



EMPLOYMENT TRIBUNALS

**Claimant**  
**Ms E Willis**

**Respondent**  
**v Ms C Sterry t/a Baloolah Hair**

**Heard at: London South by CVP**

**On: 28 November 2022**

**Before: Employment Judge Truscott QC**

**Appearances:**

**For the Claimant: No appearance or representation**  
**For the Respondent: In person**

**JUDGMENT**

The claim is struck out under Rule 37(1)(c) and (d) on the ground that the claimant has failed to comply with Orders of the Tribunal and the claim is no longer being actively pursued.

**REASONS**

1. The claimant was employed as an Apprentice Stylist on 2 December 2020 until her dismissal on 8 February 2022. On Friday 11 February 2022, she received pay for hours worked, a week's notice, any owed holiday and the difference in pay of the uplift of the hourly rate to the National Living Wage.
2. She claimed unfair dismissal and other unspecified payments. The unfair dismissal claim was struck out by a Judgement on 13 July 2022.
3. On 13 July 2022, the claimant was ordered to specify what sums she was claiming. On 11 November 2022, the claimant was ordered to supply the necessary information or the claim would be struck out.
4. The claimant has not provided the required information and did not attend the hearing.

**STRIKING OUT**

5. Rule 37 of the Employment Tribunal Rules 2013 provides:  
**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—

- (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).

6. The EAT has held that the striking out process requires a two-stage test in **HM Prison Service v. Dolby** [2003] IRLR 694 EAT, at para 15. The first stage involves a finding that one 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, order it to be amended or order a deposit to be paid. See also **Hassan v. Tesco Stores** UKEAT/0098/19/BA at paragraph 17 the EAT observed:

“There is absolutely nothing in the Judgment to indicate that the Employment Judge paused, having reached the conclusion that these claims had no reasonable prospect of success, to consider how to exercise his discretion. The way in which r 37 is framed is permissive. It allows an Employment Judge to strike out a claim where one of the five grounds are established, but it does not require him or her to do so. That is why in the case of *Dolby* the test for striking out under the *Employment Appeal Tribunal Rules 1993* was interpreted as requiring a two stage approach.”

7. In **Mechkarov v. Citibank N A** UKEAT/0041/16, the EAT set out the approach to be followed including:-

- (i) Ordinarily, the claimant’s case should be taken at its highest.
- (ii) Strike out is available in the clearest cases – where it is plain and obvious.
- (iii) Strike out is available if the claimant’s case is conclusively disproved or is totally and inexplicably inconsistent with undisputed contemporaneous documents.

## Decision

8. After lodging her ET1, the claimant appears to have taken no further part in the proceedings. The Tribunal has ordered her to provide the information upon which her claim might be based. She has not done so and did not appear at the hearing.

9. The Tribunal decided to exercise its discretion to strike out the claim for failure to comply with Orders of the Tribunal and for not actively pursuing the claim.

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**Employment Judge Truscott QC**  
**Date 28 November 2022**