



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Abdelsalam

**Respondent:** The Co-operative Group

**Heard at:** Bristol (in public, by telephone) **On:** 13 May 2025

**Before:** Employment Judge Livesey

## Appearances

For the Claimants: Did not attend

For the Respondent: Miss Diouf, Peninsula

# JUDGMENT

1. The claim is struck out under rule 38 (1)(c) and (d) of the Employment Tribunal Procedure Rules 2024.
2. The hearing on the 7, 8 and 9 July 2025 is cancelled.

# REASONS

## Background

1. By a claim presented on 1 March 2024, the Claimant brought complaints of discrimination on the grounds of race and detriment on the grounds of trade union activities. Following the filing of a Response, matters proceeded to a Case Management Preliminary Hearing which was conducted by Employment Judge Richardson on 30 October 2024.
2. Judge Richardson identified the issues at that hearing. All of the complaints (under ss. 13 and 26 of the Equality Act and s. 146 of the Trade Union and Labour Relations (Consolidation) Act) focused upon one factual event; the Claimant's suspension by a warehouse shift manager following an alleged clocking offence which, he claimed, harmed his reputation and caused difficulties within his marriage.
3. Case management directions were issued and the case was listed for a three-day hearing in July, starting on the 7<sup>th</sup>. A further case management

hearing was listed today to ensure that all directions had been complied with.

4. On 1 April 2025, the Respondent made an application to strike the claim out on the grounds that it had not been actively pursued and/or that the Claimant had been in breach of Case Management orders under rule 38 (1)(c) and (d). The parties were informed that that application was to have been considered at this hearing.

#### Relevant principles

5. Striking out the claim for non-compliance with an order is a draconian step which the Court of Appeal has indicated should not have been too readily exercised (*James-v-Blockbuster Entertainment Ltd.* [2006] EWCA Civ 684). Such a decision clearly also needed to have been proportionate to the offence because it was a terminal ruling and the common law and article 6 required it (*Bharaj-v-Santander UK plc* [2023] EAT 152).
6. The guiding principle was the overriding objective (rule 3). All of the relevant factors had to be considered, including the prejudice caused by the conduct or breaches, whether the nuclear option of striking the case out was proportional, whether a lesser sanction would do and, critically, whether a fair trial was still possible.
7. In *Blockbuster*, the Court of Appeal held that striking out could only have been justified if the offending party had been guilty of deliberate and persistent procedural disregard or unreasonable conduct which had made a fair trial impossible. More recently, in *Emuemukoro-v-Croma Vigilant (Scotland) Ltd* UKEAT/0014/20/JOJ, Choudhury J stated that that test was not absolute; if a fair trial was not possible within the trial window listed, “*the power to strike-out is triggered*” (paragraph 18). The fairness of a trial also had to be assessed with regard to the parties’ expenditure and the finite resources of the court (*Arrow Niminees-v-Blackledge* [200] WLR 775004 at paragraph 55). It might have been possible to have a fair trial if enough resources were deployed and the case took precedence over others in a list, but that would have been “*inconsistent with the notion of fairness generally*” (*Emuemukoro*, paragraph 19).
8. Nevertheless, even if the test was met, it did not follow the claim *had* to be struck out. A tribunal was always left with a discretion (the use of the word ‘*may*’ at the start of rule 38) which had to be exercised in accordance with the guidance summarised above, with the issue of proportionality at the forefront.

#### Discussion and conclusion

9. All case management directions in the October Order were expressed as having been set by consent. They required the Claimant to file a schedule of loss by 12 December, for disclosure to have taken place by 10 January, for the parties to have cooperated over the compilation of a hearing bundle by 7 February and for witness statements to have been exchanged by 4 April.

10. According to the Respondent's application, the Claimant;
  - Did not provide a Schedule of Loss by 12 December 2024, or at all;
  - Did not provide his disclosure by 10 January 2025, or at all;
  - No bundle was therefore agreed;
  - Witness statements have not been exchanged.
11. The Respondent's representatives stated that they had not had any contact with the Claimant since the hearing on 30 October, despite the fact that remained employed by the Respondent.
12. The Respondent's application and further correspondence was cross-copied to the email address provided in the Claimant's Claim Form ([mamd7777@yahoo.co.uk](mailto:mamd7777@yahoo.co.uk)). There had been no response to any of it. The Tribunal wrote to the Claimant on 25 April requiring his comments upon the Respondent's application of 1 April, by 2 May. Again, there was no response to that email.
13. For reasons best known to the Claimant, it appeared that he had disengaged with the litigation process. If there was a problem with his email address, one might have expected him to have made contact in relation to the case management timetable because he had been present at the October hearing to receive the directions. It was therefore reasonable to conclude that his disengagement was a conscious decision. The Tribunal would not devote further time and resources to his claim in such circumstances, nor was it appropriate for the Respondent to be put to further time and effort in defending the claim. The threshold tests within rule 38 were met and it was appropriate in all of the circumstances to strike the claim out. The hearing in July will not now take place.

Employment Judge Livesey  
Date: 13 May 2025

JUDGMENT SENT TO THE PARTIES ON  
27 May 2025

Jade Lobb  
FOR THE TRIBUNAL OFFICE

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>  
written record of the decision.