



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr S Longani

**v Diamond Bus South East (formerly known as
Hallmark Connections Limited)**

Heard at: Watford by CVP

On: 2 December 2022

Before: Employment Judge Forde

Appearances

For the Claimant: Did not appear and was not represented

For the Respondent: Mr Lomax, Solicitor

JUDGMENT

1. The claim is struck out.

REASONS

1. By way of a claim form dated 12 January 2022 the claimant pursues a claim of unfair dismissal against the respondent arising out of the termination of his employment on 1 December 2021.
2. Following the presentation of his claim and of the respondent's response, the tribunal sent to the parties notification of the date of the full merits hearing which was due to be today's date, 2 December 2022. In addition, the tribunal set out standard directions with regards to disclosure, exchange of documents, the provision of a schedule of loss, the preparation of witness statements and bundle preparation prior to the hearing and the parties were notified of this information by way of letter dated 19 June 2022.
3. At the beginning of November Mr Lomax on behalf of the respondent wrote to the tribunal to inform it that the claimant had not complied with any of the case management direction and that as a consequence the tribunal should be minded to strike out the claimant's claim pursuant to Rule 37(1)(c) on the basis that the claimant had failed to comply with any of the tribunal's orders or directions. A strike out warning letter was sent to the claimant and copied to the respondent on 24 November 2022. Within that warning letter, the tribunal identified that the claimant had not complied with his orders and that the claim had not been actively pursued. It is noted that following this

warning, the claimant failed to explain any reason behind his failure to comply with the tribunal's orders or provide and assurance to the tribunal of his intention to do so going forward. During the course of the evening of 1 December, the day before the hearing, the claimant notified the tribunal that he would not be able to attend the hearing because he was due to attend work the following day which was the day of the hearing. On the day of the hearing itself, the claimant informed the tribunal that he was unwell but did not provide evidence of his sickness or indeed identify what it was to the tribunal which prevented him from participating in the hearing. Furthermore, and despite being aware of the fact that the tribunal was considering striking out his claim, it remained the case at the time of the hearing which was convened at the scheduled time of 10 o'clock on 2 December 2022 that the claimant had not provided an explanation for his serial non-compliance with the tribunal's orders.

4. By way of Rule 47 of the 2013 Rules, a tribunal can proceed in the absence of a party having first considered the information available to it. As I have pointed out, the claimant applied for postponement on two grounds spanning the evening of the 1 December 2022 and the morning of 2 December 2022. Although not explicitly stated to be an application for postponement I considered that they were and considered only the application in respect of the claimant's sickness which was sent to the tribunal on the morning of the hearing but did not specify the nature of the claimant's illness.
5. I weighed up the claimant's late application against the interests of justice and in particular, the need to proceed with cases in a way that is just and equitable to both parties as well as a consideration of the tribunal's resources. Additionally, I considered the prejudice that further delay would cause in these proceedings and noted that the respondent is legally represented. Having carefully considered all of the competing factors, I determine that the hearing should go ahead in the absence of the claimant who I considered had received adequate notice that a hearing would take place on 2 December but had taken no active steps to prepare for it or engage with the respondent whatsoever. I considered it relevant that the claimant had not explained what his illness was and that it was at a variance with the reason given the night before which was that he was unable to attend the hearing due to his work commitments.

Strike out

6. Based upon the evidence before it, it was clear that the claimant had failed to comply with any of the tribunal's orders. Therefore it fell to me to consider striking out the claimant's claim pursuant to Rule 37(1)(c). I found that there had been complete non-compliance and no explanation as to the reason why there had been no compliance with the tribunal's orders.
7. Part of the tribunal's consideration of strike out under this rule requires a consideration of the overriding objective as set out in Rule 2 of the 2013 Rules, namely a requirement that tribunals deal with cases fairly and justly. This requires a tribunal to consider all relevant factors, including:

- The magnitude of non-compliance.
 - Whether the default was the responsibility of the party.
 - What disruption, unfairness or prejudice has been caused.
 - Whether a fair hearing would still be possible, and
 - Whether striking out or some other lesser remedy would be the appropriate response to the disobedience.
8. In my view, it is difficult to envisage non-compliance on a greater scale than that in this case. In short, the claimant has not participated in any meaningful way with the case, meaning that it was inevitable that the claim would not proceed in the way intended by the tribunal to a conclusion on 2 December. I consider that the default lay solely and entirely with the claimant whose conduct has caused unfairness and prejudice to the respondent who has not been able to conclude this matter through the default of the claimant. Given the wholesale nature of the claimant's conduct, a lesser remedy to strike out could not be considered. A strike out is an entirely proportionate outcome in a case where there has been serial non-compliance of the magnitude that can be seen in this case.
9. Accordingly, I order that the claim is struck out.

Employment Judge Forde

Date: 20/12/2022

Sent to the parties on: 5/1/2023

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For the Tribunal Office