



EMPLOYMENT TRIBUNALS

Claimant: Mr Nasir Seif
Respondent: Gap Group Limited
Heard at: East London Hearing Centre
On: 20 August 2025
Before: Employment Judge Barrett
Representation
Claimant: Did not attend and was not represented
Respondent: Miss J. Charalambous of Counsel

JUDGMENT

The judgment of the Tribunal is that: -

1. The Claimant's claims are dismissed pursuant to rule 47 of the Employment Tribunal Procedure Rules 2024 because he did not attend the hearing.
2. The final hearing listed to take place on 9, 10, 11 and 12 December 2025 is vacated.

REASONS

This has been a remote hearing, which has not been objected to by the parties. The form of remote hearing was by telephone. A face-to-face hearing was not held, because it was not practicable, and all issues could be determined in a remote hearing.

Introduction and procedural background

1. The Claimant worked as a driver for the Respondent, an equipment hire company, from November 2023 to June 2024. Following a period of early conciliation between 29 June and 30 July 2024, he presented an ET1 claim form on 1 August 2024 containing complaints of race and religious discrimination. The Respondent submitted its ET3 response form on 19 September 2024, which included an application to strike out the claim as having no reasonable prospect of success (alternatively for a deposit order) and a request for further and better particulars of the allegations in the claim. The Respondent made a further strike out application, relating to correspondence received from the Claimant, on 19 February 2025.
2. At a preliminary hearing by CVP on 5 June 2025, Employment Judge Reid identified that two allegations of racial and religious harassment concerning a specific individual (referred to as “statement one” and “statement two”) were potentially raised out of time. She also canvassed with the Claimant whether he wished to make an application to amend his claim. During that hearing, she listed a further open preliminary hearing on 20 August 2024 (i.e. today’s hearing). Both parties were therefore aware of this upcoming further hearing.
3. Employment Judge Reid directed that this preliminary hearing would decide the following matters:
 - 3.1. If the claimant applied to amend his claim to also include a claim for constructive dismissal (notice pay), that application;
 - 3.2. Whether the harassment claims in relation to statement 1 and statement 2 are out of time;
 - 3.3. The Respondent’s strike out application under Rule 38(1)(a) Tribunal Rules 2024 (no reasonable prospects of success);
 - 3.4. The Respondent’s strike out application under Rule 38(1)(b) (manner of conduct of the Claimant);
 - 3.5. In the alternative the application for a deposit order under Rule 40 Tribunal Rules 2024.
4. Further, Employment Judge Reid made case management directions setting out the necessary steps required to be taken in order for this subsequent preliminary hearing to be effective, as well as further case management steps to prepare for the final hearing, which she listed to take place over four days from 9 to 12 December 2025.
5. Insofar as the preparatory steps for this preliminary hearing concerned action by the Claimant, he was required to do the following:
 - 5.1. By 19 June 2025, confirm the date on which statement one was alleged to have been made (by reference to records the Claimant mentioned in the hearing) and make any application for amendment;
 - 5.2. By 26 June 2025, file his schedule of loss;
 - 5.3. By 10 July 2025, send his response to the Respondent’s strike out and deposit order application;

- 5.4. By 6 August 2025, provide information about his ability to pay a deposit order; and
- 5.5. Also by 6 August 2025, send a witness statement explaining the period taken to submit his claim in relation to statements one and two and the reasons why he said it would be just and equitable to extend time if necessary.
6. The document setting out these orders was sent to the parties reasonably promptly on 10 June 2025, so the Claimant would have been able to refer to written guidance to see what he needed to do. However, the Claimant did not comply with these orders.
7. On 30 June 2025, the Respondent applied for an unless order to compel the Claimant to provide the further information about statement one and his schedule of loss. On 17 July 2025, the Respondent chased the Tribunal for a response to the unless order application. The Claimant was copied into this correspondence and would have been reminded (if such reminder were necessary) that there were steps he was required to take to prepare for the next hearing.

The hearing

8. The Claimant did not appear in the CVP waiting room by 10am. The Tribunal clerk telephoned him and the Claimant picked up the call. The clerk said to the Claimant that he had a hearing, and the Claimant replied that he had thought it was due to start at 11am and that he would log in now.
9. However, the Claimant did not log in. At 10.15, the Tribunal clerk telephoned again to check whether he was having technical difficulties, but the Claimant's phone was switched off. The clerk sent an email resending the hearing link and PIN, and tried to call again 10 minutes later, without success.
10. At 10.30 I opened the hearing and relayed the position to the Respondent. Miss Charalambous told me that the Respondent had been prepared for the Claimant not to attend, because although he had attended the 5 June 2025 preliminary hearing by CVP, he had not complied with orders or engaged with correspondence since then. The last correspondence the Respondent had received from the Claimant was on 4 April 2025, prior to the last preliminary hearing. In the circumstances, the Respondent proposed to make an application for the claim to be dismissed pursuant to rule 47 of the Employment Tribunal Procedure Rules 2024.
11. I decided that in order to give the Claimant the best possible opportunity to attend, and in case he had encountered some unforeseen technical difficulty, to adjourn the hearing to 11.30.
12. During the adjournment, the Tribunal clerk emailed the Claimant to inform him of the revised 11.30 start time and to warn him that if he did not log in at that time there was a risk that his claim might be dismissed due to his non-attendance. The clerk also telephoned again, and as the Claimant's phone was still switched off, left a voicemail with the same information.
13. At 11.30 I reopened the hearing, and the Claimant again did not attend. The Respondent applied for the claim to be dismissed under rule 47, setting out the procedural history outlined above and submitting that the Claimant had by his conduct evinced an intention not to pursue his claim further.

The law

14. Rule 47 of the Employment Tribunal Rules 2024¹ provides that:

If a party fails to attend or to be represented at a hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it must consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence.

15. The power to dismiss a claim under rule 47 is not the same as the power to strike out a claim under rule 38 (which carries its own procedural obligations). However, in the particular circumstances of this case I considered it instructive to consider the relevant case law on the provisions regarding non-compliance with Tribunal orders and failure to pursue a claim.

16. Rule 38 of the Employment Tribunal Rules 2024 provides (insofar as is relevant) that:

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—

...

(c) for non-compliance with any of these Rules or with an order of the Tribunal;

(d) that it has not been actively pursued;

17. When considering possible sanctions for non-compliance with Tribunal orders, a Tribunal should consider all the relevant circumstances in order to justice between the parties. Relevant circumstances, as outlined by the EAT in *Weir Valves and Controls (UK) Ltd v Armitage* [2004] ICR 371, include:

17.1. The magnitude of the non-compliance;

17.2. Whether the default was the responsibility of the party or his or her representative (not relevant in this case where the Claimant is not represented);

17.3. What disruption, unfairness or prejudice has been caused;

17.4. Whether a fair hearing would still be possible; and

17.5. Whether striking out or some lesser remedy would be an appropriate response.

18. As to whether strike-out for failure to actively pursue a claim is appropriate, the Court of Appeal held in *Evans v Commissioner of Police of the Metropolis* [1993] ICR 151 that the criteria are:

18.1. That there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim; and

18.2. That the delay —

¹ <https://www.legislation.gov.uk/ukxi/2024/1155/made>

18.2.1. Will give rise to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or

18.2.2. Has caused, or is likely to cause or to have caused, serious prejudice to the respondent.

Conclusions

19. The Tribunal took all practicable steps to contact the Claimant and to give him a fair opportunity to participate in the hearing. The information available to me as to the reasons for the Claimant's non-attendance was as follows:

19.1. The reason was not that the Claimant was unaware of the hearing. He was present when the date was listed, and from what he told the clerk knew it was due to take place today, albeit he said he thought it would start at 11am.

19.2. The reason was not that the Claimant is unable to participate in video hearings given that he attended the previous preliminary hearing by CVP.

19.3. It seems unlikely that the reason was a medical issue, as the Claimant was available to speak to the clerk just after 10am and did not suggest at that point that he had any difficulty that would prevent his attendance.

19.4. The Claimant picked up the Tribunal clerk's first call but subsequently turned his phone off and did not respond to emails or a voice message. In the circumstances, it appeared that the decision not to attend was a deliberate one.

20. In deciding whether to grant the Respondent's application, I took into account the information above and the following factors:

20.1. The extent of the Claimant's non-compliance with Tribunal orders was serious. He had not complied with multiple case management directions, nor engaged with the Respondent's attempts to secure his belated compliance with the same. It appeared that he had chosen not to attend a listed hearing despite being aware and reminded that it was taking place.

20.2. This had caused disruption to the Tribunal and unfairness and prejudice to the Respondent. The Respondent had taken reasonable steps to elicit the information necessary to clarify the Claimant's claims, including in relation to jurisdictional issues. It complied with all case management directions, prepared for this preliminary hearing, and presumably incurred the costs of doing so.

20.3. Should the claims be allowed to proceed, the Respondent would be required to comply with further case management directions to disclose documents on 12 September 2025, produce a trial bundle by 17 October 2025, exchange witness statements on 31 October 2025, and prepare for a final hearing commencing on 9 December 2025. It would not be fair to expect this of the Respondent when the Claimant had not fully clarified his claims and the preliminary issues identified by Employment Judge Reid remained unresolved.

20.4. Given the relatively short timeframe remaining until the final hearing commencing on 9 December 2025 and the Tribunal's full list until then, the

Claimant's lack of compliance with orders and non-attendance at this preliminary hearing compromised the Tribunal's ability to conduct a fair final hearing on the listed dates.

- 20.5. The Claimant had not taken any steps to progress his claim since his attendance at the 5 June 2025 hearing. During that period, he had repeatedly missed important case management directions and, apparently deliberately, not attended an open preliminary hearing. In the circumstances, this delay satisfied the criterion of being "*inordinate and inexcusable*". The delay, including by non-attendance today, gave rise to a substantial risk that it was not possible to have a fair resolution of the issues in the claim (as per subparagraph 20.4 above) and had caused serious prejudice to the Respondent (as per subparagraph 20.2 above).
21. Overall, I concluded that it was proportionate to dismiss the Claimant's claims under rule 47 and that no lesser sanction would be appropriate in the circumstances.
22. If the Claimant had a good reason for not attending the hearing which I was unaware of at the time of making my decision, any potential unfairness to him was mitigated by the possibility of his making a reconsideration application.

Reconsideration

23. The Claimant has the right to apply for reconsideration of this judgment in accordance with rules 68-70 of the Employment Tribunal Rules.² The deadline for making a reconsideration application is 14 days from the date this judgment is sent to the parties (see the date at the foot of this document below).
24. If the Claimant wishes to apply for reconsideration, he should write to the Tribunal within the 14-day deadline, asking for the decision to dismiss his claims to be reconsidered and giving reasons why it would be in the interests of justice to vary this decision. His application should include or enclose:
- 24.1. An explanation for his non-attendance at the 20 August 2025 hearing, and any evidence to support that explanation.
- 24.2. An explanation why he did not send the information and documents ordered by Employment Judge Reid by the dates she set out, and any evidence to support that explanation.

Employment Judge Barrett
Date: 20 August 2025

² <https://www.legislation.gov.uk/ukxi/2024/1155/made>