



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss P Ibinson

**Respondent:** Tyne and Wear Passenger Transport Executive

**HELD** Newcastle CFCTC

**ON: 8 December 2023**

**BEFORE:** Employment Judge Johnson

**Members:** Ms S Don

Mr J A Weatherton

## REPRESENTATION:

### Appearances

For the claimant: In person

For the respondent: Mr J Anderson of Counsel

## JUDGMENT

1. The claimant's application for a postponement of this Hearing is refused.
2. The respondent's application to strike out the claimant's claim in its entirety, pursuant to Rule 37 of the Employment Tribunal Constitution and Rules of Procedures Regulations 2013, is well-founded and is granted. The claimant's complaints of unfair dismissal, and unfair sex discrimination are dismissed.

## REASONS

1. This matter came before the Tribunal this morning on what was supposed to be the fifth day of a 10-day final Hearing, to hear the claimant's complaints of unfair constructive dismissal and unlawful sex and pregnancy/maternity discrimination. The claimant attended in person. The respondent was represented by Mr Anderson of counsel.

2. By Orders made on 8 June 2023, the claimant's complaints of unfair constructive dismissal and unlawful sex discrimination were set down to be heard over a period of 9 days from 4 to 14 December 2023 inclusive. That Order was subsequently amended by consent to increase the number of days from 9 to 10 so that the hearing would be from 4 to 15 December 2023 inclusive. The parties were informed that the first day (Monday 4 December) would be utilised by the Tribunal panel as a reading day, during which the Tribunal panel would read the bundles of documents and witness statements.
3. When the panel convened on Monday 4 December, it had before it 4 bundles of documents containing a total of 1846 pages, together with statements from 8 witnesses who were to give evidence on behalf of the respondent. There was no witness statement from the claimant nor from any of the claimant's witnesses.
4. By letter dated 12 October 2023 the claimant applied to the Tribunal for a number of Orders, including one for the postponement of the final hearing in the following terms:-

*"I would like you to consider changing the final hearing date until the next available date after December 2023 as we are still not in a position where we have fully exchanged documents, have access to witness statements or agreed on the bundle. I appreciate that I am a litigant in person, but it does seem very short notice to have this all tied up between now (12 October 2023) and day one of the hearing on 4 December 2023, and since the Tribunal are expecting the bundle in advance of this date, which I believed is scheduled for November 2023. I appreciate the respondent will say this would be a detriment to them to postpone the final hearing, but this would be even more of a detriment to me and the Tribunal as it is likely I would not be able to put my best case forward and consider all of the bundle prior to the hearing and know who the Employment Judge is if the respondent continues in the same way. Therefore the hearing could be rendered ineffective (which I have raised the possibility of previously) and the Tribunal could lose 10 days of time when they could be hearing cases that have been prepared adequately and ready to be heard".*
5. That application was considered by Employment Judge Aspden at a preliminary hearing on 7 November, when she postponed it to be heard by Employment Judge Morris on 21 November.
6. On 21 November Employment Judge Morris made a number of Orders designed to ensure that the claimant's case was fully understood and to ensure that the case was fully prepared for the final Hearing. Employment Judge Morris also refused the claimant's application to postpone that final Hearing, stating, *"I was not prepared at this late stage to lose 10 days of Tribunal hearing time which would have consequences not only for the parties in these proceedings but for the parties involved in other proceedings before this Tribunal."*
7. By letter dated 28 November 2023 the claimant renewed her application to postpone the 10-day hearing due to start of 4 December. The grounds of the application were that the claimant was unable to respond to additional disclosure made by the respondents and that she was put at a disadvantage due to the amount of things needed to be completed by herself by the start of the hearing on Monday 4 December. The claimant raised her involvement in "other proceedings" and financial proceedings including an occupation order relating to her home.

8. That application was considered by Employment Judge Aspden acting as Duty Judge on 29 November 2023. Judge Aspden refused the application, principally on the grounds of the decision made by the Employment Appeal Tribunal in **Serco Limited v Wells [2016] ICR 768**, which stated that an Order of an Employment Judge can only be set aside in circumstances where there had a material change in circumstances or where the Order had been based on either a misstatement of fact or law or an omission to state relevant facts. Judge Aspden was satisfied that the respondent's disclosure of 4 additional documents did not amount to a material change in circumstance. Furthermore, the claimant's application was made less than 7 days before the date on which the final hearing was due to begin and Rule 30A of the 2013 Rules made it clear that the Tribunal may only order the postponement if all other parties consented and it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or it is otherwise in accordance with the Overriding Objective. Otherwise, the application was necessitated by an act or omission of another party or the Tribunal or there were exceptional circumstances. Judge Aspden was satisfied that none of those provisions applied.
9. The claimant renewed her application to postpone by a letter dated 30 November, requesting a "reconsideration of your decision not to postpone the final Hearing". By letter dated 1 December, the claimant was informed that her application would be dealt with by the Tribunal at the final Hearing on either 4 or 5 December, if the Tribunal considered it necessary to hear submissions.
10. By email dated 1 December timed at 2:31pm, the respondent made a formal written application to strike out the claimant's claim in its entirety pursuant to Rule 37 of the Employment Tribunal Constitution and Rules of Procedure Regulations 2013. That application, with supporting grounds, was sent to the claimant. The claimant responded on 4 December at 9.59am stating that she strongly opposed the strike out application and would attend the Tribunal that morning "to provide oral reasoning for my application to strike out against the respondent". The Tribunal replied at 10:24am informing the claimant that the Tribunal would not be hearing any oral submissions that day and that the various applications would be heard on the Tuesday morning. Despite that clarification, the claimant attended the Tribunal premises on the morning of Monday 4 December and remained there throughout the morning.
11. The Tribunal convened on the morning of Tuesday 5 December. The claimant attended, bring with her the 4 bundles of documents. The respondent attended with its representative and witnesses. In lengthy exchanges with the claimant and Mr Anderson for the respondent, the following matters were established: -
  - (i) The claimant has not finalised her own witness statement. The claimant informed the Tribunal that her statement was "30% ready" but was unable to state how many paragraphs or pages had been completed, or which of her 39 allegations were dealt with in the partially prepared statement. The claimant stated that she could have her witness statement ready "by the end of the week".
  - (ii) The claimant has not prepared any statements for any of the witnesses whom she wishes to call to give evidence on her behalf. The claimant stated that she wishes to call 5 witnesses, 4 of whom are trade union representatives.

- (iii) The claimant requires witness orders from the Tribunal to compel those witnesses to make statements and attend the hearing to give evidence.
  - (iv) The claimant requests an Order from the Tribunal for the respondent to provide additional documents. The claimant is unable to identify which documents are to be disclosed, to which of her 39 allegations those documents go and how any of those documents are said to be relevant to the issues in the claim.
  - (v) The claimant is involved in county court proceedings and a dispute between herself and her former partner relating to the occupation of a property. There have been a series of hearings relating to those proceedings. The claimant has prepared 6 witness statements relating to those proceedings. There is a one-hour hearing at 11am on Wednesday 13 December, which hearing is to take place in the same building as the Employment Tribunal proceedings. The claimant was told that the Tribunal would not sit until the afternoon of Wednesday 13 December, to enable the claimant to partake in that hearing.
12. The claimant renewed her application to postpone this final hearing on the following grounds: -
- (i) The respondent has continued to disclose documents after the deadline for disclosure and this has prejudiced her ability to prepare for the hearing and to prepare her witness statements.
  - (ii) There are further documents which she requires the respondent to disclose, without which she cannot prepare her witness statement and without which there cannot be a fair hearing.
  - (iii) Her involvement in the County Court proceedings have meant that she has been unable to prepare her witness statement and to properly prepare for the final hearing.
  - (iv) She has been suffering, and continues to suffer, from ill health, including palpitations caused by the stress and anxiety of being involved in two sets of court proceedings.
13. The Tribunal informed the Tribunal that, were the hearing to be postponed, then it could not be re-listed until June or July of next year. That would be some four and a half years after the date of some of the allegations referred to in her claim form. The claimant confirmed that she had been able to deal with the other court proceedings and had not been too ill or unwell to take part in those proceedings.
14. The claimant was unable to provide any further information to support her contention that there had been a material change in circumstances since the original Order by Judge Morris refusing her postponement application.
15. Mr Anderson for the respondent pointed out to the Tribunal that the complaints were of unfair constructive dismissal and unlawful sex discrimination, which would require the claimant to prove that the alleged acts or omissions by the respondent amounted to acts of unlawful sex discrimination and which either individually or collectively amounted to a fundamental breach of her contract of employment. The Tribunal reminded the claimant that she had the burden of proving those facts and invited the claimant to explain how she proposed to do that, without a witness statement. The claimant then complained that, whilst the respondent had sent their witness statements to her, they had refused to permit her to look at them

because they were “password protected”. The Tribunal reminded the claimant that the Order for exchange of witness statements required simultaneous mutual exchange, so that neither side had the advantage of seeing the other side’s witness statements before they prepared their own.

16. The Tribunal invited the claimant to explain how she proposed to present her claim and prove her allegations, without a witness statement. The claimant then volunteered to reduce the number of allegations in her claim form from 39 to a more manageable number. The claimant stated that this could be done by the following afternoon. The claimant then volunteered that her witness statement in support of those remaining allegations would be ready by Thursday afternoon.
17. Mr Anderson for the respondent was invited to state whether, if that were to be done, he would be able to undertake cross-examination of the claimant on the morning of Monday 11 December. The Tribunal indicated to both parties that they would be willing to sit during the second week from 9.30 each morning until as near 6pm as was necessary to ensure that the witness evidence was completed by the end of that week. Mr Anderson indicated that, in those circumstances, he would comply with his client’s instructions, which were to get the hearing dealt with and disposed of as soon as possible.
18. The claimant then volunteered to accept an “Unless Order”, whereby she was required to reduce the number of allegations and to prepare her witness statement within the next two days.
19. Mr Anderson then presented the respondent’s application to strike out all the claims on the following grounds: -
  - (i) That the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious.
  - (ii) Non-compliance with the Rules or Orders of the Tribunal.
  - (iii) That the Tribunal considers it is no longer possible to have a fair hearing in respect of the claim.

Mr Anderson recited the history of these proceedings, including the 6 case management hearings which have taken place, all of which make clear from the case management summaries in them, that the Tribunal has done its best to assist the claimant in properly identifying her claims so that everyone could understand the issues (the questions which the Employment Tribunal would have to decide). Mr Anderson submitted that the main basis of the claimant’s postponement application was that it must be postponed because she has failed to comply with the Tribunal Orders. It would be manifestly wrong for the Tribunal to permit the claimant to hijack these proceedings in that way. The claimant’s conduct throughout these proceedings has been an abuse of the Tribunal’s process. Without a witness statement, the claimant cannot prove her case and it is impossible for the respondent to challenge the claimant if she does not present any oral evidence. Mr Anderson submitted that there could not be a fair trial of the issues between these parties which would produce a just outcome within the trial window, which ends at the end of next week.

20. The Tribunal retired to consider the various submissions and decided that the claimant should be given one final opportunity in which to get her case in order. Whilst the Tribunal could not order the claimant to withdraw any of the specific 39 allegations, it was considered to be in accordance with the Overriding Objective to

enable the claimant to decide which of those allegations she wished to pursue and in respect of which she could then prepare a witness statement so that all of the witness evidence could be heard during the course of next week.

21. The claimant was informed that by not later than 12 noon on Wednesday 6 December she must inform the respondent and the Tribunal as to which of the 39 allegations she wished to pursue and which she wished to withdraw. The claimant was ordered to provide a witness statement to the respondent and copy the same to the Tribunal by not later than 12 noon on 7 December. The respondent's application to strike out the claims was adjourned to Friday 8 December at 11am.
22. By email timed at 6:42am on Wednesday 6 December, the claimant wrote to the respondent and to the Tribunal in the following terms: -

*"I can confirm that I am not able to remove any of my allegations, because in the event I do, my claim will ultimately fail. Therefore, I have worked throughout the night and intend to make a further application to the court as well as continue to work on my witness statement in the event that my appeal to the court fails. My appeal would have been sent during the course of the evening, however I am still waiting on the Order from the court that the Judge confirmed would be sent yesterday, which has still not been received. I can confirm I will include you within correspondence to the court today and send you my witness statement upon such completion."*
23. By email timed at 8:37 the same day the claimant wrote to the Tribunal stating:

*"Please could you provide the written reason for refusal of application as soon as possible"*.
24. By email timed at 10:45 on 6 December the claimant wrote to the Tribunal in the following terms: -

*"After receiving the Order, and to confirm again, I intend to pursue each allegation from 112-158 of the bundle and no allegations intend to be withdrawn at this stage. I am awaiting the Order of reasons for the Judgment yesterday and intend to appeal the decision on the grounds that the refusal of postponement was wrong. In the event this is rejected again, I can confirm I am actively working on my witness statement in advance of the deadline tomorrow."*
25. Nothing further was heard from the claimant. The claimant failed to send her witness statement to the respondent and the Employment Tribunal by the deadline of 12 noon on Thursday 7 December.
26. At 3:50am on 7 December the claimant submitted an email to the Tribunal stating, "Please find attached my application for variation/reconsideration of postponement of the final hearing. This should be sent to Judge Johnson in advance of the next hearing for his consideration." Attached to that email was a 21-page application headed "Appeal of judgment for a postponement of final hearing dated 5 December 2023".
27. At 9:11am on the morning of 8 December, the claimant sent an email to the Tribunal stating, "This email is sent in advance of today's hearing to let you know I will be in attendance but will be late. For reference I was in hospital yesterday and continue to be unwell this morning, impacting on my early arrival." At 10:22am the claimant sent to the Tribunal another message to which was attached photographs of a confirmation of attendance at a local hospital on 7 December

between 10.30am and 14.35pm and a message to her GP requesting further medication for stress/heart problems and that the claimant had a high blood pressure that day, although both blood tests and chest X-rays were normal. Copies of those documents were given to Mr Anderson by the Tribunal clerk upon his arrival at the hearing centre on Friday morning.

28. This morning's hearing commenced at 11am. The claimant attended in person and the respondent was again represented by Mr Anderson. When the claimant arrived, she had no paperwork whatsoever with her. The Tribunal enquired of the claimant as to why she did not have any other hearing bundles or any other documents relating to the case. The claimant explained that she found the documents to be "too heavy" and that she had been unable to carry them to the hearing centre because she was feeling unwell, and the box was too heavy to carry. The claimant confirmed that she did not wish to withdraw any of the 39 allegations contained in her claim form.
29. The claimant was asked if she had finalised her witness statement and stated that she had not. When asked how much of it had been completed, the claimant was unable to state anything other than she was "about through to the middle of 2021". When asked why she had failed to comply with the Order to finalise and produce her witness statement, the claimant stated that she had been unable to do so because she had been unwell.
30. The claimant produced copies of the hospital appointments she had attended on 29 September and 23 October. The claimant produced a "confirmation of attendance" form for the Accident and Emergency Department on 7 December which records her arrival at 10.30am and departure at 14.35pm. The claimant produced a photograph of a machine reading her blood pressure which shows 146/104 with a pulse rate of 59 and a temperature of 36.4. The claimant produced a copy of an online GP consultation document with her GP, confirming she had attended South Tyneside Hospital the previous day. The document records that the claimant asked "Could I please request some further medication for stress/heart problems. I have been to the hospital today who have advised I contact you to discuss this and to discuss blood pressure results so you can continue to monitor this over what they said should be a two week period as my blood pressure reading was 146/104. Blood tests were normal and chest X-ray was normal."
31. The claimant was asked if she had any specific documentation confirming that she was unfit to attend this Hearing or to partake in the preparation of documents/statements for the hearing. The claimant confirmed that she did not.
32. The claimant was asked to state specifically whether her explanation for failing to provide the witness statement was because she had been too unwell to do so. The claimant replied "yes". The claimant was then asked why, if she was too unwell to prepare a witness statement, she had been able to prepare a 21-page application to postpone the hearing. The claimant was reminded that she had informed the Tribunal earlier this week that her statement was "30% ready". If that 30% related to 12 of the 39 allegations, then there were 27 which remained. If each required a single side of A4 paper, that would be 24 pages and the claimant had produced 21 pages in respect of a postponement application. The Tribunal pointed out to the claimant the obvious inconsistency in her submission that she was unable to prepare a statement due to ill health but had been able to prepare this lengthy and detailed application. The Tribunal invited the claimant to

acknowledge the Tribunal's concern that she had failed to produce a copy of her partially prepared statement.

33. The claimant stated that she had "more evidence at home", stating that she has suffered from a heart murmur and irregular heartbeat for some time and that this tends to be triggered by stress. The claimant repeated that the respondent's persistent late disclosure of documents had increased her levels of stress and anxiety so that she had been unable to finalise her statement or prepare for the hearing.
34. The claimant was reminded that she had volunteered at the hearing on Tuesday to reduce the number of allegations, but had not been ordered to do so by the Tribunal. The claimant had also volunteered to prepare her witness statement by Thursday and had even invited the Tribunal to make an "Unless Order" in that regard.
35. The claimant's response that she had felt pressurised by the Tribunal and that was why she had agreed to those Orders. The Tribunal reminded the claimant that she had not "agreed" to any proposal by the respondent or the Tribunal but had volunteered to undertake those exercises as part of her efforts to persuade the Tribunal not to strike out her claims if her application to postpone was refused.
36. The Tribunal pointed out a further inconsistency in the claimant's submissions, namely that she initially insisted that there could not be a fair trial if her application to postpone was refused, but then insisted that there could be a fair trial if the number of allegations were reduced and the witness statement were produced, as part of her opposition to the respondent's strike out application.
37. The claimant again referred to the ongoing proceedings in the County Court in which she said she had also been unable to comply with some of its Orders. When asked if she had applied to postpone any of those hearings on medical grounds, the claimant responded by saying that the family court had told her that Orders would be made in her absence if she failed to attend.
38. Mr Anderson for the respondent again reminded the Tribunal of the decision of the Employment Appeal Tribunal in **Serco v Wells**. Mr Anderson submitted that the claimant cannot persist in renewing her applications to postpone unless there is a material change in circumstances. Mr Anderson submitted that there was no such material change in this case. Mr Anderson submitted that the Tribunal could not have any confidence in a fair hearing taking place, even if there was a postponement. Mr Anderson invited the Tribunal to look at the history of both these proceedings and the first set of proceedings brought by the claimant against the respondent, which had been struck out. Mr Anderson referred to a history of persistent failure by the claimant to properly engage with the Tribunal process and a persistent refusal to comply with Orders made by the Employment Tribunal. The assurances given by the claimant on Tuesday with regards to the number of allegations and her witness statement, were yet another example of behaviour by the claimant which amounted to an abuse of the process. Without a witness statement, it is impossible for the claimant to introduce any evidence to support her allegations. The respondent has invested vast amounts of time, effort and money in defending these proceedings. The allegations made by the claimant are challenged in every respect by the respondent's witnesses. Not one single matter has been capable of agreement. Mr Anderson again referred to the grounds set out in the respondent's letter of application for strike out and invited the Tribunal to refuse the application to postpone and to proceed to strike out all the claims.



## The Law

39. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 states as follows –

### **Striking out**

37. (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 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 or the respondent (as the case may be) has been scandalous, unreasonable or vexatious;*
  - (c) *for non-compliance with any of these Rules or with an 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).*
- (2) *A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.*
- (3) *Where a response is struck out, the effect shall be as if no response had been presented, as set out in rule 21 above.*
40. In its application to strike out the claimant's claims, the respondent relies upon section 37(1)(a) (b) and (c). In particular, the respondent relies upon the claimant's failure to comply with earlier Orders for the provision and exchange of a witness statement by the claimant and those for any of her witnesses. The claimant accepts that she has failed to comply with earlier Orders regarding witness statements and confirmed as at today's date she still has not prepared and finalised her witness statement. The claimant's explanation for failure to do so is that:-
- (a) The respondent has continued to disclose documents after the deadline for doing so.
  - (b) There remain other documents which the claimant believes the respondent is obliged to disclose.
  - (c) She has been engaged in other County court proceedings.
  - (d) She has suffered from ill health to the extent that she has been unable to comply with the Orders regarding the production of statements.
41. In response to the allegation that the manner in which she has conducted these proceedings has been unreasonable, the claimant relied upon the same grounds to explain her failure to prepare her case so that it could proceed within this trial window. The claimant confirmed and accepted that as at today's date, without any witness statement from her, there could not be a fair trial of the issues between the parties which would produce a just outcome, within the allocated trial window.
42. The Tribunal paid particular regard to the history of these proceedings. The Tribunal noted that there had been 6 case management hearings at which the Employment Tribunal had done its utmost to assist the claimant to identify the

claims which she wished to pursue, to set out what was required of the claimant to provide evidence in support of those allegations and to provide her with the necessary period of time in which to do so. This experienced Tribunal panel could not recall another case where so much had been done to try and assist the claimant, despite what appeared to be a reluctance on her part to co-operate with the Tribunal and the respondent in getting her case ready for a final hearing.

43. Of particular concern was the claimant's assurances given on Tuesday 5 December that she intended to withdraw the number of allegations by Wednesday and prepare her witness statement by Thursday in respect of the remaining allegations. The Tribunal did not accept that the claimant had been "pressurised into doing so". That was certainly not the case.
44. The Tribunal had further concerns about the claimant's explanation that she had been unable to finalise her witness statement in accordance with the timetable offered by her, on the grounds that she had either been too unwell to do so, otherwise engaged with the county court proceedings or overwhelmed with the documents in the bundle. It was the claimant who even this week persisted in asking the Tribunal to make further Orders for disclosure of additional documents, even though she was unable to identify the same. The claimant was very ready to make allegations of documents being fabricated by the respondent but was unable to identify those documents or provide what she considered to be the accurate version. The Tribunal acknowledged that the ongoing County Court proceedings would have an impact on the claimant, but the Tribunal was not satisfied that the impact was such that the claimant was unable to complete her witness statement or generally prepare for this final Hearing. The claimant has known about this hearing for 6 months. At the very least, she should have been able to prepare in draft a witness statement setting out the evidence which she would invite the Tribunal to consider supporting those allegations.
45. In summary, the Tribunal was not satisfied that the late preparation of the hearing bundle meant that the claimant was unable to properly prepare either her witness statement or her case. The Tribunal was not satisfied that the County Court proceedings were such that it made impossible for her to comply with the Orders of the Employment Tribunal and to get her Employment Tribunal case ready for final Hearing. The Tribunal was not satisfied that the claimant suffered from a medical impairment which adversely affected her ability to prepare her witness statement and for the final Hearing generally. The Tribunal found that the claimant's purported explanations for these shortfalls were inconsistent to the extent that she was being less than candid with the Tribunal.
46. The Tribunal was satisfied that the claimant has failed to comply with earlier Orders of the Tribunal to the extent that her case is not ready for final Hearing and without her witness statement there cannot be a fair trial of the issues between the parties which will produce a just outcome within the trial window. That situation has arisen because of the claimant's unreasonable conduct.
47. Having found that the claimant has failed to comply with its earlier Orders and that her conduct has been unreasonable, the Tribunal must then decide whether to exercise its discretion to strike out the claims.
48. This particular of the law is encrusted with case law from the Employment Appeal Tribunal and Court of Appeal. It has been said many times that only in the most obvious and plain cases should a discrimination claim be struck out without evidence being heard. It was said by His Honour Judge Shanks in **Parkin v Leeds**

**City Council** EAT/0178/19/RN that there are cases where the best answer may be to just list them for a full hearing at the earliest opportunity and not keep making interim Orders that are appealed or cause endless delays and bewilderment. By listing the hearing, the claimant can give her evidence, tell her story, have facts decided and the result of those can then be adjudicated upon. In the claimant's case, that is exactly what the Employment Tribunal have tried to do.

49. The Tribunal must consider, even at this late stage, whether there was a reasonable prospect of the claimant proving at a full hearing, facts from which the Employment Tribunal could conclude that there had been either a fundamental breach of the claimant's contract of employment and/or acts of unlawful sex discrimination. It is difficult to imagine anything further which the Employment Tribunal could have done in this case to enable the claimant to do so.
50. It is acknowledged that discrimination cases in particular are generally fact sensitive and that their proper determination is always vital in our pluralistic society. The questions of law that have to be determined in those cases are often highly fact sensitive. The risk of injustice is minimised if the answers to those questions are deferred until all of the facts are out. (**Anyanwu v South Bank Student Union** [2011] UK HL/14) and (**Ezsis v North Glamorgan NHS Trust** [2007] EWCA-Civ-330).
51. Accordingly, it would only be in an exceptional case that a claim would be struck out when the central facts are in dispute. As Mr Anderson rightly pointed out to this Tribunal, the facts in the claimant's case are all entirely in dispute, as every single part of every single allegation raised by the claimant is denied by the respondent's witnesses.
52. The claimant's difficulty is that, without any witness evidence whatsoever, it will be impossible for her to prove any facts from which the Employment Tribunal could make findings in her favour. The Tribunal is satisfied that this is indeed one of those cases which embraced disputed facts, but which nevertheless may justify striking out because, without any such evidence, the claims have no reasonable prospect of success. The present case is not even one of those where the Tribunal would be required to consider the evidence of the respondents, before deciding whether or not the claims could succeed. The burden is upon the claimant to provide her evidence first and to prove facts from which the Tribunal could infer discriminatory conduct by the respondents which could amount to a fundamental breach of her contract of employment.
53. Without any such evidence from the claimant contained in a witness statement, the respondent's witnesses cannot respond to whatever allegations the claimant may spring upon them. The respondent's counsel cannot properly prepare his cross-examination of the claimant without any evidence upon which to do so.
54. The Tribunal accepted Mr Anderson's submission that the respondent has invested an enormous amount of time, effort and money in preparing for this final hearing. One of the respondent's witnesses has postponed surgery to enable her to attend the hearing. The Tribunal accepted Mr Anderson's submission that the claimant is highly unlikely to be able to afford to pay or contribute towards the respondent's wasted costs of the proceedings to date. Mr Anderson further submitted that the claimant obtained alternative employment immediately after her resignation and that the value of her claim is now entirely disproportionate to the level of costs being incurred. That position should be read in conjunction with the

abject failure by the claimant to provide any acceptable explanation for the present sorry state of affairs.

55. Rarely if ever has this experienced panel seen a case in which a claimant has been so obviously guilty of unreasonable conduct of the proceedings and failure to comply with Orders. The claimant has been given several opportunities to remedy the situation and has taken none of them. This is not a case where the litigant in person claimant has not understood what was expected of her or required of her. The claimant`s explanations are wholly unsatisfactory.
56. The Tribunal is satisfied that the claimant has failed to comply with Orders and has behaved unreasonably to the extent that the Tribunal should exercise its discretion under Rule 37 to strike out all the claims. Accordingly, all the claims are struck out and the complaints of unfair constructive dismissal and unlawful sex discrimination are dismissed.

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**Employment Judge Johnson**

Date: 25 March 2024

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