



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Stone  
**Respondent** Oxfordshire GM Limited

## PRELIMINARY HEARING BY CVP

**Heard at:** Reading **On: 11 August 2022**  
**Before:** Employment Judge Gumbiti-Zimuto

**Appearances**  
**For the Claimant:** In Person  
**For the Respondent:** Ms R Hodgkin, counsel

## JUDGMENT

1. The correct name of the respondent is Oxfordshire GM Limited, the title of the proceedings are amended accordingly without the need to reserve the claim.
2. The claimant's complaints of disability discrimination are struck out the claimant has failed to comply with the employment tribunals orders.
3. The claimant's complaints of harassment are struck out the claims have no reasonable prospect of success.
4. The claimant's claims against Deanne Rodney, Sam Rodney and "Victor Known as Vic" are dismissed.

## CASE MANAGEMENT SUMMARY AND REASONS FOR JUDGMENT

1. In a claim form presented on the 15 September 2021 the claimant made complaints against Deanne Rodney who is the claimant's his sister and a director of the respondent, Sam Rodney who is the claimant's brother in law and Managing Director of the respondent, and "Victor Known as Vic" an erstwhile work colleague.

The claim arises out of events that occurred throughout his employment and culminate with a complaint about the circumstances and reasons for his dismissal. The respondents contest the claimant's claim. The claimant's claim of unfair dismissal can only be made against his employer and the claims which are made against the individual respondents can only arise from complaints under the Equality Act 2010.

2. The claimant alleges that he is disabled and makes a claim for disability discrimination. In his claim form the claimant makes reference to a work injury to his left knee but does not explicitly state that is the basis of his contention that he is disabled. On 5 April 2022 the claimant was ordered by EJ Anstis to the respondents information relating to his disability. The claimant did not comply with the order in time and when he did purport to comply with the order he did not provide the information he was requested to provide. The respondent made an application to strike out the claim on the grounds that the claimant had not complied with the Tribunal's order.
3. The case was listed for hearing to consider whether the claim should be struck out because the claimant failed to comply with the Tribunal's order or alternatively because it had no reasonable prospect of success

Failure to comply with the Tribunal's orders

4. It is the respondents case that the claimant has failed to comply with the specific requirements of the order of Employment Judge Anstis dated 5<sup>th</sup> March 2022 notwithstanding that the claimant has provided responses dated 10<sup>th</sup> May 2022 and 7<sup>th</sup> June 2022 together with a General Clinic Letter and a limited section of the claimant's medical records from 16<sup>th</sup> April 2021 -22<sup>nd</sup> June 2021. The respondent says that the claimant has therefore been provided with a number of opportunities to respond and clarify his claim and has substantively failed to do so in the five months or so that have elapsed and the 11 months that have elapsed since lodging his ET1.
5. The respondents set out in their letters dated 27<sup>th</sup> May 2022 and 9<sup>th</sup> June 2022. That the required responses to Employment Judge Anstis specific and clear questions remain outstanding. The respondent says that it is therefore unable to confirm their position in relation to the claimants alleged disability as defined under the Equality Act 2010.
6. The respondent relies on the overriding objective to deal with matters fairly and justly, the respondent maintains that the claims should be struck out pursuant to Rule 37(1) ( c) and 37(1) (d).
7. I agree with the respondent that the extent of the non-compliance is significant, a significant period of time has elapsed and the claimant has been unable or unwilling to address the specific questions and clarification sought within the clear and unambiguous order of Employment Judge Anstis on 5<sup>th</sup> March 2022. The consequential delay has and will continue to cause a substantial risk that a fair hearing will not be possible and already the respondent has been prejudiced in not

being able to address what should have been a be relatively straightforward assessment of the claimants alleged disability. The ET1 was lodged in September 2021, the ET3 accepted by the Employment Tribunal on 12<sup>th</sup> January 2022.

8. I have considered the information that has been provided by the claimant and I am not able to be sure that the information provided would necessarily show that the claimant was disabled even if accepted at face value. While the basis for asserting that the claimant was disabled because of a knee injury is clearly present the matter is not certain or clear. Taking all these factors into account I am of the view that the claim for disability discrimination should be struck out because of the claimant's failure to comply with the tribunal's order and a fair hearing is not possible.

#### Harassment claims

9. The claimant listed a number of matters which he said he wished to complain about this included assault, sexual harassment, and GDPR. I am satisfied that the nature of the claimant's complaint which arises from the matters set out in paragraphs 1-4 of section 8 of the claim form is a complaint about harassment. What is not so clear is what form of harassment is complained of. Section 26 lists a number of protected characteristics to which the provision applies. Of these the claimant was not clear which he relied on. The claimant when asked which he relied on the claimant initially said he did not know, when the question was asked again in a different way to account for the fact that it might have been misunderstood the claimant's response was to say that it was related to his age and then to say it was related to his sex.
10. The complaints of harassment are allegations of the very serious instances of harassment. The matters complained of however have all been complained of outside the time limit for the presentation of complaints. The claimant has not given any explanation for why the claims are being made out of time. There is no suggestion that the respondent has been responsible for the failure of the claimant to present complaints about these matters. When the matters were raised by the claimant they were purportedly resolved at the time. The claimant then decides after his dismissal to make a complaint to the Tribunal about these matters. I note that as part of his unfair dismissal claim the claimant argues that the respondent acted too hastily in dismissing him on 3 June 2021 after he had been off work for number of months. The claimant was dismissed purportedly because he was incapable of doing his work because of injury, the allegations of harassment did not contribute to the claimant's absence from work or apparent inability to work. I note however that the claimant seeks to link the fact that he complained to his employers about the conduct of his colleagues as one of the reasons he was dismissed. Even if that is correct I am not satisfied it justifies the claimant being able to complain about events, the most recent event being 1 year before the claim was presented, which are so far out of time. The burden is on the claimant to show that it is just and equitable to extend time for presentation of the claim the claimant has not done that. I am of the view that the claims for harassment have been presented out of time and it is not just and equitable to extend the time for the presentation of the complaints.

11. Additionally, I am not satisfied that the claimant has brought the claim for harassment with any particular protected characteristic in mind. When asked the claimant mentioned, sexuality, sexual orientation, sex, and age as all being reasons why he subjected to harassment by his colleagues. At other times the claimant candidly stated I do not know why they did it. The conduct of which the claimant complains was of an offensive and upsetting for the claimant. He should not have been subjected to it. The reasons behind the actions appear to have been a warped idea of humour, it is not conduct in context which obviously relates to a particular protected characteristic. I can see why the claimant found it difficult to attribute any protected characteristic to the harassment. I take this factor into account in coming to my conclusion that the claim has no reasonable prospect of success.
12. For the reasons set out above the claims of disability discrimination and harassment are struck out. The claim will proceed to a full hearing on the question of whether the claimant was unfairly dismissed.

## ORDERS

Made pursuant to the Employment Tribunal Rules of Procedure 2013

### Final hearing

1. The final hearing will take place at Reading Employment Tribunal, 30/31 Friar Street, Reading, RG1 1DX on **12 and 13 January 2023**. The case will be heard by an Employment Judge. The hearing will start at 10.00 am. You must arrive by 9.30 am.
2. Sometimes hearings start late, are moved to a different address or are cancelled at short notice. You will be told if this happens.
3. If you think that more or less time will be needed for the hearing, you must tell the Tribunal as soon as possible.

### Amendment

4. By consent, the respondent's name is amended to Oxfordshire GM Limited

### Judicial mediation

5. The claimant and the respondent must write to each other and the Tribunal by 8 September 2022 to say whether or not they are interested in judicial mediation.

### Schedule of Loss

6. The claimant must by 25 August 2022 send to the respondent and the Tribunal a document setting out how much compensation for lost earnings or other losses s/he

is claiming and how the amount has been calculated. This is called a Schedule of Loss.

7. If the claimant has been dismissed and wants to be reinstated or re-engaged, the Schedule of Loss must say so.

## Documents

8. By **20 October 2022**, the claimant and the respondent must send each other a list and copies of all documents they have relevant to the issues listed in the Case Summary below. This includes documents relevant to financial .
9. Documents includes recordings, emails, text messages, social media and other electronic information. You must list all relevant documents you have in your possession or control even if they do not support your case.

## File of documents

10. By **17 November 2022**, the claimant must tell the respondent the documents that he wishes to be included in the file of documents.
11. By **24 November 2022**, the claimant and the respondent must agree which documents are going to be used at the hearing.
12. The respondent must prepare a file of those documents with an index and page numbers. They must send a digital copy and a hard copy to the claimant by **1 December 2022**.
13. The file should contain:
  - 13.1 The claim and response forms, any changes or additions to them, and any relevant tribunal orders. Put these at the front of the file.
  - 13.2 Other documents or parts of documents that are going to be used at the hearing. Put these in date order.
14. The claimant and the respondent must both bring a copy of the file to the hearing for their own use.
15. The respondent must bring two more copies of the file to the hearing for the Tribunal to use by 9.30 am on the first morning.

## Witness statements

16. The claimant and the respondent must prepare witness statements for use at the hearing. Everybody who is going to be a witness at the hearing, including the claimant, needs a witness statement.

17. A witness statement is a document containing everything relevant the witness can tell the Tribunal. Witnesses will not be allowed to add to their statements unless the Tribunal agrees.
18. Witness statements should be typed if possible. They must have paragraph numbers and page numbers. They must set out events, usually in the order they happened. They must also include any evidence about financial losses and any other remedy the claimant is asking for. If the witness statement refers to a document in the file it should give the page number.
19. At the hearing, the Tribunal will read the witness statements. Witnesses may be asked questions about their statements by the other side and the Tribunal.
20. The claimant and the respondent must send each other copies of all their witness statements by **16 December 2022**.
21. The claimant and the respondent must both bring copies of all the witness statements to the hearing for their own use.
22. The respondent must bring two more copies of the witness statements to the hearing for the Tribunal to use by 9.30 am on the first morning.

**Checklist**

<b>Date</b>	<b>Order</b>	✓
25 August 2022	Schedule of Loss	
20 October 2022	Respondent’s documents	
20 October 2022	Claimant’s documents	
17 November 2022	File	
16 December 2022	Witness statements	

**Variation of dates**

23. The parties may agree to vary a date in any order by up to [14] days without the Tribunal’s permission, but not if this would affect the hearing date.

**About these orders**

24. These orders were made and explained to the parties at this preliminary hearing. They must be complied with even if this written record of the hearing arrives after the date given in an order for doing something.
25. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.

26. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

## Writing to the Tribunal

27. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

## Useful information

28. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
29. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here: <https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
30. The Employment Tribunals Rules of Procedure are here: <https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
31. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-tribunal>

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**Employment Judge Gumbiti-Zimuto**

Dated: 11 August 2022

Sent to the parties on:

2 September 2022

For the Tribunal:

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