



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs S Chanda

**Respondent:** Royal Mail Group Ltd

**Heard at:** Reading

**On:** 25 July 2025

**Before:** Employment Judge Anstis  
Mr A Kapur  
Ms H T Edwards

**Representation:**

**Claimant:** Mr K Khan

**Respondent:** Mr R Chaudhry (solicitor)

## JUDGMENT

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

## REASONS

### INTRODUCTION

1. These written reasons are produced at the request of the respondent.
2. This application was a development by the respondent of an application to strike out the claim submitted by the respondent in writing on 22 July 2025. That application was not pursued at the time but was revisited by Mr Chaudhry on 25 July 2025 following further developments during the hearing.
3. The application was to "... *strike out the ET1 based on Rules 37(1)(b) and (e) regarding the manner in which the proceedings have been conducted by KK and C were unreasonable and that is no longer possible to have a fair hearing within the allocated trial window.*" KK is Khurram Khan, the claimant's representative. He describes himself in his witness statement as being "*a Communications Workers Union representative currently waiting for elections*" and as having "*substantial experience in employment law and tribunal procedures spanning over 13 years*". The respondent accepts that he is a CWU

representative and the hearing and consideration of this application proceeded on the basis that Mr Khan, while not a trained lawyer, is experienced in employment tribunal proceedings including advocacy at final hearings.

4. The relevant rule is now rule 38(1) of the Employment Tribunal Procedure Rules 2024, which provides:

*“The tribunal may, on its own initiative or on the application of a party, strike out ... a claim ... on any of the following grounds ...:*

*(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant ... has been ... unreasonable ...*

*(e) that the tribunal considers that it is no longer possible to have a fair hearing in respect of the claim ...”*

5. Mr Choudhry accepted that in the circumstances he described the tribunal could not strike out the claim simply because of unreasonable conduct of proceedings. The tribunal would also have to find that a fair hearing was no longer possible (which Mr Chaudhry emphasised could mean a fair hearing within the original listing, following Emuemukoro v Croma Vigilant [2022] ICR 327).

## THE APPLICATION AND OUR FINDINGS

### Introduction

6. Mr Choudhry's application was founded on five matters that he said amounted to unreasonable conduct of the claim by Mr Khan on the claimant's behalf. We need to determine whether these occurred and if so whether they amount to unreasonable conduct of proceedings.

#### **a. Non-attendance**

7. The first matter relied upon by Mr Chaudhry was *“the claimant and Mr Khan's failure to attend the tribunal on the 21.07.25 leading to 2 day delay to the start of the hearing which resulted in the list of issues being during the third day of the hearing”*.

8. It is true that neither the claimant nor Mr Khan attended on the first day of the hearing. Mr Khan attributed that to a mistake on his part, although as Mr Chaudhry pointed out the hearing date is correctly recorded on two case management orders arising from two case management hearings that Mr Khan attended. We find that it is unreasonable conduct of a claim to fail to attend the listed date of a final hearing without reasonable excuse, and there is no reasonable excuse in this case.

#### **b. Mr Khan's late disclosure of 499 pages on the fourth day leading to further delays**

9. It is correct to say that Mr Khan presented 499 pages of material on the evening of the third day of the hearing, asking for it to be admitted into evidence, and that this led to further delays.
10. As we will come on to, there seemed at times to be suggestions from Mr Khan that he had previously disclosed or attempted to disclose this material, but that is not correct and we find that presenting 499 pages of additional disclosure at the time Mr Khan did is unreasonable conduct of proceedings. We note that this followed 19 pages of additional disclosure on 21 July 2025 (which the respondent did not object to).
- c. **Mr Khan's submitting case citations which mischaracterised the authorities or were false citations**
11. In support of his application to admit the 499 pages of additional disclosure into evidence Mr Khan cited the following authorities and propositions:
  - “• *Robertson v Bexley Community Centre [2003] IRLR 434 (EAT) – late evidence may be admitted if relevant and its admission would not prejudice the other party.*
  - *United Co-operatives Ltd v Browne [2007] IRLR 526 (EAT) – the overriding objective of dealing with cases justly includes considering all material evidence.*
  - *Kwamin v Abbey National plc [2004] UKEAT/0041/04 – where the issues are serious and the evidence is directly relevant, it should be considered even if late.”*
12. While these appeared to be important and relevant citations of law, the tribunal on investigation could not find those propositions of law in those cases, and could not find one of the cases referred to. It seemed to the tribunal that these may have been generated by AI.
13. On questioning Mr Khan about this, he accepted that the propositions he cited Robertson and Kwamin for could not be found in those cases, and that Browne did not exist. He denied having used AI but could not explain how these false case citations had come to be in his submission.
14. Whether generated using AI or not, we find that false citations of authority amounts to unreasonable conduct of proceedings.
- d. **The claimant's false assertions that the respondent's representative have failed to include all the documents that the claimant wanted to add to the bundle leading to delays**
15. During the course of his application in support of the entry of the 499 pages of disclosure into evidence, Mr Khan appeared to suggest that he had either disclosed or attempted to disclose the material (or at least some of it) before

but been thwarted by the respondent refusing to accept any documents other than by uploading to its Sharepoint system, which Mr Khan said was unable to accept the full range of material he wished to upload. In other words, that it was the respondent's rather than the claimant's fault that he was now making his application.

16. In response to this, Mr Chaudhry produced a series of emails, starting with the respondent's solicitors providing Mr Khan with a draft bundle and index on 1 April 2025, and chasing him for a response to this proposed bundle on 24 April and 14 May 2025, apparently without any response from Mr Khan. On 16 May 2025 Mr Khan wrote saying "*Please send this to me for download bundle and index*" which appears to be a request for a link (or new link) to access the bundle and index. That was sent to him. Later that day he says "*There are documents missing from your disclosure. Please send me an upload link.*" Mr Khan subsequently sent to the respondent by email attachment substantial further documents he wanted to be added to the bundle on 28 May, 24 June (twice), and 27 June 2025. So far as we can tell all of this material was added to the bundle. On 18 July, the Friday before the hearing was due to commence on Monday, Mr Khan wrote to the respondent saying "*with due respect, the bundle ... sent by you are unagreed*". In fact the bundle presented for this hearing by the respondent contains almost 300 pages under a heading "*claimant's documents – disclosed after statement exchange – unagreed by respondent*".
17. We have not fully explored the matter, but it appears that the original bundle was 379 pages long, and that this was extended to 667 pages by further disclosure from the claimant. We see that the respondent was willing to accept material submitted other than via its Sharepoint system, and note that the claimant was provided with a draft bundle on 1 April but made no comment on this for around six weeks, following which he sent further material for inclusion in the bundle which has been added but which did not include the 499 pages he now wished to rely on.
18. We accept that Mr Khan attempted to create a misleading impression as to the status of the additional 499 pages and why they were not included in the existing tribunal bundle, and that this amounts to unreasonable conduct of the claim.
- e. **Not informing the tribunal that the amendment application the claimant was making (or one in very similar terms) had previously been refused**
19. On the third day of the hearing, in discussion on the list of issues, Mr Khan sought to add what became "*The respondent could not move the claimant to another shift without her consent given the terms of the joint statements of 2 March and 13 March 2023.*" to the list of issues as an element of unfairness in support of the claimant's allegation of unfair dismissal. This was originally expressed as being that she could not be moved to another shift due to the terms of the realignment agreement or procedures, as to which Mr Choudhry

reserved his position pending sight of the realignment agreement or procedures that Mr Khan had in mind. It later became that the claimant could not be moved to another shift due to the terms of the joint statements, not the realignment agreement or procedures.

20. It was only in the course of discussing this application that one of the tribunal panel members noted that a previous case management order recorded the refusal of a previous application to amend by the claimant, and on further investigation it was found that this application was in very similar (albeit not identical) terms to the one that Mr Khan was now making. The question that he sought to add to the list of issues at that time was *“Did the Respondent breach the Claimant’s contract of two joint statements indicating that no one should be forced to move to another shift unless it was voluntary. This was stated in the joint statement of 2<sup>nd</sup> of March 2023 which reaffirmed the commitments to the Business Recovery Transformation and Growth Agreement, the MTSF Agreement and the IR Framework.”* It was made as an application to add a claim of breach of contract, rather than as an element of unfairness, but the brief reasons given for refusing the application did not suggest that it being alleged as a breach of contract was part of the reason for refusal. Mr Chaudry was not at that hearing. Mr Khan was.
21. We note that Mr Khan wrote to the tribunal after that hearing with an *“application to challenge refusal of amendment”* which sought to criticise the judge’s reasons for refusing his application to amend. That application has not been formally addressed by the tribunal, but Mr Khan was unable to explain in this hearing how such an application (made other than by way of appeal to the EAT) could be within the jurisdiction of the employment tribunal.
22. We find that it was unreasonable conduct of proceedings to make such an application without informing the tribunal of the refusal of the previous application that had been made by the claimant in very similar terms.

### **Deliberate failures?**

23. Mr Chaudhry suggested that Mr Khan’s behaviour was *“at its highest deliberate”*. As set out above, there is reason to believe that some of the behaviour Mr Chaudhry has criticised was (at best) disingenuous, but in an application based on unreasonable conduct of the claim we do not need to go further than finding the behaviour to amount to unreasonable conduct of the claim. Mr Chaudhry accepted that even in a case of deliberate misbehaviour, a strike out application would still require a finding by the tribunal that a fair hearing was no longer possible.

### **A fair hearing?**

24. There remains the question of whether a fair hearing was possible, with Mr Chaudhry suggesting that it was not possible within the remaining time allowed, rather than not possible at all.

25. The question of a timetable for the hearing has been one that we have had constantly under review and discussed with the parties, with us indicating that we intended to impose formal limits on the time allowed for cross-examination in order to ensure that the evidence was completed in time. From an early stage it has been Mr Khan's position that his cross-examination of the respondent's witnesses could be completed in a day. Mr Chaudhry had originally said that he could complete his cross-examination of the claimant's witnesses in two and a half days, although by the time we made our decision on this application Mr Khan had indicated that only two of the six witnesses would be attending (that is, Mr Khan and the claimant herself) in which case Mr Chaudhry said he would need a day and a half. By the time of our decision we had three and a half days left of the original listing, so it seemed clear that at least evidence could be completed in that time.
26. Mr Chaudhry was concerned that the tribunal would have limited deliberation time, which is a welcome concern but for obvious reasons we do not consider us being able to reach and deliver a decision within the allocated time to be an essential ingredient of a fair hearing. Mr Choudhry also suggested that a day may not be sufficient for Mr Khan to properly question the respondent's witnesses, but Mr Khan (who as we have said, is an experienced tribunal advocate) considers that it is, and we consider it sufficient to enable any necessary challenges to the respondent's evidence to be made by Mr Khan, even if without the elaboration or build up of steps that may make a textbook cross-examination. In any event, we consider it would be obtuse for us to find that Mr Khan needed more time than he said, and on that basis to then determine that a fair trial could not be conducted within the time allowed and strike out the claimant's claim. In such circumstances even an imperfect cross-examination would surely be preferable and more in the interests of justice than a strike out of the claimant's claim. Accordingly we refuse to strike out the claimant's claim.

Approved by Employment Judge Anstis  
28 July 2025

Judgment sent to the parties on:

02/09/2025

For the Tribunal: