



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms S Caporali

**Respondent:** Emirates Airline Limited

**Heard at:** Liverpool

**On:** 24 August 2021

**Before:** Employment Judge Robinson  
(Sitting alone)

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr D Soanes, Solicitor

# JUDGMENT

The judgment of the Tribunal is that all the claimant's claims against Emirates Airline Limited which relate to race discrimination, disability discrimination, unfair dismissal, unlawful deduction of wages, payment of holiday pay, breach of contract and no receipt of itemised pay statements are all struck out under rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant was scandalous, unreasonable and vexatious, and that the claims have not been actively pursued (rule 37(1)(b) and (d)) apply.

# REASONS

## Introduction

1. Although not asked for full written reasons, in view of the seriousness of the decision that I have made during this morning's hearing, I felt it imperative that both parties have full reasons for my decision to strike out all the claimant's claims under the above three case numbers.

## Background

2. On 21 June 2021 Employment Judge Buzzard dealt with case management issues. There was no appearance by the claimant at that hearing and Mr Soanes, the solicitor for the respondent, attended on behalf of that party.
3. Orders were made for the claimant to give an explanation as to why she had not attended the hearing, and also for there to be a further hearing today to consider various matters which I have set out below.
4. Those matters were clearly defined by the Employment Judge for the claimant in paragraph 5(a)-(d) of Judge Buzzard's minute and were:
  - (a) Whether the respondent's application for an extension of time to submit a defence to claim number 2409288/2020 should be granted;
  - (b) Whether the claimant's application, by letter dated 14 June 2021 for the striking out of all the ET3s of the respondent, should be granted;
  - (c) Any application, including an application for costs by the respondent, or for a preparation time order by the claimant, should be heard; and
  - (d) Whether the claimant's remaining claims should be combined and heard together.
5. It is clear, on the face of that minute, that Employment Judge Buzzard was concerned that the claimant had not attended, apparently without explanation on that day, and that the litigation needed to be progressed.
6. The claimant complied with the order to give an explanation by sending an email on 9 July 2021 apologising for her non attendance and saying that she was unable to take part in the preliminary hearing due to stress with aggravated symptoms, and that she could not answer the phone when the Tribunal clerk rang her number to see why she had not attended because she was suffering from severe dizziness. She produced a statement of fitness for work from her GP dated 5 July 2021 which retrospectively suggested that she was unfit to attend the preliminary hearing due to stress and aggravated symptoms.
7. The claimant confirmed to me today that she had received the Case Management Orders from the June hearing but insisted that she had not been given enough time to prepare for this hearing and that she wanted an adjournment.
8. In a long email to the Employment Tribunal on 5 July 2021 the claimant took issue with Employment Judge Buzzard for making case management orders and suggested that the hearing on 21 June 2021 could not be a preliminary hearing for case management purposes. She suggested that to make such orders was wrong in law and erroneous. The gist of her application today was to set aside the orders made by Employment Judge Buzzard, complaining that he had made some legal mistakes and that he was not acting in the interests of justice and in compliance with

the overriding objective. She wanted to vary and set aside the case management decisions of the Employment Judge.

9. On a consideration of the claimant's application, she seems to be complaining about Part 2 of the Case Management Orders. Those orders only related to her providing evidence as to why she did not attend the hearing on 21 June 2021, and an explanation for her non-attendance. The order asked her to do that by 10 July 2021 and the claimant has complied with that order. I could not discern why she complained about those orders. The second part of the order was to confirm that any application by either party should be dealt with at this hearing on 24 August 2021. The claimant had notice of all issues to be dealt with today because the orders of Employment Judge Buzzard were sent to her on 21 June 2021, and she confirmed to me that she had received a copy of that document.

10. The claimant also complained that she had not received notice of the June hearing. As I understood it, the claimant had notice of the hearing on 21 June 2021 but simply could not attend because she was unwell. She had notice of this hearing because Employment Judge Buzzard set it out very clearly in his minute that there was to be a further hearing today.

11. Yesterday (23 August 2021) the claimant made an application to have this hearing adjourned. She complained that she had had no response from the Tribunal with regard to her applications on 16, 18 and 20 August 2021, in effect saying that she wanted variations of the Judge Buzzard's orders.

12. However, a letter went to the claimant on 12 August 2021, at the behest of Employment Judge Batten, confirming that all matters that she had set out in her correspondence would be dealt with at today's hearing and that today's hearing remained listed. The letter from the Employment Tribunal is written in these terms:

"I refer to your email dated 30 July 2021 which has been placed on the file and will be considered by the Employment Judge who conducts the hearing on 24 August 2021 **as will all matters raised in recent correspondence between the parties**" (my emphasis).

Furthermore, Employment Judge Holmes had dealt with an application by the claimant to have the ET3s of the respondent struck out and informed the claimant that he was not prepared to do that, but that matter would be considered today also.

13. Furthermore, with regard to the hearing on 21 June 2021, Employment Judge Buzzard made it clear that today's hearing would be a public hearing to consider the four matters set out above but also to go on to decide the following issues:

- (a) Clarification of the claims pursued;
- (b) Discussion of the timetable for disclosure of relevant evidence;
- (c) The production of a bundle of evidence for use at a final hearing;
- (d) The disclosure of statements for all witnesses; and

- (e) Any other step considered by the Tribunal (after hearing from the parties) to be likely to assist with the preparation for the final hearing of these claims.

### **The conduct of the hearing today**

14. The above paragraphs therefore set out the background to this case leading up to today. I completed reading all documents (which were extensive) for today's hearing at 10.35 am when I entered the Tribunal room and apologised to the parties for the late start.

15. Ms Caporali was in attendance despite asking for an adjournment the previous day. Mr Soanes attended on behalf of Emirates Airline.

16. I explained to the claimant, on half a dozen occasions, that this hearing was to deal with all the issues that she had with the respondent and to deal with the progression of the litigation to a final hearing. I read to her on three occasions the four issues which were to be dealt with in the minute of Employment Judge Buzzard at paragraph 4 (a)-(d) referred to above, and I said that those matters would be dealt with and also all preliminary issues including disclosure of documents and a timetable to a final hearing.

17. I warned both parties that because of the difficulties with COVID-19 and the resources of the Employment Tribunal it may not be possible to list this matter until late 2022 or more probably in 2023. It is clear from the applications made to the Tribunal that much of the evidence that the claimant wishes to bring to the attention of the Tribunal refers to incidents which occurred in 2019. Indeed the claimant was not in work at all and was absent sick from 17 April 2019 until her resignation in April 2020. She raised a number of grievances, all of which were dealt with, but it is clear from the claimant's documentation that she refused to accept that her grievances should not have been upheld.

18. The claimant started today's proceedings by repeating her application for an adjournment on the basis that she was not prepared to deal with the matters before me, even though some of the applications were her own. In particular, the claimant refused, on four occasions, to allow the preliminary hearing to proceed, saying that there was an abuse of process and her human rights had been affected and that Mr Soanes had acted improperly. Indeed on a number of occasions she angrily turned to Mr Soanes to accuse him of acting as such. She also said that by continuing with these proceedings there was an abuse of process and that I was acting improperly by asking her to agree to deal with the preliminary issues. By 11.25 am the claimant was still refusing to deal with any issues despite me urging her on a number of occasions to allow the hearing to go ahead so that we could establish what her claims were about, and to then endeavour to understand what the response of the respondent might be to each of her claims.

19. Mr Soanes believed that without the claimant allowing this preliminary hearing to go ahead, so that orders could be made for the future good conduct of the proceedings, a fair trial could not take place. He was already worried that his witnesses' memories would fade in view of the fact that the protected disclosures, for

example, took place in October 2018, August 2019 and December 2019/January 2020. The latter protected disclosure was unknown to the respondent as it was made to Manchester City Council. The claimant was also complaining about words that had been said to her in March and April 2019 by other employees which she said amounted to race discrimination and harassment of her because of her Italian nationality.

20. I was, of course, aware that the claimant was a claimant in person but it is clear from the documentation and the way that she talked to me that she has done much research with regard to the law, and that she understood the Tribunal process.

21. However, the claimant's position was that she was not prepared to enter into any form of discussion about how the matter may progress.

22. I did inform the claimant, that in view of the difficulties the Employment Tribunals generally around the country were faced with, it was likely that the hearing would not take place until well into the future and that the sooner we established exactly what her claims were and dealt with the applications that were on the table today I could not further this litigation. I also suggested to her that it was in her interests to allow me to help formulate her claims.

23. During the course of the hour that I sat with the claimant it was difficult to explain things because she interrupted both myself and Mr Soanes. I made it clear to her, on four occasions, that if she did not allow me to proceed with this preliminary hearing and deal with the issues and accept that I had refused her application for an adjournment, then I would have little option other than to strike out her claims on the basis that the manner in which she was conducting the proceedings was scandalous, unreasonable and vexatious, and also her claims were not being actively pursued. On the third occasion when I warned the claimant that her attitude was potentially going to cause her difficulty with regard to the continuation of the litigation and her claims might be struck out she simply said, "just do it then and I'll go to the EAT".

24. My main concern, however, was whether a fair trial was still possible in this case, not only in view of the claimant's attitude towards the Tribunal and the respondent's solicitor but also because the Tribunal was not being allowed to establish the claims of the claimant and make the appropriate orders and timetable the matter for a final hearing. As everything was in place to deal with those issues there was no reason, and the claimant could not give me a reason, as to why the matter could not be progressed today.

25. Furthermore, both today and in correspondence the claimant has accused the respondent of dishonesty when there is nothing, either on the face of the file or in relation to what I heard today, to consider that Mr Soanes or Emirates Airline have been dishonest in the conduct of these proceedings. As referred to in paragraph 12 above, on 22 July 2021 Employment Judge Holmes asked the Tribunal administration to inform the claimant that although she had objected to the respondent's application for an extension of time for filing their response, that matter would also be determined at the preliminary hearing today.

26. Furthermore, the claimant would not allow the application for costs by the respondent to be heard. Mr Soanes made it clear in correspondence to both the Tribunal and the claimant (letter of 14 July 2021) that the matters to which the claims relate occurred in 2019 and that three preliminary hearings had been arranged in order to clarify the claimant's claims and progress the matter. The first being on 12 November 2020. That hearing was postponed when the claimant produced a GP fit note saying she was not able to attend the hearing. The second was listed for 4 March 2021 which was postponed after the claimant wrote to the Tribunal alleging that a fair hearing was no longer possible. Finally the 21 June 2021 hearing, to which I have referred already, where the claimant did not attend.

27. The respondent's position is that it is still unclear what claims the claimant is bringing and what claims they have to deal with, and unless clarification took place as quickly as possible it would be difficult for the respondent to prepare their defence and take statements from the relevant witnesses. The respondent's solicitors had told the claimant that, given the passage of time, the memories of their witnesses were likely to fade and that from their point of view, in the interests of justice and in compliance with the overriding objective, it would no longer be possible to have a fair hearing within a reasonable time.

28. It is a draconian step to strike out claims but in the circumstances of this case and in view of the respondent's position and the way in which the claimant conducted herself today I had no option other than to make that judgment.

29. Before making the order to strike out the claimant's claims I considered whether the party had behaved scandalously, unreasonably, and vexatiously when conducting the proceedings and I decided that she had, not only during today's hearing but also in the way that she refused to deal with the real issues of the case and was content to delay matters by obfuscating.

30. Once I had made that finding, I considered whether a fair trial was still possible. I accept that the striking out of the claimant's claims must not be used as a punishment of her. However two things decided me that a fair trial was not possible. Firstly, the claimant was refusing to involve herself in the process of preparing the case for the final hearing and point blank refused to allow me to do that. Secondly, I had no idea, as the claimant was not able to tell me, as to how long we would have to wait before the claimant decided that she would involve herself in the process of preparation and set out exactly what her claims were. Consequently, the matter might not be heard until months into the future. That would prejudice the respondent much more than the claimant. The claimant is aware, presumably, of what she wishes to complain about to the Tribunal, whereas the respondent witnesses would have to potentially think back three or four years to what happened on certain occasions. That would cause the respondent insurmountable difficulties.

31. Finally, I had to consider, that even if a fair trial is unachievable, was there some way around the claimant's inability to involve herself with the process. I asked the claimant on three occasions whether she wanted a short break to consider her position today in view of the warning about the strike out. I considered whether I should simply impose a lesser penalty, such as a costs order against her, and

despite the claimant's conduct being reprehensible, I took into account that she was a claimant appearing in person and had no legal training and that she had previously been under stress when dealing with this case. But I concluded that she had been given a sufficient amount of time to prepare for today and that she understood that this Tribunal had a full day's hearing time to sort through the issues.

32. Ultimately, I decided that the claimant knew her behaviour was likely to cause difficulties and there was an element of calculation in her conduct. In any event, her behaviour was, actually, preventing the possibility of a fair trial because she would not allow this hearing to proceed properly and consequently, I decided to strike out all her claims.

33. I did not deal with any application for costs by the respondent.

Employment Judge Robinson

Date: 9 September 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 September 2021

FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.