



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Isidore

**Respondent:** ABM Aviation UK Limited

## JUDGMENT

The claim is struck out.

## REASONS

1. By a letter dated **13 May 2024** the Respondent applied to the Tribunal to strike-out the Claimant's claim because:
  - the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous and/or unreasonable (pursuant to Rule 37(1)(b) of the Employment Tribunals Rules of Procedure 2013 (the **ET Rules**)).
2. By emails dated **30 May 2024** and **10 June 2024** the Respondent applied to the Tribunal to strike-out the Claimant's claim because:
  - the Claimant had not complied with the Order of the Tribunal dated **26 March 2024** (Rule 37(1)(c) of the ET Rules); and
  - it had not been actively pursued (Rule 37(1)(d)).
3. The Respondent renewed those strike-out applications, on the above-listed bases, orally in a hearing of today's date, and added a further ground:
  - that it is no longer possible to have a fair hearing in respect of the claim (Rule 37(1)(e)).
4. The essence of the Respondent's grounds for pursuing strike-out are that it says:

- a. The Claimant ceased employment with it on 30 November 2022, when his employment transferred to a third party pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**), and that upon that transfer, any claims the Claimant had for outstanding holiday pay, unpaid wages or disability discrimination (his complaints in this case) transferred as a matter of law to that third party, and therefore his claim has no reasonable prospect of succeeding against the Respondent;
  - b. The Claimant, by failing to disclose documents relevant to his TUPE-transfer to that third party and by his continued pursuit of his claim when an explanation of the fact that TUPE automatically transfers such liabilities to the transferee was explained to him, has behaved in a scandalous manner;
  - c. The Claimant, by his repeated failure to comply with Tribunal Orders to clarify his disability discrimination complaint and to produce a schedule of loss, has not complied with those Orders;
  - d. In light of the above behaviour, it is no longer possible to have a fair hearing.
5. The Claimant has failed to make sufficient representations, in writing or orally, why this should not be done.
6. In particular, the Tribunal notes that, in oral and written representations to the Tribunal the Claimant maintained that he had not transferred to the third party pursuant to TUPE. However, the Claimant admitted that he had entered into a COT3 settlement of a claim against the third party, and upon examination of the Claim Form he presented in those proceedings the Employment Judge could see that the Claimant had stated to the Tribunal in those proceedings that he *did* TUPE-transfer into the third party's employment on 1 December 2022. Furthermore, the respondent in those proceedings (the transferee) agreed that the Claimant transferred into its employment on that date.
7. The Employment Judge concluded, in light of those facts, that:
- a. The Claimant has no reasonable prospect of succeeding with his claim in this case against the Respondent; and
  - b. The manner in which the Claimant has conducted these proceedings has been scandalous and vexatious.
8. The claim is therefore struck out pursuant to Rule 37(1)(a) and Rule 37(1)(b).
9. The hearing fixed for **14 to 16 May 2025** will not take place.
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**Case Number: 2303548/2023**

Employment Judge Ramsden  
12 September 2024