



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Mullen

**Respondent:** The Panelcompany Limited

**Heard at:** London South (remotely by CVP)

**On:** 10 June 2025

**Before:** Employment Judge Heath

## Representation

Claimant: Did not attend

Respondent: Mr J Lofgord (Assistant Managing Director)

# JUDGMENT

The claimant's claim is struck out pursuant to Rule 38(1)(c) Employment Tribunal Procedure Rules 2024

# REASONS

## Introduction and background

1. Today's hearing was originally listed as the first day of a four-day final hearing of the claimant's automatically unfair dismissal claim. On 9 June 2025 the hearing was converted by REJ Khalil to a public preliminary hearing to consider the respondent's application to strike out.
2. By a claim form dated 29 November 2023 the claimant claimed automatic unfair dismissal for having "blown the whistle". On 28 June 2024 there was a preliminary hearing for case management before EJ Wright. At this hearing the claimant was ordered to provide further information by 5 July 2024, and a schedule of loss by 12 July 2024. Various other case management orders followed in order to prepare for a final hearing between 10 and 13 June 2025.
3. On 22 July 2024, after some correspondence between solicitors then acting for the respondent, and the claimant, the respondent applied to strike out the claimant's claim on the grounds of his non-compliance with tribunal orders. A letter was sent on my instructions on 27 August 2024, apologising for the delay in dealing with the application, but taking no further action, in the hope that case management was back on track.

4. Solicitors for the respondent came off record subsequently. I was told by Mr Longford that there was a delay in those solicitors handing over paperwork to the respondent. Nonetheless, it would appear that from July 2024 onwards there was no effort by the claimant to comply with any of the case management orders, and there was no contact or correspondence with the respondent from the claimant.
5. In response to a letter from the tribunal enquiring whether the parties were ready for a final hearing, the respondent emailed the tribunal on 19 May 2025 to say that they had not received any communication from the claimant or anyone acting for him. On 6 June 2024 the respondent wrote to the tribunal saying that the claimant had not provided any evidence or responded to any communication. It repeated its desire to strike out the claim. There was no communication whatsoever from the claimant.
6. On 9 June 2025 REJ Khalil converted the four-day final hearing into a two hour public preliminary hearing to consider the respondent's application to strike out.

## Procedure

7. In addition to the tribunal's pre-hearing letter, the claimant was sent an email giving him joining instructions for the hearing today. He did not attend. I considered that it was in the interests of justice, and having regard to the information available to me and to the overriding objective to proceed the hearing in the claimant's absence. The overwhelming impression is that the claimant disengaged from the tribunal process almost a year ago, and any further postponement would achieve nothing.
8. I confirmed my understanding of the history of the claim as set out above from my reading of the tribunal file with Mr Longford. He had little to add to his application to strike out.

## The law

9. Rule 38(1)(c) Employment Tribunal Rules of Procedure 2024 ("ET Rules") provides:
  - (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—*
    - ...
    - (c) *for non-compliance with any of these Rules or with an order of the Tribunal;*
    - (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.*
10. The case law makes it clear that in determining an application under Rule 38(1)(c):
  - a. the tribunal must consider not only whether the grounds within Rule

38(1)(c) are made out, but must go on to consider whether to exercise its discretion to strike out, it being proportionate to do so, or to make an alternative order.

- b. In considering whether to strike out for non-compliance with an order, the primary consideration is the overriding objective. This requires the tribunal to consider all the circumstances, including the magnitude of the default, what disruption, unfairness or prejudice has been caused, and whether a fair hearing is still possible.
- c. The question of whether a fair hearing is still possible, can mean a hearing within the allotted trial window, rather than a fair hearing in general at any future date.
- d. A failure to comply with orders of the tribunal over some period of time, or repeatedly, may give rise to a view that if further indulgences granted, the same will simply happen again.

11. The ET Rules also provide:

***Rule 53(2)*** *The Tribunal must give the parties reasonable notice of the date of the preliminary hearing. In the case of a hearing involving any preliminary issue, this must not be less than 14 days' notice of the date of the preliminary hearing and the notice must specify the preliminary issues that are to be, or may be, decided at the hearing.*

***Rule 5(7)*** *The Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired.*

## Conclusions

- 12. The final hearing was converted into a public preliminary hearing to consider strike out on 9 June 2025. Accordingly, 14 days' notice was not given under Rule 53(2). However, having regard to the whole history of this matter, and in particular my conclusion that the claimant has disengaged from proceedings for the best part of a year, I have of my own initiative shortened the time limit in Rule 53(2) to one day. I have done this having regard to the overriding objective, and in particular to ensure the parties are on an equal footing, to avoid delay, so far as compatible with the proper consideration of the issues, and to save expense. In short, if I did not deal with the application within the originally allotted, the matter would have to be postponed to another date. The history of the matter suggests a practical certainty that the claimant would not attend a further hearing, and the respondent would be put to the inconvenience and cost of attending a further hearing.
- 13. Dealing with the application to strike out. The claimant was ordered on 26 June 2024 to provide further information on his case by 5 July 2024, and a schedule of loss by 12 July 2024. The provision of further information was vital first step in further preparation of the case. The further orders flowed from this. The respondent was given permission to amend its

response in the light of further information, and disclosure and preparation of witness statements would have been geared towards dealing with the way he put his case. The claimant did not provide that information. From July 2024 onwards he did not communicate with the respondent and did not comply with orders. The effect of this was entirely to derail proper case management of this case. The respondent has been put to considerable disruption, inconvenience, unfairness and prejudice. It was entitled to expect that the claimant would comply with orders to provide information to set out his case and the quantum of his claim so that the case could be properly prepared and ready for trial in the allotted timeframe.

14. In the circumstances I find that the respondent has made out that the claimant has failed to comply with a tribunal order.
15. In terms of proportionality and whether a fair trial is still possible, the continued failure to comply with the order to provide information as made case management and case impossible. Disclosure has not taken place and the parties have not exchanged witness statements. It has not been possible to have a fair hearing within the trial window of 10-13 June 2025.
16. I have considered the possibility of postponing and attempting to reset the whole case management process. There are two difficulties with this. First, the history, and in particular the claimant's complete disengagement from the tribunal process for almost a year, strongly suggests that a further indulgence granted to him, the same thing will happen again. There will be further movement and non-compliance with orders. Second, the backlogs in the tribunal process, which are felt very acutely in this particular region, mean that a further hearing is not likely to be listed for perhaps 2027. It is no in the interests of justice for the respondent to have to defend a claim relating to issues in 2023 some four years after the event.
17. In the circumstances, I conclude that not only has the claimant failed to comply with tribunal orders, but that it is not possible to have a fair hearing of the matter either within the trial window or generally. I further conclude that it is proportionate to strike out the claim as no less Draconian response is appropriate.

Approved by:

**Employment Judge Heath**  
**10 June 2025**

Judgment sent to the parties on  
16 June 2025

## 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. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

[www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/](http://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/)