



EMPLOYMENT TRIBUNALS

Claimant: Mr Nicholas Smith

Respondent: Tesco Stores Limited

Heard at: Reading (by CVP) **On:** 8 April 2022

Before: Employment Judge S Matthews

Representation:
Claimant: No attendance or representation
Respondent: Ms.Charlotte Goodman (Counsel)

JUDGMENT

The claim is struck out

REASONS

1. The claimant did not attend the hearing. He was sent an email the day before the hearing with the link to join the hearing and a further email on the day of the hearing informing him that the hearing was about to start. I waited until 10.25 am to start the hearing.
2. Rule 37(1) of the Rules of Procedure provide that the tribunal has power to strike out a claim for non-compliance with an order or failure to actively pursue a claim:

*(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 or response on any of the following grounds—
[...]*

(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 or response 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.*

3. The claimant issued proceedings in the tribunal on 6 April 2021 claiming unfair dismissal. He has not complied with any orders of the tribunal including failing to attend a final hearing listed on 10 November 2021. That hearing was postponed on the day of the hearing due to the respondent not receiving notice of the hearing.

4. Notice of today's hearing was sent to the claimant following the hearing on 10 November 2021 together with an order relating to skeleton arguments as follows:

10. The respondent shall prepare a skeleton argument/written submission detailing the basis for their application to strike out the claimant's claim(s)

10.1 The respondent must provide the claimant with a copy of this submission, and any evidence relied upon, on or before 25 February 2022.

10.2 The claimant must provide the respondent with a written response to the respondent's application on or before 11 March 2022.

5. The respondent served a skeleton argument on the claimant on 25 February 2022. The skeleton argument stated that the application was made on the grounds that the claim has not been actively pursued and the claimant has not complied with tribunal orders. No response has been served by the claimant.

6. The Notice of Hearing states that the purpose of the hearing is:

"To consider the respondent's application to strike out the claim for non-compliance by the claimant."

7. It is unclear whether the Notice is referring to a previous application for strike out (which was refused on 26 October 2021) or an application made at the hearing on 10 November 2021. It does not refer to the failure to actively pursue the claim. This ground is referred to in the skeleton argument and overlaps with the non-compliance with tribunal orders. I am content that sufficient notice has been given to the claimant to enable him to make representations, when the Notice of Hearing is read together with all the previous correspondence sent to the claimant and the skeleton argument submitted by the respondent.

8. I have taken into account the case of *Baber v Royal Bank of Scotland plc UKEAT/0301/15* referred to by respondent's counsel. Rule 37(2) is not prescriptive as to the requirements of the notice. It requires the tribunal to be satisfied that the affected party has been given reasonable and proper notice.

9. In deciding to strike out I have considered the magnitude of non-compliance and noted that the claimant has not complied with any of the orders of the tribunal. He failed to attend the listed final hearing and the hearing today. I have referred to case law in the respondent's skeleton argument, in particular *Rolls Royce PLC v Riddle UKEATS/0044/07*. I find that the claimant's conduct is such that it is not proportionate or in the interests of justice that he continue to use the tribunal's resources.
10. I have considered the possibility of lesser sanctions including a further notice being sent to the claimant to give reasons why the claim should not be struck out but decided that it is not in the interests of justice or proportionate to do so. The claimant has already been given sufficient opportunities to make submissions in writing or at a hearing.

Employment Judge S Matthews

Date 8 April 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON

22/4/2022

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FOR THE TRIBUNAL OFFICE