



EMPLOYMENT TRIBUNALS

Claimant: Mr N Williams

Respondent: Counterline Limited

HELD AT: Liverpool (in chambers)

ON: 23 September 2025

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: Did not attend

Respondent: Did not attend

JUDGMENT

The judgment of the Tribunal is that:

- (1) The claim is struck out under Employment Tribunal Rule 38(1)(d) because it has not been actively pursued.

REASONS

Background to the preliminary hearing

1. This preliminary hearing to consider the respondent's applications seeking strike out of the claim under Rule 38(1)(c) and/or Rule 38(1)(d) and the claimant's application seeking a stay was considered in chambers based upon the written applications and submissions made by both parties.

The commencement of proceedings

2. These proceedings arose from the claimant's employment as a fork lift truck driver with the respondent from 1 May 2019 until his dismissal on 9 July 2024.

3. He presented a claim form to the Tribunal on 12 July 2024 following a period of conciliation with ACAS from 23 May to 18 June 2024. He identified in section 8.1 of his claim form, complaints relating to constructive unfair dismissal, disability discrimination, redundancy payment, breach of contract, holiday pay and unlawful deduction from wages. In section 8.2, he referred to a sham redundancy and a failure to consult and decision to dismiss being motivated by his disclosure of disability.
4. Reference to the employer failing to provide a safe working environment was also mentioned, but no complaint which the Tribunal had jurisdiction to hear could be discerned from this description.
5. The claimant identified a disability in section 12 of the claim form which was described as carpal tunnel syndrome which may affect his ability to write. No representative was identified at this stage. No medical evidence was provided in support of this disability, although the claimant asserted that the claim form *'took 11 hrs to fill'*, when describing his disability in section 12.
6. The claim was subject to the usual initial vetting process by the Tribunal and the claim brought against the proposed additional respondents Andrew Perry (Director), Simon Dutton and Andrew Shillock were rejected in accordance with Rule 10(1)(c) (2013 Rules of Procedure), because early conciliation numbers were not provided for each person. However, the claim against the remaining respondent employer company was unaffected by this decision.
7. A Notice of Claim was sent to the respondent on 30 July 2024 requiring the presentation of a response by 27 August 2024. A Notice of Preliminary Hearing Case Management (PHCM) was also sent on the same day listing the PHCM for 10 January 2025.

The response

8. A response was sent to the Tribunal on 27 August 2024 by their instructing solicitors. It described a complicated employment history from April 2023 until the claimant's resignation. They were aware of the claimant having issues with his then partner and Merseyside Police attended the respondent's factory to arrest the claimant, and reference was made to previous serious offences. This followed with further attendances by the Police and the claimant leaving the factory before they could speak with him. A lengthy period of absence then followed which was understood to have been taken as sick leave, with sick notes being submitted for a shoulder injury and then carpal tunnel syndrome.
9. The respondent submitted that the claimant sought to return to work and the respondent asked for a doctor's note to confirm his fitness given that his job involved driving a fork lift truck. They confirmed that mention was made of a potential redundancy exercise, but that the claimant resigned before the process could begin.

10. The respondent resisted the claim and referred to numerous grievances having previously been raised by the claimant and that they had been dealt with correctly. They disputed constructive unfair dismissal, breach of contract and unlawful deduction from wages, holiday pay and disability discrimination. They submitted that they would have conducted a redundancy exercise, but the claimant resigned before it began, as the respondent wished to resolve the outstanding grievances first. Further particulars were sought regarding the disability discrimination complaint. The respondent provided as full a response and grounds of resistance as could reasonably be expected from them at this stage of the proceedings, and it was accepted by the Tribunal on 3 September 2024.

The claimant's reaction to the response

11. On 4 September 2024, the claimant sent an email to the Tribunal and respondent acknowledging the response describing their submissions as 'lies' and that:

'...This commitment of lies by respondent does formulate perjury and will constitute a criminal matter as it is deliberateky [sic] committed through a formal procedure as the ET3 form.

'I reserve the right to have this filed as part of the case and for the tribunal to fully understand the respondent is lying and ask the tribunal hold the respondent liable to perjury for each and every lie.'

The use of the words 'lying', 'lie' or 'lies' were used in relation to the respondent's response on 8 occasions in what was a relatively short email. The response had been presented to the Tribunal in circumstances where the respondent was represented by a firm of solicitors.

The involvement of the claimant's father and subsequent progress of the case

12. On 18 December 2024, the claimant's father David Williams sent an email to the Tribunal seeking a postponement of the PHCM because the claimant was a prisoner in HMP Liverpool under prisoner number A9473DA. He did not confirm that he was instructed to represent the claimant, whether the claimant had been in prison when previously corresponding with the Tribunal and how he communicated with him. However, he explained that the claimant had (presumably a criminal) hearing listed for 27 January 2025 and no release date scheduled.
13. Judge Holmes considered the matter and directed that the PHCM listed for 10 January 2025 be postponed. However, he cautioned that a stay could not be granted until there was more information available concerning the claimant's ability to pursue his claim. Judge Holmes treated the claimant's father as being on record as his lay representative and all communication would be sent to him. He ordered that the claimant's father update the Tribunal of the present position in the criminal proceedings by 5 February 2025 and reminded him that he must copy in the respondent to all communications that he sends. The failure to copy in the respondent was an ongoing issue which vexed the

Tribunal in subsequent correspondence from the claimant's father and required continual reminders.

14. On 29 January 2025, the claimant's father explained that the claimant was still held on remand, with a trial set in the criminal proceedings for 5 February 2025. He explained that the proceedings did not relate to the facts of these employment proceedings and requested that the respondent not be informed of the criminal case as it is of a '*private nature*'. Not surprisingly, the respondent was already aware of the criminal proceedings and sought an update on 6 February 2025, questioning whether the claimant wished to continue with his employment claim.
15. On 3 March 2025, the claimant's father confirmed that he was the claimant's lay representative. He explained that the claimant had entered a guilty plea in relation to the charges made against him, he remained on remand and sentencing would take place on 20 March 2025. Again, he emphasised the private nature of the criminal proceedings and that he would not copy in the respondent.
16. Judge Tobin was clearly exasperated by the claimant's attitude towards the criminal proceedings and on 16 April 2025 sent him a letter with the following comments:

'...You persist in writing to the Tribunal in circumstances that such correspondence ought to be copied to the respondent. I understand why you do not want the respondent's [sic] to know this information but the Procedure Rules are clear and your refusal to acquiesce this impinges upon our supposed neutrality.'

'You are not assisting your son by continuing to ignore clear instructions. Please copy all future correspondence to the respondent.'

'I will mark our file with a caution for all correspondence not copied to the respondent so as to ensure that we treat/are seen to treat all parties fairly and with transparency. Future Judges may not read this material or if they do they will note my concerns.'

The applications for stay and strike out

17. The claimant's father sent an email on 16 April 2025 enquiring about the possibility of a stay being granted. The respondent replied on 22 April 2025 having this time been copied into the claimant's father's correspondence. They made an application for strike out on the basis of Rule 37(1)(c) (2013 Rules), as neither the claimant nor his representative appeared to have complied with the postponement order for the original PHCM dated 10 January 2025. However, the main ground for making the application was under Rule 37(1)(d) on the basis that it is no longer being properly pursued.
18. The claimant's father then sent a further email to everyone on 29 April 2025 and explained that sentencing had not taken place on 20 March 2025. Blame was attached to the claimant's barrister failing to provide a written basis for

plea and a change of representation had taken place. The claimant's father acknowledged a failure to comply with Rule 37(1)(c), which he attributed to his inexperience. In reply to Rule 37(1)(d), he said the following:

'...as both the the [sic] Respondents representative and the Employment Tribunal are fully aware Nigel cannot himself at present actively pursue this matter due to circumstances beyond his own control and which also have no connection to his claim and for this reason a temporary Stay of Proceeding may be the way forward.

'I am not sure why the Respondents Legal representative is attempting to use my inexperience and Nigel's current situation as a means to strike out his claim rather than let the claim be fully tested in court. However I stress that Nigel is confident that his claim is very strong and he has supportive evidence to back up his claim, therefore for justice to be seen to be done Nigel very much needs his day in court.'

19. On 22 May 2025, Judge Allen confirmed that it is not appropriate to stay the case indefinitely as there was no indication when the claimant would be available. He therefore listed the case for a preliminary hearing with at least 4 months' notice to allow the claimant some additional time. The preliminary hearing would consider the application for strike out and that the claimant could make written representations, or his father could attend to make them for him. A Notice of Hearing was sent on the same day, with notice of today's PH.
20. On 1 September 2025, the respondent's solicitors expressed their sympathy for the claimant's father but requested that he confirm whether he would agree to the application for strike out being considered by a Judge on the papers at an earlier date.
21. The claimant's father replied on 3 September 2025 and in a lengthy email explained that the claimant would not make any written representations because:

'...he has no access to his phone or to any of his emails. This lack of access to his information regarding this claim makes a written submission meaningless because he would be trying to do a written submission from memory on matters that occurred more than a year previously. He could therefore not be accurate on timelines or remember precisely the interactions between his self and the Respondent nor would he be bale to provide any of the documentary proof he has to support his claim. all of the points mean that Nigel whilst in prison can not provide any meaningful written response to support his claim for reasons that are currently beyond his control.'

He said that the claimant intends to pursue his claim as soon as he can and referred to an automatic 50% release date of 12 June 2026 with a suggestion of an earlier November release date in 2025. No documentary evidence was provided in support. He suggested that the proceedings could resume by mid July 2026. He offered the respondent and the Tribunal the opportunity to correspond with the claimant directly at HMP Liverpool.

22. Judge Slater replied on 22 September 2025 and explained that these matters would be considered at the PH today, including the postponement. She acknowledged the claimant's father's difficulties in being able to access the PH by CVP (it was remote hearing) and informed the parties that they notify the Tribunal by 9am today should they wish to attend to make submissions or for the Judge to deal with the applications on the papers in chambers.
23. This decision was restated by Regional Employment Judge Franey on 22 September 2025 and the claimant's father confirmed that he would be content for a decision to be reached on the papers and in the absence of a reply from the respondent, it is assumed that they agreed with this approach.

Law

24. The Employment Tribunal Procedure Rules 2024 updated the 2013 Rules, but Rule 37 was simply renumbered as Rule 38. The following provisions are relevant in this case:

'(1) The Tribunal may, on its own initiative or on the application of a party, strike out all or part of the claim...on any of the following grounds –

(a)...

(b)...

(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)...

'(2) A claim...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)...

'(4)...

25. In the House of Lords case of Birkett v James [1978] AC 297, it was held that claims should not be struck out unless there has been intentional and contumelious default (ie the default is disrespectful or abusive to the tribunal), or inordinate and inexcusable delay leading to a substantial risk that a fair trial is not possible, or serious prejudice is caused to the respondent. The case of Evans Executors v Metropolitan Police Authority [1992] IRLR 570 established that the principles set out in Birkett could apply to cases brought in the Employment Tribunal.
26. In Rolls Royce v Riddle [2008] IRLR 873, Lady Smith sitting in the EAT cautioned parties reading into authorities on strike out that its severity did not mean it is never appropriate to use it. This case involved the claimant misrepresenting grounds that he could not attend a hearing on medical grounds and then failed to give reasons why his claim could not be struck out.

This was described as a persistent disregard for the Tribunal, its procedures, and the respondents' interests', making strike out inevitable.

27. In Evans (above), Hoffman LJ explained that when applying Birkett principles to Tribunal cases, attention should be given to a less tolerant attitude existing within this jurisdiction because:
- a) That the nature of Tribunal cases and the nature of remedies available were such as to make it intrinsically desirable that there should be an expeditious hearing; and,
 - b) That the disparity between the limitation periods (usually 3 months in Tribunal cases, as opposed to three or six years in civil cases) indicated that Parliament intended Tribunal cases to be prosecuted as speedily as possible.
28. However, as well as considering the extent of the delay, prejudice must also be considered. In Leeks v University College London Hospitals NHS Foundation Trust [2024] EAT 134, Tayler HHJ identified questions that were likely to be relevant when considering whether there is a risk that a fair trial is jeopardised by a witness not being available.
29. In Khan v London Borough of Brent UKEAT/0002/18, HHJ Tucker held that a point had been reached where it was no longer just for a claimant to have access to the Tribunal for his claim and that a litigant in person cannot be exempt from compliance with procedures or from engaging in the litigation process to pursue a claim.

Discussion

30. I observed that this was a claim which related to a dismissal which arose from a resignation on 9 July 2024 with immediate effect. However, the claimant had begun his early conciliation several weeks earlier on 23 May 2024 and a certificate had been issued on 18 June 2024, which was several weeks before the resignation was notified.
31. The proceedings were issued on 12 July 2024 and despite a PHCM having been originally listed for 10 January 2025, no material progress has taken place in these proceedings since the claimant replied to the respondent's response immediately following the Tribunal serving it upon him.
32. It is not clear when he was first taken into custody and remanded in prison prior to pleading guilty in 2025. However, by 18 December 2025, the claimant's father requested a postponement of the PHCM. While he suggests (without evidence), that a November release from prison might be possible, in reality, we are probably looking at the earliest date when the claimant will be released to be June or July 2026. However, this date too had been not been supported by evidence and appears to be based upon a presumption rather than a firm decision.

33. I am not sure from the available papers what documentation was provided in support of the claimant instructing his father to represent him as a lay representative. It appears to be based upon the claimant's father notifying the Tribunal of these circumstances from December 2024 and January 2025 and Judge Holmes accepted that this was the case in the Tribunal letter dated 9 January 2025. However, assuming that the claimant has given his father instructions to represent him, his role has been little more than being a conduit for information concerning the criminal process. I appreciate that the claimant's father says he was too unwell to attend the hearing today, but he has been involved with this case for 10 months. My concern today is that if we delay the proceedings in the way that he has suggested, with a stay being issued, the earliest date when a meaningful PHCM can take place will be July 2026. This will be 2 years since the date of dismissal and the date when proceedings were commenced.
34. In terms of the respondent's application under Rule 38(1)(c) (R37(1)(c) as was under the 2013 Rules), I accepted that the claimant's father had effectively complied with the order to provide the necessary information concerning the criminal proceedings. I do acknowledge however, his initial unwillingness to share this information with the respondent under the mistaken belief that it related to a private matter was unhelpful. Nonetheless, there was material compliance, and this limb of the respondent's application is refused.
35. Turning to the question of Rule 38(1)(d) (R37(1)(d) as was), it was necessary for me to set out the chronology of events within this judgment above. At first glance, it would appear that in his role as the claimant's advisor, his father has provided ample correspondence and has engaged with the Tribunal concerning the need to stay or delay the progress of the case until his son is released from prison. He has also provided grounds for resisting the respondent's applications seeking strike out.
36. However, by assuming the role of representative, the claimant's father would be expected to take a more proactive role in ensuring the claim is progressed than simply arguing that the claimant is in prison and nothing can be done until he is released. The release date is of course something which has not yet been confirmed or at least supported by documentation from the Prison Service or indeed the claimant himself setting out his expectations regarding this event.
37. I acknowledged that his father refers to him being unable to use electronic correspondence such as emails, etc' or being able to telephone. However, he has failed to provide full details of what steps he has taken with the claimant (as his 'client' so to speak) or the Prison Service, concerning what access he can have to remote hearings, writing materials and postage or meetings with his father at HMP Liverpool. It is noted that his father does not live too far away from the prison, and it would be expected that some visiting arrangements could have been made.
38. I take judicial notice of the fact that prisoners are able to participate in proceedings even if it is unlikely that they would be permitted to physically

attend the Tribunal. It is commonplace for prisoners to attend remotely by CVP and the claimant's father appears to have made no attempt to meet with him and provide papers so that he can take meaningful instructions.

39. As it is, many months have elapsed since the Tribunal became aware of the father's involvement in this case and no attempt has been made to obtain basic information from the claimant so that some sort of case management could take place in order that proceedings could have progressed. I am confronted with a situation where the claimant has either failed to properly instruct his father as his representative or his father has been unwilling to act as an effective representative on his behalf. This is not the fault of the respondent, their representatives or the Tribunal and it is reasonable to expect the claimant and his father to cooperate to do the best that they can to avoid unnecessary delay. As it is, the argument has been that because the claimant is in prison, nothing can happen in the proceedings. No correspondence has been provided from the Prison Service confirming the limitations imposed on the claimant and instead, the claimant has asserted (according to his father), that he can only participate with the information held on his phone which currently unavailable to him.
40. While I have a great deal of sympathy for the claimant's father and the circumstances, he has found himself in, he has not assisted the claimant in progressing the case and is unwilling to do anything more than update the Tribunal concerning the claimant's possible release dates and confirm nothing can happen until July 2026 at the earliest.
41. I must remind the claimant and his father that Tribunal proceedings operate within a jurisdiction where time limits are short, and resolution is expected to take place relatively quickly. While delays do exist within the system they do not provide that parties should automatically be given lengthy periods where little activity can take place. The claimant has not described any physical or mental health issue preventing the progression of this case and nor has he provide evidence supporting complete inactivity by him until his release date.
42. Consequently, for the reasons that I have given above, I must conclude that the claimant has been responsible for an inordinate and inexcusable delay in these proceedings.
43. I am concerned that the claimant is already suggesting to his father that his memory is struggling to recall the events alleged within the proceedings, but I accept that potentially access to documentation might have assisted matters. The claimant has made no attempt based upon the available evidence to explore what access the Prison Service would permit in this regard. Other than this information provided by the claimant's father I did not hear evidence from either party that the delay in progressing this case would lead to a substantial risk that a fair trial is not possible.
44. However, I have also considered the question that there is a risk of serious prejudice being caused to the respondent, by the next PHCM not taking place until July 2026 or later. The respondent has now been in a position where it has been waiting for a PHCM to take place since they presented their

response on 27 August 2024. In proceedings, there is not only the question of the difficulties encountered by the claimant, but challenges faced by a respondent and their proposed witnesses in being expected to reply to serious allegations and to expend significant time and resources in defending the claim and ultimately having to attend a multi-day hearing at an unknown date in the far future. In this case, the claimant has responded to the response with an aggressive and strident reply making unnecessary and repeated allegations of dishonesty against the respondent. He then appears to have instructed his father to represent him and provide a series of holding responses without evidence of proactively seeking to explore what steps he can take while in custody. This contradictory behaviour has caused unnecessary prejudice to the respondent who has been faced with an angry reply to the response without any prospect of a final hearing taking place within a reasonable period where both parties can give evidence and resolve this dispute.

45. Consequently, I must conclude that there has been serious prejudice caused to the respondent and their application that the claim has not been actively pursued should be allowed and the claim struck out in accordance with Rule 38(1)(d).
46. This of course means that these proceedings are brought to a close and there is no need to consider the claimant's application that the proceedings should be stayed.

Employment Judge Johnson

Date 23 September 2025

JUDGMENT SENT TO THE PARTIES ON
Date: 31 October 2025

FOR THE TRIBUNAL OFFICE

Notes

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