



EMPLOYMENT TRIBUNALS

Claimant: Ms I Slade
Respondent: Home Office
Heard at: Watford Employment Tribunal
On: 25th June 2025
Before: Employment Judge Shrimplin

Representation

Claimant: In person
Respondent: Mr. McLean (counsel)

JUDGMENT

The claimant's claims for unfair dismissal (including constructive dismissal) and for "other payments" are dismissed following withdrawal by the claimant.

The respondent's application to strike out the remaining claims is refused.

REASONS

1. In discussion at the Public Preliminary hearing on 25th June 2025, the claimant confirmed that she understood that, as she was still employed by the respondent, the claim that she had been unfairly dismissed was bound to fail. She also confirmed there were no "other payment" claims. The claimant withdrew those claims and they were dismissed.

Background to Application to Strike Out

2. The claims were the subject of an earlier hearing on 15th August 2024 before Employment Judge (**EJ**) Quill, at which the claimant and her union representative were present. The case was listed for Alternative Dispute Resolution on 27th June 2025 and a full merits hearing in April 2026.

3. EJ Quill made several case management orders, in particular: -

3.1. By 29th August 2024 the Claimant was to confirm whether she wished to continue with her claims for unfair dismissal and “other payments” and provide the additional information set out in the case management order

3.2. By 26th September the claimant was to provide a schedule of loss

3.3. By 31st October 2024, disclosure of documents by list and copy was to be completed.

4. The claimant and respondent later agreed to extend the dates for completion as follows: -

4.1. In respect of order at 3.1 to 30th September 2024

4.2. In respect of order at 3.2 to 28th October 2024

4.3. In respect of order at 3.3 to 2nd December 2024

5. However, the claimant failed to comply with those orders and as a result the respondent had been unable to complete the remaining case orders, particularly to finalise the grounds of resistance, and complete the preparation of the hearing bundle and witness statements. The Dispute Resolution Appointment (**DRA**) was canceled.

6. Mr McLean, Counsel for the Respondent, asked the Tribunal to strike out the claimant’s remaining claims (**claims**) under Rule 38 Employment Tribunals Rules of Procedure 2024 (**The Rules**) on the basis that the claimant failed to comply with EJ Quill’s orders and was not actively pursuing her claims.

7. Mr McLean drew my attention to the orders set out above. He noted that there had been no active correspondence by the claimant, despite engagement by the respondent’s solicitors which had made her, and her union representative, fully aware of the actions required. The breach of the orders was clear and unambiguous.

8. Mr McLean argued that this was part of a pattern of non-compliance, as the initial orders in the case had also not been complied with and again, despite engagement by the respondent’s solicitors, no action had been taken by the claimant to progress her claim. Letters from the Tribunal had also been ignored.

9. Mr McLean noted that the breaches were material in that the full hearing could not proceed without those steps having been taken. He stated that the

prejudice to the respondent was clear in that they had been unable to proceed with the DRA, had had to deal with unnecessary hearings and incur additional costs.

10. Mr McLean argued that the prejudice to the respondent clearly outweighed the prejudice to the claimant, especially because she had not actively pursued her case, and invited me to strike out the claims.

11. In the event that I did not strike out the claims, counsel invited me to consider whether a deposit order would be appropriate.

12. In discussion, Mr McLean agreed that the list of issues was clear (subject to the additional information requested) and that the respondent had spoken to witnesses and recovered its own documents. However, he also pointed out that the respondent was obviously unable to deal with any unexpected disclosure which made it difficult to say whether a fair trial was possible.

13. The claimant explained that the reasons she had not complied with the orders were that she had had a serious health condition which caused her to have blackouts, difficulty concentrating and extreme fatigue. The claimant produced medical certificates as unfit for work which broadly covered February to June and August to mid-September 2024 for black outs/falls and from December 2024 to March 25 and June to September 2025 for syncope (fainting or black out). The claimant explained that this could affect her at any time and left her with severe fatigue, difficulties breathing, and an inability to concentrate.

14. In addition, the claimant explained that her Union representative had told her during the course of proceedings "I've got your back", that she should not worry and that everything was under control. The claimant said that she personally had not received all the communications referred to by counsel for the respondent. She had thought there were things to be done in April 2025 but had not realised so many things had been missed.

15. I asked the claimant about the three particular orders noted above at paragraph 3. In relation to the first one, her union representative had told her that she should withdraw the claims as she had not then been dismissed. She understood that the bundle of documents had been sent to the respondents'

solicitors in time. When asked, she was unable to explain why she had not said this to the respondent or Tribunal in response to the letters to her.

16. The claimant had asked her representative to attend this hearing. At first, she had no reply, then the representative said she would sort it out, and then said she could not attend. The claimant offered to show me and counsel messages on her telephone. She was now looking for someone new who could assist her.

17. The claimant said the effect on her if the strike out of her claims was granted would be severe. She would be unable to pursue her claim and to understand why these things had happened. She said it would destroy her.

18. In response, Mr McLean noted that there were serious allegations made against the union representative. He also noted that the claimant, despite her difficulties, could still have taken action to progress her claim, such as informing the respondent solicitors of the difficulties or providing the medical certificates which had been available for many months.

The Law

19. Rule 38 of the Rules sets out the power for the Tribunal to striking out as follows (as far as is relevant to these proceedings):-

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).*

20. In exercising this power, the Tribunal must consider a two-stage approach, following the case of **Hasan v Tesco Stores Ltd EAT 0098/16**: -

20.1. First, to decide whether any of the grounds set out in Rule 38(1) have been met.

20.2. Secondly, only if at least one of those grounds has been met, to decide whether to exercise the discretion to strike out or not to do so.

21. There has been a significant amount of case law dealing with the Tribunal's power to strike out under Rules of Procedure and it is considered to be a "draconian" measure to be used in rare circumstances.

Decision

22. I have firstly considered whether the actions of the claimant are sufficient to establish whether the grounds in Rule 38(1) have been met. I conclude that the claimant failed to provide a response to the additional information requested, disclosure of her documents, and a schedule of loss. She therefore failed to comply with the orders set out by EJ Quill at the hearing in August 2024. Having failed to comply with those orders, the claimant failed to respond to letters from the respondent or the Tribunal (which were sent to her by the respondent) and failed to explain her reasons for not doing. I therefore find that the thresholds under Rule 38(1) (c) for failing to comply with orders and (d) for not actively pursuing her claim have been met. Although the Tribunal notice also included the grounds under Rule 38(1)(b), I do not find that threshold has been met.

23. Having found that the threshold is met, I have then considered whether I should exercise my discretion to strike out the claimant's claims. I bear in mind Rule 3 which sets out the overriding objective to deal with cases fairly and justly, which includes dealing with cases proportionately and avoiding delay.

24. I have considered the following factors: -

24.1. As a result of the failure to respond to the case management orders, the case has not been prepared in accordance with EJ Quill's orders and the appointment for DRA was cancelled. An additional hearing today was required.

24.2. A full merits hearing is listed for April 2026 and there is time to remedy

the failures to comply with the case management orders and schedule a further DRA appointment.

24.3. It is still possible to have a fair trial. The respondent is aware of those it wishes to call as witnesses and their documents. I consider that, while there may be unexpected issues to deal with, the full hearing process is able to deal with such matters.

24.4. The loss of all remaining claims would cause significant prejudice to the claimant and while I note the additional time and cost to the respondent, I do not consider any prejudice arising to them outweighs that to the claimant.

24.5. I accept the claimant's reasons for non-compliance, namely the reliance on her union representative and the medical evidence which suggests significant difficulties. I believe that any omissions in complying with orders or in replying to correspondence were not deliberate or in disregard of the respondent or Tribunal.

24.6. To strike out the claim would be to impose a sanction of the last resort in these circumstances and would be disproportionate

25. Bearing in mind each of these factors and the overriding object, I decline to exercise my discretion to strike out the claimant's remaining claims and the application is refused.

26. I also considered whether a deposit or unless order was appropriate and, in view of the medical history and difficulties with the union representative, I do not consider it proportionate to do so at this stage

Approved by
Employment Judge K A Shrimplin
Date: 26th July 2025

Sent to the parties on: 31 July 2025

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For the Tribunal Office

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