



EMPLOYMENT TRIBUNALS

Claimant: Mr E Adams

Respondent: London Underground Ltd

Heard at: London East Hearing Centre (by
CVP)

On: 15 May 2025

Before: Employment Judge Whittall

REPRESENTATION:

Claimant: In person

Respondent: Mr R Winspear (Solicitor)

JUDGMENT

The judgment of the Tribunal is as follows:

The claim in its entirety, including the claims under section 13 of the Employment Rights Act 1996, section 10 of the Employment Relations Act 1999 and section 12 of the Employment Relations Act 1999, is struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospects of success.

WRITTEN REASONS

1. This matter was listed for final hearing on 15 May 2025. The claimant and respondent were both in attendance. The respondent made a strike out application for the entirety of the claim that had not yet been considered. I dealt with the strike out application as a preliminary matter.
2. The respondent had provided written submissions in support of their strike out application. The claimant had only received it the evening before. I decided to hear the respondent's oral submissions for strike out and then take a break for the claimant to read the respondent's skeleton and consider the respondent's oral

submissions before responding. The claimant agreed and, after returning from the break, confirmed that he had had enough time to prepare his response.

3. As this matter was listed for a final hearing, I had three witness statements and a 206 page bundle. I read the witness statements and the documents in the bundle that the statements referred me to. During the hearing the parties directed me to specific pages of the respondent's policy document titled 'LU trade union representative recognition and release arrangements' (the 'Policy'). The respondent accepted this Policy applied to trade union and work place representatives.

Background

4. The claimant was employed by the respondent as a train driver. His colleague, Mr Hakim, was on long term sick leave. On 25 April 2025, the respondent wrote to Mr Hakim inviting him to a case conference to discuss his long term sickness absence. The letter stated that Mr Hakim could bring a trade union representative or workplace colleague to the meeting. It did not ask Mr Hakim to provide details of who, if anyone, was accompanying him to the meeting in advance. It stated that, if Mr Hakim or his chosen representative could not attend he could ask for the meeting to be rearranged.
5. The respondent's case, which the claimant agreed with, was that this was not a disciplinary or grievance meeting as there was no threat of sanction or formal warning given or threatened. The claimant provided evidence about how stressful Mr Hakim found these meetings. This was not disputed by the respondent.
6. The initial date that was set was unsuitable due to Mr Hakim and the claimant's religious practices. Mr Hakim asked the respondent to re-arrange the meeting which was originally set for Friday 17 May 2024. That day, the respondent re-arranged it to Monday 20 May 2024. The claimant was on annual leave on 20 May 2024. No request was made to re-arrange the date, although the claimant highlighted that the date was arranged the Friday before so there was limited time.
7. The claimant spent time on his day of annual leave preparing for the meeting, attending the meeting, discussing the meeting with Mr Hakim afterwards and then reviewing the notes.
8. The claimant's position is that there is a reasonable prospects of success as he suffered a detriment, namely not being paid for, either in money or time of in lieu, for his work on his day of annual leave. He states that this would be granted if he was a trade union representative and relies on the respondent's Policy.
9. The respondent's application for strike out was on the basis that the claim had no reasonable prospects of success because the claimant was not entitled to an additional pay or time off in lieu in accordance with his employment contract or Policy.

The law

10. Under Rule 38(1)(a) of the Employment Tribunal Procedure Rules 2024 (the 'Rules') a party can make an application to strike out a claim on the basis it has no reasonable prospects of success.
11. When considering whether to strike out a claim, a tribunal must first consider whether any the relevant ground, in this case there is no reasonable prospect of success, has been established; and then, if it has been established, it must decide whether to exercise its discretion to order strike-out.
12. The requirement for a two-stage approach was confirmed in [*Hasan v Tesco Stores Ltd EAT 0098/16*](#), in which it was held that an employment judge had erred in failing to consider whether to exercise the discretion to strike out claims on the basis that they had no reasonable prospect of success.
13. Tribunals should have regard to the overriding objective of dealing with cases 'fairly and justly', set out in rule 3 of the Rules. [*rule 3 of the Tribunal Rules 2024*](#). This includes, among other things, ensuring so far as practicable that the parties are on an equal footing, dealing with cases in ways that are proportionate to their complexity and importance, and avoiding delay.
14. In [*Abertawe Bro Morgannwg University Health Board v Ferguson 2013 ICR 1108, EAT*](#), the EAT remarked that, in suitable cases, applications for strikeout may save time, expense and anxiety. However, in cases that are likely to be heavily fact-sensitive (such as those involving discrimination or public interest disclosures ('whistleblowing')), the circumstances in which a claim will be struck out are likely to be rare. Similar sentiments had been previously expressed by the House of Lords in [*Anyanwu and anor v South Bank Student Union and anor \(Commission for Racial Equality intervening\) 2001 ICR 391, HL*](#).
15. In many cases, it will be neither necessary nor appropriate for a tribunal to hear witness evidence when considering whether to strike out a claim or response. In [*Kwele-Siakam v Co-Operative Group Ltd EAT 0039/17*](#) the Appeal Tribunal suggested that witness statements, oral evidence and lengthy cross-examination are unsuited to a strike-out application. Furthermore, where a tribunal is considering striking out a claim on the ground that it has no reasonable prospect of success, case law has established that the claim should be taken at its highest and the judge should avoid conducting a mini-trial of the issues; and, where there is a crucial core of disputed facts, that the issues will need to be determined by evaluating the evidence at a full hearing
16. In [*A v B and anor 2011 ICR D9, CA*](#), for example, the Court of Appeal held that an employment tribunal was wrong to strike out an employee's claims of sex discrimination and unfair dismissal on the basis that they had no reasonable prospect of success. The Court concluded that there was a 'more than fanciful' prospect that the employer would not be able to discharge the 'reverse' burden of proof to show that the employee's dismissal was not sex discriminatory.

17. In [Mbuisa v Cygnet Healthcare Ltd EAT 0119/18](#) the EAT overturned an employment tribunal's decision to strike out M's claim of automatically unfair constructive dismissal for raising health and safety concerns under [S.100 ERA](#). The EAT noted that strike-out is a draconian step that should be taken only in exceptional cases. Such an exceptional case might arise where it is instantly demonstrable that the central facts in the claim are untrue or there is no real substance in the factual assertions being made. However, the tribunal should take the claimant's case at its highest, unless contradicted by plainly inconsistent documents.
18. Section 13 of the Employment Rights Act 1996 (the '1996 Act') protects workers from unauthorised deductions from their wages. Wages are defined in section 27 of the 1996 Act as '*any sums payable to the worker in connection with his employment*'.
19. Section 10(6) of the Employers Relations Act 1999 (the '1999 Act') states an employer shall permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers in accordance with a request under subsection (1). Section 13 of the 1999 Act details that a disciplinary hearing is a hearing that could result in the administration of a formal warning, the taking of some other action or the confirmation of a warning issued. A grievance hearing is one concerning the performance of a duty by an employer in relation to a worker.
20. Section 12 of the 1999 Act protects a worker from detriment on the grounds that the worker accompanied another worker pursuant to a request under section 10 of the 1999 Act.

Decision and reasons

21. As this is a strike out application I have to take the claimant's case at its highest. There were no significant factual disputes. The claimant had concerns about the respondent's actions in re-arranging the meeting but these are not relevant to his claim.
22. I have decided there is no reasonable prospects of success for the following reasons.
23. Firstly, and this is applicable to all claims, the Policy does not entitle trade union representatives to time off in lieu or overtime when attending a case conference whilst on a rest day or annual leave. The policy expressly excludes this. On the first page of the print out of the Policy it states: '*If a representative accompanies an employee to a case conference which falls on their rest day or whilst on annual leave, then they are not entitled to receive the day back.*' The Policy is clear on this point.
24. The claimant relies on a later part of the Policy which states: *Re-instatement of an annual leave (AL) or banked rest day(s) (BRD) will only be granted when the*

attendance of a representative at a meeting is at the express request of management and If the rostered annual leave occurs on the same day that the representative has been released, an alternative annual leave day can be taken by mutual agreement . However, these provisions are an exception to the general rule.

25. Furthermore, the provisions Mr Adams relies on are when management have expressly requested a trade union, or work place representative, to attend. The letter stated that Mr Hakim was entitled to bring a trade union or work place representative to the meeting if he chose to do so, this was not management requesting him to bring a representative.
26. The claimant points out that the letter did not request details of who would be attending in advance, contrary to normal practice. However, even a request for details of who Mr Hakim had arranged to attend does not mean that management are requesting attendance, they are simply asking for details if the person decided to attend. Mr Hakim was entitled to attend without a trade union or work place representative so it cannot be said they were requiring the claimant, or any other trade union or workplace representative.
27. Even if the letter had asked for details of who will be attending Mr Hakim, if anyone, providing these details would not have meant that management expressly requesting rep attendance. Mr Hakim was entitled to attend by himself.
28. Turning to the specific claims and dealing with the claim of unauthorised deduction from wages. As detailed above, I need to look at what is properly payable. The claimant acknowledges there is no contract provision setting out that he has an entitlement additional wages in these circumstances. He is only relying on the Policy. However, as detailed above, the policy does not grant additional wages in these circumstances. The claimant was paid for his day annual leave as he is entitled to be. There is no reasonable prospect of the claimant succeeding in establishing he has had an unauthorised deduction from his wages.
29. Turning to sections 10 and 12 of the '1999 Act', this mandates an employer to permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers to a disciplinary or grievance meeting and protects a worker from detriment due to accompanying a worker to a disciplinary or grievance meeting.
30. I have noted Mr Hakim's evidence about how distressing the situation was for him and the reasons for his absence. However, the claimant's case is that this was a case conference. The claimant pointed out it was not the first case conference, but that does not mean it was not a case conference or it was a disciplinary hearing. There is no evidence, even taking the claimant's case at it's highest that, whilst this was an important meeting, it was a grievance or disciplinary hearing.
31. Taking the claimant's case at it's highest, which essentially was that the meeting was stressful for Mr Hakim, there is no reasonable prospect of determining that

this was a disciplinary or grievance meeting and therefore covered by the 1999 Act.

32. Having decided that the respondent has established that the claimant has no reasonable prospect of success, I then considered carefully whether to exercise my discretion to strike the case out.
33. I considered that both parties were present and prepared for the final hearing. Arguably minimal extra resource is required to hear the claim in full. However, even an extra half a day is significant Tribunal resource where a claim has no reasonable prospect of success.
34. This matter is not fact sensitive. I have made my decision taking the claimant's case at its highest. Even if I went on to make factual findings around the circumstances of the postponed hearing and whether or not the relevant manager was told, the claimant was never required to attend the meeting, no representative, trade union or otherwise, was. In light of my decision, this factual dispute is not necessary to resolve to decide the case.
35. Fundamentally there is no legal basis for the claim and so dealing with this case fairly and justly does not require me to move to a final hearing and hear oral evidence before making a decision. There is nothing in the overriding objective that means I should proceed in these circumstances and so I have decided to allow the strike out application

**Employment Judge Whittall
25 July 2025**