



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimant**

Mr S Salter

AND

**Respondent**

Fedex Express UK Transportation Limited

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Plymouth  
**BY CLOUD VIDEO PLATFORM**

**ON**

20 September 2024

**EMPLOYMENT JUDGE** N J Roper

### Representation

**For the Claimant:** Did Not Attend

**For the Respondent:** Mr S Gill of Counsel

## JUDGMENT

**The judgment of the tribunal is that the claimant's claims are all struck out.**

### RESERVED REASONS

1. This is the judgment following a preliminary hearing to determine the respondent's application to strike out the claimant's claims.
2. In this case the claimant Mr Simon Salter has brought claims alleging unfair constructive dismissal, and for disability discrimination said to be related to the impairment of depression and anxiety. The respondent denies the claims.
3. I have considered the grounds of application and the response submitted by the parties. I have also considered the bundle of documents which was prepared for this hearing by the respondent's solicitors, which includes the written objections to the respondent's application which were submitted by solicitors who were instructed at that stage by the claimant. No one appeared for the claimant today. Counsel for the respondent informed me that neither the claimant nor any solicitors had responded to attempts to engage in discussion or agreement of the bundle of documents for this hearing.
4. The Procedural History:
5. The claimant was employed as a driver by the respondent delivery company from March 2018 until his resignation which took effect on 2 December 2022. He commenced the Early Conciliation process with ACAS on 2 December 2022 and the Early Conciliation Certificate was issued on 18 January 2023. At that stage the claimant was a litigant in person, and he

- presented these proceedings on 21 January 2023 claiming constructive unfair dismissal, and as yet unspecified claims of disability discrimination, which related to the mental impairment of depression and anxiety. Both claims required further particularisation. By letter dated 5 July 2023 Employment Judge Bax ordered the claimant to provide those further particulars. There was then a case management preliminary hearing before Employment Judge Hastie on 12 July 2023. This noted that the respondent disputed that the claimant was a disabled person, and identified the issues as being for constructive unfair dismissal, direct disability discrimination, indirect disability discrimination, discrimination arising from disability, and in respect of an alleged failure to make reasonable adjustments.
6. The matter was listed at that stage for a preliminary hearing on 17 October 2023 the purpose of which was to determine as a preliminary issue whether or not the claimant was a disabled person at the material times. Various case management orders were made. The claimant failed to comply with an order to provide a Schedule of Loss, despite reminders from the respondent. The claimant also failed to engage with the respondent in connection with the preparation of a proposed bundle of documents for that preliminary hearing. The claimant did provide some further particulars in reply to the order of Employment Judge Bax referred to above, but his response did not comply fully with that order. The claimant did supply a statement setting out the impact which the alleged disability was said to have on his normal day-to-day activities, and a letter from his GP. The respondent argues with some force that neither of these documents is sufficient proof to indicate that the claimant was a disabled person at the relevant times. It became clear that owing to the claimant's failure to comply fully with the various orders the Preliminary Hearing was not ready to proceed, and it was postponed.
  7. By letter dated 11 October 2023 the respondent then made a detailed application to strike out the claimant's claims under Rule 37. The claimant then instructed solicitors, who by letter dated 20 October 2023 submitted a detailed objection to the application to strike out the claims. There was then some delay within the Tribunal administration, and although the parties agreed in principle to have the application determined on paper, I decided that it was in the interests of justice for that application to be determined in person, and accordingly this hearing was listed for that purpose.
  8. Counsel for the respondent Mr Gill informs me that thereafter neither the claimant nor any solicitors who may have been instructed on his behalf engaged with the process of preparing a bundle of documents for this hearing, and nothing more has been heard from them. Neither the claimant nor his solicitors attended today.
  9. Having established the above facts, I now apply the law.
  10. The Law:
  11. The Employment Tribunal Rules of Procedure 2013 are in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and are referred to in this judgment as "the Rules".
  12. Rule 37(1) provides that 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 the grounds: (a) 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).
  13. Decision:
  14. In this case the claimant (i) remains in continued default of various Tribunal orders; (ii) has given no substantive explanation for the continued delay in failing to comply with these orders; (iii) has not engaged in the process of preparing for this hearing; (iv) failed to attend today's hearing without any explanation or application to postpone with good reason; and (v) has not actively pursued this claim.

15. Accordingly, I strike out the claimant's claims under Rule 37 (b) (c) and (d) because the manner in which the proceedings have been conducted by or on behalf of the claimant or has been unreasonable; for non-compliance with a number of orders of the Tribunal; and because it has not been actively pursued.

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Employment Judge N J Roper  
Dated 20 September 2024

Judgment sent to Parties on 04 October 2024

For the Tribunal Office

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