



EMPLOYMENT TRIBUNALS

Claimant: Mr U Munir
Respondent: DFSI M25 Limited
Heard at: East London Employment Tribunal – in person
On: 02 April 2025
Before: Employment Judge Illing

Representation

Claimant: In person
Respondent: Miss S Casheln (Counsel)
Interpreter: Mr T Mahmood

RESERVED JUDGMENT

The judgment of the Tribunal is that: -

1. The claim is struck out under Employment Tribunal Rule 38(1)(c) because the claimant has not complied with the Tribunal Rules or a Tribunal order.

REASONS

Hearing

1. The Respondent applied to strike out the Claimant's claim under Rules 37(1) (c) and/or (d) and/or (e) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 ('ET Regs 2013), now rule 38 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2024. Regional Employment Judge Burgher vacated the final hearing listed for hearing on 15 – 17 April 2024 in response to the Respondent's application for strike out and directed that the matter be listed for preliminary hearing today to consider the Respondent's application.
2. The hearing was an application hearing, however, when speaking to the Claimant in relation to his response to the Respondent's application, it was clear that there

were significant inconsistencies between his recollection and the documents before the Tribunal. To ensure a full and fair opportunity for both parties for his replies to be considered, the Claimant gave evidence under Oath. I asked open questions to establish his evidence and the Respondent's representative was permitted to cross examine him.

3. An Urdu Interpreter was present to assist the Tribunal throughout the hearing.

Procedural history

4. The following is a brief chronology for the proceedings relevant to this application only:
 - 4.1. 12 January 2022 – ET1 issued.
 - 4.2. 2 May 2022 – ET3 submitted.
 - 4.3. 30 June 2023 there was a private preliminary hearing for Case Management before EJ Iqbal. The Tribunal provided an interpreter for this hearing. The Case Management Orders followed in writing and made the following orders:
 - 4.3.1. Final hearing date for April 2024.
 - 4.3.2. That if the Claimant wished to amend his claim to include Caste, his application was required by 21 July 2023, with authorities by 3 August 2023.
 - 4.3.3. A draft list of issues was prepared, which if incorrect, they should write to the Tribunal by 21 July 2023.
 - 4.3.4. Schedule of Loss by 21 July 2023.
 - 4.3.5. Dates for documents (25 August 23) and Witness statements (13 Oct 2023).
 - 4.3.6. The issues within the Case Management Orders also required further information from the Claimant, such as dates for the alleged discriminatory acts and the last date of employment.
5. On 21 August 2023, the Respondent's solicitor wrote to the Claimant to set out the information required from him and gave dates of either the 4 or 18 September 2023 by which he should reply. This included requests for the following:
 - 5.1. An amended claim form, including dates for the alleged discriminatory acts.
 - 5.2. Any authorities for the allegation regarding Caste
 - 5.3. Schedule of Loss
 - 5.4. The alleged last working day for the Claimant in relation to the notice pay claim.

6. On 4 September 2023, the Claimant wrote to the Respondent's solicitor but provided no information and attached a copy of the June 2024 Case Management Orders.
7. On 5 September 2023 the Respondent's representative informed the Claimant of this error and asked for him to provide any documents again and highlighted the information required from him.
8. On 11 September 2023, the Respondent's representative again sought the information as ordered by the Tribunal. The Claimant replied to this email but did not provide any further information.
9. The Claimant did not comply with the above orders and the Respondent's submitted an application for an unless order dated 21 September 2023 to the Tribunal and copied to the Claimant. The application sets out the information required from the Claimant from the June 2023 Case Management Orders. The Respondent identified that they had been unable to comply with the Case Management Orders in relation to an amended Grounds of Resistance or disclosure or witness statements due to the lack of information from the Claimant.
10. The Tribunal wrote to the parties on 21 March 2024 asking them to confirm that they were ready for the final hearing and that all case management orders had been complied with. The Claimant replied stating that he did not have any other witnesses.
11. The Respondent's solicitor contacted the Tribunal on 22 March 2024 to enquire about the strike out application. This had been overlooked by the admin team and was referred to a Judge.
12. On 27 March 2024 the Tribunal, REJ Burgher, wrote to the Parties and confirmed that any outstanding applications would be considered at the final hearing, including strike out applications.
13. By email dated 28 March 2024, the Respondent's solicitor wrote to the Tribunal, copying in the Claimant, and detailed the orders that remained outstanding, including its inability to proceed as the Claimant had not complied with the Tribunal Orders.
14. On 5 April 2024 the Respondent's solicitor again wrote to the Tribunal, copying in the Claimant, again stating that it was not prepared for the hearing due to the outstanding information from the Claimant.
15. The April hearing was postponed by the Tribunal.
16. On 11 April 2024, the Respondent's representative wrote to the Tribunal, and Claimant, requesting a preliminary hearing for their application of 21 September 2024.
17. On 30 April 2024 further to orders of EJ Jones the Tribunal issued further orders:
 - 17.1. The Claimant must write to the Respondent and the Tribunal by 8 May 2024 confirming the following:
 - 17.1.1. Whether he still pursues his claim.

- 17.1.2. Whether he is going ahead with his application to add a complaint of discrimination on the basis of case as well as race/. If not the Claimant must let the Tribunal and the Respondent know immediately.
 - 17.1.3. Whether he has any documents to add to the trial bundle.
 - 17.1.4. Whether he is going to produce a witness statement and if so, when?
 - 17.1.5. That if the Claimant fails to respond and engage with this process, he is in danger of having his Claimant struck out or some other sanction applied.
- 18. The Claimant did not respond to the Tribunal orders. The Tribunal wrote to him on 16 May 2024, and the Respondent as follows:
 - 18.1. You have not responded to the Tribunal's last letter. Unless the Tribunal hears from you by email by 24 May, it will strike out your claimant because you have failed to pursue it.
- 19. The Claimant responded to the Tribunal email of the 16 May 2024, but only to state that he had sent the information. He did not resend it or say what the information was. In evidence, the Claimant confirmed that he was referring to the health documents. On 2 July 2024, the Tribunal wrote to the Claimant to tell him that it had not had any recent correspondence with him in respect of the non-compliance with case management orders.
- 20. Following the Tribunal's email, the Claimant emailed the Respondent's solicitor with some documents regarding his general health issues. The Claimant provided a range of medical records from his GP and a specialist unit, but did not provide the information required or a reason as to why the information had not been provided or why he could not provide it.
- 21. On 5 June 2024, the Respondent's representative informed the Tribunal that the Claimant had not complied with the Order of 16 May 24.
- 22. On 17 June 2024, EJ Crosfill reviewed the file and found that it did not appear that the Claimant had answered the questions asked of him by the Tribunal and that there would be a public preliminary hearing to consider the following:
 - 22.1. Whether the Claimant's claims should be struck out under Rule 37 of Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 on the basis that the Claimant has breached orders of the Tribunal, is conducting the proceedings unreasonably or is not actively pursuing his claims; and if not
 - 22.2. To deal with any outstanding case management issues.
- 23. On 3 July 2024, a Notice of Hearing was listed for a public preliminary hearing on 25 September 2024. An Urdu interpreter was also allocated for the hearing.
- 24. The Respondent's provided the Claimant with a bundle of documents for the hearing on 13 September and asked if he would like to include anything further. The Claimant replied by return, again attaching the health documents.

25. The Claimant and the Respondent's solicitor corresponded to ensure that the Claimant could access the bundle.
26. The September hearing was postponed due to a lack of judicial resources. The Respondent's solicitor assisted the Claimant in providing dates to avoid. This hearing was re-listed for 2 April 2025 again with an interpreter.
27. Prior to the hearing, both parties were asked if they were ready to proceed and both confirmed that they were.
28. On 22 March 2025, the Claimant asked for an interpreter and asked the Tribunal to look at his medical records.
29. The Respondent's solicitor updated the bundle and provided the Claimant with a copy on 27 March 2025 along with their opening note and authorities.

Respondent' Application

30. It is the Respondent's position that the Orders and information required from the Case Management Orders of 30 June 2023, and subsequent orders, remains outstanding. Key information including the basis of the Claimant's claim of race and / or caste and the dates of the alleged discriminatory acts remain outstanding. The Respondent states that it has endeavoured to engage with the Claimant, highlighting what information is required and why, but that they have not received the information and cannot prepare for or proceed with this case without it.
31. The Respondent states that it has been prejudiced by the Claimant's inaction and that given that the claim was issued over 3-years ago, it is also prejudiced evidentially. The dates of the alleged discriminatory acts and last day of employment have not been provided by the Claimant and the Respondent is now unable to answer these allegations. There is also the additional time and costs that would be incurred to investigate allegations of acts that occurred 3-years ago.
32. The Respondent asserts that the claim is no further forward than it was when it was issued and responded to in May 2023.

Claimant's Response to application

33. It was the Claimant's position that he had provided all of the information required during the case management hearing on the 30 June 2023. He stated that he had replied to all of the emails from the Tribunal and the Respondent within a week or two of receiving any.
34. The Claimant stated that he had provided the Tribunal with details regarding the race claim, but this changed as the Claimant could not remember whether he had done so or not.
35. The Claimant also confirmed that when asked for documents he had sent his health documents and that he had answered the Tribunal's questions. The Claimant was unable to provide any email or document with those details. At no time did the Claimant state that he was unable to provide the information requested because of a medical condition.

36. With regards to the witness statement for the September hearing, the Claimant stated that he had provided copies to the Tribunal and Respondent, but again no emails showing this were provided. He then could not recall when he had done this.
37. As to the outstanding information in relation to dates of alleged discriminatory acts, the Claimant stated that he had provided this in the case management hearing in June 2023 and that he could no longer remember those dates.
38. The Claimant accepted that the orders were clear, but that the Respondent should have highlighted to him what he needed to do.
39. I find that the Claimant did respond to the Tribunal and Respondent in response to emails, but he did not provide the information as requested of him at any point.
40. I find that the Claimant did not provide specific dates or the required information to Judge Iqbal during the hearing on 30 June 2023, or subsequently.
41. I also find that the Respondent solicitor took steps to clarify the information required from the Claimant, however the Claimant did not provide the information requested.
42. The Claimant has had clear warnings of the risk of the strike out of his claim well in advance of this hearing.

The law

43. A Tribunal is required when addressing matters such as this application to have regard to the overriding objective, which is found in the Rules at Schedule 1 to the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2024, rule 3 of which states as follows:

Overriding objective

3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) 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.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) *The parties and their representatives must—*

- (a) *assist the Tribunal to further the overriding objective, and*
- (b) *co-operate generally with each other and with the Tribunal.*

44. Rule 38 of the Employment Tribunals Rules of Procedure 2024 states (in part):

38.— 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.

3. A party against whom strike is being considered has the right to a hearing before the decision is made. A party seeking strike out against another party has no such right to a hearing to consider the application.

45. Strike out on the basis of **failure to comply with case management orders; and / or failure to have actively pursued** a case is very much dependent on the tribunal's assessment of whether a fair trial is still possible on the date listed despite any defects in compliance with Tribunal orders.

46. The Court of Appeal in the case of *Blockbuster v James* [2006] EWCA Civ 684 [2006] I.R.L.R. 630 emphasised that it would be unusual to strike out on procedural grounds if a claim was ready for final hearing.

47. I must consider whether any of the grounds are established and, if so, whether to exercise my discretion to strike out, given the permissive nature of the rule (*Hasan v Tesco Stores Ltd* UKEAT/0098/16). Mrs Justice Cox commented in *Ridsdill and others v Smith and Nephew Medical* UKEAT/0704/05 (paragraph 25) that strike out is a “draconian measure” which ought to be applied only as the final tool in the range of sanctions open to a Tribunal.

48. In *Rolls Royce plc v Riddle* [2008] IRLR 873, the EAT confirmed that striking out claims on the basis that the claim has not been actively pursued pursuant to r.38(1)(d) can typically take two forms, namely:

- 48.1. There has been a delay that is intentional or contumelious (disrespectful or abusive to the court), or
- 48.2. There has been inordinate and inexcusable delay, which gives rise to a substantial risk that a fair hearing is impossible, or which is likely to cause serious prejudice to the respondent.
49. With regards **to non-compliance**, the overriding objective remains central to the question of whether a fair trial remains possible, again requiring consideration of all of the circumstances. Weir Valves and controls v Armitage [2004] ICR 371 at paras 16 and 17 set this out. The EAT affirmed:
- “The Tribunal must be able to impose a sanction where there has been wilful disobedience to an order”. It further stated, “But it does not follow that a striking out order or other sanction should always be the result of disobedience to an order. The guiding consideration is the overriding objective. This requires justice to be done between the parties. The court should consider all of the circumstances.”*
50. The Tribunal should consider:
- 50.1. the magnitude of the default;
- 50.2. whether the default was the responsibility of the party or their representative;
- 50.3. what disruption, unfairness or prejudice has been caused;
- 50.4. whether a fair hearing would still be possible, and
- 50.5. whether striking out or some lesser remedy would be an appropriate response to the disobedience.
- 50.6. It must also consider whether a strike out order is a proportionate response to the non-compliance.

Fair Trial

51. In considering whether a **fair trial** remains possible:
In this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with proper regard to the demands of other litigants upon the finite resources of the court... Arrow Nominees v Blackledge [2000]2BCLC 167, para 55.
52. In Emuemukoro v Croma Vigilany (Scotland) Ltd [2022] ICR 327, the EAT, at para 19, did not accept that the power to strike out could “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 set out in **Arrow Nominees**.”
53. In Harris v Accademies Enterprise Trust and others [2015] IRLR 209 the EAT held that:

“Justice is not simply a question of the court reaching a decision that may be fair as between the parties in the sense of fairly resolving the issues; it also involves delivering justice within a reasonable time. It must also have regard to cost. Overall justice 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. Decisions made in the employment tribunal can accommodate these considerations because a tribunal has to deal with a case fairly and justly.”

Submissions

54. The Respondent provided helpful skeleton arguments, which the Tribunal has taken into consideration. The Claimant was also permitted to make closing submissions, which have also been considered.

Conclusions

55. In considering the Respondent's application, I will consider whether the threshold to breach the Tribunal Rules has been reached, whether a fair trial is still possible and whether a strike out of the claim is a proportionate response.
56. I first consider the circumstances of this case:
- 56.1. This case was issued over 3-years ago relating to alleged discriminatory acts before issuing, on dates which remain unknown.
 - 56.2. The Claimant has been repeatedly ordered to provide information that is central to the allegations he raises.
 - 56.3. The Claimant has engaged in the process by emailing the Tribunal and Respondent but has not provided the information as required of him.
 - 56.4. The Respondent has endeavoured to clarify the information required from the Claimant, but the Claimant insists that this has already been provided. He cannot, however, provide a copy of any emails providing that information, other than his health information.
 - 56.5. The Claimant has not stated that he has been unable to participate in the proceedings because of his health.
 - 56.6. The Claimant has been warned of the consequences of his non-compliance with the Orders.
 - 56.7. The case is no further forward than when it was issued. There has not been disclosure or witness statements as the information from the Claimant remains outstanding.
57. In considering whether the threshold has been reached, the Respondent seeks a strike out order in relation to the manner in which the claims has been progressed (38(1)(b)), or for non-compliance (38(1)(c)) or not actively pursued (38(1)(d)).
58. I will consider each in turn.

Manner in which proceedings have been brought

59. I am not satisfied that the claimant has conducted the proceedings in a manner that is scandalous or vexatious. As to unreasonable, I have considered the

repeated failure of the Claimant to provide information and I accept that he was attempting to engage with the Tribunal and the Respondent, but did not provide the information that was asked of him. I do not find that he was deliberate in his conduct, but that he simply did not provide it believing that he had provided it at the case management hearing in June 2023.

Non-compliance with any of the Rules or with an order of the Tribunal

- 60. I am satisfied that the claimant has not complied with an order of the Tribunal. He has been asked on at least 3 occasions for specific details as to allegations central to his claim and this information has not been provided.
- 61. I am also satisfied that given the number of opportunities the Claimant has had to provide this information, that the threshold for this breach of the ET rules has been reached.

Not actively pursued

- 62. I am not satisfied that the claim has not been actively pursued as the Claimant has responded promptly to emails from the Tribunal and the Respondent. However, the content of those emails are the cause for concern and this failure to provide information falls into non-compliance with an order of the Tribunal.

Fair Hearing

- 63. Given that I have concluded that the Claimant has failed to comply with an order of the Tribunal, before I can make any decision as to whether to allow the Respondent's application, it is imperative that I consider whether a fair trial is still possible. For this, I reflect back onto the overriding objective and all of the circumstances of this case.
- 64. The claim was issued in January 2022 and it is now April 2025. There has been considerable delay for a range of reasons. However, this case was listed for a hearing in April 2024, which was postponed because the parties had not prepared for the hearing. Fundamental to that postponement was the Claimant's failure to provide the information as required of him by the Tribunal from June 2023.
- 65. The claim is unprepared and would take, possibly, 6-months or more to bring this to a further case management hearing and then a final hearing of 3-days.
- 66. The failure by the Claimant to provide the information required of him has brought this case to a halt. I am satisfied that there has been prejudice to the Respondent, not only in the cost (time and money) of this, but also an evidential prejudice. The Claimant has stated that he cannot now remember the dates of the alleged discriminatory acts and there is no further information available other than what is within the ET1 from January 2022.
- 67. A considerable amount of time has also been spent on this claim by the Tribunal. However, whilst I believe that this is a situation where a fair trial may be possible in the absolute sense, I do find that a fair trial is not possible given the Claimant's failure to provide information as requested and the evidential and substantive prejudice incurred by the Respondent because of this.
- 68. I must also consider the consequence of the Claimant's failures in relation to the wider picture and the impact on judicial resources and other litigants who are waiting to have their own cases heard.

69. I have concluded that the threshold for rule 38 (1)(c) has been achieved and that a fair trial is not possible in all of the circumstances.
70. Strike out is a draconian sanction and I have considered alternatives, for example whether a deposit order would be appropriate. However, given the extent of the failings by the Claimant and the length of time that has passed, I am not satisfied that even if the case were permitted to continue, this information would be forthcoming.
71. In concluding, I am satisfied that having regard to all of the circumstances, including whether a fair hearing is still possible, that the strike out of the Claimant's claim is a proportionate response given the Claimants conduct of his case.
72. The claim is struck out under Employment Tribunal Rule 38(1)(c) because the claimant has not complied with the Tribunal Rules or a Tribunal order.

Employment Judge Illing
Dated: 2 April 2025