



# EMPLOYMENT TRIBUNALS

**Claimant: Ms K Wright**

**Respondent: Worker Bee UK Limited**

**Heard at: Leeds on 7 August 2023**

**Before: Employment Judge Shepherd**

**Members: Mr Corbett**

**Mr Stead**

## **Appearances**

**For the claimant: in person**

**For the respondent: Ms Jervis, Litigation Consultant**

## **JUDGMENT**

The unanimous judgment of the Tribunal is that the respondent's application succeeds and the claims are struck out.

## **REASONS**

1. The claimant represented herself and the respondent was represented by Ms Jervis.
2. The Tribunal heard evidence from Kimberly Wright, the claimant.
3. The Tribunal had sight of a bundle of documents consisting of 135 pages and it considered those pages to which it was referred by the parties.
4. This case was listed for a three-day hearing commencing 7 August 2023. The respondent had made an application for claim to be struck out by reason of non-compliance with A tribunal orders.
5. On 23 November 2022 at a Preliminary Hearing before Employment Judge Armstrong had been ordered to provide a schedule of loss by 21 December 2022, medical evidence of disability and a disability impact statement by 4 January 2023, disclosure of documents by 6 February 2023 to agree the documents to be used at the hearing by 13 February 2023 and to exchange witness statements by 20 March 2023.

6. On 18 January 2023 the respondent made an application for the claim to be struck out for failure of the claimant to actively pursue the claim and for non-compliance with the orders of the Tribunal. The claimant was asked for comments but provided none and the respondent reiterated its application to strike out on 31 January 2023.

7. On 6 February 2023 the respondent provided disclosure of its documents to the claimant.

8. On 9 February 2023 the claimant apologised for the delay in sending the documentation required and said she would comply within the next 5 – 7 working days.

9. The final hearing listed for 17 April 2022 was postponed and on 15 April 2023 the respondent made a further application for the claim to be struck out for failure to comply with orders and that the claim was not being actively pursued or, in the alternative, an unless order.

10. The hearing was relisted for a 4 day hearing commencing on 7 August 2023. It was confirmed to the parties that the application to strike out would be dealt with at that hearing.

11. An application to postpone the hearing was made by the respondent due to a medical appointment for the respondent's director. This was refused by Employment Judge Davies on 2 August 2023. It was indicated that the hearing would go ahead on 7, 8 and 10 August 2023 and it was stated that the claim had been presented more than a year before and had already been postponed or delayed for a variety of reasons. It was indicated that there was an outstanding strike out application.

12. At the commencement of the hearing the Tribunal heard the strike out application.

13. The Tribunal heard evidence from the claimant and submissions from Ms Jervis and the claimant

14. The claimant provided a witness and disability impact statement on 7 August 2023, the first morning of the final hearing. She said that she had provided these to the respondent and the Tribunal on 28 May 2023. She also said she had provided a schedule of loss, disclosure of documents and medical records on 28 May 2023.

15. The respondent had not received those documents and there was no record found of them being received by the Tribunal. The claimant was unable to provide a copy of the email sending the documents to the respondent and the Tribunal.

16. The Tribunal carried out a further search of emails received and there was no email from the claimant to the Tribunal on 28 May 2023.

## **The Law**

17. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) regulations 2013 provide

“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 –

- (a) that it is scandalous vexatious or has no reasonable prospects of success;
- (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;
- (c) for non-compliance with any of these Rules in order of the Tribunal;
- (d) that it has not been actively pursued;
- (e) that the Tribunal considers that it is no longer possible to have a fair hearing in respect of the claim or response (or the part to be struck out).

18. The Tribunal has taken into account that the power to strike out is a draconian power and not to be readily exercised unless there has been deliberate and persistent disregard of procedural steps or that it has made a fair trial impossible. (**James v Blockbuster Entertainment Ltd [2006] IRLR 630**).

19. The Tribunal has considered whether striking out is a proportionate response to the non-compliance and whether there was a less drastic means of addressing the claimant's failures and achieving a fair trial for the parties. (**Weirs Valves and Controls (UK) Ltd v Armitage [2004] ICR 371 EAT**).

20. The Tribunal has taken account of the principles governing the equivalent power in the High Court as set out by the House of Lords in the case of **Birkett v James 1978 AC 297** as applied in **Evans and Anor v Commissioner of Police of the Metropolis 1993 ICR 531** in which it was provided that a Tribunal can strike out the claim where there has been a delay that is intentional or contumelious or there has been inordinate and inexcusable delay which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause serious prejudice to the respondent.

21. There had been total non-compliance with the Tribunal's orders by the claimant. This had led to the hearing in April 2023 being postponed.

22. The respondent has provided its disclosure of documents on 6 February 2023 and has provided a witness statement. The claimant had provided a witness statement and disability impact statement on 7 August 2023, the first morning of the final hearing. This was lengthy and referred to a case in which an earlier claim made by the claimant against another respondent had been struck out in 2020. This had only been raised by the respondent in an email dated 4 August 2023. The Tribunal does not accept that the claimant had referred to this spontaneously in her witness statement and this was further evidence that the statement had not been sent to the respondent on 28 May 2023.

23. It was submitted by Ms Jervis, on behalf of the respondent, that the only step the claimant had taken was to submit the claim and had taken no further step to progress this litigation since 21 June 2022. The first final hearing in April 2023 had been

postponed as a result the claimant's non-compliance and failure to pursue the claims. It was no longer possible at all let alone within the trial window. In the case of **Emuemukoro v Cromo Vigilant (Scotland) UKEAT/0014/20/JOJ**) the strike-out application was being heard on the first day of that trial window, and the main merits trial window had arrived and had started. The claimants were all ready to go, whereas the respondents were not, entirely through the fault of their representatives.

24. The Tribunal finds that there was no credible evidence of compliance with the Tribunal's orders and there had been a failure to actively pursue the claims. There was no evidence to corroborate the claimant's representation that the email had been sent to the respondent and the Tribunal. There was a total failure to comply with the Tribunal's orders. This had been deliberate, inordinate and inexcusable delay. The Tribunal has considered the prejudice to the respondent which is significant as it would not be possible to have a fair hearing within the time allowed.

25. The Tribunal has given careful consideration to this application and concludes that, on the balance of probabilities, the claimant had totally failed to comply with the Tribunal's orders. The claimant has been provided with a reasonable opportunity to make representations as to why the order should not be made. There was inordinate and inexcusable delay, significant prejudice to the respondent and it is no longer possible for a fair hearing to take place within the time allotted for the case.

26. The statement provided by the claimant was lengthy and it would be necessary for the respondent to consider the factual allegations and take instructions. The Tribunal did not see the medical evidence but it is clear that there would be a significant issue with regard to whether the claimant was disabled within the meaning of section 6 of the Equality Act 2010 at the material time. The claim related to failure to pay wages and would require a considerable amount of further evidence to determine whether the alleged disability was relevant.

27. The Tribunal's unanimous judgment is that these claims are struck out as the claimant not complied with the orders of Tribunal, has failed to actively pursue her claims and it is no longer possible to have a fair hearing.

Employment Judge Shepherd  
7 August 2023