EMPLOYMENT TRIBUNALS

Claimant: Mr N Wignarajah

Respondent: John Lewis Plc

Heard at: Croydon (CVP) **On:** 26 November 2025

Before: Employment Judge Wright

REPRESENTATION:

Claimant: Did not attend and no written representations
Respondent: Ms J Laxton - counsel

JUDGMENT AT PRELIMINARY HEARING

1. There is a final hearing listed in this case for four days, due to start on the 8 December 2025.

2. There is a history to this claim. The claim was presented on the 4 June 2022. There were case management hearings on the 22 March 2023 and 26 July 2023. A four day final hearing was listed on the 22 March 2023 to commence on the 25 June 2024. There was therefore over a year's notice of that final hearing. Case management Orders were made to progress the claim to the final hearing.

3. On the 10 May 2024 the claimant applied for a postponement of that final hearing. His reason was that he had surgery scheduled for the 10 June 2024. The respondent opposed that application and the claimant renewed it when the date of surgery was changed to the 20 June 2024.

4. The postponement request was granted on the 13 June 2024.

5. A notice of hearing dated 5 August 2024 relisted the final hearing for the 8 December 2025.

6. Matters had not progressed satisfactorily. On the 16 October 2025 the respondent applied for a strike out of the claim, on the basis of unreasonable conduct and that it was not actively being pursued.

7. In the meantime, the claimant had presented a second claim (2304217/2025). In the main, that claim related to his resignation with the dismissal taking effect on the 17 April 2025 and a claim of victimisation.

8. When the respondent applied to strike out the claim the claimant's focus was upon consolidating the two claims. It is fair to say, the claimant engaged with matters which were of concern to him, but not on substantive matters, which needed addressing in order to ensure the case was ready for the final hearing in December 2025.

9. This caused the Tribunal (Employment Judge Hart) to write to the parties on the 21 November 2025. The first matter addressed was that the two claims would not be consolidated as this would jeopardise the December 2025 hearing. It was considered the second claim post-dated the first claim and that almost three years separated them.

10. The Tribunal's letter went on:

> *'I note that the claimant has refused to agree a final hearing bundle. Further the parties have been seeking to agree a final bundle since 8 November 2024. It is simply not acceptable to attempt to have a hearing using two different bundles. The parties MUST agree a single bundle. That is to contain all the documents that the claimant wants and all the documents that the respondent wants, in chronological order, indexed and paginated. The inclusion of a document in the bundle does not mean that the other party agrees with it. For ease of reference the medical information can be in a separate section (or if significant in a separate bundle). I have listed this matter for an urgent public preliminary hearing on 26 November 2025 at 2pm by CVP to confirm with the parties that they are / will be ready for the hearing and make orders to ensure that they are ready and resolve any outstanding matters in relation to agreeing the hearing bundle and exchange of witness statements. If necessary and appropriate, the Judge at that hearing may consider the respondent's application dated 16 October 2025 to strike out the claim on the grounds of unreasonable conduct. It is suggested that the claimant helps himself by agreeing the bundle with the respondent in advance of this hearing.'*

11. The claimant wrote on the 22 November 2025 and informed the Tribunal he had a hospital appointment at 2pm on the 26 November 2025.

12. On the 25 November 2025 the Tribunal re-timed the hearing to 10am to accommodate the claimant. At 14:54 the claimant wrote to the Tribunal and stated that notwithstanding the adjustment, he was unable to attend the hearing, due to his ongoing medical condition and that he was currently unfit for work. He provided a Med 3 statement of fitness for work, which stated he

was unfit for work (not unfit to attend a Tribunal hearing) due to obstructive sleep apnoea syndrome. He provided confirmation of his appointment at 2pm on the 26 November 2025. A second letter dated 30 July 2025 referred to a sleep study on the 17 July 2025; which stated 'No action for GP'. It referred to the claimant starting treatment for obstructive sleep apnoea of CPAP.

13. The claimant also applied to postpone the final hearing listed for December 2025. His reason was stated: *'In light of my medical condition, and the resulting inability to attend the preliminary hearing on 26 November 2025, I respectfully apply for the final hearing listed for 8–11 December 2025 to be postponed to a later date. I ask that the Tribunal considers this request alongside the medical evidence provided, so that I am afforded a fair and reasonable opportunity to participate when I am medically able to do so.'*

14. The only medical evidence was confirmation of an outpatient appointment with the Respiratory Physiology on the 25 November 2025. The outcome of the sleep study dated 30 July 2025 (no action for the GP). Along with the Med 3 statement.

15. It would appear the claimant intended to attend the outpatient appointment on the afternoon of the 26 November 2025 and hence, the Med 3 certificate was not preventing him from doing so. If he was well enough to attend that appointment, it follows he would have been well enough to attend a short video Tribunal hearing.

16. The application to postpone the final hearing was refused. The only document which was relevant to that application was the Med 3 certificate. The claimant had had that document since the 6 November 2025 and if he relied upon that document for the postponement, then his application had not been made at the earliest opportunity. It seems that it was only the listing of this urgent preliminary hearing, which prompted him to apply to postpone it and the final hearing. There was no substantive evidence as to why the final hearing should be postponed. All of the surrounding facts, including the previous postponement were taken into account.

17. The claimant had stated: '*For the avoidance of doubt, I wish to confirm that I am not refusing to attend the hearings. I remain committed to pursuing my claim and am seeking only a reasonable opportunity to participate when my health permits*'. Yet he was not pursuing his claim and he was not making efforts to progress the claim and to attend hearings. Reliance upon a Med 3 certificate is not a good enough reason to postpone a final hearing.

18. The respondent confirmed that despite the Tribunal's letter of the 21 November 2025, the bundle was not agreed and therefore, witness statements had not been exchanged.

19. The respondent applied to dismiss the claim under Rule 47. In the alternative, to strike it out under Rule 38. The respondent's position was that the claimant was acting unreasonably in not agreed a bundle for over a year, which jeopardised the final hearing. Although it was acknowledged that the claimant had not disengaged from the proceedings, it was submitted that he had not actively pursued his claim. He had advanced matters of his own interest, but he had not engaged in actively pursuing the claim to the listed final hearing.

20. The respondent also acknowledged that if the final hearing was postponed, it was not likely to be relisted before 2028. This is a 2022 claim.

21. Non-attendance – Rule 47

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.

22. Striking out – Rule 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—

> *(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).

23. On the issue of striking out the claim, the Tribunal also had regard to the authorities summarised in Smith v Tesco Stores Limited [2023] EAT 11, which referred to the overriding objective setting out:

33. …

> *A Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, these Rules. The parties and their representatives* ***shall assist the Tribunal to further the overriding objective*** *and in particular* ***shall co-operate generally with each other and with the Tribunal****.*

34. It is important to remember that parties are not merely requested to assist the employment tribunal in furthering the overriding objective, they are required to do so.

[emphasis in the original]

…

36. The EAT and Court of Appeal have repeatedly emphasised the great care that should be taken before striking out a claim and that strike out of the whole claim is inappropriate if there is some proportionate sanction that may, for example, limit the claim or strike out only those claims that are misconceived or cannot be tried fairly.

37. Anxious consideration is required before an entire claim is struck out on the grounds that the manner in which the proceedings have been conducted by or on behalf of the claimant has been scandalous, unreasonable or vexatious and/or that it is no longer possible to have a fair hearing.

38. In Bolch Burton J considered the approach to be adopted in considering whether it is appropriate to strike out a claim because of scandalous, unreasonable or vexatious behaviour and concluded that the employment tribunal should ask itself: first, whether there has been scandalous, unreasonable or vexatious conduct of the proceedings; if so, second (save in very limited circumstances where there has been wilful, deliberate or contumelious disobedience of an order of the employment tribunal), whether a fair trial is no longer possible; if so, third, whether strike out would be a proportionate response to the conduct in question.

39. This approach was adopted by the Court of Appeal in Blockbuster Entertainment Ltd v James, [2006] EWCA Civ 684, [2006] IRLR630, where Sedley LJ stated:

> *This power, as the employment tribunal reminded itself, is a draconic power, not to be readily exercised. It comes into being if, as in the judgment of the tribunal had happened here, a party has been conducting its side of the proceedings unreasonably. The two cardinal*

conditions for its exercise are either that the unreasonable conduct has taken the form of deliberate and persistent disregard of required procedural steps, or that it has made a fair trial impossible. If these conditions are fulfilled, it becomes necessary to consider whether, even so, striking out is a proportionate response.

40. In considering proportionality the Court of Appeal noted:

18. The first object of any system of justice is to get triable cases tried. There can be no doubt that among the allegations made by Mr James are things which, if true, merit concern and adjudication. There can be no doubt, either, that Mr James has been difficult, querulous and uncooperative in many respects. Some of this may be attributable to the heavy artillery that has been deployed against him, though I hope that for the future he will be able to show the moderation and respect for others which he displayed in his oral submissions to this court. But the courts and tribunals of this country are open to the difficult as well as to the compliant, so long as they do not conduct their case unreasonably.

41. In Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167 it was held:

55. Further, in this context, a fair trial is a trial which is conducted without an undue expenditure of time and money; and with a proper regard to the demands of other litigants upon the finite resources of the court

42. Choudhury J (President) made a very important point about what constitutes a fair trial in Emuemukoro v Croma Vigilant (Scotland) Ltd [2022] ICR 327:

19 I do not accept Mr Kohanzad's proposition that the power can only be triggered where a fair trial is rendered impossible in an absolute sense. That approach would not take account of all the factors that are relevant to a fair trial which the Court of Appeal in Arrow Nominees [2000] 2 BCLC 167 set out. These include, as I have already mentioned, the undue expenditure of time and money; the demands of other litigants; and the finite resources of the court. These are factors which are consistent with taking into account the overriding objective. If Mr Kohanzad's proposition were correct, then these considerations would all be subordinated to the feasibility of conducting a trial whilst the memories of witnesses remain sufficiently intact to deal with the issues. In my judgment, the question of fairness in this context is not confined to that issue alone, albeit that it is an important one to take into account. It would almost always be possible to have a trial of the issues if enough time and resources are thrown at it and if scant regard were paid to the consequences of delay and costs for the other parties. However, it would clearly be inconsistent with the notion of fairness generally, and the overriding objective, if the fairness question had to be considered without regard to such matters.

24. As per the above, the Tribunal is required to consider Rule 3, the overriding objective, when applying the Rules and to deal with cases justly and fairly.

25. The Tribunal did not see the claimant's email stating he would not be attending until approximately 9:10am. The clerk was asked to contact the claimant and to establish if he was going to attend. The clerk tried to call him two or three times. There was no answer.

26. This was a public preliminary hearing, listed at short notice in order to ensure the claim was ready to be heard on the 8 December 2025. The claimant was unavailable and as a result of that, the hearing was re-timed. Notwithstanding that, the claimant indicated he still would not attend the hearing. He cited medical reasons. While there is no doubting he is certified as unfit for *work* by his GP, that does not address his ability to attend this hearing or indeed, the final hearing. Furthermore, the GP only owes a duty to claimant as their patient. There is no wider duty owed to the Tribunal or the respondent.

27. It is noted that the Med 3 is dated 6 November 2025, yet the claimant had not applied at that time for a postponement of the final hearing.

28. There is no substantive and independent medical evidence to address the claimant's fitness to attend hearings during November and December 2025. Furthermore, there does not appear to have been any progress since the June 2024 hearing was postponed. No steps appear to have been taken to ensure the claimant's fitness for the final hearing.

29. The Tribunal does not accept the claimant was unable to attend this hearing and to participate in what was listed as a two hour public preliminary hearing.

30. The Tribunal was therefore persuaded to dismiss the claim under Rule 47 due to the claimant's non-attendance. He was aware of the hearing and applied for a postponement. The hearing was retimed to accommodate him. The claimant then sent an email on the 25 November 2025 to state that he was not attending the hearing and to apply for the final hearing to be postponed. He did not apply to postpone this preliminary hearing. Even if it could be assumed that he was applying for a postponement by referring to the Med 3 and the hospital letters, he did not answer the call when the clerk attempted to contact him. He knew a hearing was due to start at 10am on the morning of the 26 November and that a postponement had not been granted.

31. In the alternative, it is accepted that striking out a claim or a response is a draconian power.

32. The has been unreasonable conduct of the proceedings by the claimant, in not agreeing a bundle, particularly after Employment Judge Hart's instruction. Agreeing a bundle should not be contentious. Based upon the medical evidence the claimant relied upon, he had not promptly applied for the final hearing to be postponed. This preliminary hearing had been listed in an attempt to get the claim back on track and for the final hearing to be effective.

There has been a wilful disregard of the Tribunal's Orders, particularly in respect of the bundle. That resulted in the respondent's strike out application of the 16 October 2025. That coupled with the claimant's non-attendance at this hearing, resulted in a fair hearing no longer being possible. As to whether a strike out is a proportionate response, there has been no substantive progress since November 2024. The fault lies with the claimant. Based upon the claimant's conduct thus far, the Tribunal has no confidence in him that he will co-operate in future. He had one last opportunity as per the letter of the 21 November 2025 and he did not take it.

33. For those reasons and due to the claimant's non-attendance at this hearing, a fair trial in the December 2025 trial window is no longer possible. There has been no progress on agreement in respect of a bundle for over a year. It is not a particularly onerous task to agree which of the documents listed or disclosed, should be included into the final bundle. The claimant takes issue with the respondent's documents. That is no reason not to agree to a bundle. The documents should go into the bundle, with the caveat that they are the subject of a dispute, which can, if relevant, be addressed at the final hearing. This was the resolution Employment Judge Hart proposed to break the impasse.

34. The protracted proceedings are onerous for the respondent and it has incurred costs in attempting to finalise and agree the bundle, making applications as a result of the claimant's failure to co-operate and then in attending this hearing.

35. Due to the claimant's conduct to date, there is no reason to suppose that he would in the very short term (no more than a week) reach agreement in respect of the bundle. He was however, unavailable at this hearing to explain what his objection is to the respondent's suggestions.

36. As a bundle has not been agreed, witness statements cannot be finalised and exchanged. The end result of that is that a fair hearing is no longer possible in the December 2025 trial listing.

37. In the additional alternative, the claimant has not actively pursued his claim. He has not engaged in reasonable suggestions from the respondent, with the result that the respondent applied for the claim to be struck out on the 16 October 2025. As referred to above, the claimant has engaged in his case. He presented a second claim on the 17 April 2025. He has made consolidation applications in respect of the two claims. He has applied for a postponement of this hearing and of the final hearing. What he has not done and where the failure lies, is to progress and actively pursue this claim. What urgently needed to be done, was to agree a bundle and to focus on the preparation for the final hearing.

38. It does appear that the claimant was not committed to the December 2025 final hearing going ahead and has done what he could to jeopardise and prevent that hearing. His tactics have not worked and the claim is struck out on the alternative basis that it has not been actively pursued.

39. The respondent applied for its costs in respect of the preparation and attendance at this hearing. The application is under Rule 74(2)(a) – that the claimant's conduct of these proceedings was unreasonable. The respondent seeks the sum of £250.

40. As the claimant did not attend the hearing, it was not possible to have regard to his ability to pay any costs which are ordered to be paid. The respondent understands the claimant is unemployed. A separate Direction will be sent in this regard.

Approved by:

Employment Judge Wright

26 November 2025

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at https://www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/