



# THE EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mr M Al-Hussaini**

**v**

**Unite the Union**

**Before: Employment Judge Glennie**

## JUDGMENT

**The judgment of the Tribunal is that the claim is struck out under rule 37 of the Rules of Procedure on the grounds that:**

- (1) It has not been actively pursued; and**
- (2) It is no longer possible to have a fair hearing in respect of the claim.**

## REASONS

1. The claim form was presented on 23 January 2020, making complaints of discrimination on grounds of race and religion or belief. Seven individual officers of the Respondent were named within the grounds of claim as having discriminated against the Claimant. The Respondent presented a response on 25 February 2020 disputing the claim.
2. The claim arises from events which occurred between July 2019 and January 2020.
3. A preliminary hearing took place in April 2020 and the hearing of the claim was listed in September 2020. The Claimant sought a postponement of that hearing on grounds of his ill health, and the Respondent did not object to this. The postponement was granted by the Tribunal.
4. The hearing was re-listed to take place in September 2021. The Claimant sought a further postponement on grounds of ill health, supported by a medical report from Professor Lewis. It is not necessary to go into details of the Claimant's health conditions: the relevant point is that Professor Lewis stated that the Claimant was unfit to attend the hearing, but that he

anticipated that the Claimant's condition would be sufficiently improved to enable this after a period of around 6 months. Employment Judge Baty stayed the claim until 31 January 2022, observing that: "the parties should note that the matter cannot be delayed indefinitely and that.....a time is likely to come where the claim is struck out because it is no longer possible to have a fair hearing".

5. The Respondent made an application to strike out the claim on 27 September 2022. The application stated that since the expiry of the stay the claim had not been listed for a hearing, nor had the matter proceeded any further. Preparation for the hearing had got as far as the provision of a draft bundle to the Claimant, but no further. The bundle had not been agreed and there had been no exchange of witness statements. The Claimant's solicitor had advised that the Claimant remained unwell. The Respondent's solicitor stated that witnesses were retiring / had retired and that recollections were likely to become more and more faded.
6. On 20 January 2023 the Claimant's solicitors wrote to the Tribunal stating that it was accepted that the claim had not been actively pursued, and enclosing a further report dated 16 January 2023 from Professor Lewis. This stated that the Claimant was not fit to attend a hearing at present, whether in person or via video link, and that it was very unlikely that his mental health would improve sufficiently in the future to enable him to make decisions about the case and give clear instructions to his solicitor.
7. The Claimant's solicitor indicated consent to the Tribunal dealing with the application to strike out the claim without a hearing.
8. Both parties have written to the Tribunal in October 2023 asking for a determination of the application, and without indicating that the situation has changed in any material respect.
9. Rule 37 of the Rules of Procedure provides that a Tribunal may strike out a claim on grounds which include that it has not actively been pursued and that it is no longer possible to have a fair hearing. The fact that either or both of these conditions has been met does not mean that striking out the claim automatically follows: the Tribunal has a discretion, which must be exercised judicially.
10. It is clear, and accepted, that the claim has not been actively pursued. I have also concluded that a fair hearing is no longer possible. The claim concerns events essentially in the second half of 2019. Even if the Claimant were to return to a sufficient degree of health as to enable him to take part in the proceedings within the next few months (a prospect which was not envisaged in the medical evidence), it is unlikely that the pre-trial preparations could be completed and a hearing listed before mid-2024 at best. The hearing would then be taking place 4.5 - 5 years after the relevant events. Although there is no evidence of particular witnesses having difficulty recollecting events, I consider that it is likely that this will be the case at that distance in time.

11. The medical evidence suggests, however, that in reality the position is worse than this, in that it is very unlikely that the Claimant will be in a position to participate in the proceedings in the foreseeable future. He has already been unable to participate since some time before the original listing in September 2020.
12. I therefore find that the claim has not been actively pursued, and that it is no longer possible to have a fair hearing.
13. I also find that, as a matter of discretion, I should strike out the claim. This is not something that a Tribunal will do lightly, especially in the case of complaints of discrimination. Striking out the claim will deprive the Claimant of the opportunity of having trial of his case on its merits. Against this, the claim should not be allowed to hang over the Respondent and the individuals named in it indefinitely. There is little prospect of the situation changing in the near future. In those circumstances, I find that the correct course of action is to strike out the claim.

Employment Judge Glennie

Dated: .....11 October 2023.....

Judgment sent to the parties on:

11/10/2023

For the Tribunal Office