



EMPLOYMENT TRIBUNALS

Claimant: Ms Rosario Lino

Respondent: Euro Group Limited

HELD AT: Liverpool **ON:** 2 January 2024

BEFORE: Employment Judge Shotter (sitting alone
by CVP)

REPRESENTATION:

Claimant: Krishan Dassaur, solicitor

Respondent: Ms Sarah Ashberry, solicitor

JUDGMENT

The judgment of the Tribunal is:

1. The claimant's claim of unlawful deduction of wages is struck out under Rule 37(1) of the Employment Tribunals Rules of Procedure 2013.
2. The claimant's claim for accrued holiday pay is dismissed on withdrawal.
3. The claimant has been ordered to disclose the documents she intends to rely on no later than 4pm 5 January 2024 failing which her claims of unfair dismissal and race discrimination will be automatically struck out.
4. The claimant has been ordered to send to the respondent witness statements she intends to rely on at the liability hearing by 4pm 19 January 2024 failing which her claims will be automatically struck out.

REASONS

1. This has been a remote hearing by video which has been consented to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

1. No oral evidence was heard on the facts in this case, and I have not made any determination that could tie the judge's hands at the liability hearing.

2. I am grateful to Mr Dassaur appearing today, albeit without instructions and without payment. He has taken a realistic view of this case including agreeing that the claimant's claim for unlawful deduction of wages relating to unpaid salary between December 2018 to November 2019 was problematic for her, not least in relation to time limits and accepted that given there were difficulties going forward with this claim. Taking into account the complete lack of information provided by the claimant to date the respondent was prejudiced and it was clear to me that a fair trial on this issue could not take place.

3. Mr Daussaur has not received instructions from the claimant since the 14 July 2023 when he requested her consent to release documents and information to the respondent, which was not forthcoming. He has successfully persuaded me that it is the interests of justice to give the claimant one last chance taking into account that her husband was terminally ill in hospital earlier in the year, and he does not know why she has ignored his attempts at communication and this litigation. Mr Daussaur has agreed that if the claimant fails to take an active part in this litigation by close of business on the 5 January 2024 and then fails to provide her witness statements by the 19 January 2024 her claims will be struck out. Given the final hearing has been listed for 15 and 16 February 2024 and if adjourned it is likely to be re-listed end of 2024 or in 2025, I am satisfied that as things stand a fair trial cannot take place, and the parties will need to work hard to get this case back on track ready for the final hearing.

4. The respondent cannot be criticised for this state of affairs, and the claimant is wholly responsible because she has failed to pursue her claim and failed to communicate with her solicitors.

5. I have ordered the claimant to provide an explanation for her behaviour, and if there is a medical reason, attach medical evidence, to be provided to the Tribunal and respondent no later than **19 January 2024**. Mr Daussaur will attempt to communicate with the claimant today to advise her of this, the strike out and my judgment today in order that she has an opportunity to instruct him in good time for Friday. In the meantime this Judgment and Reasons will be expedited.

6. I also referred to the claimant's behaviour and the manner in which she has dealt with this litigation possibly having costs consequences for her as a result of the extra costs incurred by the respondent, and agreed with Ms Ashberry that the claimant will serve her witness statement first in order that the respondent has some assurance that she intends to proceed with this litigation before it incurs the cost of preparing witness statements. If the claimant fails to served her witness statement as ordered all of her

claims will be automatically struck out without further reference to her and her solicitors on the basis that so late in the day a fair trial cannot take place and the respondent has been prejudiced by the claimant's continued refusal to comply with case management orders.

The history leading to the strike out application.

7. There is a bundle before me consisting of 115-pages and I have referenced the correspondence and Preliminary Hearing Summaries on the Tribunal file, including the respondent's application for a strike out dated 8 September and 1 December 2023. I do not intend to refer to all of the correspondence.

8. Three preliminary hearings have taken place, the first on 10 May 2022, followed by 15 March 2023 and 26 June 2023. At the last two preliminary hearings the claimant was legally represented and her solicitors are still on the record. The preliminary hearings have been largely concerned with clarifying the claimant's claims and the issues in anticipation of the 2-day final hearing listed for 15 and 16 February 2024.

9. The 26 June 2023 preliminary hearing set out the complaints in some detail, recording that the issues had been agreed earlier at the 10 May 2022 case management discussion and had not changed. The direct race discrimination complaint relating to 6 allegations brought in relation to the behaviour of Balbino Alvarez are set out in full and no further information is necessary.

10. With reference to the unlawful deductions of wages claim the claimant's representative agreed to provide further information. In addition, she was ordered to provide a schedule of loss by 14 July 2023. Various other case management orders were agreed including exchange of witness statements by 24 November 2023. The claimant has failed to comply with any of these orders.

11. The respondent applied to strike out the claimant's claims in an email dated 8 September 2023 on the basis that the claimant had failed to comply with any of the case management orders, and nothing had been heard since 14 July 2023. The respondent had made a number of earlier applications to strike out the claimant's claim, for example, on the 7 June 2023 which resulted in a strike out warning dated 14 June 2023 being issued against the claimant, the claimant's solicitors responded and in a letter sent on the 21 June 2023 from the Tribunal strike out was not considered to be proportionate and the final hearing listed for 26 to 28 June 2023 postponed and converted to a preliminary hearing.

12. In a notice dated 6 October 2023 sent to the claimant's solicitors and respondent the parties were informed of today's hearing at which "an Employment Judge will consider strike out of the claimant's claim for failure to comply with orders and failure to actively pursue the claim."

13. The last communication from the claimant's solicitors was sent on the 19 June 2023, and there has been no response to the respondent's application to strike out or the notice of today's hearing indicating that strike out was to be considered.

14. The last letter on the file is the respondent's email of 1 December 2023 confirming the case management orders had not been complied with and it was not clear whether the claims were being pursued. It is notable that some 6 weeks before the final hearing not one of the case management orders relating to preparing this case for trial have been met and the reason for this is down to the claimant's default. Despite the strike out warning the claimant has still not made contact with her solicitors, and Mr Dassaur appears without instruction or any knowledge as to whether the claimant intends to pursue her claims or not.

Conclusion

Rule 37(1)(a) – scandalous, vexatious or has no reasonable prospects of success.

18 Striking out is a draconian step and should only be exercised in exceptional cases; Mbusia v Cygnet Healthcare Ltd EAT 0119/18. The Tribunal's power to strike out the claim is set out in Employment Tribunals Rules of Procedure 2013 Rule 37(1) that "*(a) that it is scandalous or vexatious or has no reasonable prospect of success; (b) that the manner in which the proceedings have been conducted by or on behalf of the claimant ... has been scandalous, unreasonable or vexatious*".

19 I am satisfied that the claimant's claim for unlawful deduction of wages is scandalous, vexatious or has no reasonable prospects of success. and the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious for the reasons set out above, not least the claimant's failure to provide details of her claim to the respondent in order that it understands the claim it has to meet. I am grateful for the clarification given today, and I am satisfied that it has no reasonable prospects of success given the time period of the claim, and it was vexatious. I am grateful for Mr Dassaur's realism when it came to this claim.

20 The same cannot be said for the unfair dismissal and direct race discrimination claim which have been clarified and set down in the case management order of Employment Judge Buzzard and confirmed by Mr Daussaur today as the complaints in this case. There is no application to amend (which would de-rail these proceedings) and the final list of issues will be those recorded by Employment Judge Sharkett at the 10 May 2022 preliminary hearing. A final version of the list of issues will need to be agreed between the parties in preparation for the hearing, and they will consist of an amalgamation provided at the two case management hearings referred to, with one amendment only which is the relation in allegation 6 reference to culture. Mr Daussaur confirmed the claimant was relying on her Spanish nationality and not culture. The final list of issues will be agreed after the respondent has provided the claimant with its witness statements and whilst a date was not agreed today, I have inserted **8 February 2024**.

21 In conclusion, striking out claims in whole or in part is draconian, and I am giving the claimant one last chance to progress her claim in order that the final hearing can take place. The time for compliance with case management orders is very tight given the imminent trial, and there is no room for delay. The parties have agreed to the compliance for case management dates as follows with this in mind:

1. Claimant's documents to be sent to the respondent no later than 4pm **5 January 2024, failing which her claims will be automatically struck out.**
2. The trial bundle will be agreed no later than **8 January 2024** and electronic copies produced for the claimant.
3. The claimant will send to the respondent her witness statement(s) no later than **4pm 19 January 2024 failing which her claims will be automatically struck out.**
4. The respondent will send to the claimant all witness statements it intends to rely on no later than **2 February 2023.**
5. The parties will agree a final list of issues no later than **8 February 2024.**
6. The parties will write to the Tribunal and confirm the case is ready for trial no later than **8 February 2024.**
7. The claimant will write to the Tribunal and copy to the respondent a letter explaining her action and attaching any medical evidence if relevant, no later than **19 February 2024.**

22 The claimant is facing a serious possibility of her claims being struck out, and if there is any matter that affects her or her case which prevents compliance with the case management orders she must inform her solicitors straight away and/or the Tribunal and respondent.

23 In conclusion, the claimant's claim of unlawful deduction of wages is struck out under Rule 37(1) of the Employment Tribunals Rules of Procedure 2013. The claimant's claim for accrued holiday pay is dismissed on withdrawal. The claimant has been ordered to disclose the documents she intends to rely on no later than 4pm 5 January 2024 failing which her claims of unfair dismissal and race discrimination will be struck out. The claimant has been ordered to send to the respondent witness statements she intends to rely on at the liability hearing by 4pm 19 January 2024 failing which her claims will be struck out.

2.1.24
Employment Judge Shotter

Judgment SENT TO THE PARTIES ON
4 January 2024

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

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Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>