



EMPLOYMENT TRIBUNALS

Claimant: Mr K Mughal
Respondent: Omnia Lifestyle Ltd

Heard at: Reading (by CVP)
Before: Employment Judge Reindorf KC
Ms B Osborne
Ms E Bristow

On: 6 January 2025

Appearances

Claimant: In person
Respondents: In person (Ms P Mahdo)

WRITTEN REASONS

FOR THE JUDGMENT SENT TO THE PARTIES ON 16 JANUARY 2025

BACKGROUND

1. The Claimant was employed as a Senior Therapist (Osteopath) by the Respondent from 24 September 2019 until 28 November 2022.
2. Following a period of early conciliation from 25 January 2023 to 27 January 2023 the Claimant presented his ET1 on 1 March 2023. The claim was brought against the current Respondent and a Second Respondent, Mr Francis Mirandha (the Director and CEO of the Respondent company). The Claimant complained of unfair dismissal and age discrimination.
3. In their ET3 dated 24 April 2023 the Respondents asserted that the Claimant was fairly dismissed on grounds of capability and/or misconduct. They said that the age discrimination complaint was not properly particularised.
4. A Preliminary Hearing took place before EJ Cowen on 21 August 2023 at which both parties were represented by their solicitors. EJ Cowen ordered the Claimant to provide Further Particulars of his age discrimination complaint. EJ Cowen also listed the final hearing for four days from 6 to 10 January 2025 and made other Case Management Orders.
5. On 11 September 2023 the Claimant sent to the Respondents Further Particulars of the age discrimination complaint. He said that his employment had been terminated "in part due to his age" and that he had been subjected to direct age discrimination and harassment in various ways.

6. The Respondents responded to the Further Particulars on 29 September 2023, complaining that the Further Particulars were inadequate. On 31 October 2023 the Respondents made an application for a strike out of the age discrimination claim, alternatively a deposit order.
7. The Respondents' strike out application of 31 October 2023 was heard at the Preliminary Hearing on 15 March 2024. The application was dismissed on the basis that although the Further Particulars of the Claimant's age discrimination claim were not entirely satisfactory, a fair trial was still possible. The Claimant was not able to recall any more particulars (in particular the dates) of the matters he complained of, but the substance of the allegations made was sufficiently well particularised for the Respondents to be able to state whether they ever occurred or not.
8. Also at the Preliminary Hearing on 15 March 2024 the Claimant withdrew the claim against the Second Respondent. An Order was made for the Claimant to provide a Schedule of Loss on or before 5 April 2024.
9. A List of Issues was sent to the parties following the Preliminary Hearing on 15 March 2024.
10. Following the Preliminary Hearing of 15 March 2024 the following relevant events took place:
 - 10.1. On 6 June 2024 the Claimant's solicitors came off the record.
 - 10.2. On 18 July 2024 the Respondent, through its solicitor, made a second strike out application, on the basis that the Claimant had not complied with the order to provide a Schedule of Loss. The application appears to have been refused on the papers.
 - 10.3. The parties did not exchange documents or witness statements, or otherwise take any steps to comply with the Case Management Orders made at the two Preliminary Hearings.
 - 10.4. In late November 2024 the Respondent ceased instructing its solicitor.
 - 10.5. On 2 December 2024 the Respondent wrote to the Tribunal stating that the parties were not ready for trial, because the Claimant had not provided Further Particulars of his claim, a Schedule of Loss or a cast list and chronology. The Respondent stated that it had attempted to contact the Claimant about these issues on 22 November 2024, but did not receive a response (this correspondence was not shown to the Tribunal at the present hearing)
 - 10.6. On 1 January 2025 the Claimant sent his Schedule of Loss to the Respondent and the Tribunal.
11. The parties both attended the final hearing in person. The Respondent brought a bundle, which was the same bundle which had been before the Tribunal at the Preliminary Hearing on 15 March 2024. No disclosure had taken place and there were no witness statements. The Respondent accepted, contrary to the position stated in its email of 2 December 2024, that the Claimant had in fact provided Further Particulars of his age discrimination complaint and that the outcome of the hearing of 15 March 2024 had been that those particulars were adequate. The Respondent pursued its strike out application on the basis that the Claimant had

not provided a Schedule of Loss until 1 January 2025, which, they stated, had not left them enough time to prepare for the trial.

RELEVANT LAW

12. An Employment Tribunal has power, at any stage of the proceedings, either on its own initiative or on the application of a party, to strike out all or part of a claim or response for non-compliance with any of the Rules or with an order of the Tribunal (r 37(1)(c)).
13. By Rule 6 a failure to comply with any Rules or any order of the Tribunal ‘does not of itself render void the proceedings or any step taken in the proceedings’ and:

“In the case of such non-compliance, the Tribunal may take such action as it considers just, which may include all or any of the following (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party’s participation in the proceedings; (d) awarding costs in accordance with rules 74 to 84’.
14. When considering striking out a claim for non-compliance with procedural orders, such as the provision of further information, the appropriate time to do so is well before the date of the substantive hearing. In *Blockbuster Entertainment Ltd v James* [2006] IRLR 630 the Court of Appeal said that, when determining the proportionality of the response, the Tribunal is required to make a structured examination in order to see whether there is “a less drastic means to the end for which the strike-out power exists”, such as unless orders and costs orders.
15. Applications for strike out for every perceived breach of the rules of procedure or Tribunal orders are to be deprecated and such applications are rarely successful. It is disproportionate to strike out for a one-off minor breach.
16. The guiding consideration, when deciding whether to strike out for non-compliance with an order, is the overriding objective (*Weir Valves and Controls (UK) Ltd v Armitage* [2004] ICR 371 EAT). This requires the judge or Tribunal to consider all the circumstances, including “the magnitude of the default, whether the default is the responsibility of the solicitor or the party, what disruption, unfairness or prejudice has been caused and, still, whether a fair hearing is possible”.

CONCLUSIONS

17. The Tribunal concluded that the Claimant’s failure to provide a Schedule of Loss until 1 January 2025 was an insufficient basis for striking out the matter or indeed for taking any other identifiable action in the particular circumstances of the case. Those circumstances included the fact that neither party had taken adequate steps to prepare for the final hearing or to comply with the orders of the Tribunal. The Respondent’s assertion that it had been unable to prepare for the final hearing because the Claimant had not sent a Schedule of Loss in good time was wholly inadequate. A Schedule of Loss was not needed for the Respondent to undertake disclosure, compile a bundle or provide witness statements. The case management orders had been made almost 18 months previously and the Respondent had had a solicitor instructed until the end of November 2024. There was no documentary

evidence before the Tribunal to suggest to suggest that it had taken any steps at all to comply with the orders. The Tribunal was much more concerned about the absence of disclosure, a bundle and witness statements than about the late service of the Schedule of Loss.

18. Against that background the Tribunal considered that striking out the claim would be a disproportionate step to take. It would have the effect of punishing the Claimant for the least serious of the failures which had been committed by both parties. A fair trial was still possible if the parties complied with case management orders, although it was inevitable that the final hearing would have to be postponed. The Tribunal reminded itself that it could strike out the claim if a fair trial was not possible within the listed window for the final hearing. However, in the circumstances of the case it would not be just, fair or proportionate to apply that principle, since the Claimant's late service of the Schedule of Loss was not the reason for the postponement. Rather, the reason was the lack of readiness on the part of both parties, and was whollyalmost entirely unconnected to the late service of the Schedule of Loss.
19. The Tribunal considered less drastic alternatives and concluded that a postponement of the final hearing was unavoidable and that Unless Orders should be made against both parties in respect of disclosure and witness statements in order to bring the matter to a final hearing. Those orders were made and sent to the parties along with further case management orders.
20. The Respondent's strike out application was refused. Those orders were made and sent to the parties. The Respondent's strike out application was refused.

Approved by

Employment Judge Reindorf KC

Date 27 June 2025

Sent to the parties on:

1 July 2025

For the Tribunal Office

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