



# EMPLOYMENT TRIBUNALS

**Claimant: Mr N Garner**

**Respondent: Royal Mail Group Limited**

**In chambers on: 9 June 2025**

**Before: Employment Judge JM Wade**

## JUDGMENT

- 1 The claimant's application to strike out the response is refused.
- 2 The claimant's claims are dismissed pursuant to Rule 47 upon the claimant's failure to attend or be represented on the first day of today's five-day hearing.

## REASONS

1. The claimant was dismissed by the respondent in April 2024. His claim form recorded his representative organization as "CWU", with email and telephone details, but the name of the representative to be confirmed. The claim form also gave an email address for the claimant, with a preference for email contact.
2. A preliminary hearing took place on 15 January 2025 at which the claimant was represented by Mr Haslam, noted as "CWU official".
3. The orders and notice of a five-day hearing were sent to the parties – to the claimant at the CWU email address - on 25 January 2025. A five-day hearing was arranged for a Tribunal comprising an Employment Judge and lay members, commencing today.
4. The orders gave typical directions for preparation -disclosure followed by file agreement by 2 April, and witness statement exchange by 7 May. Both parties were to write to the Tribunal on 2 June 2025 to confirm they were ready for the hearing, and if not explain why.
5. On 16 May 2025 Mr Haslam, writing from the CWU email address on behalf of the claimant, confirmed to the respondent the bundle was acceptable.

6. He also wrote that he doubted the claimant would be in a position to exchange statements w/c 2 June, but he would update at that time - the claimant was doing his statements himself and Mr Haslem was no legal expert – he said.
7. On 20 May 2025 the respondent's solicitor invited a postponement application if the claimant was so minded and said the respondent would not object.
8. That invitation was chased by the respondent's solicitor on 29 May. In response the same day Mr Haslem said the claimant was making progress and he would write to the Tribunal on 2 June.
9. On 2 June Mr Haslem set out delay by the respondent and a failure to respond, as grounds to strike out the response, and he made that application.
10. On 4 June the respondent's solicitor accepted there had been delay in disclosure and late provision of the hearing file, but apologized, explained the context (the claimant originally requesting delayed disclosure) and explaining that the respondent's statements had been served on the claimant on 2 June, and objecting to the strike out of the response. Those reasons included that the respondent had invited a postponement request, and none had been made on the claimant's behalf. The respondent concluded that unless the claimant served his statement in the next 24 hours it was unlikely the parties would be ready. A Judge directed the sending of a link to enable the respondent to upload hearing documents in accordance with the January directions, ready for the hearing. Further, on 5 June, the Tribunal asked for the claimant to confirm if he was ready for a hearing.
11. Today the Tribunal was ready to commence the case, the claimant's statement having been provided (albeit undated) setting out his case, such that the respondent could upload it to the Tribunal's system and the Tribunal could read in to all the evidence in the case.
12. Neither the claimant nor Mr Haslam were here by 9.30 as directed, nor by 10am. The respondent's solicitor, Mr Edwards, was here to start the case. The Tribunal directed telephone and email contact to both the claimant and his representative (the CWU having provided the claimant's direct telephone number to the Tribunal). The email set out that Rule 47 permits a Tribunal to dismiss a claim on non-attendance of a party, and sought a telephone number for the claimant because it appeared his representative Mr Haslam had come "off the record".
13. At some time this morning the claimant telephoned Mr Edwards, who had also tried to contact him, and Mr Edwards relayed to the Tribunal the contents of that call: the claimant had said he had not been told by Mr Haslem he was required to attend today, he was at work and unable to take time off for the rest of the week, but he wanted to pursue his claim.
14. The Tribunal vacated the hearing, and instructed Mr Edwards to provide a note of the call, and I would consider the matter in chambers, not least because there appeared an undecided strike out application on behalf of the claimant.

15. Having reviewed the correspondence on the file, summarized above, it reveals a wholly unsatisfactory state of affairs.
16. The Tribunal's resources have been wasted - a hearing of more than one day cannot now be listed until 2026 without displacing cases already listed. Mr Haslem had the opportunity to discuss with the claimant and make a postponement request which would not have been opposed and would have avoided wasted resources. Instead Mr Haslem made a strike out application, which if successful would prevent the respondent defending a conduct unfair dismissal case, and race discrimination/harassment allegations with time limit difficulties. The latter are based on colleagues' alleged perception of the claimant as Austrian or German, and the impression given is that they are retaliatory in nature – the claimant having been dismissed following allegations raised by colleagues about his own behaviors at work.
17. I now refuse the strike out application (which I understand from the failure to attend today is not pursued) in circumstances where although there had been delay, unreasonable conduct was not one sided, and a fair hearing could have taken place starting today. Had the claimant attended, the Tribunal's duty to put the parties on an equal footing requires the Tribunal to ensure a fair hearing, and that would have happened. There was a good deal of scope in the time allocated for this hearing, given the file is relatively compact. It is clear there are arguable defences to the claim, including a limitation defence. Strike out of the defence would be unfair when there could still have been a fair hearing of the issues.
18. As to the claimant's failure to attend or be represented, the options pursuant to Rule 47 on non-attendance are dismissal or continuing with the hearing. Alternatively, the Tribunal could consider an unless order, but that is typically helpful when there is no explanation for a parties' non attendance.
19. That is not the position today. The reason given by the claimant is that Mr Haslem did not advise him he had to attend today, and he has not arranged time off work and cannot now secure that time. If true, that is wholly unsatisfactory conduct by a representative who has not themselves attended a case, which he knows his member wishes to be pursued, and if not true, the claimant has no good reason – the time off work should have been booked back in January 2025 when the case was listed. To the extent Mr Haslem was acting in personal capacity – for the position may be unclear – it is also apparent that the CWU branch office has provided communications and support any irregular arrangement has not been clear to the Tribunal or the respondent.
20. There is considerable practical difficulty for a Tribunal in finding facts about conduct and communications between a party and their representative and where fault lies. In this case, that does not seem to be the just way forward or a good use of the Tribunal's resources – either by unless order or otherwise. Wasted costs typically involves satellite litigation and further delay and complexity. If the claimant has a complaint about the way that matters have developed, he must pursue that with his union. It is, in the round, not fair or reasonable for these proceedings to continue further.

21. Generally, the interests of justice are served by a Rule 47 dismissal and the claim is dismissed for the reasons above.

Employment Judge JM Wade

Dated: 9 June 2025

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