



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Elishi

**Respondent:** Alfresco Ltd

**Heard at:** The Watford Employment Tribunal

**On:** 28 October 2024

**Before:** Employment Judge Tuck KC

**Appearances:**

For the claimant: In person

For the respondent: Mr S Overs, Litigation Consultant

## Judgment

**The claim is struck out.**

### REASONS

1. By an ET1 presented on 13 February 2024, following a period of early conciliation between 2 and 13 February 2024, the claimant complained of unfair dismissal. He had been employed by the Respondent as an Account Manager between 1 November 2016 and his resignation on 25 January 2024. His ET1 stated “I had no option but to leave my job due to continuous ridiculing, accusations of thieving money to fellow employees, undermining my position at work and constant bickering and arguments”. He sought £10,000 compensation.
2. The Respondent denied the claim in its ET3, asserting that the Claimant had resigned without notice and that the allegations were without foundation. It sought a strike out of the ET1.
3. EJ Lewis gave case management orders on 1 July 2024 and listed this matter to be heard over two days on 28 and 29 October 2024. He gave a specific direction that the claimant provide “a list, in date order and numbered paragraphs, of the things the claimant alleges were done by the Respondent which caused him to resign”. He was also to set out what remedy he was seeking and what steps he had taken to mitigate his losses. The information was to be provided by 16 July 2024 and the schedule by 29 July 2024. Dates

were set for provision of documents in August 2024 and the preparation of witness statements by 7 October 2024.

4. The claimant told me he received this communication; he did not consider he needed to comply with the order as he had already given this information in the claim. He sent an email to the ET on 31 July 2024 effectively repeating his assertion that he had complied with all instructions, and as a hearing date had been sent he did not consider any further information was needed.
5. The claimant did not provide any documents by way of disclosure and has not prepared a witness statement for today's hearing (or at all).
6. EJ Quill on 21 October 2024 ordered that the Claimant must comply with the July orders by 27<sup>th</sup> October 2024, or explain why he had not done so. The Claimant did not receive this email which was sent to his Hotmail email address – which he no longer has access to. He did receive the Respondent's application for a postponement – sent to his "icloud" email address on 25<sup>th</sup> October. The Claimant told me (and I accept) that he telephoned the ET on Friday, and having informed the staff member that he had given information, was told he did not need to send it again.
7. On Friday 25 October 2024 the Respondent sought a postponement of the hearing listed for Monday 28 and Tuesday 29 October 2024 as they still did not know the case they had to meet; they concluded their letter stating that if any hearing went ahead on Monday 28 October they would pursue their strike out application. On the basis of non compliance with orders or no reasonable prospects of success. This letter was copied to the Claimant – who received it at his "icloud" address. EJ Alliot on 25 October refused the postponement request, stating that it could be renewed if the Respondent had been prejudiced by non-compliance with the orders of 1 July 2024, and warning the claimant that his claims or parts of it may be struck out if it is not possible to have a fair hearing of the case and/or he may be ordered to pay costs of the Respondent if he has acted unreasonably.
8. I explained to the Claimant the test for constructive unfair dismissal and the need to show a fundamental breach of contract on the part of the Respondent. The substantive response to the question of what caused the claimant to resign was, he said, "constant bickering" with Mrs Morris – the owner / CEO of the Respondent. He said he did not have specific dates. He also said that Henry Sampson ("Mrs Morris's PA") told him that Mrs Morris thought that when a repair needed to be made to the roof, and the Claimant had organised a friend of his to conduct that repair, that she thought the claimant had charged more to the Respondent than the roofer had required, "pocketing" the difference. When I told Mr Elisih that had the Respondent known of this allegation, it might have asked Mr Sampson to give evidence (or indeed have produced the invoices in relation to the roof / sought evidence from the roofer) Mr Elishi said that this allegation was not the main allegation. Rather, it was the "continuous bickering" between him and Mrs Morris about "everything", which he said caused her to say her blood pressure was too high because of their interactions. The claimant told me : "it was not just her fault, it was from both sides, we just could not work together".

9. In response to a series of questions about what the behaviour or interactions complained of were, the Claimant told me:

“The company sold insect repellent. There were 3 employees, Mrs Morris, Mr Sampson and the me, and Mrs Morris’s ex-husband was a consultant. I cannot give you evidence in terms of specific dates and situations. It was just constant. I wanted to raise the point about why I left. It was constant bickering about how the company was being run. It was not personal. She was nice to me as a person. I am sure that Mr Sampson would say everything was roses. Mrs Morris’s ex husband saw the bickering, but I would never date to call him to give evidence for either side. I have not worked since January because I have a bad back”.

10. Mr Overs prepared a skeleton in support of a strike out application. He set out four basis for striking out – but primarily relied on non-compliance with tribunal orders and the claim having no reasonable prospects of success. Essentially, Mr Overs submitted that the claimant having given no examples of what could amount to a fundamental breach of contract, either a fair trial is not possible (he has not been able to seek instructions on matters which might be complained of, nor to seek any explore whether there might be any witnesses) or the case has no reasonable prospects of success.
11. Mr Overs said this small employer should not be put to the expense of further hearings by “indulging” the claimant – but accepted that if it was a question of the claimant being able to provide further details if given sufficient time and instruction, he could make a costs application. Mr Overs however highlighted the Claimant’s own assertion that he was unable to give any specific dates or incidents, and had complained only of “bickering” about business matters, which he said was a long way short of establishing a fundamental breach of contract.
12. Mr Elishi replied; his case essentially was that he had not refused to comply with any orders, but had said what he wanted to say in his claim form. That he left because of the “constant bickering” which meant that he could not look forward to going into work each morning. He said that he knew his claim was likely to be struck out as he could not provide any dates or times, bring any evidence or provide specific examples.

## **Law**

13. Rule 37 of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 provide as follows:

“(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 prospects 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 ...
- (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.”

14. The tribunal must of course have in mind the overriding objectives set out in the ET Rules, and have regard to the rights of both parties to have a fair trial – as set out in Art 6 ECHR as well as at common law.

15. There has been a great deal of guidance from the EAT as to the correct approach to strike out applications under Rule 37 in the last year or so. This includes:

***Edinboro v Jamma Umoja (Residential Services) Ltd*** [2024] EAT 61, highlighting that in considering a strike out application on the basis of “no reasonable prospects of success”, it is important to take the claimant’s case at its highest; and

***Carver v London Borough of Newham*** [2024] EAT 64 in which Judge Walker noted the need to consider adequate reasons as to why a fair trial is not possible and to consider the proportionality of strike out before this draconian order is made.

16. The substantive claim is for constructive unfair dismissal. Section 95 (1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed if:

“ the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”

## **Conclusions**

17. The order of EJ Lewis on 1 July 2024 was in very clear terms. The claimant, by 16 July, was to “send to the Respondent and the employment tribunal a list, in date order and numbered paragraphs of the things done by the Respondent which caused the claimant to resign”. The claimant accepts that he received this. The single sentence set out in his ET1 clearly does not set out the “things done” which led to resignation. The claimant has not, at any time, even attempted to comply with this order.

18. Nor has the claimant provided the basis for the £10,000 compensation he has claimed. He has not provided pay slips showing what he earned with the Respondent, nor any evidence about what he has done since. Today the claimant said that he has not applied

for other jobs due to a back condition – but he has not provided this explanation before today, or any evidence by way of GP fit notes, benefit applications or anything else.

19. Attempts from the Respondent's representatives in July, August and September 2024 to obtain information from the Claimant about what exactly his complaints were met with no substantive response. The claimant did send an email on 31 July 2024 saying that he thought he had given the information he needed to. In light of this, and indeed call to the ET last week and attendance today, I would not strike this claim out for failure to pursue it.
20. The claimant did not provide a witness statement by 7 October 2024 as ordered – and indeed has not come today's hearing having done any preparation to think about what it was in his interactions with Ms Morris which caused him to resign.
21. Whilst the claimant did not receive the ET letter dated 21 October 2024 requiring him to comply with the July orders by Sunday 27 October "or supply a written explanation for the failure", he was made aware of this letter when the Respondent's wrote on 23 October 2024 seeking a postponement or strike out. He received both the 21 October ET letter and that of 25 October from the ET on that date. He has not provided a "written explanation" for failure to comply with orders. Whilst the claimant has said that he thought he had given all the information needed about why he resigned he was well aware that the Respondent's repeatedly complained they did not know the case they had to meet, and three different judges had told him to write out what it was he was complaining about. Furthermore, the claimant has made no effort whatsoever to show how he reached the figure of £10,000 he says in his ET1 he seeks by way of compensation.
22. I am acutely aware that the Claimant is representing himself, and has not had the benefit of an advisor taking him through his employment history to "tease out" what the "bickering" was about and why it led to him resigning after almost eight years at the company. Despite the Claimant not seeking an adjournment today, I have considered carefully whether permitting the claimant more time would enable him to compile an account which the Respondent could then engage with and reply to. However, the claimant told me on a number of occasions that he "had no evidence", could not provide examples and said frankly that it was not one sided matter, but that he and Mrs Morris "just could not work together". The Claimant has not been able to provide even a brief narrative of conduct which could be argued to amount to a fundamental breach of his contract on the part of the Respondent.
23. I have reached the conclusion that the Claimant's claim should be struck out under R37(1)(c) for failure to comply with the ET orders of 1 July and 21 October 2024. I have considered carefully whether it is proportionate to strike out for that non-compliance. I accept the submissions of the Respondent that they have been unable to understand the case against them, unable to take instructions and unable to interview relevant witnesses. Furthermore, whilst it will inevitably be the case that the Claimant will be nervous in attending the tribunal today, he has been unable to set out any basis on which he would be able to put forward a case for constructive unfair dismissal. He says, and I accept entirely, that he reached the point of not wanting to go to work in the

mornings. He had the job for eight years and clearly had worked closely with Mrs Morris in that time. However, despite my best efforts he could not or would not give any examples of what their “bickering” concerned beyond “business matters” and when asked why it was her fault, why he had been left with no alternative but to walk away from his job, said that he did not consider it to be one sided, but they “could not work together”.

24. Had I not struck out the claim for failure to comply with tribunal orders, I would in any event have struck out the claim as having no reasonable prospects of success under r 37(1)(a).

EJ REBECCA TUCK KC  
Dated this 28<sup>th</sup> Day of October 2024.

Sent to the parties on 7 December 2024  
For the Tribunal Office: T Cadman