



# EMPLOYMENT TRIBUNALS

**Claimant:**

Miss M Musah

v

**Respondent:**

Chief Constable of  
Surrey Police

**Heard at:** Reading (by CVP)

**On:** 2 August 2024

**Before:** Employment Judge Hawksworth

**Appearances**

For the claimant: No attendance or representation

For the respondent: Ms N Gyane (counsel)

## JUDGMENT

### Employment Tribunals Rules of Procedure 2013 – rules 37 and 47

The claimant's claim is struck out under rule 37(1)(c) (non-compliance with tribunal orders) and 37(1)(d) (not actively pursuing the claim).

## REASONS

1. The claimant Miss Musah was a police officer in the respondent's force from 9 January 2023 to 9 August 2023 when she was dismissed. Her claim was presented on 15 September 2023. She ticked boxes in section 8.1 of the claim form to say that she was complaining of discrimination because of race and religion/belief.
2. The respondent defends the claim and says the claimant was dismissed because of the loss of her driving licence and decision making regarding driving incidents.
3. The claimant's complaints of discrimination cannot be fully understood from the claim form. While it is clear that her complaints concern her dismissal, the claimant does not say who did the things she complains about, and when. For example she says 'Certain members of the organisation plotted my dismissal', someone 'lied about [her] performance' and some trainers 'slowly abandon[ed her] so that [she] would leave voluntarily'. The tribunal and the respondent need to understand who did the acts the claimant complains

about, and when, and what exactly she says they did because of her race and religion/belief.

4. The tribunal made an order on 17 March 2024 that the claimant must provide more details about her claim. She was asked to provide details by 2 April 2024 of 'each and every detrimental (bad) thing you say was done to you because of race and religion or belief', and to say what was said or done, by whom, when and where.
5. The claimant did not comply with this order. The respondent applied on 18 April 2024 and 30 May 2024 for the claim to be struck out under rules 37(1)(c) and 37(1)(d) of the Employment Tribunal Rules of Procedure 2013, that is because of non-compliance with the order, and failure to actively pursue the claim.
6. On 10 June 2024 the claimant sent the tribunal (but not the respondent) seven A4 envelopes of evidence, with an introduction. The information did not include the details requested in the order.
7. A preliminary hearing for case management took place by video on 14 June 2024 before Judge Shields. The claimant attended the hearing with her father. Judge Shields made another order for the claimant to provide further information to clarify her claim and said that this should be done by 28 June 2024.
8. Judge Shields also ordered that a public preliminary hearing would take place today, and that one of the things to be considered at the hearing today was whether the claimant's claim should be struck out for non-compliance with the order of the tribunal.
9. On 27 June 2024 the claimant wrote to the tribunal (but not the respondent) asking for more time to comply with the order. She asked for an extension to mid-July. That request had not been dealt with by the time of the hearing today, but the claimant did not provide the information by mid-July and had not done so by today.
10. The public preliminary hearing took place today before me, by video (CVP). It was due to start at 10.00.
11. Ms Gyane attended the hearing today on behalf of the respondent. The claimant did not attend.
12. The tribunal clerk phoned the claimant, identified herself and spoke to her briefly but was cut off mid-call. After that, the claimant's phone diverted to voicemail. The claimant did not reply to the messages left by the clerk or to an email she sent. The claimant did not give any explanation as to why she was not attending today, and she did not ask for today's hearing to be postponed. She was aware of the date of today's hearing because it was set at the last hearing when she was present.

13. I waited until 10.20 but the claimant had not joined the hearing. I decided that the hearing should proceed in the claimant's absence under rule 47.
14. I made the respondent's representative aware at the start of the hearing that before being appointed as a salaried judge in 2019 I was a partner and principal lawyer at Slater and Gordon, which acts for the Police Federation of England and Wales and its members. This case does not involve the Police Federation or anyone known to me and in light of this, and the passage of time, I did not consider there to be any reason why I should not continue to hear the case. Ms Gyane said the respondent had no objection.
15. At the hearing Ms Gyane made an application for the claim to be struck out under rule 37(1)(c) and (d).
16. I decided that grounds for strike out under rule 37(1)(c) and (d) are established. The claimant has failed to comply with two tribunal orders. As the person bringing the claim, the claimant must actively pursue it. In failing to comply with the orders for further information, she has failed to actively pursue her claim.
17. I went on to consider whether to exercise my discretion to strike out the claim, bearing in mind the overriding objective in rule 2. I took into account:
  - 17.1 The claimant has still not complied with the orders to provide more information, even by the date of the extension she requested;
  - 17.2 The claimant was aware of the hearing today and failed to attend or explain why she was not attending. It may that she has decided not to pursue her claim;
  - 17.3 The claimant's failure to comply with the orders has a significant impact. The claim cannot be progressed without the information the claimant has been ordered to provide, because the claim is not at present sufficiently clear. The parties are unable to start their preparations for the full merits hearing until this is done. The date set for the full merits hearing, 11-14 February 2025, is in question;
  - 17.4 The claimant has been made aware of the respondent's strike out applications in emails on 18 April and 30 May 2024, and in the case management orders sent after the preliminary hearing in June 2024.
18. Strike out is a draconian sanction. It brings the claim to an end without the claimant being able to present her evidence and have it fully heard. I considered whether a lesser sanction would be appropriate. However, I decided, given the length of time for which the claimant has been in default of the tribunal orders and the failure to attend today to enable the claim to be progressed, that the claim should be struck out under rule 37(1)(c) and (d).
19. I would have reached the same decision under rule 47 of the Employment Tribunal Rules of Procedure 2013, relating to dismissal of a claim for non-attendance at a hearing.
20. This strike out judgment brings the claim to an end. My decision can be reconsidered if there is a good reason why the claimant was unable to attend

today. If she wants to ask me to reconsider, Miss Musah should write to the tribunal and the respondent's solicitors (Weightmans), explaining why she did not attend and why she did not let the tribunal know that she was unable to attend, and providing evidence to show why she was unable to attend. Miss Musah should note that I will not be able to consider any application for reconsideration which has not been copied to Weightmans, because that is a requirement of the tribunal rules.

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**Employment Judge Hawksworth**

Date: 2 August 2024

Sent to the parties on: 26 August 2024

For the Tribunal Office

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