



**EMPLOYMENT TRIBUNALS**  
**(England and Wales)**  
**London Central Region**

Claimant: Mr K Gorringe  
Respondent: Ministry of Defence

Heard by CVP on 31/5/2023  
Before: Employment Judge J S Burns

Representation

Claimant: in person  
Respondent: Mr A Shellum (Counsel)

JUDGMENT

1. The Claims are struck out
2. The Claimant must pay costs of £4223 to the Respondent as follows: (i) the deposit of £500 (previously paid by the Claimant to HMCTS) is to be paid over to the Respondent's solicitors by HMCTS as soon as possible and (ii) the balance of £3723 is to be paid by the Claimant to the Respondent's solicitors by 14/6/23.

REASONS

1. I was referred to a bundle of 125 pages and received a Respondent's skeleton argument dated 31/5/23 and oral submissions from both sides. I did not take witness evidence as neither side had filed witness statements.
2. The Claimant suffers from learning difficulty, autism, depression and anxiety. At his own request he joined the hearing by telephone rather than by video. He was content for the hearing to proceed on this basis.
3. After I had delivered an extempore judgment and Mr Shellum had indicated that the Respondent wished to make a costs application, I announced a short adjournment starting at 11.38 immediately before which I requested the Claimant to remain connected or rejoin the hearing at 11.50 when the costs application would be heard. However when the hearing resumed the Claimant did not rejoin so he was absent for the costs application and its determination.
4. The Claimant was employed by the Respondent from 1/11/1980 but was dismissed for misconduct on 5/10/2014. He presented an ETI in the Huntington ET office in case number 3400577/2015, on 27/2/2015 for unfair dismissal, age and disability discrimination and holiday pay but withdrew the claims which were then dismissed on withdrawal in a judgment dated 30/7/2015.

5. The Claimant told me that he withdrew his claims in 2015 on advice from his doctor and solicitor. Before the withdrawal the solicitor negotiated the Respondent's agreement that it would not pursue costs in relation to those proceedings.
6. In his current claim, which was accepted in the London Central ET Office after reconsideration with effect from 16/8/22, he has presented claims of unfair dismissal and disability discrimination arising out of the same or substantially the same facts as those in the 2015 proceedings.
7. The main themes of his 2015 claims were (i) claimed lack of training on computers as relevant to whether he was guilty of the misconduct for which he had been dismissed (ii) alleged shortcomings or absence of a proper appeal against dismissal and (iii) alleged problems with Claimant trying to recover various personal chattels from his work-locker.
8. In the instant claims presented in 2022 the same themes recur with the added detail that the Claimant now contends that the chattels in his locker were destroyed or lost, in support of which he refers to 2 letters about this which he says he received from the Respondent in 2017.
9. In oral submissions today the Claimant agreed that his claims were "mostly the same" as his earlier claims. When I asked him how they differed in any material respect he was unable to say.
10. When I asked the Claimant why he had waited from 2015 until 2022 to try to present his claims again, he said that he had been unwell and since dismissal he had got worse not better. However, this is not a case of him having recovered recently to the point that he was able to pursue a claim, whereas he had previously been incapacitated. He has not adduced any medical evidence to support any incapacity in any event.
11. He told me that the trigger for his deciding to present the instant claims in 2022 was discussions with/the influence of various politicians including Matt Hancock who had told him, or lead him to believe, that he should "to get his claim into court as soon as possible"..
12. A deposit order was made against the Claimant on 9/12/22. He was required to pay £500 to HMCTS in Bristol by 28/1/23 which was 7 weeks after the deposit order was made, failing which the order provided that the claims would be struck out.
13. Despite the fact that clear directions and the correct Bristol address had been given in writing to the Claimant when the deposit order was made, he sent the cheque to some incorrect address in London and by the time the muddle was sorted out and he had sent the deposit to the correct address, three weeks had elapsed after the deadline had expired. He paid the deposit late on 21/2/23.
14. The law I have had to consider in this matter is set out fully in the relevant sections of the Respondent's skeleton argument which are incorporated by reference into these reasons.

### Conclusions

15. Although a deposit order may be the subject of variation, including an extension of time for payment, notwithstanding that the time originally set for payment has expired, - where there has been a failure to pay within time, the onus is on the Claimant to persuade the tribunal that circumstances or developments since the deposit order was made justified the date originally set being revisited and extended.
16. it is clear that in this case the failure to pay the deposit on time was not a result of the Tribunal's error, or of the Claimant's ignorance. Rather, he failed to take sufficient care to read the terms of the deposit order before posting the cheque. That is not a good reason to extend the already lengthy period he was given to pay the deposit.

17. I bear in mind that the Claimant states that he is a disabled person – but no medical evidence has been produced to me to substantiate this and in any event the Claimant does not suggest that disability or medical incapacity was the cause of the lateness.
18. The claims are therefore struck out under the terms of the deposit order as contemplated by Rule 39(4).
19. I have gone on to consider what my decision would have been under the other heads of the Respondent's application, if I had not struck out the claims under Rule 39(4):
20. The Claimant is in any event estopped from presenting and pursuing the current proceedings by virtue of his previous complaint to the Tribunal in case number 3400577/2015, which was brought on substantially the same grounds, and which was dismissed upon withdrawal by the Claimant, as set out in the Tribunal's Judgment dated 30 July 2015.
21. A judgment dismissing a claim following a withdrawal by a claimant amounts to a judicial decision which may give rise to cause of action or issue estoppel even though there has been no reasoned decision on the merits of the claim – it is not a mere administrative act. This is reflected in Rule 52, in Schedule 1 of the 2013 Rules.
22. An issue which has been decided or ought to have been decided in previous litigation can only be reopened if there is fresh evidence which entirely changes that aspect of the case and could not by reasonable diligence have been discovered previously by the party wishing to put that evidence before the court. In the absence of such exceptions, issue estoppel provides an absolute bar to subsequent litigation of that issue. There is no such exception in the instant case. The instant claims are therefore res judicata.
23. Further, to the extent that there was anything new in the instant claims (and the Claimant could not identify that there was), their presentation to the Tribunal in 2022 was an abuse of process under the rule in Henderson because they could and should have been pursued in 2015 in any event.
24. Furthermore, he has presented his current complaints to the Tribunal more than seven years outside the statutory three-month time-limit for presentation of complaints to the Tribunal.
25. Obviously it was reasonably practicable for him to present his unfair dismissal claim in time because in fact he did present such an in-time claim in 2015.
26. It would not be just and equitable to extend time to permit the instant discrimination claims at this late stage, even if that were possible. The main reasons for this are that the Claimant in 2015 made a considered decision with professional legal advice to withdraw the claims and many years have gone by subsequently, so that the Respondent, if it was required to try to defend the claims now, would be prejudiced through the departure/loss of various key witnesses (identified in the skeleton argument) and deterioration in the quality of evidence generally. The Tribunal therefore has no jurisdiction to hear the claims in any event.
27. For these reasons I would strike out the claims under Rule 37(1)(a) (no reasonable prospect), 37(1)(b) (vexatious conduct) and 37(1)(e) (no longer possible to have a fair trial), in any event.
28. The claims have been struck out (or would have been but for the strike out under Rule 39(4)) for the same reasons given in the Case Management Order signed on 9/12/2022 and, in any event I have decided the arguments referred to in the deposit order against the Claimant. Therefore under Rule 39(5)(b) in Schedule 1 of the 2013 Rules the £500 deposit must be paid to the Respondent.
29. Furthermore, the Claimant is to be treated as having pursued his claim unreasonably unless the contrary is shown, which he has not done. My discretion to make a costs order is engaged.

30. At the hearing on 9/12/23 and in the subsequent case management order, EJ Stewart gave the Claimant a clear explanation that his claims were likely to be struck out.
31. In addition, the Respondent's solicitors sent a costs-warning letter to the Claimant on 22/3/23 explaining the reasons why the claims were bound to be struck out and offering to not claim costs if the Claimant withdrew, but unfortunately, he did not accept this.
32. By paying the deposit to the wrong address and then late he caused additional costs and work from the Tribunal and the Respondent's solicitors.
33. Having secured an agreement that the MOD would bear its own costs of dealing with his 2015 claims, he has then issued the 2022 claims thus forcing the MOD, a publicly-funded body, to incur substantial further legal costs in responding again.
34. The Respondent claimed all its costs of the instant proceedings, in the sum of £7353.5 plus vat; alternatively £4554 plus vat being its costs since 9/12/23 (when the deposit order was made) and produced a schedule showing the calculations. The figure of £4554 plus vat was then reduced by Mr Shellum in his oral submissions to £4223 plus vat on account of the fact that the today's hearing was concluded in less than the two listed days assumed when the schedule was drafted.
35. The MOD is registered for VAT so it can recover VAT through its normal accounting and I do not award that against the Claimant.
36. As the Claimant absented himself from the costs part of the hearing today, I was unable to ask him about his finances at that stage. However, he had already told me that he lives alone on state-benefits and is unemployed.
37. In all the circumstances I conclude that I should make order in favour of the Respondent of its costs net of vat incurred since the deposit order was made. Hence I order the Claimant to pay costs to the Respondent of £4233 of which £500 will be satisfied by the deposit and the balance of £3723 must be paid by the Claimant to the Respondent by 14/6/23.

J S Burns Employment Judge  
London Central  
31/5/2023  
For Secretary of the Tribunals  
Sent to parties : 01/06/2023