



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Y D Mohamed  
**Respondent:** Abbatt Dual Management Limited

**Heard at:** East London Hearing Centre

**On:** 29 June 2022

**Before:** Employment Judge Burgher  
Ms M Long  
Ms P Alford

## Representation

**For the Claimant:** In person  
**For the Respondent:** Mr R Hignett (Counsel)

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by telephone Cloud Video Platform. A face-to-face hearing was not held because the relevant matters could be determined in a remote hearing.*

## JUDGMENT

**1** The Claimant's claims are struck out following non-compliance with Tribunal orders to provide witness statements.

## REASONS

1. At the outset of the hearing, the issues in the case were identified as follows: The Claimant was subject to this direct disability discrimination by virtue of migraines:

- 1.1 by being dismissed on the 12 June 2020. The Claimant was subsequently reinstated; and

1.2 by being dismissed on 11 August 2020.

2. The Claimant also advanced alternative claims of disability related harassment in relation to the dismissals outlined above.

3. Having clarified the issues, Mr Hignett on behalf of the Respondent, applied to strike out the Claimant's claims on the basis of non-compliance with orders of the Tribunal pursuant to Rule 37(1)(c) of the 2013 Employment Tribunal Rules.

4. Rule 37 of the 2013 ET rules states:

Striking out 37.

—(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 –

- (a) that it is scandalous or vexatious or has no reasonable prospect of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules or with an order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

(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.

5. The focus of the strike out application was the Claimant's non-compliance with Tribunal orders and the effect of his non-compliance on continued proceedings.

6. The legal and factual issues in this matter are relatively limited. A preliminary hearing took place before Employment Judge Emery to consider the issue of disability on 9 December 2021. EJ Emery concluded the Claimant was disabled by reason of migraines and made case management orders for the parties to comply with.

7. The case management order for the provision of a bundle was to take place on 11 February 2022 and witness statements were to be exchanged by both parties on the 25 March 2022. In respect of the witness statements the relevant parts of paragraph 5 of the order stated as follows:

5.1 The Claimant and the Respondent shall prepare full witness statements containing all of the evidence they and their witnesses intend to give at the final hearing and must provide copies of their witness statements to each other on or before **25 March 2022**.

5.2 No additional witness evidence will be allowed at the final hearing without the Tribunal's permission.

5.3 The witness statements must: have numbered paragraphs; include page numbers from the bundle when referring to a document; contain only evidence relevant to the issues in the case.

8. There was difficulty in finalising the hearing bundle following lack of cooperation from the Claimant and the date for finalising the bundle was not met. However, the Claimant was confirmed that he received a bundle of 567 pages was accepted on 25 April 2022.

9. Following receipt of the bundle, the parties sought to agree between themselves a date to exchange witness statements bearing in mind that the date witness statement exchange had passed. The parties agreed a date for exchange of witness statements for 6 June 2022, given that the order made by EJ Emery had passed. The Respondent sent its 3 witness statements to the Claimant on 6 June 2022. The Claimant did not do so. He informed the Respondent in various correspondence replying to their attempts to secure his witness statement that he was abroad; he lost his electronic devices, he did not have a laptop; he did not have private internet facility and he was suffering from ill-health.

10. On 16 June 2022, the Claimant's witness statement still had not been sent and the Respondent applied to the Tribunal for an unless order asking for, amongst other things, that the claimant provides a witness statement in relation to his case by 17 June 2022.

11. Employment Judge Gardiner considered the respondent's application and by letter dated 20 June 2022, the Claimant was ordered to respond to the Respondent's application for an unless order by 21 June 2021.

12. On 21 June 2022, the Claimant responded to EJ Gardiner's order writing:

'Unfortunately, as a result of the transport strikes, I am unable to send my full witness statement.

However I have signed notes. [As an aside the signed notes that was sent to the Tribunal were illegible]

I can confirm that the 3 witness statements have not played any role in my notes nor my witness statement.

Nor will they form any part in my full witness statements when I am able to send it in its entirety tomorrow.

Please do tell me should you need to do anything further regards signing and dating my notes.'

13. The implication therefore from the Claimant's email was that his witness statement or statements would be sent to the respondent by 22 June 2022. However, still no statements were provided by the Claimant.

14. On 21 June 2022, the Respondent renewed its application for an unless order.

15. By letter dated 23 June 2022, Regional Employment Judge Taylor sent a strike out warning to the Claimant stating that she was considering striking out the claim because he has failed to comply with paragraph 5 of the order of EJ Emery relating to provision of witness statements. The Claimant was informed that if he wished to object to the proposal, he should give his reasons in writing or request the hearing at which he could make them by 28 June 2022. REJ Taylor also sent a separate letter in any event that the strike out application would be considered at the outset of the final hearing.

16. The Claimant responded to REJ Taylor's letter on the 27 June 2022. He stated:

I understand that Judge Taylor is considering striking out my disability claim against Abbatt Dual Management. I do not believe this should happen. I believe I should be entitled to a full tribunal on the facts presented prior to an outcome on this very difficult case, that has left me incredibly upset stressed and overwhelmed.

Considering whether I should have ever challenged powerful companies and people for discriminating.

Made more difficult because of Covid19

Because the Respondent stated I failed to comply with para 5 of the order sent to the parties on 2 February 2022 (provide witness statement).

This attachment was made on 23 June sent to me on 24 June 2022.

The sickening accusation they make is in relation to the order made by Employment Judge Emery. Employment Judge Emery understood I was representing myself and was very kind.

The order he made was now I understand that both parties to submit their witness statements by 25 March.

Unfortunately I have not. And I can confirm the respondents nor the representatives complied with this order,

...

I find it incredibly sickening that the Respondents and those that represent them have a wish to have my claims [struck] out albeit they failed to follow the order themselves.

Professionals and experts in this. Whilst I am a layman with no money to get legal instructions despite seeking legal aid.

I do not wish Judge Taylor to strike this very serious discrimination out, that I have been waiting over two years (12 June 2020) since my first experience of being discriminated against because of disability under the Equality Act.

Should Judge Taylor have any further questions or concern I wish this to go to a hearing.

17. Still the Claimant did not provide a witness statement. The Tribunal considered that it may have been easier for the Claimant to have drafted a simple witness statement setting out his position in respect of the issues than send the responses he did.

18. By letter dated 28 June 2022, EJ Lewis informed the Claimant that he was in default of the order to provide his written witness statement; the notes he provided were illegible; and if he wished to rely on any witness evidence, including his own, he must provide a written statement and send a copy of it to the Respondent in advance of the hearing. EJ Lewis informed the Claimant that the Tribunal would consider whether to strike out the claim for failure to comply with the Tribunal's orders and if the Claimant wished to refer to any period of ill health or unexpected absences from the UK e.g. for an emergency he must provide evidence in support in the form of GP or other medical evidence.

19. At 1.50am on 29 June 2022, the Claimant sent the Respondent and the Tribunal an email setting out an extensive commentary of documents in the bundle. This does not amount to a witness statement. However, the Tribunal spent some time reviewing narrative to consider whether it was possible to distil any accusations and allegations from it for the Respondent's witness to consider. We concluded that it was not able to do so. The Claimant's email is a lengthy narrative of the documents within the bundle without specifically identifying who was alleged to do what and when. If it was possible to edit the email to a more manageable length of relevant comments, Mr Hignett and the Respondent's relevant witnesses still would not know the scope of the allegations being advanced to be able to fairly address them given no prior warning and the time that has elapsed since the events in question.

## **Submissions**

20. The Respondent's submissions on strike out veered into the extent to which a fair hearing was still possible pursuant to Rule 37(1)(e) but for the avoidance of doubt the Tribunal concludes that the claim, which involve limited factual issues, could ultimately be considered fairly in future, if an adjournment was permitted to allow the Claimant to provide a witness statement focusing on the relevant issues. However, given the Claimant's inaction, inconsistent reasons for failing to provide a witness statement, delays and the representations from both parties concerning the effect of an adjournment it would not be fair, appropriate or in accordance with the overriding objective to adjourn the case. This would result in continued delay, stress on the people involved, costs and uncertainty.

21. The Claimant stated that the fair and just way to proceed would be for all the evidence to be heard and not for his case to be struck out on a technicality. His case was a serious case of multiple acts of disability discrimination over his short period of employment. He apologised for not providing a witness statement but stated that he was awaiting the final bundle (which he received on 28 June 2022) to finalise his statement. He stated that he is a litigant in person unaccustomed to Tribunal proceedings. He stated that he could now draft a statement of 300 – 500 words to set out his case on the two factual issues.

## **Conclusions**

22. The Claimant has continued to fail to comply with EJ Emery's order dated 2 February 2022 to provide a witness statement.

23. When considering our discretion to strike out on this basis the Tribunal considered whether it would be appropriate for the Claimant to effectively start again and give focused evidence on the two particular factual issues that the Tribunal was required to consider. We concluded that whilst this would have been possible it would not have been able to have undertaken in the hearing time allotted and an adjournment was likely for the Respondent's witnesses to be able to review and give instructions. Both parties agreed that further delay would be unfair in this matter in particular witnesses memories fade and it has been unresolved, hanging over the Respondent's witnesses; and also the Claimant for a significant period of time. It was not considered to be in accordance with the overriding objective to adjourn.

24. The Tribunal also considered whether there could be any other workable adjustments to the hearing timetable to allow the Claimant to provide his evidence within the time allotted and concluded that this would also run the serious risk of the case not being decided in the time allowed.

25. We considered whether it was reasonable to take a less draconian step instead of striking out the Claimant's claim, depriving him of the ability to ventilate his claim and pursue a possible remedy. We concluded that it is not appropriate in this case given the Claimant's failures to provide a witness statement which could, on his own submission, have been easily provided in a condensed way and still had not been done.

26. The Claimant failed to give a consistent or credible explanation as to why he could not provide a witness statement.

26.1 Before us, the Claimant stated that there was further discussion about other further pages being added to the bundle which resulted in an updated bundle consisting of 648 pages on 28 June 2022. The Claimant submitted that he did not think he had to submit a witness statement until he had received the final updated bundle. This was inconsistent with the representations he was previously making to the Respondent and the Tribunal in his correspondence sent throughout June 2022; and the Tribunal do not accept this submission in view of the clear wording of the orders made from the Tribunal.

26.2 The Claimant gave differing, and at times baseless, reasons for not providing witness statements. No medical evidence was provided in respect of his ill health. In respect of his transport strike excuse the Tribunal was unable to comprehend how this would prevent him sending his witness statement by email.

26.3 Finally, the Tribunal concludes that as the Claimant was able to provide focused responses providing reasons objecting to strike out he could also have simply drafted his witness statement. The Tribunal therefore conclude that there was an element of deliberate obstruction underpinning the Claimant's failure to provide a witness statement.

27. In these circumstances the Tribunal conclude that this is an appropriate case to strike out. There were a number of opportunities the Claimant could have taken to avoid his case being struck out. If he had provided a composite focused account event as late as 1.50 on 29 June 2022, it is possible that the Tribunal may have taken a different view. However, what he sent on that occasion did not assist the Respondent in identifying the actual basis of his disability discrimination allegations were or highlight to the Tribunal what it should consider.

28. The Claimant's claims are therefore struck out for non-compliance with Tribunal orders to provide a witness statement and are therefore dismissed.

**Employment Judge Burgher  
Dated: 29 June 2022**