



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Sega

**Respondent:** Supreme Imports Limited

## JUDGMENT

The claim is struck out.

## REASONS

1. I gave my decision, with reasons, orally at the hearing today. After hearing my decision the Claimant requested the reasons in writing.
2. The hearing today was listed by Employment Judge Heath at a case management preliminary hearing on 30 August 2024. A brief summary of the background to the claim is set out below.

### **Background**

3. The claim was submitted on 6 April 2023, following ACAS Early Conciliation taking place between 13 February 2023 and 6 March 2023.
4. A case management preliminary hearing took place on 1 December 2023, conducted by Employment Judge McCluskey. The Claimant attended that hearing, and a discussion about the claim took place. It was noted that the Claimant was seeking to bring the following complaints: unfair constructive dismissal; harassment related to race; and breach of contract / unlawful deduction from wages. Case management orders were made to ensure the claim was ready for a 4 day final hearing commencing on 1 October 2024.
5. The preparation for the final hearing did not go smoothly between the parties, there are a number of emails on the Tribunal file from the parties following the first case management preliminary hearing. On 12 April 2024 the Claimant wrote to the Tribunal and requested the Tribunal list a further

preliminary hearing to assist in finalising the list of issues, as the parties had not been able to agree the list themselves. On the same day the Claimant also made an application for a witness order.

6. In a letter dated 17 May 2024 Employment Judge Fowell refused the Claimant's application for witness order and also stated, the text in bold being my highlight:

*"Since the parties have been unable to agree a list of issues, **a preliminary hearing will be held as soon as practicable** to finalise those issues and deal with any outstanding issues. **In the meantime the parties should adhere to the existing directions.** If the hearing in October 2024 has to be adjourned for any reason it is unlikely that a further hearing can be arranged before October 2025, even if rearranged today."*

7. The Claimant received and replied to this letter on 19 May 2024 asking for a reconsideration of Employment Judge Fowell's decision. There has been no further contact from the Claimant, to the Tribunal, at all since 19 May 2024.
8. A further case management preliminary hearing took place on 30 August 2024 and was conducted by Employment Judge Heath. A Notice of Hearing was sent to the parties on 17 June 2024.
9. The Claimant did not attend that hearing and provided no explanation for the non-attendance. The Claimant had not engaged with the Respondent since 19 May 2024. Employment Judge Heath issued a strike out warning on 30 August 2024 and ordered the Claimant to write with any objections by 13 September 2024. The strike out warning set out that if the Claimant did not reply by 13 September 2024, it was open to the tribunal to strike out your claim without the need for a hearing.
10. The Claimant did not reply to the strike out warning.

### **The hearing today**

11. The Claimant attended the hearing today.
12. I explained that the first matter that I needed to consider was whether the claim should be struck out on the basis that it had not been actively pursued.
13. The Claimant had been sent a copy of the following documents that the Respondent had prepared for the hearing today: skeleton argument, bundle index, bundle and witness statement.
14. I asked him to explain why he had not attended the hearing on 30 August 2024 and why he had not replied to Employment Judge Heath's strike out warning sent on 30 September 2024.
15. The information given by the Claimant was confusing, inconsistent and unclear at times. It was necessary for me to ask questions several times and recap what the Claimant told me. The Claimant initially told me that that his laptop broke around April/May 2024 and therefore he couldn't access emails. He later told me that he had a second laptop, the one he

was using today, and that he had this laptop since February 2023 and could access his emails from time to time. He said that following Employment Judge Fowell's refusal of the witness order on 17 May 2024 he had chosen not to read any emails from the Tribunal. He said he was frustrated with the Respondent not giving documents he wanted to be shown and wanted to wait until today, to speak to the decision maker, for the Respondent to be told that they must include his documents. He said he knew about the hearing for today from the first preliminary hearing in December 2023. He said he has been working on the claim and is active, hence his attendance today. He said he didn't know the date of the case management preliminary hearing on 30 August 2024 as he hadn't read the emails from ET. The Claimant confirmed that he did indeed have access to his emails, and that several email from the Tribunal on 30 August 2024, in particular the strike out warning, were in his inbox, but he had chosen not to read them.

16. I also heard oral submissions from Ms. Baylis, which largely followed her written skeleton, and she directed me to *Khan v London Borough of Barnet UKEAT/0002/18/DA*, in particular paragraph 30 – 36.

### **The Law**

17. Set out below are rules 2 and 37 of the Employment Tribunals

#### ***Overriding objective***

*2. The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*

*(a)ensuring that the parties are on an equal footing;*

*(b)dealing with cases in ways which are proportionate to the complexity and importance of the issues;*

*(c)avoiding unnecessary formality and seeking flexibility in the proceedings;*

*(d)avoiding delay, so far as compatible with proper consideration of the issues; and*

*(e)saving expense.*

*A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.*

#### ***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.*

18. I was also directed to the following cases:

*Evans and anor v Commissioner of Police of the Metropolis 1993 ICR 151, CA,*

*Rolls Royce plc v Riddle [2008] IRLR 873*

*Khan v London Borough of Barnet UKEAT/0002/18/DA*

### **Conclusion**

19. I adjourned the hearing to deliberate. I considered the comments from the parties, the documents and information in the Bundle, the relevant Employment Tribunal Rules and the law.

20. I determined that, in view of the non-compliance with the strike out warning, the claim was struck out on the basis that it was not actively pursued.

21. I considered whether there had been any intentional delay by the Claimant. I concluded there had been. The Claimant had clearly stated that he had chosen not to read any more correspondence from the Tribunal following the refusal of his application for a witness order because he wanted to wait for today to speak with a "decision maker" regarding documents. This has caused delay in the proceedings, as the Claimant did not know the date of the 30 August 2024 hearing and therefore did not attend, even though on 17 May 2024 he knew a hearing was in the process of being scheduled. No real progress was achieved at the case management preliminary hearing

on 30 August 2024 and the delay resulted in final hearing listed for 1 – 4 October 2024 being postponed, with no fixed date for return. The Claimant could and should have attended the case management preliminary hearing on 30 August 2024 to discuss the claim, and any matters such as disclosure/inclusion of documents, and further the Claimant could have written to the Tribunal regarding such case management matters, as had done so prior to 19 May 2024. The Claimant's actions were intentional and deliberate.

22. I considered whether the Claimant had acted in a manner that was contumelious (put in a more simple way as disrespectful or abusive). The Claimant had failed to reply to the Respondent's attempts to engage with him from 19 May 2024, he had failed to comply with case management orders, he had chosen (by not reading emails to learnt he date) to not attend last case management preliminary hearing. He failed to reply to the strike out warning. He gave inconsistent answers to my questions today. I conclude that, following the refusal of his application for a witness order, the Claimant has shown no regard or respect for the employment tribunal process. I consider his decision to not read correspondence from the Tribunal was deliberately rude and disrespectful.
23. I reminded myself that when making any decision to strike out, one must consider all the circumstances and the Overriding Objective. I took into account all the circumstances as set out in the Background section above and what was said to me at the hearing today.
24. In relation to the Overriding Objective, and a key component in relation to striking out on the grounds a claim has not been actively pursued, delay is a key feature. In terms of delay, I noted that case is remains unprepared for a final hearing despite case management in December 2023. A four day hearing listed for October 2024 had to be vacated. Any final hearing listed now is likely to be in 2026, a considerable delay by consequence of the Claimant failure to properly pursue his claim. There has now been a significant passage of time since events in claim, and this will negatively impact on witness memory. I think, given the lack of preparation and delay, that there is a significant risk that a fair final hearing cannot take place.
25. In relation to ensuring the parties are on an equal footing, I kept in mind that the Claimant is a litigant in person and I was careful to check that he had received documents from the Tribunal, which he had. Since May 2024 the Respondent has not been able to progress case, and therefore has suffered prejudice, due to conduct of the Claimant.
26. The Claimant's failure to engage has resulted in increased costs, in particular those related to the hearing of 30 August 2024.
27. In many cases only one case management preliminary hearing takes place. The Tribunal sought to be flexible in the proceedings and list a further case management preliminary hearing upon request of the Claimant despite, on the face of matters, the issues being relatively confined. The Claimant disregarded the assistance and time offered by the Tribunal by not reading any correspondence following 19 May 2024.
28. I have considered if there is an alternative, such as an unless order. Given the Claimants conduct and his comments today, I do not consider that to be

an appropriate course of action. Since May 2024 he made a deliberate decision to not engage with the Tribunal and the Respondent until today, noting he considered today would be a final hearing with a “decision maker” and therefore he has shown no respect to the Tribunal orders, rules or procedures.

29. I did not hear or make any determination in relation to the Respondent’s application for strike out as it was not necessary to do so.

Employment Judge Cawthray

1 October 2024

JUDGMENT SENT TO THE PARTIES ON  
2<sup>nd</sup> October 2024

FOR THE TRIBUNAL OFFICE