



# EMPLOYMENT TRIBUNALS

**Claimant:** Bartosz Rychlik

**Respondent:** Fresh Start Property Solutions Ltd (in voluntary liquidation)

**Heard at:** Leeds (by video)

**On:** 6 November 2023

**Before:** Employment Judge Miller

## Representation

Claimant: No Attendance

Respondent: No Attendance

# RESERVED JUDGMENT

The complaint of direct race discrimination is struck out under Employment Tribunal Rule 37(1)(c) because the claimant has not complied with the Tribunal Rules or a Tribunal order and because the claim has not been actively pursued.

# REASONS

1. The claimant was employed by the respondent from 11 April 2022 until his summary dismissal on 26 March 2023. The claimant undertook early conciliation from 16 February 2023 until 28 February 2023 and presented his claim on 26 March 2023.
2. The claimant brought claims of unfair dismissal on the grounds of making a protected disclosure, breach of contract for failing to give notice or pay notice pay, a claim for holiday pay, and a claim of direct race discrimination. The respondent did not respond to the claim.
3. There was case management hearing before employment Judge Buckley on 6 June 2023 at which the claimant withdrew his claim for unfair dismissal. The claims of holiday pay, notice pay were allowed together with a claim for unauthorised deduction from wages pursuant to Rule 21 of eh Employment Tribunal Rules of Procedure.
4. At the hearing on 6 June 2023 Judge Buckley made orders to address the claimant's claim of race discrimination. The claim was clarified as being that

claimant was dismissed because of his race on breach of section 13 Equality Act 2010. Judge Buckley made orders for a hearing on 24 July 2023 although this was, in the event, postponed because of judicial availability. Judge Buckley had ordered that the claimant was to provide relevant documents, a schedule of loss and a witness statement to the respondent by 7 July 2023 and send a copy to the tribunal by 30 June 2023.

5. On 16 June 2023 the tribunal was notified that liquidators had been appointed and the respondent was in creditors voluntary liquidation. The liquidators did not intend to take part in the proceedings’.
6. The hearing was rearranged for 12 September 2023 to decide the remaining claim of race discrimination. The claimant did not attend that hearing but wrote to the tribunal stating that he was not aware of the hearing and asking for it to be postponed. Judge Buckley noted in her case management order made following the postponed hearing that the claimant had failed to comply with any of the previous orders that had been made at the hearing at which he attended.
7. Judge Buckley directed that the claimant must provide relevant documents, a schedule of loss and a witness statement to the respondent and the tribunal by 29 September 2023. In those orders Judge Buckley made it very clear that if the claimant failed to comply with those orders, a judge may consider striking out the claimant’s claim for failing to actively pursue the claim and failure to comply with an order of the tribunal. .
8. There is no record of the claimant sending any documents at all to the tribunal. The hearing started at 10 AM this morning and the claimant was not on the video hearing. I asked the clerk to contact claimant by telephone which she attempted to do a few times, and there was no reply.
9. The claimant’s claim is insufficiently clearly pleaded to enable me to fairly consider his claim of direct race discrimination on the basis of his claim. The claimant has had two opportunities to attend the hearing and provide the evidence and he has failed to do so. On this occasion he has made no attempt to contact the tribunal as far as I am aware.
10. I conclude that the claimant is no longer pursuing his claim of direct race discrimination. I also find that the claimant has failed to comply with the very clear orders of Judge Buckley made initially on 6 June 2023 and then varied on 12 September 2023 and notified to the claimant by email on 11 October 2023. In the second orders, the claimant was given a very clear warning of the consequences of non-compliance with those orders.
11. It is correct that there was a noticeable delay between the date of the orders made by Judge Buckley and the tribunal informing the claimant of them. However, those orders were sent almost one-month prior to today’s hearing and had the claimant wished to pursue his claim it is entirely reasonable to expect that he would have contacted the tribunal. The orders required the claimant to complete tasks before the date the orders were sent to him. It is reasonable to conclude that the claimant would either contact the Tribunal to query or challenge that, or if he had not received any orders by today, almost two months after the postponed hearing, to contact the Tribunal to

make enquiries about what was happening to his claim. In any event, until he received the amended case management orders, the claimant still had an obligation to attempt to comply with the orders of 6 June 2023 to provide the relevant documents as described above.

12. The claimant has been given two opportunities to pursue his claim and provide the relevant evidence. He has failed to do so and in my judgment, there is no realistic possibility of the claimant complying with any further orders. It is not therefore possible to fairly consider the claimant's claim in the total absence of any detail or evidence.
13. For these reasons, it is in the interests of justice to dismiss the claimant's claim on the basis that he has failed to comply with the orders of the tribunal and/or is not actively pursuing his claim in accordance with rule 37 of the employment tribunal rules of procedure 2013.

Employment Judge Miller

Date: 6 November 2023