



EMPLOYMENT TRIBUNALS

Claimant: Mr S Nwogu

Respondent 1: Dimensions UK Ltd

Respondent 2: Camilla Maple

Respondent 3: Adam Phillips

Heard at: Reading **On:** 20 February 2023

Before: Tribunal Judge A Jack, acting as an Employment Judge

Representation

Claimant: Did not attend

Respondents: Mr S Singleton and Ms S Miller, Trowers and Hamblins LLP

JUDGMENT

The claim is struck out.

ORAL REASONS GIVEN AT THE HEARING

1. The claimant's ET1 was presented on 17 June 2022. Case Management Orders made on 24 October 2022 required the claimant to send the respondent a schedule of loss by 22 November 2022, and to send the respondent documents relevant to the claim by 20 December 2022. The claimant has not complied with those orders. (The claimant was also required to write to the respondent by 22 November 2022 saying what physical or mental impairments he relies on. He did not do so. However that order appears to have been a mistake, since the claimant has not made a claim of disability discrimination.)

2. Ms Miller, solicitor for the respondents, has attempted to contact the claimant by letter, by email, and via ACAS, without success. She has had no correspondence from the claimant since his ET1. She applied for the claim to be struck out on 21 December 2022. On the same date she sent a copy of the

respondent's application to the claimant, explaining that if he wished to object to the application he needed to do so as soon as possible.

3. By a letter dated 17 February 2023 the Tribunal gave the claimant an opportunity to make representations or to request a hearing, as to why the claim should not be struck out because:

- the claimant had not complied with Case Management Orders dated 24 October 2022.
- it has not been actively pursued.

The letter was clear that if the claimant wished to object to the claim being struck out, he should give reasons in writing, or request a hearing at which he can make them, by 9 am on 20 February 2023, before the start of the listed hearing.

4. The tribunal clerk checked at 9:37 am, and the claimant has failed to make representations in writing why his case should not be struck out, or to request a hearing.

5. A Notice of today's hearing was sent to the claimant on 24 October 2022. He did not respond to the respondent's letter to him, sent by special delivery on 2 February 2023, asking for his comments on the proposed list of issues. Despite the tribunal's two attempts to ring the claimant this morning, by 10:40 am he had still not attended the hearing.

6. Under rule 47, if a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. I decided to proceed with the hearing and hear to respondent's application for strike out, taking account of the two attempts made by the tribunal to ring the claimant this morning.

7. The tribunal is able under rule 37 to strike out a claim for non-compliance with an order of the Tribunal or on the grounds that it has not been actively pursued. *Rolls Royce plc v Riddle* 2008 IRLR 873, EAT, paragraphs 19 and 20, makes clear that there is an expectation that cases of failure to actively pursue a claim will typically fall into one of two categories. The first is where the default is intentional and shows disrespect for the tribunal and/or its procedures. It is quite wrong for a claimant, who has started a claim which he should realise affects the 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 for the tribunal and/or its procedures. The second is where there has been inordinate and inexcusable delay so as to give rise to a substantial risk that a fair trial would not be possible, or there would be serious prejudice to the other party.

7. I am satisfied that the claimant has failed to comply with tribunal orders regarding a schedule of loss and disclosure, and that he has not actively pursued the claim. Had he attended the hearing today, it should have been possible to make orders to ensure that fair trial was still possible in August 2024. However in the circumstances of his failure to engage with the respondents' solicitor, his failure to respond to the tribunal's Strike Out Warning of 17 February 2023, and his failure to attend the hearing today, I consider that it is more likely than not that his failure

to comply with tribunal orders made on 24 October 2022 is intentional, and disrespectful of the procedures of the tribunal and its orders.

8. The claim is therefore struck out.

9. The hearing fixed for 19 August 2024, 20 August 2024, 21 August 2024, 22 August 2024, 23 August 2024 will not take place.

Employment Judge Jack

20 February 2023

JUDGMENT SENT TO THE PARTIES ON

2/3/2023

NG

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.