



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr J Thompson  
**Respondent:** Department for Work and Pensions  
**Heard at:** Liverpool **On:** 31 August 2022  
**Before:** Employment Judge Buzzard (sitting alone)

## REPRESENTATION:

**Claimant:** In Person  
**Respondent:** Mr Holloway (Counsel)

## STRIKE OUT JUDGMENT

The claimant's claims are struck out pursuant to rule 37 of the Employment Tribunal Rules of Procedure 2013.

## REASONS

### 1. What happened Prior to 1 July 2022?

1.1. The claimant presented his claim form on 21 November 2020. The claimant appears in that claim form to have made the following claims:

- 1.1.1. unfair dismissal;
- 1.1.2. age discrimination;
- 1.1.3. disability discrimination;
- 1.1.4. that he had been subjected to detriments for making one or more protected disclosures;
- 1.1.5. a claim for holiday pay; and

- 1.1.6. a claim for notice pay.
- 1.2. In that claim form the claimant included a seven page, typed, narrative of events which occurred during his employment. This narrative, when it did provide dates or estimates of dates when relevant matters occurred, gave dates that spanned from 2015 to the claimant's dismissal in August 2020.
- 1.3. The narrative does not distinguish between matters that are included as relevant background, and what is an allegation that he makes of an employment law wrong. The narrative on multiple occasions makes assertions which are not explained. For example, the claimant states "*The bullying continued and I pleaded for help from DWP management, the Secretary of State and the Permanent Secretary but none was given*", but does not explain what specific incidents or events he refers to when saying the "*bullying continued*".
- 1.4. The respondent submitted a defence, as required. When submitting the defence, the respondent noted that the claimant had not provided sufficient particulars of his claims for a detailed response to be submitted.
- 1.5. A telephone case management preliminary hearing took place on 8 March 2021, before Employment Judge Warren. A 10-day final hearing was listed for October 2021. Judge Warren records in her note sent to the parties after that hearing:

*"(12) The claimant is extremely angry about his situation. It was difficult for him to express himself effectively today, and to address the specific matters which we needed to discuss."*
- 1.6. Judge Warren records that, rather than press the claimant to identify the detail of his claim in that telephone hearing, the claimant would provide those details in writing. It was agreed that the respondent would prepare a list of detailed short questions for the claimant to answer by no later than 29 March 2021, and the claimant would provide answers to those questions by 19 April 2021.
- 1.7. The respondent duly sent the claimant a list of questions by the 29 March 2021.
- 1.8. The claimant did not answer the questions. The claimant instead sent an email to the respondent on 18 April 2021 in which he stated: "*I believe that DWP have all the information that you require*"; and then went on to list the persons he wanted to appear as witnesses at the hearing of his claims.
- 1.9. The respondent updated the Tribunal on 17 May 2021, sending a copy of the questions asked of the claimant and the claimant's response. A letter dated 7 June 2021, sent to the parties on the instruction of Employment Judge Warren, stated the following:

*“The claimant was ordered to provide the details requested – if he refuses he places himself at risk of his claim being struck out for failure to comply with the Order. His case cannot proceed as it stands.*

*He is ORDERED to provide the details requested within 14 days of this email. Failure to comply will lead to consideration of his claim being struck out under Rules 37(1)(b), (c) and (d).”*

- 1.10. The claimant did not comply with this order.
- 1.11. By letter dated 17 July 2021 the claimant was informed that Employment Judge Buchanan was “*considering striking out the claim because you have failed to comply with Order 1.2 of the Case Management Orders of Employment Judge Warren dated 8 March 2021 and have failed to actively pursue the claim.*” The claimant was given until 31 July 2021 to respond and object to the proposal to strike out his claim.
- 1.12. The claimant responded by email on 26 July 2021. In this response the claimant asserted that he had “*complied with the judge’s instruction*” and went on to say he had sent to the respondent “*all the evidence for them to collate*”. Despite his assertion, there is no record that the claimant had responded to the specific questions he was ordered to respond to, nor had he, in any other way, provided adequate details of the allegations he pursued.
- 1.13. The respondent submitted a strike out application via email on 29 July 2021. The final hearing was converted to a one-day preliminary hearing to consider that strike out application. The preliminary hearing was subsequently postponed and relisted to take place on 1 July 2022.

## **2. What happened at the 1 July 2022 Hearing?**

- 2.1. The claimant attended a preliminary hearing via CVP on 1 July 2022. That hearing was before myself. The claimant joined the hearing from his car using a phone, and notified the Tribunal at the outset that he had limited time as he was taking a break in his working day.
- 2.2. Part way through that hearing the claimant became distressed and abruptly disconnected. After a 20 minute adjournment, in which the Tribunal clerk sought to contact him, the hearing resumed.
- 2.3. The respondent’s strike out application was not considered at the 1 July 2022 hearing. The claimant was instead given a further chance to provide answers to the questions he had been ordered to answer by 19 April 2021. The claimant specifically confirmed at the 1 July 2022 hearing that he now understood what was needed. The claimant was explicitly told that submitting files of evidence would not amount to meeting the requirement to provide answers. The claimant himself suggested he would need a period of 4 weeks to compile the

necessary details. The claimant was accordingly given until 29 July 2022 to provide the necessary answers and details of the allegations he makes.

- 2.4. In anticipation that the answers the claimant might provide, noting he is a litigant in person, could need some additional clarification and discussion, a further preliminary hearing was listed before me for 31 August 2022. This hearing was listed in person and for a full day. This length of hearing was to ensure the claimant had a full and fair opportunity to provide any necessary further details and clarifications at that hearing.
- 2.5. The note sent to the claimant after that hearing states:

*“The claimant confirmed that he understood that if he does not provide a satisfactory attempt at answering the questions this will be a material factor that would support the respondent’s strike out application.”*

### **3. What happened at this hearing?**

- 3.1. The claimant did not provide any attempt at answering the questions as ordered. The claimant instead sent two emails on 14 August 2022. The claimant’s 14 August 2022 emails were sent about ten minutes apart.
- 3.2. The first email from the claimant listed persons he wanted to attend the hearing of his claims, and made brief general allegations, lacking in adequate detail in a similar (albeit much briefer) way to the narrative originally included with his claim form.
- 3.3. The second email from the claimant made no attempt to provide any details of his claim and stated:

*“I cannot understand the legalise from the judges directions therefore under natural justice I require the Crown to provide me, a vulnerable person, legal representation to answer the complicated questions rather than strike out a genuine case.”*

- 3.4. This appears to confirm that the claimant has not answered the questions. This also contradicts what was said at the 1 July 2022 hearing, when the claimant had been clear in confirming that he did understand what he needed to do.
- 3.5. At this hearing the respondent’s strike-out application was not initially considered. It was explained to the claimant that that priority, if possible, was to obtain the necessary details to allow a fair hearing of his claims to proceed.
- 3.6. Several attempts to obtain the necessary details were made. The claimant repeatedly stated that he had given the evidence to the respondent and then proceeded to read entire emails to the Tribunal. This was not helpful in clarifying what specific acts the claimant was complaining about.

- 3.7. After a few minutes the claimant became visibly angry that his general allegations were not sufficient. At this point the claimant announced that he was leaving the hearing and started to collect his belongings.
- 3.8. The respondent's representative clearly stated at this point that if the claimant left he would seek to pursue the respondent's strike out application in the claimant's absence. The claimant stated that he "*did not care*" or words to that effect. I indicated to the claimant that he should stay as he was leaving the room, but he continued to leave.
- 3.9. The hearing was immediately adjourned to allow time for the claimant to reconsider. This was in part in the light of the fact the claimant had abruptly left the 1 July 2022 hearing, only to return around 20 minutes later. The Tribunal clerk subsequently confirmed that the claimant had left the Tribunal premises.
- 3.10. After a 15-minute adjournment the hearing resumed in the absence of the claimant. The respondent's representative proceeded to make submissions in support of striking out the claim.

#### 4. Strike Out Submissions

- 4.1. The respondent sought strike out under rule 37, on three grounds:
  - Rule 37(1)(c) That the claimant had not complied with orders;
  - Rule 37(1)(b) That the manner in which proceedings had been conducted by the claimant was not reasonable; and
  - Rule 37(1)(d) That the claimant was not actively pursuing his claim.
- 4.2. *Rule 37(1)(c) That the claimant had not complied with orders*
  - 4.2.1. The respondent submitted that the non-compliance with orders was clear from the facts. The claimant was first ordered to respond to questions providing details of his claim by April 2021.
  - 4.2.2. This order has been repeated and restated several times, and still has not been complied with. The claimant does not appear to suggest he has answered the questions. There is no evidence before the Tribunal that the claimant has even made any reasonable attempt to answer them.
- 4.3. *That the manner in which proceedings had been conducted by the claimant was not reasonable*
  - 4.3.1. The respondent submitted that the claimant had been intransigent. The claimant has not only failed to answer the specific questions but had not even attempted to answer them. The claimant appeared to believe that the

respondent should sift through evidence looking for incidents about which the claimant could make a claim.

- 4.3.2. The claimant has been warned about the potential strike out of his claims for over a year. Despite this, no clarification of his claims has been provided.
- 4.3.3. The claimant has been explicitly told that producing a file of evidence does not meet the requirement of providing the necessary details. It is not appropriate to ask the respondent to determine which incidents he seeks to make a claim about. The questions he has been asked to answer are clear and concise. The claimant has had numerous opportunities to seek clarification if they were not clear to him. At the 1 July 2022 hearing the claimant specifically confirmed he understood what he needed to do.
- 4.3.4. The claimant, as a former Executive Office Fraud Investigator, would have the skills to explain and give details of the specific incidents he relies on. The respondent referred the Tribunal to the comments of Her Honour Judge Tucker in the case of Mr W Khan v London Borough of Barnet (2018) in which at paragraph 31 she states:

*“Being a litigant in person does not mean that a litigant is exempt from compliance with procedures or from engaging in the litigation process to pursue a claim.”*

- 4.3.5. The respondent’s submission was that the claimant, even as a litigant in person, has to make a reasonable effort to do what is needed to pursue his claim. The respondent submitted that this claimant had not met this basic requirement.
- 4.4. *That the claimant was not actively pursuing his claim.*

- 4.4.1. The claimant clearly has attended hearings. The respondent submitted that active pursuit of claim needs more than attending hearings.
- 4.4.2. The respondent submitted that the claimant, in failing for well over a year to provide the necessary details of the specific incidents he relies on, is not actively pursuing his claim. The respondent referred the Tribunal to the authority of Rolls Royce plc v Riddle [2008] and the comments of Lady Smith at paragraph 20 of that report where she states:

*“20. ....it is quite wrong for a claimant, notwithstanding that he has, by instituting a claim, started a process which he should realise affects the employment tribunal and the use of its resources, and affects the respondent, to fail to take reasonable steps to progress his claim in a manner that shows he has disrespect or contempt for the tribunal and/or its procedures. In that event a question plainly arises as to*

*whether, given such conduct, it is just to allow the claimant to continue to have access to the tribunal for his claim. ...”*

## 5. Relevant Law

- 5.1. The power to strike out all or part of a claim is contained in Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013.

*“37 Striking out*

*(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—*

*(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;*

*(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.”*

- 5.2. The power to strike out is discretionary and is to be applied as a two-stage test. At the first stage the tribunal must find that one or more of the specified grounds for striking out has been established; and, if it has, the second stage requires the tribunal to decide as a matter of discretion whether to strike out the claim or response.

## 6. Discussion and Conclusions

- 6.1. *Did the claimant have an opportunity to make representations regarding the strike out application?*

6.1.1. The claimant left the hearing before the strike out application was considered.

6.1.2. The claimant was aware that the respondent had made an application to strike out his claim well before this hearing. This was specifically related to his failure to provide answers to the questions asked, giving adequate details of the allegations he made. The claimant was also aware that the

respondent's strike out application was on hold pending the details he provided before (or indeed at) this hearing.

- 6.1.3. At this hearing the claimant was informed that if he walked out, a strike out application would be made in his absence. The claimant indicated that he did not care what happened.
  - 6.1.4. Accordingly, the claimant did have a reasonable opportunity to make representations at this hearing as to why his claim should not be struck out. The claimant chose not to take this opportunity.
- 6.2. *Is the test in s37(b), (c) or (d) met?*
- 6.2.1. The facts are plain, the claimant was ordered to provide information in the form of answers to questions, and for over a year has repeatedly failed to do so.
  - 6.2.2. The claimant has not made any effort to provide the needed information in writing. At this hearing, the claimant chose to walk out of the hearing rather than continue to make efforts, with the assistance of the Tribunal, to provide the necessary information.
  - 6.2.3. The claimant's failure to provide the information needed, or even to attempt to answer the questions is not reasonable. The claimant's abrupt departure from this one-day hearing after around 1 hour is not reasonable. For well over a year the claimant's claim has not been able to usefully proceed because he has not provided the information needed for it to proceed. This has included the postponement of a listed final hearing of 10-days duration.
  - 6.2.4. For the above reasons the claimant is found to have failed to comply with an order, to have done so in a way that amounted to unreasonable conduct of proceedings and to have failed to act to progress his claim for over a year.
  - 6.2.5. It is noted that the claimant, when walking out of this hearing, stated that he did not care what happened after he left. Although the claimant is a litigant in person, that does not absolve him of the need to take reasonable steps to progress his claim. There is no indication of any potential for the claimant to take reasonable steps to provide the needed particulars at any point in the future.
  - 6.2.6. The possibility of making an unless order was considered, as an alternative to striking out the claimant's claim. Such an order was not considered appropriate at this time in the current case. The claimant had been given ample time to prepare for this hearing, where his attempt to answer the questions giving adequate details of his claims would be discussed. This hearing was listed for a full day, an unusually long time for a case management discussion. The claimant was made explicitly aware that a failure to reasonably attempt to provide the needed answers would result



in the respondent's application for strike out being considered. This had a similar effect to an unless order, save that it ensured the claimant would have a further 'last chance' to provide the needed details at this hearing. Accordingly, an unless order at this time would not have been appropriate.

- 6.3. For the above reasons the statutory test for strike out is found to be met on all three submitted grounds.
- 6.4. Taking into account the claimant's conduct for over a year, in failing to make reasonable efforts to progress his claim, and the manner in which he walked out this hearing stating his disinterest in what happened after he left, it is an appropriate and just exercise of my discretion in the circumstances to strike out the claimant's claim.

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Employment Judge Buzzard  
9 September 2022

JUDGMENT SENT TO THE PARTIES ON  
13 September 2022

FOR THE TRIBUNAL OFFICE

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