



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

v

Mr Kyle Parris-Scantlebury

British Airways PLC

**Heard at:** Watford by telephone  
**Before:** Employment Judge Clarke KC

**On:** 12 January 2023

## **Appearances**

**For the Claimant:** No attendance  
**For the Respondent:** Guy Hollibon (solicitor)

## **JUDGMENT**

1. All of the claims (being those for unfair dismissal and race discrimination) are struck out pursuant to Rule 37 (1) of the Employment Tribunals (Constitutional Rules of Procedure) Regulations 2013.

## **REASONS**

2. The claimant was employed the respondent, latterly as a ground operations lead, 28 November 2016 to 20 January 2022. On 19 May 2022 he commenced this claim alleging unfair dismissal and race discrimination. Due notice had been given to ACAS under the early conciliation procedure on 29 March 2022 and a certificate was issued on 13 April 2022. Hence, it would appear that the claimant had until 13 May 2022 to present his claim. No claim was presented within what I apprehend to be the primary limitation period. Hence, as the response makes clear, one issue which the Tribunal would have had to deal with at some stage is, assuming the claim was presented outside the primary limitation period, whether time should be extended into the secondary limitation period.
3. The response set out the respondent's position as to the race discrimination claim. In short, it did not understand the basis in which the claim was brought and reserved to itself the possibility of amending the written response once the claim was particularised.
4. With that in mind, the Employment Tribunal issued orders in addition to those which would normally be made in advance of a preliminary hearing.

The case was given a provisional listing on 21 October 2022 (for dates in September 2023), the claimant was ordered to produce a schedule of loss by 05 September 2022, the parties were ordered to give mutual disclosure by 31 October 2022, today's telephone preliminary hearing was notified to the parties and a detailed order was made in respect of the particularisation of the discrimination case. The judge examining the papers took the view that the claimant might be intending to raise not only a claim for direct race discrimination, but also a claim for harassment related to race. Those particulars were to be given by 19 September 2022.

5. There followed a series of emails from the respondent to the Tribunal (copied in each case to the claimant) pointing out his non-compliance with the orders made by the Tribunal made, in particular, to require the giving of details of his discrimination claim. The emails of 07 and 20 October were not responded to by the claimant. However, he did respond to the third email, of 08 November, by pointing out to the respondent that he had provided some information via ACAS. In fact, the information provided (so far as the respondent was aware) amounted to an indication of what he might be claiming by way of financial losses. In response to that email from the claimant, the respondent advised the claimant that any communications via ACAS would be "without prejudice" and could not be used in the Tribunal proceedings. Hence, the claimant was asked to comply with the orders made by direct communication with the respondent. He failed to do so.
6. The claimant's non-compliance with the Tribunal's orders led to his being sent a letter by the Tribunal dated 18 December 2022 warning him of the possibility of a strike out of his claim for failure to comply with the Tribunal's orders. He was instructed that if he wished to oppose the strike out of his claims "he must write to the Tribunal by 12 January 2023" doing two things, firstly explain why his claim should not be struck out, and secondly, confirming that he had complied with the outstanding case management orders.
7. The Tribunal received no response to the strike out warning letter. Indeed, the Tribunal received no communication, either written or oral from the claimant until the Tribunal itself contacted him on 11 January 2023 to enquire as to his attendance (by himself or by a representative) at this hearing which was to take place on the following day. In the usual way he had been asked on 21 August 2022 to complete an agenda in advance of the hearing and to provide a telephone number for himself or his representative so that they could be linked into the hearing. He had done neither.
8. When telephoned by the Tribunal the claimant indicated that he could not attend today's hearing due to "work responsibilities". He was advised that if he wished to apply for the hearing to be postponed, he should do so in writing as soon as possible. At 15:11 that afternoon the claimant emailed the Tribunal stating that he was "not able to attend due to work responsibilities". He expressed the hope that the case could be rescheduled for a later date.

9. The application was immediately put before Employment Judge Tobin who refused the request. He indicated that a statement made on the afternoon before a hearing did not provide a convincing explanation for the claimant's non-attendance, nor did it show that he had made efforts to accommodate the date, which I note he had known about since 21 August 2022. That decision was communicated to the claimant by email timed at 15:54 on the afternoon of 11 January 2023.
10. This morning I attempted to link the claimant into this telephone hearing. I used the telephone number which he had originally provided to the Tribunal on his claim form and which was the telephone number which the Tribunal clerk used to contact him on 11 January. I made two attempts to link the claimant into the hearing, the first just after 10:00am and the second some seven minutes later. He did not respond on either occasion.
11. I note that the email address which the claimant used to send his application to postpone on 11 January 2023 is the same email address used by the Tribunal to send documents referred to from 21 August 2022 and also the strike out warning letter. It is also the email address which was used by the respondent and by him in respect of the communications of October and November 2022.
12. It follows that I am satisfied that the claimant was aware of the order made for the production of a schedule of loss and the giving of particulars of the discrimination case and that he was aware of the strike out warning letter.
13. Save that the respondent has responded to the parts of the claim that it understood, this claim has not been advanced since the claim was commenced on 19 May 2022. In particular, the race discrimination claim remains unclear and unparticularised. The claimant has provided no explanation for his failure to comply with the orders made in August 2022.
14. The rules of procedure provide, in Rule 37, that at any stage of the proceedings, either on its own initiative or on the application of a party, the Tribunal may strike out all or part of the claim on various grounds. These include that the manner in which the proceedings have been conducted by the claimant has been unreasonable or that there has been non-compliance with Tribunal orders, or that the claim had not been actively pursued. Rule 37(2) makes clear that a claim should not be struck out unless the party in question had been given a reasonable opportunity to give representations, either in writing, or, if requested by the party, at a hearing.
15. By the letter of 18 December 2022, the claimant was warned that the Tribunal was considering the strike out of his claim because of his failure to comply with orders. He was given the opportunity to respond by explaining why the claim should not be struck out and, in particular, showing that he had complied with the case management orders. This claimant has done neither of those things.
16. Of itself, that would provide a sufficient basis for the striking out of his claim. Had he been present (by telephone) today, it might have been possible for

him to persuade me that I should take a different view in respect of the unfair dismissal claim to that in respect of the race discrimination claim. That claim was sufficiently particularised to enable the respondent to deal with it and (albeit via ACAS and strictly speaking “without prejudice”) an indication of the losses alleged had been given. However, I note that if I could have been persuaded not to strike out that claim, this would inevitably have led to a further preliminary hearing to consider whether it was reasonably practicable for the claimant to have had brought his unfair dismissal claim within time.

17. I regard the claimant’s conduct of this claim to be unreasonable. I also take the view that the claim has not been actively pursued. He has failed to comply with the Tribunal’s orders, he has failed to prepare appropriately for this hearing, and he has failed to attend it. That failure has not been adequately explained. To refer to “work responsibilities” which prevent his telephone attendance for the first time on the eve of the hearing is obviously an insufficient basis upon which to obtain an adjournment, as Employment Judge Tobin found.
18. I consider that the claimant has had a reasonable opportunity to make representations in respect of his failure to comply with the order contained in the strike out warning letter. Those orders were designed to provide that opportunity. He was not warned of the possibility of the claim being struck out on the basis of his unreasonable conduct or on the basis of a failure actively to pursue the claim. It might well be said that this hearing offered him that opportunity, but I do not strike out the claim on either of those two grounds. Rather, in considering whether to exercise my discretion to strike out on the basis of the failure to comply with the orders of the Tribunal, I had regard to the claimant’s overall conduct of this case and what I regard as his failure actively to pursue it.
19. In all the circumstances, I consider that it is appropriate to strike out the whole of this claim on the ground that the claimant has failed to comply with orders made by the Tribunal. Hence, this claim is struck out in its entirety.

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Employment Judge Clarke

Date: 15/2/2023

Sent to the parties on: 23/2/2023

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For the Tribunal Office