



EMPLOYMENT TRIBUNALS

Claimant: Mr B Mircea Calin **Respondent:** GXO Logistics

JUDGMENT

1. The claim has not been actively pursued and the Claimant has failed to comply with Tribunal orders. The claim is struck out pursuant to Employment Tribunal Rule 38.

REASONS

1. This claim of unfair dismissal was presented on 13 October 2023.
2. A hearing was listed for 4 March 2024.
3. The Claimant sent the Tribunal a copy of his doctor's note signing him off work with anxiety and a knee problem until 1 July 2024. He asked for the proceedings to be put on hold.
4. The Tribunal did not make any order putting the proceedings on hold.
5. On 13 February 2024, the Respondent's legal representatives made a postponement application on the Claimant's behalf. He had told them he was not well enough to prepare for the hearing or take part. The Tribunal postponed the hearing.
6. The hearing was re-listed for 22 July 2024.
7. On 3 July 2024 the Respondent applied for the claim to be struck out because the Claimant was not actively pursuing it. The Respondent explained its attempts to contact the Claimant, which had been mainly unsuccessful. The Claimant had not sent the Respondent any of his evidence and they could not prepare for the final hearing.
8. On 12 July 2024 Employment Judge Lancaster postponed the hearing that was listed for 22 July 2024. The Judge warned the Claimant that he was considering striking out his claim because it had not been actively pursued. He gave him until 2 August 2024 to respond.

9. On 21 July 2024 the Claimant emailed the Tribunal saying that he did not understand why he was getting the emails, because he had asked for his case to be suspended due to his health. He said that he could not pursue his claim because he was very depressed and sick and had anxiety issues and other health problems. He was very interested to take his claim forward, but when his health was good. He would make contact when he was well enough.
10. On 23 August 2024 Employment Judge Brain refused the Respondent's application for the claim to be struck out. He stayed (suspended) it until 21 October 2024 and ordered the Claimant to provide the Respondent with an update by 4 November 2024.
11. On 11 November 2024 the Respondent made a second application for the claim to be struck out. They said that they had not received any communication from the Claimant and asked for his claim to be struck out on the basis that it was not being actively pursued.
12. On 28 November 2024 Employment Judge Lancaster ordered that the Claimant must respond to the strike-out application by 16 December 2024. At the same time, he must say when he thought he would be able to comply with the case management orders and when he thought he would be fit enough to take part in a hearing. Employment Judge Lancaster made clear that any application to postpone the dates further must be accompanied by medical evidence confirming that he was not able to participate in the proceedings and saying whether that was likely to change. Employment Judge Lancaster made clear that being fit to take part in the Tribunal proceedings was not the same as being fit for work.
13. On 19 November 2024 the Claimant emailed to say that his health conditions were the same as before and that he was homeless at the moment. He wanted to continue but only when his health was good enough. He attached a copy of a fit note. That simply signed him as unfit for work because of knee pain and anxiety. It covered the period 22 July 2024 to 21 January 2025.

14. Employment Tribunal Rule 38 provides, so far as material, as follows:

38 Striking out

- (1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim ... on any of the following grounds –

...

- (c) for non-compliance with any of these Rules or with an order of the Tribunal;

- (d) that it has not been actively pursued;

...

...

15. Striking out a claim is a draconian step and is not to be used as a punishment. Before striking out a claim on the grounds of that it has not been actively pursued, the Tribunal must generally be satisfied either that the delay has been intentional and disrespectful, or that there has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is no longer possible, or is likely to cause serious prejudice to the Respondent: see *Evans v Commissioner of Police of the Metropolis* [1993] ICR 151, CA.

16. In deciding whether to strike out a claim, the Tribunal must have regard to the overriding objective of seeking to deal with cases fairly and justly. This will include consideration of the magnitude of the non-compliance; whether it was the person's fault or their representative's; what disruption, unfairness or prejudice has been caused; whether a fair hearing would still be possible; and whether striking out or some lesser remedy would be appropriate: *Weir Valves and Controls (UK) Ltd v Armitage* [2001] ICR 371, EAT. The Tribunal must always consider whether, even if a fair trial is no longer possible, striking out is proportionate: *Blockbuster Entertainment Ltd v James* [2006] IRLR 630. CA.
17. A fair hearing is not simply a question of the court reaching a decision that may be fair in the sense of fairly resolving the issues; it also involves delivering justice within a reasonable time. Overall justice also means that each case should be dealt with in a way that ensures that other cases are not deprived of their own fair share of the resources of the court: *Harris v Academies Enterprise Trust* [2015] ICR 617.
18. In this case, I am satisfied that the claim has not been actively pursued. This falls into the second category of cases, where there has been inordinate delay, giving rise to a substantial risk that a fair hearing is not possible.
19. I am also satisfied that the Claimant has failed to comply with Tribunal orders. He has not complied with the orders for disclosure of documents, agreement of a hearing file or exchange of witness statements made by the Tribunal on 13 November 2023. Also, he has not complied with the order of Employment Judge Lancaster to tell the Tribunal when he is likely to be fit to comply with Tribunal orders and take part in a hearing. He has not provided medical evidence confirming that he is not well enough to participate in the proceedings and saying whether that will change. The Judge made clear that this is not the same as whether the Claimant is fit for work.
20. The question is therefore whether the claim should be struck out. The Claimant has failed to comply with any of the Tribunal's case management orders. A claim that should have been heard in March last year has made little or no progress almost a year later. I accept at face value the Claimant's indications that he has been unwell and that this is the reason for his non-compliance. The background is that his dismissal was apparently on the grounds of his long-term absence from work prior to that, so I infer that his ill-health has lasted a long time. The Respondent will be prejudiced by the effect of the delay on people's memories, but also by having this claim unresolved for an indeterminate period, and by the costs of trying to communicate with the Claimant and progress the case. A fair hearing involves delivering justice within a reasonable time. There is no indication about when the Claimant will be well enough to pursue his claim and take part in a hearing. Employment Judge Lancaster gave him the opportunity to provide evidence about that and he has not done so. There is no indication that it will be possible to make any progress towards hearing this claim in the foreseeable future. In those circumstances, I find that there is a very real risk that a fair trial, delivering justice in a reasonable timeframe, is no longer possible. I bear in mind that this is a complaint of unfair dismissal following long-term ill health, due to be concluded in one day. The Tribunal must have regard to the question of proportionality in deciding whether it is appropriate to strike out the

claim. I am satisfied that there is no step short of striking-out the claim that could be taken instead. The Claimant has had a warning that his claim may be struck out and has not provided satisfactory evidence, as ordered by the Judge. I bear in mind that seeking medical evidence may be something that he struggles with if his mental health is bad and his housing situation is difficult, but he has chosen to bring the claim. He cannot simply present the claim and then tell the Tribunal that he will be in touch when he is ready to progress it. There is no information before the Tribunal to suggest that the situation will change. I do not consider that an unless order would be appropriate in these circumstances, because the issue is not that the Claimant needs to do something specific now. Therefore, I find that it is consistent with the overriding objective and proportionate to strike out the claim.

S-J Davies
Employment Judge Davies
22 January 2025