



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8000044/2023**

**Held in Glasgow on 29 June 2023**

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**Employment Judge S MacLean**

**Mr M Anderson**

**Claimant  
Not present  
Not represented**

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**Royal Mail Group Limited**

**Respondent  
Represented by:  
Ms N Moscardini –  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20 The claim is struck out under rule 37 of the rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the grounds of non-compliance with an order of the Tribunal in terms of rule 37(1)(c).

**REASONS**

**Introduction**

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1. The claimant sent the claims to the Tribunal on 31 January 2023.

2. On 29 March 2023 a preliminary hearing was held by telephone for case management (March PH) at which the claimant represented himself. Ms Moscardini represented the respondent.

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3. The claimant confirmed that his claims were for discrimination on the grounds of the protected characteristic of disability under the Equality Act 2010; constructive unfair dismissal under the Employment Rights Act 1996 (ERA);

and unlawful deduction of wages under the ERA in relation to holiday pay. Employment Judge Kemp considered that the respondent was entitled to further particulars of the claims being made. The Judge set out orders for specifying the particulars to be provided by the claimant who confirmed that 14 days was sufficient time for him to do so. The Judge also directed the claimant to sources for the claimant to consider and where he might find assistance if he chose to do so. Meanwhile a preliminary hearing on disability status was fixed on 19 May 2023 which was a date agreed by the parties.

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4. The case management order was sent to the parties on 31 March 2023 accompanied by the Judge's note of the March PH (the March Order). The claimant was ordered to provide specific further particulars by 11 April 2023. The respondent was ordered to respond by 25 April 2023.
5. On 10 April 2023, the claimant sent an email to the Tribunal and copied to the respondent. The claimant stated that he was seeking legal advice and gave a global figure that he was seeking.
6. On 18 April 2023, the Tribunal wrote to the claimant advising that he had not complied with the March Order. The claimant was asked to confirm how long he need to secure legal assistance and comply with the March Order. He was asked to rely by 20 April 2023. The claimant did not reply.
7. On 2 May 2023 the Tribunal wrote to the claimant advising that a legal officer was considering referring the case to an employment judge to consider strike out of the claims on the grounds that there had been non-compliance of an order (rule 37(1)(c) of the rules contained in schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations (the ET Rules)) and that the claim was not being actively pursued under rule 37(1)(d) of the ET Rules. The claimant was advised that he should reply by 9 May 2023 setting out in writing reasons for disagreeing or requesting a hearing to put forward reasons in person.
8. On 4 May 2023, the claimant sent an email to the Tribunal advising that he needed more time to get legal advice. He was seeking advice from the Citizens Advice Bureau.

9. The Tribunal wrote to the claimant on 10 May 2023 drawing the claimant's attention to the hearing already arranged for 19 May 2023. The claimant was asked for an explanation for the lack of progress. He was advised that, if he was seeking a postponement of the hearing, he required to make a formal application to the Tribunal and copy this to the respondent for comment.
10. On 14 May 2023, the claimant emailed the Tribunal to advise that he did not have the records in the time frame and needed time to get a lawyer. He now had all the documents and was ready to go ahead.
11. On 19 May 2023 the claimant sent an email to the Tribunal to advise that he was not attending the hearing as his anxiety was playing up and he was having a panic attack.
12. At the preliminary hearing (the May PH) the respondent sought dismissal of the proceedings under rule 47 of the ET Rules. Ms Moscardini who was representing the respondent referred to the claimant's failures to comply fully with the March Order. She argued that the claimant had still not provided (1) further and better particulars of his disability discrimination claim, (2) a disability impact statement, (3) a statement as to the basis of why he believed the respondent knew or ought to have known about his disability or (4) his schedule of loss, despite a strike out warning having been issued to him on 2 May 2023 and his having asked for more time to seek legal advice. Further, while it was conceded that the claimant had recently provided some medical records in response to the March Order those records did not relate to the material time relevant to his claim.
13. Employment Judge King who conducted the May PH issued an order for the production by 9 June 2023 of a soul and conscience certificate from the claimant's GP certifying the reason for his non-attendance. Also because of the claimant's failure to provide a response to the March Order despite his having subsequently received a strike out warning the Judge made ordered under rule 38 that "unless he complies by 9 June 2023 with that Order his claim shall be struck out under rule 37(1)(c) because of his failure to comply

with an order of the Tribunal and under rule 37(1)(d) because of his failure to actively pursue his claim.”

14. The note of the May PH reiterated the terms of the March Order. It also postponed the preliminary hearing and rescheduled it for 29 June 2023, “subject to the rule 38 Order”. The note was sent to the parties on 30 May 2023.
15. A notice of hearing was issued 5 June 2023 for a preliminary hearing on 29 June 2023.
16. On 12 June 2023 the claimant sent an email to the Tribunal, which was not copied to the respondent asking for more time as he was finding it hard to get legal advice. The Tribunal copied this correspondence to the respondent.
17. A guidance for in person hearing was sent to the parties by administration on 21 June 2023. The claimant replied that he did not know what response was wanted. He was trying to get legal advice and an appointment with the Citizens Advice Bureau.
18. On 26 June 2023 the Tribunal wrote to the claimant (copied to the respondent advising:

“The Judge notes that you have not responded to the email sent on 30 May 2023 attaching the note of preliminary hearing on 19 May 2023 dated 30 May 2023 which includes orders for compliance by 9 June 2023. For ease of reference a copy of the note of preliminary hearing is attached.

The orders state that in the event of non-compliance by **9 June 2023** with the earlier orders dated 23 March 2023 (which are reiterated in the note at paragraph 12) your claim shall be struck out under rule 37(1)(c) of the rules contained in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 because of failure to comply with the order and rule 37(1)(d) because of your failure to actively pursue the claim.

5 Employment Judge MacLean has directed that in these circumstances it is premature to determine the issue of disability status and the preliminary hearing already fixed for **29 June 2023** will be converted to a preliminary hearing in public so that you can put forward reasons in person why your claim should not be struck out.

If nothing is heard from you and you do not attend in person in the Judge will decide whether to strike out your claim, or part of it as the case may be, on the basis of the information which is otherwise available.”

#### 10 **Preliminary hearing**

19. At the preliminary hearing Ms Moscardini represented the respondent. There was no appearance by or for the claimant. He had not sent an email in response to recent correspondence.
20. The clerk contacted the claimant by telephone. The claimant was aware of the preliminary hearing. He was not attending.
21. In the circumstances I advised Ms Moscardini that I proposed to proceed with the preliminary hearing and decide whether to strike out the claim based on the information available. I asked whether she had anything further to add. She did not other than to refer me to orders issued at the May PH.
22. I explained to Ms Moscardini that, when the papers were referred to me on 26 June 2023, I noted that there had been a failure to comply with the “Rule 38 Order”. However, I did not consider, given the wording of the order, that there was automatic dismissal and therefore no notice was issued to the claimant under rule 38(1) of the ET Rules.
23. I was also concerned that having issued a notice of hearing the claimant may have thought that this hearing was any opportunity for the claimant to make representations why his claims should not be struck out under rule 37. It was for this reason that I had directed that the email be sent to the claimant on 26 June 2023.

**Deliberation**

24. I appreciated that the claimant is a party litigant and while disability is not conceded he has issues with his health. However, the explanation for his failure to comply with the March Order is that he has had difficulty obtaining legal representation.
25. The claimant prepared and presented his claim form and represented himself at the March PH. It is apparent from the note of the March PH that Employment Judge Kemp carefully explained the different types of discrimination and how the claimant could source other information. Employment Judge Kemp also stated that, while the process of drafting will be easier if the claimant is represented, the claimant has said that he may continue as a party litigant and the respondent might draft the list of issues and agreed facts when the additional information from the claimant was received.
26. While I acknowledge that the claimant had endeavoured to obtain legal advice there is no requirement to do so and many parties are unrepresented in Tribunal proceedings. In any event the claimant had been given more time to comply with the March Orders.
27. In the March Orders the claimant has been asked to provide facts which must be in his knowledge given that he must know how his alleged disability impacts his day to day activities; what holidays he believed were outstanding when he resigned; the benefits he has received; and what steps he has taken to find alternative employment since he resigned.
28. The claim was presented on 31 January 2023. Despite three preliminary hearings the respondent still does not have a fair notice of the claims against it. The claimant has not participated in the last two preliminary hearings, so it has not be possible to obtain the information from him by any other means.

29. In the circumstances I have concluded the claims should be struck out.

5 **Employment Judge: S Maclean**  
**Date of Judgment: 30 June 2023**  
**Entered in register: 03 July 2023**  
**and copied to parties**