



EMPLOYMENT TRIBUNALS

Claimant: Miss J Dolmantaite

Respondent: Nissan Motor (Manufacturing) UK Limited

PUBLIC PRELIMINARY HEARING

Heard at: Cambridge Employment Tribunal by CVP **On:** 7 April 2025

Before: Employment Judge Isabel Manley

Representation

Claimant: In person

Respondent: Mr Milne, counsel

PRELIMINARY HEARING JUDGMENT

- 1 The claimant's claims have no reasonable prospect of success and the claimant has failed to comply with tribunal orders.
- 2 All claims are struck out.

JUDGMENT having been provided orally to the parties on 7 April 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction

1. This was a preliminary hearing that was listed some time ago. It was to have been held in December 2024 and was then postponed. The issues to be decided as set out in the September 2024 preliminary hearing summary are as follows:

- 1.1 Whether to allow any application to amend the claim that might be made by the claimant before this hearing.
 - 1.2 Whether the claims for direct race discrimination and harassment related to nationality had been presented outside the time limit in section 123 of the Equality Act 2010 to include questions of whether there was conduct extending over a period and if the claims were presented out of time whether it is just and equitable to extend time to allow some or all of the claims to proceed.
2. It was also to consider any case management matters which might arise.
3. Various orders were made for preparation for that hearing, which was to be, as I say, in December. Before that the respondent made an application to strike out the claimant's claims because she had failed to comply with the orders contained in that summary. That application is therefore to be determined at this hearing.
4. The claimant worked through an agency for the respondent between November 2021 and 28 March 2023. She referred the matter for early conciliation to ACAS on 4 May 2023 with a certificate dated 15 June 2023 and the claim form was presented on 16 July 2023.
5. The claimant was on sick leave from the respondent from 3 February 2023 up to her resignation in March 2023.
6. After she presented her claim form, on 16 July 2023, and after some delays, she then provided further information in response to the respondent's requests, on 19 September 2024. That was discussed in some detail at the preliminary hearing on 23 September 2024. The summary of that preliminary hearing sets out what we discussed; the possibility that there might need to be an amendment application and the claimant was given guidance on doing that. Orders were made, primarily for the claimant to provide a witness statement by 4 November 2024.
7. In that hearing we discussed the claims, concentrating particularly on the dates of the alleged acts of discrimination as they are vital to determine whether claims are in time, whether there is conduct extending over a period, and whether it might be just and equitable to extend time. The acts complained of appear in paragraph 26 to 29 of the summary. The last date of any suggested act of direct discrimination appearing there is in paragraph 26 at item 7, (the number from the further particulars of the claimant) which was October 2022. For the harassment claim at paragraph 28 of the summary, the last date is Spring 2022.
8. As well as being ordered to provide a witness statement by 4 November 2024 the claimant was also directed that, if she wanted to make an application to amend, she should do so by 21 October 2024.
9. On 15 November 2024, the respondent made an application to strike out the claim because they had had no witness statement or anything else from the claimant.

10. An Employment Judge, on 16 December, having read a letter from the claimant, decided to postpone the preliminary hearing which was listed for 19 December, and gave the claimant a further opportunity to provide a witness statement by 31 January 2025. The matter was re-listed for hearing today, 7 April 2025.
11. I had before me a bundle of documents prepared by the respondent's representatives. Most of the documents are those seen before at the previous preliminary hearing and applications for postponements and strike out. The only medical evidence before me is contained in the bundle in GP letters of January and March 2024, which appear to primarily relate to applications for postponements of earlier tribunal hearings. They give no information about the claimant's health before she presented her claim.
12. No such witness statement has been provided nor anything further has been provided by the claimant. There is no application to amend.

The law and submissions

13. The relevant employment tribunal rule relating to strike out is at Rule 38 Employment Tribunal Rules of Procedure 2024, the relevant parts of which read as follows:

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) -

(4) –

14. Rule 40 of the Employment Tribunal Rules of Procedure 2024 provide for the consideration of a deposit order where a judge considers any allegations or

arguments have little reasonable prospect of success and is often considered as an alternative to a strike out. The respondent did not apply for such an order and, in light of my findings, it was not necessary to consider it.

15. The respondent sent their written submissions, which I have seen, to the claimant on either 27 or 28 February 2025.
16. The respondent's application to strike out the claimant's claims is primarily made because the claimant has failed to comply with tribunal orders under Rule 38 (1) c) of the Employment Tribunal Rules 2024.
17. Mr Milne made oral submissions. He referred me to a number of cases some of which are well-known but, in particular, I was reminded of the guidance in Weir Valves & Control (UK) Ltd v Armitage [2004] ICR 371 which reminds me to look at a number of matters which relate to the overriding objective for me to consider how serious the default is, in this case, it is failure to comply with a number of tribunal orders; to consider unfairness and prejudice to both parties and also to consider whether a fair trial is still possible. I am also reminded that I should consider lesser sanctions than a strike out.
18. In relation to discrimination cases in particular, I am reminded of the case of Anyanwu and another v Southbank Student's Union [2000] ICR 23 where I am reminded that discrimination cases "*Should as a general rule be decided only after hearing the evidence.*" Blockbuster Entertainment v James [2006] IRLR 630 is another case which looks at strike out particularly where there has been a lot of default by one party. I am reminded that strikeout is a draconian measure, and it is only in exceptional circumstances that a tribunal should strike out a claim.
19. The claimant, as I have said, has produced nothing in writing but she did appear at the hearing today. She explained that she had been too unwell to write to the tribunal or to write her witness statement as it caused her to have panic attacks. She was visibly upset during the hearing today but seemed to want the matter to proceed. She believes that her claim was in time as she had raised matters of concern with the respondent in February 2023 and that had been set out in her claim form.
20. Under Rule 38 (1) a) Employment Tribunal Rules of Procedure 2024, I may also strike out a claim, or part of it, if it has no reasonable prospect of success. In this case, the claim appears to be out of time under s123 Equality Act 2010; there does not appear to be conduct extending over a period so a tribunal would need to determine whether it would be just and equitable to extend time to allow the claim to proceed.

Conclusions

21. First, I have decided to strike the claim out for the claimant's failure to comply with tribunal orders. I take into account that the claimant has been able to send letters from time to time to the tribunal and has been able to work. I do accept that she has some mental health issues and that she takes medication, but it does not really explain her inability, without medical evidence, to write a witness

statement so that the tribunal and the respondent know what she is saying about the time limit point. A party taking steps in litigation must be ready to cooperate so that the matter can go to a hearing and the claimant has not been able to do this to date. This hearing should have taken place in December and the claimant was given a further opportunity to provide her witness statement and she still did not provide one.

22. I heard no evidence on why there is no witness statement except what she tells me about the effect of writing such a document would have on her mental health. That gives me concern about allowing the claim to proceed further because it seems to me that it would cause her the same difficulties if it were to be allowed to proceed. We are now some two and a half years, if not more, from the date of the last act complained of and, if the matter were to proceed, it would be some months, probably into 2026 or 2027, before it could be heard. I appreciate that strike out is a draconian move, but I must balance the prejudice to both parties.
23. I have grave concerns about whether a fair trial is still possible in this case. This is now quite a delay from the acts complained of and the people involved may well have little or no recollection of what was said about matters then. Given that there have already been delays, and are likely to be further delays, I cannot see that this matter can proceed to a fair trial. I have considered, when I am considering the claimant's failure to comply, whether a lesser sanction is available to me, but I am not satisfied that any other order would take matters much further.
24. I have considered making an unless order or suggesting perhaps that costs be considered. But I really do not think that that would help this matter to proceed in the way in which it would. There is nothing to give me confidence that the claimant is more likely to be able to write a witness statement if she is under an unless order than the two previous orders where she was told to provide a statement and given clear instructions as to the consequences of not providing one.
25. It is with some reluctance therefore, that in all the circumstances of this case, I am going to strike out the claim because of the claimant's failure to comply with a number of tribunal orders. This is one of those exceptional cases where a strike out is appropriate.
26. However, if I am wrong about that, I have gone on to decide whether, in any event, the case cannot proceed because the claimant has no reasonable prospect of convincing a tribunal that it has jurisdiction to hear it because of the time limit point.
27. It is plain to me that the claimant has no reasonable prospect of showing that the tribunal does have jurisdiction to hear this claim. We spent some time at the last preliminary hearing in September clarifying the claimant's claims, going through them in some detail and putting dates to the matters about which she complains. There is a significant gap between the last date in October 2022 and February 2023 when the claimant went on sick leave and there is no explanation why no claim was made then. There is then a further gap to May 2023 when the claimant took the matter to ACAS. Not only that, but even then, she was one day late in

putting in the claim form, one day after the month after the ACAS certificate.

28. It is clear to me that this claim for race discrimination is out of time. I appreciate that the claimant has told me today that she believes it is in time but there is no suggestion or any evidence that there were discriminatory acts in February 2023 when she complained about the previous acts about which she does want to bring a claim. As I have said, most of those happened during 2002 with the last being October 2022. The claimant has no reasonable prospect of showing that it is just and equitable to extend time as she has given no evidence about this, save to say, that she had been unwell and finds it difficult to think about writing down these matters.
29. If I had not struck out the claim under Rule 38 (1) c) because of the claimant's non-compliance with an order making a fair trial no longer possible, I would have struck it out under Rule 38 (1) a) because the claimant has no reasonable prospects of showing the tribunal has jurisdiction to hear it. The claim is struck out.

Approved by:

Employment Judge Manley

7 May 2025

JUDGMENT SENT TO THE PARTIES ON

13 May 2025

FOR THE TRIBUNAL OFFICE