



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 800023/2022

Hearing held on written documentation 26 January 2023

Employment Judge A Kemp

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Ms L McDade

**Claimant
In person**

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M & M Plumbing and Heating Supplies Ltd

**Respondent
Represented by:
Ms J Gould,
Solicitor**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

25 **The Tribunal strikes out the Claim under Rule 37 of the Employment Tribunal Rules of Procedure.**

REASONS

30 **Introduction**

1. The respondent has made an application for strike out in an email dated 25 January 2023.
2. The Tribunal issued orders in relation to the pursuit of the claim in a Note following a Preliminary Hearing on 23 November 2022, issued to the parties by email on 28 November 2022. The Note explained that further and better particulars of claims made were required, made an order for
35 E.T. Z4 (WR)

the claimant to do so by 7 December 2022, and set out the matters for and context of that. The claimant did not comply with that order. The Tribunal sent reminders to the claimant, without response.

3. A strike out warning letter was sent to the claimant on 19 December 2022,
5 seeking a response within seven days. Whilst that was a date that was a public holiday, the claimant has not responded in the substantial period from that date onwards. A Notice of Preliminary Hearing to address an application for strike out by the respondent was fixed for 1 February 2023.
4. The respondent has now made the said application.

10 **The law**

5. A Tribunal is required when addressing such applications as the present to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 which states as follows:

15 **“2 Overriding objective**

The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—

- 20 (a) ensuring that the parties are on an equal footing;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- 25 (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the
30 overriding objective and in particular shall co-operate generally with each other and with the Tribunal.”

(i) *Strike out*

6. Rule 37 provides as follows:

“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—

.....

(c) for non-compliancewith an order of the Tribunal.....

(d) that it has not been actively pursued.”

7. The EAT held that the striking out process requires a two-stage test in *HM Prison Service v Dolby [2003] IRLR 694*, and in *Hassan v Tesco Stores Ltd UKEAT/0098/16*. 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.

15 **Discussion**

8. I take into account that the claimant is a party litigant and that she has referred to having mental health difficulties. She has not however complied with a case management order, that includes giving fair notice to the respondent of the case she intends to make. The respondent claims that it is suffering prejudice as a result of that, in that it is incurring expense.

9. The claimant has been given more than one opportunity to address the issues, and a degree of assistance to do so in the terms of the Note and time to date. There has been no response of any kind. It appears to me both that there has been a failure to comply with the order as to further and better particulars, and that the claimant is not actively pursuing the claims.

10. In light of the background, the circumstances set out above, and having regard to the terms of the overriding objective, I am satisfied that it is appropriate for me to strike out the Claim on the basis of both a failure to comply with the order, and the claimant not actively pursuing the claims.

Employment Judge: A Kemp
Date of Judgment: 26th January 2023
Date sent to parties: 31st January 2023