



EMPLOYMENT TRIBUNALS

Claimant: Ms. E Azaanoun

Respondents: (1) RefuAid
(2) Steve Duffy
(3) Kate Higgins
(4) Sarah LLewllyn

JUDGMENT

The claim is struck out.

REASONS

1. I gave my decision, with reasons, orally at the hearing today. The Claimant did not attend the hearing, and therefore I have set out my reasons below so that the Claimant can understand the reasons why her claim has been struck out.

Background

2. The Claimant submitted her claim form on 13 June 2023. The claim was submitted against four respondents. The First Respondent is charity, the other three respondents are employees, or former employees of the First Respondent. The claim form ticks the boxes for race and disability discrimination but the basis of the complaints are not clear from reading the claim form.
3. A case management preliminary hearing took place on 7 June 2024. The Claimant did not attend that hearing. The Tribunal made case management orders and the final hearing was listed for 19, 20 and 21 February 2025. As the claim was not clear, the Claimant was ordered to provide further information. The Claimant did provide some information but the basis of the claim remained unclear and the Claimant also referenced matters not within the claim form in her further information.

4. A further case management hearing took place on 10 December 2024, again the Claimant did not attend that hearing.
5. Employment Judge Lumby determined that a fair hearing could not take place in February 2025, and postponed the final hearing and rescheduled it for 17, 18 and 19 September 2025.
6. The Case Management Order from the hearing on 10 December 2024 was sent to the parties on 24 December 2024. A number of case management orders were made, noting the Claimant had to that stage provided little information about the basis of her claim and the allegations were still unclear.
7. The orders included:
 - a requirement on the Claimant to set out information about her claim by 17 January 2025. The Case Management Order contained a clear and detailed request on what information was required and set out a template table for the Claimant to complete;
 - the Claimant was also directed to provide information about any application to amend that she so wished to pursue, again by 17 January 2025;
 - the Claimant was ordered to update her schedule of loss by 17 January 2025;
 - The Claimant was ordered to provide information about the medical conditions that she sought to rely on as a disability and provide medical documents.
8. The Claimant has not complied with any of the orders set by Employment Judge Lumby, in full or part.
9. The Claimant has not wrote to the Tribunal requesting any extension of time or requesting any clarification on what she was required to do.
10. The Case Management Order, at paragraph 15.2, notes that the hearing today would consider

“Whether the case or any part should be struck out as a result of any failure by the Claimant to comply with any directions contained in this order.”
11. Further, paragraph 39 states:

“If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.”

12. On 17 January 2025, in reply to the email from Employment Tribunal sending the parties the 10 December 2024 Case Management Order, the Claimant said:

“I am afraid I have been unable to see my GP although I have been calling to book an appointment in order to discuss the note that was requested by the judge in the last hearing, I have not been able to see at all for the last few weeks.”

13. Further on 31 January 2025 the Employment Tribunal wrote to the parties and said:

“If the Claimant does not provide the medical information required by paragraph 12 of the Case Management Order issued by Employment Judge Lumby, then it is likely that her claims will be struck out, for failure to comply, at the hearing on 15 February 2025.”

14. On 14 February 2025 the Claimant emailed the Tribunal. The email says:

“I managed to speak to my doctor yesterday who provided me the attached document, I asked him how long it would take me to recover and if I could attend the hearing, he said that it is not possible to tell how long it would take because it is different for everyone and I have had it for a while, this was triggered by the respondents' abuse towards me.”

15. The attached note certifies the Claimant as being unfit to work between 13 to 27 February 2025 only. The note does not address any ability or otherwise to attend the hearing today. The fit note refers to *“benign paroxysmal positional vertigo or nystagmus, power problem awaiting consultant follow-up.”*

16. The Claimant, in previous correspondence, has referenced having vertigo for four years.

17. The Claimant has not offered any explanation for her non-compliance with the Tribunal's Orders.

The Law

18. Rule 38 of the Employment Tribunal Procedure Rules 2024 states:

Striking out

38.—(1) *The Tribunal may, on its own initiative or on the application of a party, strike out all or part of a claim, response or reply 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, response or reply (or the part to be struck out).

(2) A claim, response or reply may not be struck out unless the party advancing it 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 is as if no response had been presented, as set out in rule 22 (effect of non-presentation or rejection of response, or case not contested).

(4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by rule 26(2) (replying to an employer's contract claim).

19. A key leading case on striking out for non-compliance with an order is *Weir Valves and Controls (UK) Ltd v Armitage 2004 ICR 371, EAT*.

20. In deciding whether to strike out a party's case for non-compliance with an order under rule 38(1)(c), a tribunal must consider the overriding objective set out in rule 3 of seeking to deal with cases fairly and justly.

21. This requires a tribunal to consider all relevant factors, including:

- the magnitude of the non-compliance
- whether the default was the responsibility of the party or his or her representative
- 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 an appropriate response to the disobedience.

Conclusions

22. I have set out my conclusions below, and had structured my conclusions in relation to each of the above factors and in full consideration of the Overriding Objective.

The magnitude of the non-compliance

23. The Claimant has made no attempt at all to comply with any of Employment Judge Lumby's orders. The Claimant has not requested any extension of time and has provided no explanation for her non-compliance. The degree of non-compliance is significant. Particularly in view of the background of the claim where the claim remains unclear and the final hearing has already been postponed once.

Whether the default was the responsibility of the party or his or her representative

24. The Claimant is a litigant in person, the responsibility rested on her to comply with the orders.
25. I checked the Employment Tribunal's electronic file to ascertain if the Claimant had requested any extension or sought clarification. As set out above, she had not, but she was clearly in receipt of Employment Judge Lumby's Order.

What disruption, unfairness or prejudice has been caused

26. The Claimant submitted her claim on 13 June 2023. She ticked the box to indicate the claim was about race and disability discrimination, but the basis of the complaint is not clear factually or legally.
27. The claim was submitted over 18 months ago. Due to the Claimant's non-compliance, the claim has not progressed at all. The claim remains unclear and no case preparation has been able to take place.
28. The Claimant has not attended any of the three preliminary hearings, and the medical evidence does not clearly indicate that she was too unwell to attend any of the video hearings.
29. The Respondents have been left in a position where they do not know the claim they need to meet and not been able to move forward, and are preparing for and attending hearings where no real progress has been made. The Claimant's actions have caused disruption to the Tribunal process and unfairness and prejudice to the Respondents.

Whether a fair hearing would still be possible

30. As set out above, a three day final merits hearing was due to take place on 19, 20 and 21 February 2025. However, it was necessary to postpone that hearing due to the claim not being clear or ready and was rescheduled to start on 10 September 2025.
31. I considered if a fair hearing, in the September 2025 trial window, was still possible.
32. I concluded that if the Claimant had provided the information she was ordered to give, complied with the orders and attended the hearing today there would have been adequate time to ensure the issues were clarified and case management directions were set.
33. However, that is not the case. The Tribunal has requested the Claimant provide detail about her claim in June 2024 and December 2024. There is a total lack of explanation for the non-compliance with Employment Judge Lumby's orders and if the claim remains as it presently is, I do not consider a fair hearing will be possible because the Respondents do not know the case against them.

Whether striking out or some lesser remedy would be an appropriate response to the disobedience

34. I considered whether striking out was a proportionate response to the Claimant's failure to comply with Employment Judge Lumby's orders. In considering this I took into account all the circumstances of the case. I kept in mind that the most recent fit note only states the Claimant is unfit to work between 13 and 27 February 2025. There is no medical evidence that the Claimant was not able to comply with any case management orders between 24 December 2024, the date the order was sent to the parties, and present.
35. I also considered if there was a less drastic response, in particular whether issuing an Unless Order would be appropriate.
36. I do not consider issuing an Unless Order would be appropriate in the circumstances of this case. The Claimant has been warned about possible consequences of non-compliance, within the Case Management Order at paragraphs 15.2 and 39 she was told that if she did not comply with the orders the claim may be struck out, and was warned again by the Tribunal on 31 January 2025.
37. There has been complete non-compliance, with clear information about possible outcomes, and in these circumstances I do not consider an Unless Order an appropriate or effective tool.
38. On balance, taking all of the above into account, I consider striking out the claim to be a proportionate response and have decided to strike out the claim for non-compliance with the Employment Tribunal Orders sent to the parties on 24 December 2024.

Approved by Employment Judge Cawthray
19 February 2025