Claimant: Mr W Davey

Respondent: Harrods Ltd

JUDGMENT

1. The claims are all struck out.
2. The trial on 30/9/21 and 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> October 2021 is cancelled.

REASONS

1. On 30/4/21 I held a long OPH by video in which following a history of failure by the Claimant to comply with Tribunal directions, which included a failure by the Claimant to serve a proper schedule of loss by 29/1/2021, I declined to strike out the claims forthwith (as had been applied for by the Respondent,) and decided to give the Claimant one last chance to comply failing which I would strike out the claims.
2. The Claimant told me during that hearing that he had been suffering from depression and anxiety, but was on the mend and had been feeling better in the run up to 30/4/21. His son who was supporting him was also a participant at the hearing.
3. In the light of these issues and following a detailed discussion with the Claimant in which I explained to him very clearly in layman's terms what was required by way of a Schedule of Loss, I asked the Claimant whether it would be possible for him to comply with a final deadline of 5pm on 7/5/21 for the service of his Schedule of Loss. The Claimant, with his son's support, assured me that this would be easily attainable by him.
4. I then warned the Claimant that, given the history of significant previous delay and non-compliance by him, (in relation to not only the Schedule of Loss but also to other directions such as those for disclosure and the list of issues) that I would give him a final opportunity to comply, failing which I would certainly strike out the claims as a whole. The Claimant said he understood this clearly and would ensure that he complied on time.
5. I then made an unless order in the following terms, and emailed it directly to the parties the same day (30/4/21):

*"By 5pm on 7/5/21 the Claimant must serve by email on the Respondent (a) a Schedule of Loss setting out the money he is claiming in these proceedings and how it calculated to date .....*"

*If the Claimant does not comply with the previous paragraphs of this Order in full, his claims may be struck out on application by the Respondent."*

6. The Claimant sent some documents by way of disclosure (as also ordered by me) to the Respondents solicitors at 14.22 on 7/5/21. The email referred to a schedule of loss but did not attach one. At 16.02 on 7/5/2021 the Respondent's solicitor very fairly sent the Claimant an email by way of reply pointing out that no Schedule of Loss had been included in the Claimants earlier email, and requesting *"please send this by 5pm today in compliance with the unless Order"*

7. The Claimant did not send his Schedule of Loss by 5pm on 7/5/21.
8. On 7/5/21 at 17.53 the Respondent applied for the claims to be struck out.
9. In response the Claimant sent his Schedule of Loss "*with his deepest apologies*" and further references to his ill health, at 8.59am on 8/5/21, claiming that the Respondents application to strike out (was) "*another example of the respondent's hard stance and lack of consideration towards my mental health issues and a further example of the lack of empathy shown thus far*".
10. I have taken note of what the Claimant has written in his email of 8/5/21 – which includes the explanation that he had prepared the Schedule of Loss in time but did not include it in his email of 7/5/21 because of an 'oversight", which he seeks to attribute to his mental health problems.
11. I took these claimed health problems fully into account when I made the unless order in the first place and, notwithstanding them, the Claimant, with the support of his son, assured me that he would nevertheless be able to comply.
12. As I recorded in my reasons for my orders on 30/4/21, the Claimant's health issues have not precluded him from blogging/engaging with social media about the dispute on the internet and presenting an EAT appeal at the same time that he was failing to comply with tribunal directions previously made with his agreement; and notwithstanding correspondence from the Respondent seeking to persuade him to comply. His failure to comply was the sole reason why a lengthy hearing had to be held that day.
13. It is not in the interests of justice, nor is it fair to the Respondent or other Tribunal users to allow unless orders to be disobeyed and for parties to be able to persist in breaching directions and final orders with impunity. To allow this would not only undermine the authority of the Tribunal, and its ability to make effective orders and secure compliance with directions; but the extra judicial and legal time consumed by non-compliance unnecessarily increases costs, wastes resources, and leads to inefficiency in the system generally.
14. The Claimant chose to issue this claim, and was subsequently given considerable leeway and extra time to deal with reasonable standard directions. I disagree that the Respondent's application is hard or lacking in empathy. I invited the application to be made if the Claimant wasted his final opportunity to comply.
15. The claims are struck out under Rule 37(1)(c) of Schedule 1 in the ETs (Constitution and Rules of Procedure) Regs 2013.

J S Burns Employment Judge  
London Central  
12/5/2021  
For Secretary of the Tribunals  
Date sent to parties: 12<sup>th</sup> May 2021

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