



EMPLOYMENT TRIBUNALS

Claimant
Mr. M Skubis

v

Respondent
AM Norris Ltd

ATTENDED PRELIMINARY HEARING

Heard at: Nottingham

On: 14th July 2025

Before: Employment Judge Heap (Sitting alone)

Appearances

For the Claimant:

In person

For the Respondent:

Ms. E Riding – Solicitor

Interpreter:

Ms. J Niezgoda

JUDGMENT

1. The Respondent's application to strike out the claim is refused.
2. The claim of unfair dismissal is struck out because the Claimant lacks the qualifying service to present such a complaint.
3. Case Management Orders are attached.

REASONS

BACKGROUND

1. This Preliminary hearing was converted from the full merits hearing and followed on from one before Employment Judge Butler which took place on 23rd May 2024. The Claimant did not attend that hearing. Employment Judge Butler made Unless Orders for the Claimant to confirm why he had not attended the hearing and to provide medical evidence in support. That was because when contacted during the hearing by a clerk of the Tribunal the Claimant had said that he was not fit to attend and later supplied a Fit Note which understandably Employment Judge Butler determined was insufficient to demonstrate that he was unfit to attend a hearing as opposed to being unfit to attend work.
2. The Claimant sought to comply with the Unless Order by supplying an email dealing with his health problems, a schedule of loss and some medical notes and records. Employment Judge Welch determined that the Claimant had

not complied with the Unless Order because he had not supplied medical evidence that he was unfit to attend the Preliminary hearing. She extended time to comply until 7th August 2024 indicating that if he did not supply the required information consideration would be given to whether to strike out the claim.

3. On the date for compliance the Claimant supplied a photograph of his disabled parking pass and a letter from his General Practitioner ("GP") which set out that the Claimant had told him that he was unable to attend the hearing. It was clear that that was based on the Claimant's own assessment and not any examination by the GP at the material time and I come to that further below in my conclusions.
4. It does not appear that that information was referred to a Judge at the time and nothing else happened until 9th April 2025 when Employment Judge Broughton determined that the Claimant had not complied with the Orders of Employment Judge Welch and indicated that she was considering striking out the claim and giving the Claimant until 16th April 2025 to make representations why that should not happen. It is not clear if Employment Judge Broughton had seen the Claimant's email and attachments when taking that decision.
5. The Claimant replied by the time set by Employment Judge Broughton objecting to the claim being struck out and setting out details of his health concerns along with copies of some of the medical evidence previously submitted.
6. Unfortunately, that correspondence was not referred to a Judge until 9th July 2025 which was only a matter of days before the full merits hearing, which had not been vacated, was scheduled to begin. I converted the first half day of the first day of the full hearing to this Preliminary hearing and vacated the remaining days of hearing time. I made plain that one issue that would be determined was whether to strike out the claim and that if the Claimant failed to attend then it was highly likely that that would happen or the claim would be dismissed in his absence.
7. The Claimant did attend the hearing. Ms. Riding appeared on behalf of the Respondent and advanced an application to strike out the claim for the Claimant's non-compliance with Orders made and failure to actively pursue the claim. The Claimant resisted that application and indicated that he wanted to continue with the claim.
8. I have not set out comprehensively what each party has said in respect of the application but they can be assured that I have taken into account everything that each party has told me before making my decision.
9. I should observe that before determining the application I did ask the Claimant to give some thought to whether he is in fact going to be able to see these proceedings through to a conclusion if the claim was not struck out. That was on the basis that it appeared that because of his health, a lack of understanding of the legal process and the fact that English was not his first language along with other personal circumstances that he had not been able to fully engage thus far. I have explained that we are at a very early stage

and there is going to be a great deal of work for the Claimant to do not only to prepare for the hearing but also to represent himself at it which will not only include giving evidence himself but also questioning (cross examining) the Respondent's witnesses on all issues in the claim and then making closing submissions about why each of the complaints should succeed.

10. The Claimant has assured me that if the claim was not struck out he would throw his whole endeavours into complying with Orders and preparing the case for hearing.

THE LAW

11. Employment Tribunals must look to the provisions of Rule 38 Employment Tribunals (Constitution & Rules of Procedure) Regulations 2024 when considering whether to strike out a claim.

12. The relevant parts of Rule 38 provide as follows:

“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).

(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”.

13. Whilst the striking out of discrimination claims should be rare because of the public interest importance of such claims being determined after examination of the evidence (see **Anyanwu v South Bank Student Union [2001] 1 W.L.R. 638: UKEAT/0128/19/BA** – albeit in a different context) that will be a permissible step where there can no longer be a fair hearing, including within a reasonable time frame (see **Peixoto v British Telecommunications plc EAT 0222/07** and **Riley v Crown Prosecution Service 2013 IRLR 966, CA**).

CONCLUSIONS

14. I have not heard any evidence or made any findings of fact because it is not necessary to do so in order to deal with the application.
15. Before turning to that, Ms. Riding had made some representations that it was not certain that the Claimant had complied with the terms of the Unless Order made by Employment Judge Butler. The focus there was on the terms of the GP letter because it did not give anything other than repetition of what the Claimant had told them and not any actual clinical assessment. I have revisited the terms of the Order made which required the Claimant to provide a letter from his GP confirming he was physically unable to attend the hearing. Even if the letter is not entirely satisfactory that is what it says however that conclusion was arrived at. I am therefore satisfied that the Unless Order was complied with at the point that time for compliance was extended by Employment Judge Welch.
16. I turn then to the application itself. By the narrowest of margins I have determined not to strike out the claim. It has weighed heavily in favour of granting the application that today should have been the first day of the final hearing and that it has now not been possible for it to proceed with there being inevitable further delay in relisting it. However, there is nothing to suggest that the Claimant's inability to attend the Preliminary hearing was anything other than ill health and he did not, therefore, deliberately choose not to do so.
17. Although there was some initial non-compliance with the Orders of Employment Judge Butler the Claimant appears to me to have tried his best and did comply after the further Orders of Employment Judge Welch. Unfortunately, there was then a significant delay on the part of the Tribunal in dealing with matters and had that being picked up more promptly then the Preliminary hearing could potentially have been relisted and this original full merits listing kept. Equally, as Ms. Riding candidly accepted in her submissions the assumption that the Respondent had made was that the claim had been struck out but that the Tribunal had just not informed the parties. Had that assumption not been made then again matters may have been able to have been picked up before now.
18. I have also taken into account the fact that the claim was issued as long ago as January 2024 and we are effectively no further forward with understanding what the claim is about in a significant number of aspects. However, again the same considerations apply as above given that the situation is not entirely of the Claimant's making. Moreover, we will be able to spend time discussing the claim and identifying the issues today and the full hearing can be relisted without significant delay being caused.
19. Finally, in order to strike out the claim I would need to be satisfied that a fair hearing would no longer be possible. Whilst Ms. Riding refers to the fact that the cogency of the evidence will likely have diminished, the time frame in which the full hearing could be relisted would not see a significant delay and no longer than unfortunately most of the waiting times now for a full hearing from presentation of a claim. There is no suggestion that any relevant witnesses would have left the Respondent or otherwise now be unable or unwilling to give evidence and there will be contemporaneous documents

which will assist with recollections. The Respondent's position is also well set out in their ET3 Response.

20. I cannot therefore conclude that there can no longer be a fair hearing of the claim and as such striking it out is not a justifiable step and balancing the positions of the Respondent and the Claimant I am not satisfied at this stage that the claim should be struck out.

21. However, I have explained very clearly to the Claimant that this is very much a case of him being in the last chance saloon. He must now comply with what is required of him because any further failure to comply or delay is highly likely to result in the claim being struck out.

Unfair dismissal claim

22. However, I have determined that the claim of unfair dismissal should be struck out for entirely different reasons. It is common ground that the Claimant was only employed by the Respondent for just shy of seven months. Section 108 Employment Rights Act 1996 requires a Claimant seeking to bring an unfair dismissal claim to have a minimum of two years qualifying service with the Respondent who they seek to bring the claim against. That is unless some exception applies which bring the claim within a category of automatically unfair dismissal such as where the reason or principal reason for dismissal is pregnancy or maternity, for whistleblowing, for raising certain concerns about health and safety etc. I have discussed that with the Claimant today. There was no basis advanced in the Claim Form or from anything that the Claimant has said today which could possibly bring him within any category of automatically unfair dismissal. As such, the Claimant has no standing to bring a complaint of unfair dismissal and I have therefore struck it out accordingly.

23. The remaining complaints of age and disability discrimination continue at this stage and case management Orders are attached.

Approved by:

Employment Judge Heap

Date: 27th July 2025

SENT TO THE PARTIES ON

.....31 July 2025.....

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FOR THE TRIBUNAL OFFICE