Case Number: 2409512/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr A Sylla

Respondent: DHL Services Ltd

Heard at: Manchester (by CVP video) **On:** 28 May 2025

Before: Employment Judge Parkin

Representation
Claimant: In person,

Respondent: Miss M Martin, Counsel

French Interpreter: Ms Ollington

JUDGMENT AT A PRELIMINARY HEARING

The Judgment of the Tribunal is that the claimant's claim is struck out under Rule 38(1)(b) and (c) of the Employment Tribunal Procedure Rules 2024 because the claimant has conducted the proceedings unreasonably and has failed to comply with case management orders.

REASONS

1. This was the 6th preliminary hearing in these proceedings; it was listed on the direction of Employment Judge Allen on 9 May 2025. EJ Allen postponed the final hearing listed for 12-16 May 2025 on the last working day before that 5-day hearing in the light of the respondent's application to strike out the claim, the claimant's agreement to a postponement of the final hearing, his intention to apply to amend his claim and the fact that the case was clearly not ready and prepared for the final hearing.

Overview of the lengthy proceedings

2. The claimant presented his claim claiming disability discrimination and arrears of pay on 28 November 2022, after ACAS Early Conciliation from 24

to 28 November 2022. He referred to pain in his back and knee conditions with a Baker's cyst due to a work accident in May 2018 and to being put on Statutory Sick Pay from April 2022 with reduced pay thereafter. He stated that correspondence by e-mail was his preferred method.

3. On 2 December 2022, the Tribunal sent the Notice of Claim to the respondent and listed the claim for both a case management hearing on 13 March 2023 and a final hearing on 18-20 June 2024.

4. The respondent presented its response and grounds of resistance defending the claim on 20 December 2022.

5. The first case management hearing on 13 March 2023 was ineffective as the Tribunal determined that the Claimant needed a French interpreter.

6. The second case management hearing went ahead on 2 May 2023 before Employment Judge Shotter. A Preliminary Hearing was listed for 1 day on 25 September 2023, to determine the claimant's disability status in respect of back and knee conditions (left and right), swollen legs, ankle conditions and kidney problems. Case management orders were made for him to provide medical evidence and an impact statement to the respondent by 22 August 2023. A draft List of Issues was produced. The final hearing was retained for 18-20 June 2024.

7. The disability status Preliminary Hearing on 25 September 2023 was postponed to 23 February 2024 because the claimant had failed to provide his disability impact statement. Employment Judge Martin made an Unless Order for the claimant to comply with this. The claimant told the Judge that he had not sent documentation to the respondent because he did not want to communicate with it, but that he had sent documentation to the Tribunal only. EJ Martin explained that no such documentation was apparent on the Tribunal electronic file at the time of her hearing. (In fact, some documentation he sent might not by then have been linked to the Tribunal's electronic file. The file now reveals that the claimant sent emails, to the Tribunal only, late on 24 September 2024, the night before the hearing, between 20.49 and 23.20, including various medical and health documents and a brief document describing his disabilities and its effects). EJ Martin told the claimant he must share his medical information/statement with the respondent and warned him that this was his last chance.

8. The claimant then provided a full impact statement to the respondent and the Tribunal on 30 October 2023.

9. On 13 November 2023 the respondent admitted that the claimant was disabled by reason of his lower back and knee condition but did not admit disability in respect of the claimant's kidney condition.

10. On 23 February 2024 there was a third case management hearing. Employment Judge Barker granted permission to the claimant to add two claims of disability-related harassment. The claimant also indicated that he wished to complain about further new matters, arising from a later accident at work with a head injury in 2020. He was ordered to provide further information by 22 March 2024, so that his amendment application could be

considered at a further case management hearing. The final hearing for 18-20 June 2024 was postponed and was relisted on 12-16 May 2025, with new case management orders made, in particular for disclosure by 13 January 2025 and provision of witness statements by 23 March 2025.

11. On 5 April 2024, the respondent wrote to the Tribunal and the claimant noting that the claimant had not provided further information in connection with his amendment application as ordered.

12. On 9 April 2024, the claimant provided a 2-page document headed: "Application to amend claim". He referred to a head injury, ear injury, brain injury and memory loss but without any clear detail of alleged acts of unlawful discrimination. He referred also to a claim of "unfair dismissal detriment" on ill health retirement grounds. It seems that in March 2024, he tried to present a new ET1 claim for constructive unfair dismissal but it was rejected by the Tribunal for want of an Early Conciliation number.

13. At the case management hearing on 18 June 2024, the claimant applied to amend his claim to add a claim of failure to make reasonable adjustments between December 2020 and April 2022, in respect of his head injury. Employment Judge Ainscough refused the application. The final hearing listed for 12-16 May 2025 was retained with the existing timetable of case management orders.

14. On 13 January 2025, the respondent disclosed its documents to the claimant in line with the case management orders and requested that the claimant provide his disclosure in return. He did not reply at that time.

15. On 20 March 2025, the respondent informed the claimant that his disclosure was outstanding and that the parties would not be able to exchange witness statements until disclosure had taken place. Again, he made no reply.

16. On 24 March 2025, the claimant informed the Tribunal that he had been dismissed from the respondent, with a copy of his notice of termination of employment dated 29 January 2025, terminating his employment on 18 March 2025.

17. On 31 March 2025, the respondent applied to stay the claim or postpone the final hearing, pending the possibility that the claimant would be presenting a new claim for unfair dismissal, and because had not complied with orders. The claimant was copied in, with the opportunity to object.

18. In the absence of a response from the Tribunal, on 29 April 2025, the respondent's solicitor spoke to the claimant by telephone telling him he needed to comply with the case management orders for the final hearing.

19. Anticipating that the hearing may proceed on 12 May 2025, the respondent served two witness statements on the claimant on 2 May 2025. It served its third and final witness statement only on 9 May 2025.

20. On 6 May 2025, the Respondent applied to strike out the claim for failing to comply with orders and not actively pursuing his claim.

21. On 8 May 2025, the Tribunal ordered the Claimant to respond to various queries by 12pm on 9 May 2025, reminding him of his duty to cooperate with the respondent and the Tribunal in accordance with the overriding objective. He was to answer why he had not complied with orders for the hearing on 12-16 May 2025, whether he intended to seek to amend his claim to include a claim of unfair dismissal or bring a fresh claim and whether he objected to the postponement of the hearing on 12-16 May. He was warned that, if he failed to reply, the hearing may be cancelled without further reference to him.

22. This time the claimant replied promptly, on 8 May 2025. He said he had always complied with Tribunal orders but he did not understand the order about witness statements and that he had tried to obtain assistance and to contact the Tribunal without success.

23. Then, on 9 May 2025, the claimant sent a further series of emails to the Tribunal and the respondent. He did not object to the postponement of the final hearing and applied to amend his claim to include unfair dismissal. He enclosed a disability impact statement, medical documents and photographs and what he called an "incomplete witness statement".

24. He sent various new documents between about 22.20 and 22.40 the night before this hearing, including an extended 8-page version of a witness statement and a copy of "without prejudice" settlement proposals made via the ACAS Conciliator.

25. French interpreters were provided to assist the claimant at all hearings including this hearing, except the first case management hearing.

26. The "Sources of Guidance" standard content included after many case management hearings in the ensuing formal orders was included with the orders following the hearings on 13 March 2023, 2 May 2023 and 23 February 2024. That content expressly provides references for and links to the Employment Tribunal website where there is extensive information about Tribunals and procedure and guidance including guidance upon case management.

This hearing

27. The respondent indicated that it sought the striking out of the claim under Rule 38(1)(c), failure to comply with case management orders but not now under Rule 38(1)(d), not actively pursuing his claim. In addition, it contended that the claim should be struck under rule 38(1)(b) for the claimant's unreasonable conduct of the proceedings.

28. The claimant had the benefit of a French interpreter through the hearing. The respondent had provided an indexed bundle (158 pages) for the hearing in electronic form to the claimant but it soon became apparent that he did not have the bundle available to him. He explained that, although he had received an electronic copy of the bundle the previous week, he had been unable to access it and was waiting as he expected to receive a hard copy of the bundle. However, he had not notified the respondent or the

Tribunal in advance of the hearing that he did not have a hard copy and could not access the electronic bundle,

29. Taking stock of the situation, I requested of the respondent whether it was possible to provide a hard copy of the bundle to the claimant at his home address by early afternoon. Save for one page (an Attendance Note from the respondent's solicitor, recording a brief conversation with the claimant on 29 April 2025, page 140) the full contents of the Preliminary Hearing bundle were case documents which the claimant was or should have been familiar with, having regard to his need to prepare for a final hearing a fortnight earlier. I then adjourned the hearing to 2.00pm (14.00), hopeful that the bundle would be delivered to the claimant in good time; it was recorded as delivered to him at home at 12.47. In these circumstances, it was appropriate to continue and conclude the hearing which had been listed for a full day by sitting late that afternoon.

30. My enquiries of the listing team revealed that a 5-day final hearing could not be re-listed in the North West region before early October 2026.

The parties' submissions

31. The respondent made extensive oral submissions building upon its skeleton argument and the claimant made oral submissions.

32. The respondent contended the claimant had failed to comply with many case management orders: to give details of his unlawful deduction claim, to prepare and serve to prepare a disability impact statement (which led to the postponement of the Preliminary Hearing on 25 September 2023), to set out his proposed amendment to the claim by 22 March 2024, to provide a Schedule of Loss, to give disclosure and provide a witness statement for the final hearing. That final hearing had to be postponed because of the last two failures. The law was clear; the first stage was to determine whether one of the grounds in Rule 38 was satisfied and the second stage was for the Tribunal to exercise its discretion whether to strike out the claim or not. The respondent relied upon the EAT authority of Weir Valves & Controls (UK) Ltd v Armitage, especially at paragraph 17 and the principles in Blockbuster Entertainment v James (CA), contending that the decisive factor at the second stage when there had been breaches of case management orders was not just whether a fair hearing remained possible but to apply the overriding objective in its entirety.

33. As well as breaches of orders, there was other unreasonable conduct by the claimant: late applications to amend, failure to correspond with the respondent in the months leading to the final hearing, only then to send multiple emails on 9 May (the last working day before the hearing). This repeated the pattern before the September 2023 hearing. Then it was unreasonable to send an "incomplete witness statement" on 9 May 2025, saying he would send a completed witness statement once it was finished.

34. A hearing in October 2026 gave rise to real evidential difficulties for the respondent; this was not a heavily documented case and oral evidence would be central, yet only one of seven individuals named by the claimant still worked for the respondent (and had given a witness statement). Two

others had made statements, but one of those had not engaged initially to do so. Evidence would relate to matters as far back as 2018, by then 8 years earlier; the delay meant real prejudice for the respondent.

35. The claimant's reasons for not complying with orders were wholly inadequate, for instance him suggesting he did not understand the order to provide his witness statement. This had been expressly explained at the June 2024 case management hearing (with counsel present). He must be accountable and should have found out about any orders he did not understand; he could not simply ignore them. There was no medical evidence linking his disability impairments and any inability to comply, even in terms of mental health or memory loss. The overriding objective required consideration of dealing with claims in ways proportionate to their complexity as well as avoiding delay and saving expense, yet far more Tribunal time had been given to this than to other similar cases with an adverse effect on other Tribunal users. The claim should be struck out now.

36. The claimant strenuously resisted the application to strike out his claim, contending that he had complied with all case management orders throughout the proceedings. He first said he had provided a witness statement and paperwork back in 2023 and then continued to provide more documents; all the respondent had asked of him was the full names of Matthew Lee and James Wilson, which he had sent after due consideration. He had misunderstood the position in relation to witnesses thinking he had to go to the respondent and name witnesses who would then come to court once named by him. He accepted he had been advised by the respondent's solicitor that he should make his own witness statement; however, this was only in May 2025 and he had told her he would try to find people to help him write it. He maintained that the Tribunal file would show that he had sent all the documents including a witness statement in 2023. When I probed this assertion, it became clear that he was referring not to the witness statement for the final hearing but to his disability impact statement.

37. He agreed that on 9 May 2023 he had provided an incomplete witness statement; this was because he was told he had to go deeper into the circumstances of his first accident in 2018. He thus said he would work on it more and send it later. He had sent medical proofs regarding his hearing loss and headaches; he had concentrated on trying not to make mistakes as he went deeper into his witness statement since he had forgotten a lot of things. He sent the respondent his witness statement the same day he received her witness statements, on 9 May 2025. None of the witnesses relied upon by the respondent were there when he had his first accident in 2018. He had always wanted the case to stay between himself and the Tribunal and not to engage with the respondent but he had to obey the orders. However, he believed the respondent would try and intimidate him to strike out his case which he wanted to avoid; therefore, he now copied everything he sent to the Tribunal to the respondent. The only mistake he made was that he believed once he wrote the names of the witnesses they would go to court. The respondent's solicitor clarified it for him and told him he must write his own witness statement but it was never explained during preliminary hearings that he was to write the witness statement or how to write it. He had not disobeyed court orders; every time he received an email from the respondent he obliged and always provided everything he was

asked. He did not receive any emails and believed he had sent some documents which did not appear in the hearing bundle.

38. He maintained he had not failed to comply persistently and deliberately. How could he neglect a case that he had been waiting for such a long time or not put any effort into the case? He had been pursuing his case despite all his disabilities; the respondent was trying to incriminate him saying he had not replied to emails but often he did not get the emails. Every time he received an email from the respondent he had replied. It was not acceptable or normal that his claim should be rejected as he was doing everything to bring his case to reach a conclusion.

The Law

39. I applied the Employment Tribunal Procedure Rules 2024, in particular the overriding objective at Rule 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.

40. Rule 38 provides for striking out:

(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…

41. My approach to Rule 38: In respect of Rule 38(1)(b) and (c), I followed the Court of Appeal guidance in Blockbuster Entertainment Ltd v James [2006] IRLR 630 and the Employment Appeal authority of Weir Valves & Controls (UK) Ltd v Armitage, [2004] ICR 371. Whilst there is much case law on the individual provisions, the clear import of the authorities is that Rule 38 (based on what was Rule 37 in the 2013 Rules) gives the Tribunal draconian powers which are exercised infrequently and only after careful consideration in clear cases. The Tribunal seeks where possible to determine claims fully after hearing that oral evidence and the parties' submissions rather than on paper.

42. As well as determining first whether the claimant had conducted the proceedings unreasonably or not complied with an order, I needed to consider why he acted as he did, whether wilfully or deliberately or for some other reason. Even in a case where Rule 38(1)(f) was not expressly engaged, I had to decide in accordance with the overriding objective whether a fair hearing was still possible and what a proportionate response to the claimant's default would be i.e. whether a less onerous sanction than striking out would suffice. In deciding this, I was fully aware of content of the Equal Treatment Bench Book, in particular at Chapter 1: Litigants in Person and Lay Representatives, paragraphs 10, 11 and 15. I also took into account the relative informality of proceedings in the Tribunal and the user-friendly guidance available on the Employment Tribunal website which is of particular assistance to litigants in person and lay representatives, as well as the explanation of procedure and case management orders regularly given to parties by Employment Judges themselves.

Conclusion

43. Having regard to the current volume of cases in Employment Tribunals including the North West region, I was very concerned at the late postponement of the final hearing this month based upon lack of preparation by the claimant. This meant that the earliest date at which the hearing could be re-listed was in early October 2026, nearly 4 years after commencement of the proceedings.

44. I concluded that the claimant had done little to assist himself in the conduct of his claim i.e. preparing towards the final hearing. At an early stage, as he acknowledged, he chose not to share information with the respondent because he considered that his claim was a matter for him and the Tribunal alone; this wholly contradicted the order of the Tribunal. Rather later, he appeared to wait for prompts from the respondent's solicitor instead of complying directly with the Tribunal's orders. Regrettably, I found the claimant either in denial about his failure to comply with case management orders earlier in the proceedings or at best unable to remember these failures clearly. There were proven examples of his failure to comply with case management orders, the starkest being the failure to provide an impact statement for the first disability Preliminary Hearing resulting in that hearing being postponed and EJ Martin issuing an Unless Order to him. The most recent was, of course, his failure to disclose documents and to prepare and serve a witness statement at the proper times for the final hearing listed on 12-16 May 2025. That hearing was postponed as a direct result of these failures; it could have gone ahead otherwise. The other failures cited by the respondent were perhaps of lesser gravity.

45. Even accepting the claimant's unfamiliarity with Employment Tribunal procedure and that English is not his first language, the need for six case management and preliminary hearings and the postponement of two listed final hearings speaks volumes about inadequate conduct of the proceedings on his behalf. These are by no means the most complex or extensive of claims, as the lists of issues show. Whilst I did not conclude that this was wilful disobedience to case management orders in the sense of mischievous and intentional disobedience, I did conclude that the claimant had persistently and with some deliberation not complied with case management orders in time, despite sometimes attempting to do so at or after the last possible moment before a listed hearing. There was no substantial medical evidence showing he was not actually capable of complying with case management orders and his last minute attempts to comply before different hearings satisfied me he was capable of both complying with them and properly conducting his claim. Had he followed the guidance available he could readily have understood how to comply with and could then have complied with the orders at a suitable stage before the deadline loomed.

46. Accordingly, the limbs under 38(1)(b) and (c) were both fully made out by the respondent. Taking all aspects of the overriding objective into account, I turned in particular to decide whether a fair hearing was still possible in

circumstances where the background allegations began in 2018 and claims of discrimination by failure to make reasonable adjustments from 2021 onwards and harassment in 2022 were to be determined. These are proceedings with relatively little documentary evidence, such that oral evidence becomes highly important. Having regard both to the claimant's apparent loss of memory of events within these proceedings relating to his failure to comply with orders and the respondent's difficulties in obtaining witness evidence of all those named by him in his allegations, I was fully satisfied that a fair hearing in October 2026 is no longer achievable. In accordance with the overriding objective, the proper outcome is to strike out the claim. Moreover, given the magnitude of the claimant's unreasonable conduct of the proceedings and failure to comply with case management orders, striking out is an entirely proportionate response.

Approved by:

Employment Judge Parkin

31 May 2025

JUDGMENT SENT TO THE PARTIES ON

22 July 2025

FOR THE TRIBUNAL OFFICE

Notes

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/