



# EMPLOYMENT TRIBUNALS

## Claimant

Mr P Odunwo

## Respondent

B & M Retail Limited

v

**Heard at:** Bury St Edmunds (by CVP)

**On:** 10 July 2025

**Before:** Employment Judge Laidler (sitting alone)

## Appearances

**For the Claimant:** In person

**For the Respondent:** Ms J Charalambous, Counsel

## JUDGMENT on Open Preliminary Hearing

The claims brought by the Claimant are struck out within the provisions of Rule 38 Employment Tribunal Rules 2024.

## REASONS

### Background

1. This Hearing was listed at a previous Case Management hearing to determine whether the claim of race discrimination (the only claim brought) should be struck out and / or whether a deposit should be paid.

### The Hearing

2. The Claimant attended this Hearing which was conducted on the Cloud Video Platform (CVP). Having heard the submissions made on behalf of the Respondent and the Claimant the Tribunal adjourned, indicating its decision would be given at 11:45 am and that the parties were to rejoin on the CVP then. The Claimant had successfully rejoined following a previous adjournment. The Claimant did not reappear and despite an email sent by

the clerk to him, he had still not attended by 12:05 pm when the Judge gave the decision to the Respondent.

3. As the Claimant was not able to rejoin these written reasons are provided.

### **The Claims and Issues**

4. The claim in this matter was issued on 2 June 2024. No dates of employment were given and the Claimant ticked box 8.1 stating that the only claim brought was that of race discrimination. Details were provided in section 8.2 but these only provided details of the interview process and provided no information from which any race discrimination complaint could be discerned.
5. The Respondent took this point in its Grounds of Resistance which was filed by them, asking that the Claimant be ordered to provide further information so that they could understand the case they had to meet. They did, however, set out full grounds of defence to the claim. The Respondent does not dispute that the Claimant was offered a role with a shift pattern as set out in their offer to him but it is the Respondent's case that the Claimant explained in a telephone call that he wished to have a different shift pattern. That was not available. It is the Respondent's case that the Claimant rejected the offer that had been made multiple times and that therefore no employment relationship was ever entered into between the parties.
6. On 19 November 2024, the Tribunal listed a Case Management hearing for 10 February 2025 and in the letter sent to the parties confirming that hearing, the Claimant was ordered to provide within 21 days the further information that the Respondent had requested in its ET3 Response and to confirm how he would describe his race upon which he relies.
7. The Respondent wrote to the Claimant on 21 November 2024 reminding him of the Case Management Order that had been issued and the details that they required. The Claimant responded on the same day accusing them of harassing him. The Respondent's solicitor replied on 3 December 2024 clarifying that as the legal process was underway they, as representatives of the Respondent, would need to liaise with him.
8. No further information having been forthcoming, the Respondent wrote to the Tribunal on 16 January 2025 (copied to the Claimant) asking for an Unless Order that the Claimant comply with the Tribunal's Order of 19 November 2024 within a further period of two weeks and in default, that the claim be dismissed without further Order. It does not appear that such an Unless Order was made and on 4 February 2025 the Respondent wrote directly to the Claimant, again requesting the further information.
9. The Claimant replied on 4 February 2025 stating that his case,

“... is regarding formal dismissal”

and that it was about,

“formal dismissal / discrimination”

and that when the Judge saw the evidence that he had, his case would be understood.

10. On 7 February 2025, the Claimant wrote to the Respondent indicating he had spoken to the Tribunal and set out what he referred to as his, “case management” and specific details in respect of discrimination. He stated that he was referring to a telephone call on 16 April 2024 when a representative of the Respondent had said that there had been two Africans in the room called Peter and the Claimant not being African felt “disrespected” and that this was “very discriminating”. He felt that he had been discriminated against / formally dismissed because of the way she communicated with him.
11. The Case Management hearing proceeded on 10 February 2025 when the Claimant appeared in person. The Judge set out, following that hearing, how much effort had been made in trying to ascertain the claim that was being brought by the Claimant. The Judge noted that on the face of box 8.2 there was not a claim of race discrimination. Varying answers appear to have been given as to what claim was being brought. At paragraph 24 of the Summary it was recorded that there was extensive discussion regarding unfair dismissal and the Judge noted,

“It was clear to me that this was the claim that the Claimant wished to pursue.”
12. It was explained to the Claimant that he did not have the two years’ requisite service to be able to bring such a claim. At paragraph 27 the Judge noted that the Claimant did not make a formal application to amend his claim. This Hearing was then listed to consider Strike Out and / or a Deposit Order.
13. Prior to this Hearing, the Claimant sent to the Respondent and to the Tribunal a letter recording the advice he had received, even though it had been pointed out to him by the Respondent that he was under no obligation to disclose this, it being a privileged document. The Judge also raised this with him at the outset of this Hearing and he confirmed that he did wish to rely upon it. It is a document dated 16 June 2025 sent to the Tribunal by the Claimant on 4 July 2025 and explains the strengths and weaknesses of the Claimant’s case. It suggested that the comments about the two African candidates might best be framed as a harassment claim but explained to the Claimant that he would need to make an application for leave to amend to bring such a claim. No such amendment application has been brought.

### **Relevant Rules**

14. Rule 38 of the Employment Tribunal Procedure Rules 2024 provides,

38. 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.
- (3) Where a response is struck out, the effect is as if no response had been presented, as set out in [rule 22](#) (effect of non-presentation or rejection of response, or case not contested).
- (4) Where a reply is struck out, the effect is as if no reply had been presented, as set out in rule 22, as modified by [rule 26\(2\)](#) (replying to an employer's contract claim).

15. Rule 3 of the Employment Tribunal Rules 2024 provides,

3. Overriding objective

- (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.

### **Tribunal's Conclusions**

16. There is nothing in the Claim Form that points to a claim of race discrimination. The Respondent asked for further information and an Order was made by the Tribunal. The only information provided by the Claimant was that of 7 February 2025. It was not clear at the last hearing nor at this, how that information on its own could lead to the Tribunal concluding that there had been less favourable treatment on the grounds of the Claimant's race.
17. The Claimant was not dismissed in law as he had never started employment. The Tribunal and the Respondent do not have sufficient information still as to the basis of any race discrimination claim. The Respondent is entitled to know the claim it has to meet. The Tribunal has therefore determined that it can exercise its discretion under Rule 38 and

taking into account the overriding objective, the claim brought by the Claimant is dismissed and will proceed no further.

18. As the Claimant did not return to the Hearing and no information had been provided with regard to his financial circumstances, it was not possible to consider his means. The Judge did not therefore feel able to deal with the Deposit Application which she would have dealt with in the alternative, even though the claims had been struck out.

**Approved by:**

Employment Judge Laidler

Date: 17 July 2025

Sent to the parties on: 12 August 2025

For the Tribunal Office.

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>