EMPLOYMENT TRIBUNALS

Claimant: Mrs Sicong Wang

Respondent: Coventry University

Heard at: Birmingham (via CVP) **On:** 14 August 2024

Before: Employment Judge Boyle

Representation

Claimant: Dr Sean Wang (claimant's husband) (assisted by interpreter Mrs Shenhui Wilson)
Respondent: Mr C Ilangaratne (Counsel)

RESERVED JUDGMENT

1. The claimant's application to strike out the respondent's response under Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is refused.

2. The respondent's application to strike out the claimant's claim under Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 is granted. The claim is struck out.

REASONS

1. This open preliminary hearing was listed on 14 August 2022 to consider:
    a. The claimant's application to strike out the respondent's response;
    b. The respondent's application to strike out the claimant's claim;
    c. Any further case management orders that should be made, if appropriate, to prepare this case for final hearing.

2. At the start of the hearing I received a bundle of 259 papers prepared by the respondent, an additional document being a letter from the

Employment Appeal Tribunal addressed to the claimant dated 7 August 2024 and one case authority. On asking the parties if there were any other documents, the claimant's representative stated that they had prepared a supplemental bundle and further had not received the respondent's bundle.

3. Following enquiry over about an hour, the claimant confirmed that they had received a "Mimecast" (which is a secure link used to send large attachments) but they had not opened it. The respondent stated that they had used Mimecast previously with the claimant, and whilst the claimant had expressed a preference, to have bundles sent as attachments, this bundle had been too large to do this. The claimant argued that the hearing could not go ahead today due to this. The respondent argued that it was the claimant's decision not to access the bundle and that the hearing should go ahead today.

4. I asked for the clerk to send the bundle to the claimant as an attachment and it was indeed too large to send. It was therefore broken down by the respondent and sent as attachments. I gave the claimant time to read this by adjourning the hearing. In doing so I noted that all the documents in the bundle had already been seen by the claimant and were in fact, largely made up of emails from the claimant to the respondent and/or the Tribunal. Where relevant I will refer to this as 'the respondent's bundle'.

5. I decided that, bearing in mind, this matter had already been listed for 3 final hearings, and the claimant had sufficient time for preparation, it was in the interests of justice for the hearing to go ahead rather than to postpone it to a further date later in the year.

6. It was noted that the majority of the claimant's supplemental bundle duplicated documents in the respondent bundle and the respondent confirmed that it was happy to agree the claimant's bundle and for the claimant to refer to it during the hearing. Where relevant I will refer to this as "the claimant's bundle".

7. I will largely refer to the claimant as "they" during this judgment. This is because the claimant did not appear at the hearing or show her face. She has been represented throughout by her husband, Dr S Wang, and he is the author all the correspondence in the bundle.

8. I heard the claimant's application for strike out first during the morning of the hearing. Before our break for lunch the respondent indicated the documents they would be relying on from the respondent's bundle so that the claimant had an opportunity to consider them over the lunch break. The respondent pointed to around 11 pages, together with the letter from the Employment Appeal Tribunal and the decision of *Mr T Smith v Tesco Stores Ltd 2023.*

9. An interpreter, Mrs Wilson, was present for the entire hearing. She spoke the same language as the claimant's representative. At times she translated for the claimant. At other times, the claimant's representative spoke for himself in English. I took into account the Equal Treatment Bench Book and following adjustments to the hearing (to include the use of an interpreter) I believe the claimant was fully able to access the hearing and understood the process. During submissions, which the claimant did not require to be interpreted, I asked counsel for the respondent to simplify his language, which he readily agreed to do.

Background and events leading to the strike out applications

10. The claimant presented a claim with Midlands West Employment Tribunal on 17 June 2022 against her then employer, Coventry University. She was, at that time, employed as a lecturer in business strategy. She ticked the box "I am seeking a redundancy" payment" only under box 8.1 but her narrative in box 8.2. appeared to indicate that she was bringing a claim for unlawful deductions from wages in respect of her salary and/or breach of contract.

11. The respondent filed a response denying the claims and seeking further particulars on 21 July 2022. In summary the response was that the claimant was refusing to come to work and therefore the respondent had suspended her pay. It denied there was any jurisdiction to consider a claim for breach of contract as the claimant was still employed by the respondent. At that time, the respondent was represented by Ms L McKenzie at DAS Law.

12. The Tribunal issued a notice of hearing and case management orders dated 9 December 2022. This is standard for a case that is considered to be 'short track" and contained standard directions as regards exchange of documents and witness statements. I will refer to these as the "first Case Management Orders".

13. The claimant had sent around 55 pages of documents in accordance with the original case management orders dated 9 December 2022 to Ms McKenzie on 3 February 2023.

14. A final hearing was originally listed to be held on 1 June 2023. The respondent successfully applied for the hearing to be converted to a case management hearing on the basis that, as pleaded, the claimant's case could not be sensibly responded to.

15. By this time, the claimant's employment had been terminated for gross misconduct on 4 January 2023.

16. Further, by this time, the respondent's case had been taken over by Ms H

Loveluck-Edwards at DAS Law. She had not received some of the Tribunal's correspondence as it had been sent to her former colleague's inbox who was on maternity leave, and the correspondence was not forwarded to her by the Tribunal. Therefore she was unaware of the first Case Management Orders. She explained in detail why this had happened in an email to the Tribunal dated 18 April 2023.

17. A case management hearing took place on 1 June 2023 with EJ Algazy KC. I can see from the case management order document that EJ Algazy KC spent a large amount of time with the claimant's representative trying to understand the case being brought by the claimant.

18. It is clear from this document that new case management orders were made at the hearing. I am satisfied that that EJ Algazy KC considered any prior breaches (and the reasons for them) of the case management orders at this hearing and decided to start a 'fresh sheet'. I will refer to these as the "second Case Management Orders".

19. One of the orders was for the claimant to produce in a single page, the heads of claim she is pursing and specific sums claimed by 15 June 2023.

20. By this stage, the respondent's representative had changed again to Ms D Humpries at Shakespeare Martineau. The claimant sent the respondent a document which looks like a schedule of loss. The respondent said it did not comply with the case management order and asked for the remaining case management orders to be suspended until the claimant had complied.

21. On 30 June 2023, the claimant made their first application for a strike out of the response. This application largely rested on alleged failures by the respondent from the first Case Management Orders. Whilst these had been superseded by second Case Management Orders, the claimant continually referred to them. The claimant was also confused by the change of representative and for some time refused to engage with Shakespeare Martineau.

22. Following the case management hearing, a new final hearing date was listed for 20 -21 December 2023.

23. There followed lengthy correspondence from both parties around the preparation of the case with both parties saying the other was in breach of the second Case Management Orders.

24. The claimant reiterated and added to their strike out application on several occasions during this time. Again, whilst part of this application related to alleged breaches of the now superceded first Case Management Orders, they further alleged breaches by the respondent under the second Case Management Orders. During this period the respondent sought to argue

that it was the claimant's failure that meant the case could not be prepared.

25. EJ Kenward was referred this file on 12 August 2023. On reviewing the file, he determined that the claimant's claim was limited to unlawful deductions from wages and potentially a claim for breach of contract. He released the respondent from any order to respond to the claimant's claim and again sought to get this claim back on track by issuing further case management orders with new dates for compliance ("third Case Management Orders"). EJ Kenward stated:

"9. *In the circumstances set out above, it is not in the interests of justice for a Judgment to be given in favour of the Claimant on the basis of non compliance by the respondent with the Case Management orders given that the respondent had brought the need for clarification of the position to the attention of the Tribunal."*

26. He further went on to remind the claimant to copy in relevant correspondence to the Tribunal to Shakespeare Martineau and that any failure to do so may be considered as unreasonable conduct contrary to rule 37 (1) (b) of the Employment Tribunals Rules of Procedure.

27. It is clear from the third Case Management Orders that EJ Kenward was drawing a line under previous matters and urging the claimant to move on. The respondent was ordered to produce a list of issues by 1 September 2023 and send these to the claimant. The case remained listed for hearing on 20 and 21 December 2023.

28. Despite the intervention of EJ Kenward, the claimant continue to correspond with the Tribunal relying on alleged breaches by the respondent of the first and second Case Management Orders.

29. The respondent sent a list of issues to the claimant on 31 August 2023. Having reviewed this document, my view is that this was an appropriate document attempting to summarise the list of issues. Despite this, and in my view, in an obstructive way, the claimant stated that this list of issues was "unclear, incomplete and have misstatements". A further application was made by the claimant to strike out the response on 9 August 2023.

30. During this period, I can see from correspondence in the respondent's bundle that it made several professional attempts to liaise with the claimant in order to get the case ready for the forthcoming hearing on 20 and 21 December 2023. These include liaising with the claimant over the hearing bundle and for exchange of witness statements.

31. These attempts were met with objections from the claimant. They didn't 'agree" the bundle and wanted witness statements sent as attachments rather than via a link from Mimecast. The respondent tried to explore options with the claimant in order to get the case ready for trial.

32. My reading of the correspondence at this time was that the claimant seemed to wish to frustrate the process by not co-operating with the respondent to get this case ready. For example whilst it is clear that a link with the respondent's witness statements were sent to the claimant on 29 September 2023, the claimant wrote to the Tribunal on 2 October 2023 stating:

> *"we didn't received the witness statements in the email's attachments form the respondent on the due date of 29 Sep 2023. We strongly contend that the Tribunal should strike out the respondent*".

33. This is an incorrect statement, which I find was a deliberate attempt by the claimant to manufacture a breach by the respondent of the third Case Management Orders. The claimant had received a link. The claimant didn't want to open the link. The respondent offered to send the witness statements in an alternative method. Instead the claimant's response was to write to the Tribunal to say the respondent had not complied with case management orders.

34. This conduct is repeated in the relation to the bundle. The respondent disclosed some additional documents. Parties are under a duty to disclose relevant documents and this is an on-going duty by either party if new evidence emerges.. However, the claimant stated that this was a further evidence of a breach.

35. During this time (an example being 1 December 2023), the claimant again wrote to the Tribunal referring to the first Case Management orders, even though these had clearly been superceded by the second and third Case Management orders. By continually referring to historic matters, this on the face of it makes the application look stronger, but these matters had been dealt with by previous judges.

36. A further example relates to the hearing bundle. The respondent took the responsibility for preparing this and several versions were sent to the claimant. The respondent asked the claimant on several occasions if there were any other documents they wished to be included. As the claimant either refused to engage or did not comment they produced a final bundle on 15 September 2023 and sent this to the claimant. The claimant made no comment that any documents were missing. However, when the claimant disclosed her witness statement it clearly referenced documents that were not in the final bundle. The claimant has continually maintained that they had sent their disclosure in December 2022. This might be the case, but due to the change in representatives, it would appear that this disclosure did not make its make to Shakespeare Martineau. I find it unreasonable that despite the respondent making a reasonable request for the documents to be resent, the claimant consistently refused to do so because they had already been sent to a previous representative.

37. Unfortunately the respondent had to make an application to postpone the hearing date of 20 and 21 December 2023 due to the ill-health of their barrister. This was considered and granted by EJ Maxwell on 19 December 2023. A new final hearing date was issued and sent to the parties for a hearing to take place on 22 and 23 May 2024.

38. Despite all foregoing, the respondent indicated in an emails dated 16 and 20 May 2024 to the Tribunal, that the case was ready for hearing with the bundle, witness statements and list of issues being sent to the Tribunal.

39. The hearing commenced on 22 May 2024 before EJ Wright. The record of hearing from EJ Wright confirms that several attempts were made to contact the claimant but she did not attend nor did her representative. The booked interpreter was stood down and the hearing vacated.

40. Following this, EJ Wright wrote to the claimant stating that she was considering striking out the claim due to the claimant's non attendance at the hearing. The claimant was asked to write to the Tribunal if they objected to that proposal.

41. The claimant wrote to the Tribunal on 30 May 2023 stating that they objected to the proposal. They stated their reasons as being:
    a. The multiple defaults by the respondent in their preparation of the case (again including referring back to the first Case Management orders);
    b. The bias shown by the Tribunal in considering a strike out of the claimant;
    c. The insufficient time given to the claimant to respond to the strike out warning.

42. There was no explanation given by the claimant for their specific nonattendance at the hearing on 22 and 23 May 2024. EJ Battisby wrote to the claimant on 31 May 2024 and gave the claimant a further opportunity to give an explanation for their non-attendance with an increased deadline to respond by 10 June 2024.

43. Again the claimant simply reiterated the contents of their email dated 30 May 2023.

44. On 12 June 2024, the respondent made an application to strike out the claim based on the claimant's failure to provide a good reason for their non-attendance at the hearing.

45. In light of the claimant's application that they had several strike out applications they wished to make against the respondent, and the respondent's counter application, an open preliminary hearing was listed to consider these application

46. **The Law**

Rule 2 of the Employment Tribunal Rules 2013 (" the ET Rules) provides:

Overriding objective

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.

Rule 37 of the ET Rules provides:

Striking out
(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.I was directed to the case of .

47. I was referred by the respondent to the case of *Smith v Tesco Stores Ltd [2023] EAT 11* and in particular the following paragraphs:

"5. *Regrettably, those who are confused by, or disagree with, proper case management decisions that are fair to both parties, sometimes jump to the conclusion that the employment judge is biased and that the employment tribunal and its staff are adversaries to be challenged and attacked. If such a mistaken view results in a withdrawal from the required co-operation with the employment tribunal and the other party, necessary to advance the overriding objective, it puts a fair trial at risk.*

34. It is important to remember that parties are not merely requested to assist the employment tribunal in furthering of the overriding objective, they are required to do so.

36.. The EAT and Court of Appeal have repeatedly emphasised the great care that should be taken before striking out a claim and that strike out of the whole claim is inappropriate if there is some proportionate sanction that may, for example, limit the claim or strike out only those claims that are misconceived or cannot be tried fairly.

37. Anxious consideration is required before an entire claim is struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious and/or that it is no longer possible to have a fair hearing.

38. In Bolch Burton J considered the approach to be adopted in considering whether it is appropriate to strike out a claim because of scandalous, unreasonable or vexatious behaviour and concluded that the employment tribunal should ask itself: first, whether there has been scandalous, unreasonable or vexatious conduct of the proceedings; if so, second (save in very limited circumstances where there has been willful, deliberate or contumelious disobedience of an order of the employment tribunal), whether a fair trial is no longer possible; if so, third, whether strike out would be a proportionate response to the conduct in question.

39. This approach was adopted by the Court of Appeal in Blockbuster Entertainment Ltd v James, [2006] EWCA Civ 684, [2006] IRLR630, where Sedley LJ stated: This power, as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.

40. In considering proportionality the Court of Appeal noted: 18. The first object of any system of justice is to get triable cases tried. There can be no doubt that among the allegations made by Mr James are things

which, if true, merit concern and adjudication. There can be no doubt, either, that Mr James has been difficult, querulous and uncooperative in many respects. Some of this may be attributable to the heavy artillery that has been deployed against him, though I hope that for the future he will be able to show the moderation and respect for others which he displayed in his oral submissions to this court. But the courts and tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably.

41. *In Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167 it was held: 55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court*

42. *Choudhury J (President) made a very important point about what constitutes a fair trial in Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327: 19 I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees [2000] 2 BCLC 167 set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of*

other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

45. . The reliance placed by EJ Cookson on the two matters raised in the grounds of appeal, as clarified by HHJ Auerbach, the fact that the claimant had not engaged with or agreed the latest draft list of issues and that he had made a fresh application to amend, was not that they meant that there could not theoretically be a fair trial of any of the claims because none of the issues in any of the claims were sufficiently clarified; but that there could not be a fair trial because the claimant refused to cooperate with the respondent and employment Tribunal. The great difficulty in identifying the issues was part of a course of conduct in which the claimant had shown that he was "not prepared to cooperate with the Tribunal process". EJ Flood concluded that the course of conduct showed that the claimant would not abide by his obligation to assist in achieving "the overriding objective and that his disruptive conduct exhibited at the hearing before her was likely to be repeated. EJ Flood found that claimant was guilty of a "continued refusal to cooperate". The claimant would not work towards a trial that was fair in the sense of avoiding the undue expenditure of time and money, taking into account the demands of other litigants and the finite resources of the employment Tribunal. One listing of the full hearing had already been lost and no progress was being made in preparing for the second hearing listed. Preparation was moving backwards, not forwards. There was every reason to believe that the lack of cooperation would persist. . . .

47 This judgment should not be seen as a green light for routinely striking out cases that are difficult to manage. It is nothing of the sort. We must remember that the "tribunals of this country are open to the difficult". Strike out is a last resort, not a short cut. For a stage to be reached at which it can properly be said that it is no longer possible to achieve a fair hearing, the effort that will have been taken by the tribunal in seeking to bring the matter to trial is likely to have been as much as would have been required, if the parties had cooperated, to undertake the hearing. This case is exceptional because, after conspicuously careful, thoughtful and fair case management, the claimant demonstrated that he was not prepared to cooperate with the respondent and the employment tribunal to achieve a fair trial. He robbed himself of that opportunity. "

48. I was reminded of the Draconian nature of the strike out power; the importance of taking into account the overriding objective and of asking whether a fair trial is possible in the future and whether any alternative to strike out is proportionate.

Claimant's applications to strike out the response

49. The claimant made an application to strike out the response. It was helpfully set out in a document which the claimant sent to me and I have been able to refer to.

50. In essence, the claimant argues that the respondent has been in breach of case management orders since the first Case Management Orders were issued in December 2022. They break this down under the headings of bundle, witness statement, list of issues and go over many issues that were dealt with by EJ Kenward when he looked at this matter in August 2023. They say it is in the interests of justice for the response to be struck out.

51. The respondent opposed this application. Counsel reminded me that is rare for a claim to be struck out. Counsel said the claimant's application was baseless. At every turn the claimant had not co-operated with respondent or the Tribunal and the claimant had tried to frustrate the process by making weak strike out applications and for those reasons this strike out application should fail.

52. Reviewing the background set out above and the correspondence set out in the bundle before me I can find no breach by the respondent that would warrant a strike out of its response. There have been no warnings from the Tribunal, or unless orders issued. This case has been examined by several Employment Judges since it was issued in 2022, and not one of them has criticized the respondent or its conduct of the matter in any way.

53. The respondent explained their early failure to comply with the first Case Management Orders due to their change of representative. Since then, it is my view that the respondent has tried very hard to co-operate with the claimant in getting this case ready for hearing and therefore complied with the Overriding Objective.

54. I can see the respondent has made efforts to get this case ready for hearing including the production of a bundle, list of issues and witness statement. The respondent is clearly wishing to defend this case and appears to have a viable defence.

55. Whilst the claimant has made multiple requests to have the response struck out, these have been largely baseless and without merit. The claimant, appears to take the view that by simply reissuing and repeating the same requests, that this bears more weight. In my view, it does not. The claimant has used the threats of a strike out

throughout the life time of this case prompting the respondent to have to write lengthy responses. I will come to this conduct further again below.

56. There appears to be no merit in the claimant's application and no breaches identified of rule 37 of the ET Rules. Therefore It would not be in the interests of justice to strike out the response.

57. For these reasons I am refusing to grant the claimant's application.

Respondent's application to strike out the claim

58. The respondent made an application to strike out the claim. They argued that not only did the claimant unreasonably fail to attend the final hearing listed for 22 and 23 May 2024, they have since failed to offer any explanation for their non-attendance despite being given full opportunity to do so including at the hearing itself today. They argue that the claimant clearly knew about the hearing but did not write to say they would not be attending.

59. The respondent noted that the claimant had already engaged with the Employment Appeal Tribunal who in their letter to the claimant dated 7 August 2024 confirmed that it had not been incorrect for the Tribunal to issue a strike out warning. Whilst acknowledging that strike-outs are rare, they stated that if the Tribunal apply the law as set out in *Mr Jones v Tesco Stores Ltd 2023*, this case falls squarely as one that should be struck out.

60. The claimant opposed the application. They maintained their position for the three reasons they say they did not attend as set out in their email dated 30 May 2023. They also said that they did not have to attend the hearing and had already been told that there was no need for them to attend: the hearing would go ahead in any event. (I believe they are referring to a letter from Legal Officer Singh dated 19 January 2024 which states that "the Tribunal may proceed in the absence of the party".)

61. In determining this application I will consider first if the claimant is in breach of any part of rule 37 of the ET Rules.

62. The claimant (nor her representative) did not attend the final hearing listed for 22 and 23 May 2024 I agree that they are not required to do so and therefore did not breach of Order of the Tribunal by failing to attend. Despite being given opportunities to do so however, the claimant has only ever stated that the reason they did not attend was "for the 3 reasons given in the email dated 30 May 2024". Referring back to these, these can be summarized as:

a. The multiple defaults by the respondent in their preparation of the case (again including referring back to the first Case Management orders);
b. The bias shown by the Tribunal in considering a strike out of the claimant;
c. The insufficient time given to the claimant to respond to the strike out warning.

63. With respect, it is only the first reason (a) that can be any kind of excuse for not attending a hearing – (b) and (c) both refer to the strike out warning that was then given based on their non-attendance.

64. The claimant, who has actively contacted the Tribunal over a period of 2 years, made no attempt to contact either the respondent or the Tribunal to say they would not be attending. A two day case was vacated from the list and a booked interpreter sent away. There will have been inconvenience to the respondent and their representative too. It is surprising that the claimant made no attempt to contact the Tribunal and my reading of the claimant's explanation for non-attendance is that they were refusing to attend because there were outstanding strike out applications that they say the Tribunal had failed to address.

65. In my view, the reasonable action here would have been to actually attend the hearing and make those applications rather than refuse to attend. Despite being given time to provide any further explanation, the claimant has not done so.

66. I find that it is not appropriate to engage with the Tribunal in this way and that this type of conduct is vexatious and unreasonable. It feels as though, along the way, the claimant has lost sight of the fact that she has brought a claim and it is hers to pursue. However, it is not hers to pursue at all costs or entirely on her own terms. She must, and is required to, engage with the respondent and Tribunal and co-operate. Deliberately refusing to attend in this way goes against this and appears designed to frustrate the Tribunal process and put the respondent to further expense.

67. In itself, I find this behaviour unreasonable. However, I also considered if there has been a deliberate and persistent disregard for the tribunal process or that a fair trial is no longer possible. Looking at the history of this matter, as set out above, I find that there has been persistent and deliberate attempts by the claimant to frustrate the Tribunal process. I have identified examples above of the claimant willfully refusing to engage properly with the respondent. Further I identified a deliberate attempt by the claimant to mislead the Tribunal (in relation to the provision of witness statements by the respondent).

68. Added to this are the multiple baseless threats by the claimant that the response should be struck out. This have undoubtedly put the respondent to additional expense in writing detailed responses, for these responses to be ignored and the same application then re-made by the claimant.

69. Whilst I appreciate that from the claimant's perspective, these strike applications have only been considered today, I do not believe that is an acceptable position to take. ET judges have carefully and consciously looked at this file over two years. Not once has there been any criticism of the respondent nor any warnings given to the respondent.

70. It is not reasonable for the claimant to continue to refer to case management orders that have been superceded as a reason for strike out, but they continue to do so. Again, I fear that the claimant has lost sight of the fact that a case needs to be prepared and heard and that they have instead spent most of their time and energy on trying to prevent this case actually being heard. It is a surprising position for a claimant to take. I don't attempt to second guess why this would be the case.

71. I asked the claimant's representative if he believed a fair trial was still possible. He candidly replied that it was not. He said the respondent's breaches meant they would not get justice or fairness. The respondent also argued that a fair trial was no longer possible.

72. I approached this hearing with an open mind, but based on the history of this matter as set out clearly in the respondent's bundle, I had serious doubts that because of the claimant's conduct a fair trial was still possible. Unfortunately, the claimant was not able to give me any comfort during the preliminary hearing that their conduct would change to allow the case to proceed.

73. Even at the preliminary hearing, the claimant was attempting to obstruct the process, by refusing to open Mimecast links or engage with the respondent as to finding another way to share the preliminary hearing bundle. The claimant said this hearing could not go ahead, and I believe would have been happy for me to grant a postponement. This, I am afraid, gives me no confidence, if I let the claim proceed and another two day full hearing is listed later that this, that it would not be vacated due the claimant's actions. Their behaviour shows a pattern of non-cooperation with the respondent and Tribunal, and nothing I heard at the hearing makes me believe this will change.

74. I remind myself that strike out is not just used where fair trial is impossible in the absolute sense. It will always be possible to have a trial if enough time and resources are thrown at it and if no regard

given to costs and delay for the other parties. However, fairness has to be considered with regard to these matters. Counsel for the respondent commented that this case is similar to that of *Mr Jones v Tesco Stores Ltd.* I tend to agree here. There, the claimant was not willing to cooperate to with the Tribunal and the respondent and robbed himself of the opportunity to continue. This is what the claimant has done here: she has robbed herself of the opportunity to continue her case to the end.

75. I remind myself this is a rare event, but some case justify it and I believe this is one of them. I have taken into account that the claimant is a litigant in person. However, the evidence from the many emails sent by the claimant is that they understand the tribunal process but that their conduct is focused on thwarting the process, causing delay and increasing the respondent's legal fees.

76. I have nonetheless considered if there is a viable and proportionate alternative to striking out the claimant's claim here. One possible option would be to consider a costs application from the respondent for their expenses in relation to the hearing of 22 or 23 May. Whilst I believe this would go some way to covering their expenses, I don't believe this would change the claimant's conduct of this case for the future. Further I do not believe further case management or the use of unless orders will assist here. This case has already been case managed on at least three occasions by three different Employment Judges. I remind myself that this (on its face) is a straightforward unlawful deduction of wages claim, and yet, it is has still not been heard over two years since it was lodged. This was down to the claimant's conduct.

77. Therefore, on the application of the respondent, the claimant's claims are struck out because

a. the manner in which the claimant has conducted these proceedings has been scandalous, unreasonable or vexatious (Rule 37(1)(b)), and
b. I consider that it is no longer possible to have a fair hearing in respect of the claim because of the claimant's conduct (Rule 37(1)(e), and in the circumstances it is proportionate and in the interests of justice to strike out the claimant's claims in their entirety.

Employment Judge Boyle
14 August 2024

Public access to employment Tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practicedirections/