



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr F Owusu-Brobbe

**Respondent:** Kings Security Systems Limited

## JUDGMENT

The claims brought by the Claimant are struck out pursuant to rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure Regulations 2013) on the basis that they are not being actively pursued and/or the Claimant has failed to comply with the Tribunal's orders.

## REASONS

1. The Claimant had brought claims of discrimination relying on the protected characteristic of disability and claims for wages.
2. Neither the Claimant nor his then representative attended a Preliminary Hearing to deal with issues of case management on 12 February 2021. At that hearing EJ Gardiner made case management orders including orders that the Claimant clarify the basis of his claims. The matter was listed for a three day final hearing commencing 9 February 2022.
3. The Claimant has not complied with any of the directions of EJ Gardiner. The Respondent made applications for the Claim to be struck out complaining about the non-compliance of the Claimant and his failure to communicate. Those applications were not dealt with before November 2021 when EJ Hallen instructed that a letter be sent to the Claimant (through his then representative) warning him that the Tribunal was considering whether to strike out his claims. He was asked to make any representations or request a hearing by 17 December 2021.
4. On 31 December 2021 I made a direction in the following terms:

*I note that by letter dated 29 November 2021 which was sent by email to the Claimants representative, the Claimant was warned that the tribunal was considering striking out the claim because of failures to comply with the orders of the tribunal made on 12 February 2021. The Claimant was given until 17 December 2021 to give his reasons in writing as to whether the claim*

*should be struck out or to request a hearing. No response has been received to that letter.*

*It appears to me that the Claimant is in wholesale breach of the orders of the tribunal made on 12 February 2021. This is apparent not from what the Respondent says but from the Tribunal file because the Claimant was ordered to send various documents to the tribunal and has not done so. I note that failed to attend the preliminary hearing on 12 February 2021 without any explanation. My provisional view is that this is exactly the sort of conduct which would lead to a claim being struck out.*

*The only reason I hesitate to strike out the claim at this stage is that I note from the file on 11 May 2021 the Claimant sent an email to the Tribunal without copying that email to the Respondent as he was required to do. In that email he indicated he would like to 'terminate' his claim citing the inability of Ms Bamfo to represent due to her personal health circumstances. In accordance with the practice of this Tribunal he was asked to clarify whether he wished to withdraw his claim he later indicated that he did not and was looking for an employment lawyer to pursue the case on his behalf. It therefore appears to me quite possible that the Claimant has not received the letter from the tribunal dated 29 November 2021. I have ordered that this letter be sent both to the Claimant and to his representative.*

**I repeat the strike out warning that was included in the letter of 29 November 2021 and I remind the Claimant that the Tribunal is considering whether to strike out his claims on the basis that he has failed to comply with the orders of EJ Gardner made on 12 February 2021 and all that he is not actively pursuing his claim. The Claimant shall within 14 days of this letter set out in writing his reasons for opposing that course of action or requesting a hearing.**(emphasis added)

*If he does not do so then the matter will be considered on the papers on the information already provided. I should make it clear that I consider it highly likely that the claim will be struck out if no good reason is shown to the contrary. If the Claimant does not wish to pursue his claim he should write to the tribunal and the Respondent straight away. A failure to deal promptly with this matter may well prompt the Respondent to make an application for costs on the basis that the Claimant has acted unreasonably in the conduct of the proceedings.*

*The final hearing in this matter is listed for 3 days on 9, 10, and 11 February 2022. Given the failure by the Claimant to comply with the orders of the tribunal it is inevitable that hearing will need to be postponed. Those hearing dates are accordingly no longer effective and the parties need not attend. I can see that the Respondent has been put to considerable effort and expense in dealing with this matter. The Respondent need to take no further action at this stage. The Respondent is released from all of the obligations imposed by reason of the case management orders made on 12 February 2021. It need do nothing other than await a response by the Claimant to this letter.*

5. The purpose of my instruction above was to give the Claimant a further opportunity to explain his failure to comply with directions and to guard against the possibility that his former representative had not informed him of the Tribunal's letter of 29 November 2021.
6. The Claimant has to this date not responded to my letter he has not communicated with the Tribunal in any way. I am satisfied that the Claimant is in breach of all of the orders made by EJ Gardiner. The trial that had been fixed was vacated. The fact that it has taken some time for the file to be referred to me has given the Claimant more than an additional 3 months to contact the tribunal after my last letter.
7. I am satisfied that the Claimant has not been actively pursuing his claim. The Tribunal has not heard from the Claimant for 12 months. Even if the Claimant was acting for himself he would have been aware of the need to prepare for the final hearing. The fact that he did not attend the final hearing provides strong evidence that he received my letter which postponed the hearing. The fact that he did not respond is discourteous to the Respondent and to the Tribunal.
8. Clearly a fair trial within the original dates allocated is no longer possible.
9. I have considered whether, in the exercise of my discretion I should strike out the claims on the basis that the Claimant has breached orders of the Tribunal and furthermore is not actively pursuing his claims. I recognise that striking out discrimination claims is not to be undertaken lightly. I have had regard to the wider interests of the other users of the Tribunal. This claim has taken up time and resources. It was very unclear how the case was put and the Claimant has not done anything to progress the case.
10. For these reasons I am satisfied that I ought to strike out the entirety of the Claimant's claims.

**Employment Judge Crosfill**

**10 May 2022**