



EMPLOYMENT TRIBUNALS

Claimant: O Ndukwe

Respondent: Fortress Operations Ltd

STRIKE OUTJUDGMENT

1. The claimant's unfair dismissal; whistleblowing and discrimination claims against the respondent are struck out under Rule 38 of the Employment Tribunal Procedural Rules 2024.

REASONS

2. At a hearing on 22 October 2025, the claimant's claims were struck out in their entirety as follows:
 - a) The unfair dismissal on the basis that the claimant lacked the requisite period of continuing service under section 108 of the Employment Rights Act 1996 and had not provided any evidence that she had jurisdiction to bring that claim.
 - b) Her discrimination claims were struck out under Rule 38(1)(a) as she has no reasonable prospect of establishing that it is just and equitable to extend the time limit for bringing them.
 - c) The claimant's whistleblowing claim was struck out Rule 38(1)(a) as she has no reasonable prospect of establishing grounds to extend the time limit for bringing her whistleblowing claim
 - d) Additionally, the complaints of age discrimination; race discrimination; discrimination on the grounds of religion or belief; harassment; whistleblowing and unauthorised deduction from wages were struck out under Employment Tribunal Rule 38(1)(a) because they have no reasonable prospect of success.
3. On 11 November 2025, the claimant requested written reasons as follows:

"I reject this judgement, because it is grossly founded on the basis of judicial misconduct and intentional act to inflict insolence and abuse even in my function. Therefore, I am rejecting this judgment I need written reasons."

Law

4. The power to strike out part or all of a claim is contained in r.38 of the Employment Tribunal Procedural Rules 2024 which says:

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).
5. The power involves a two-stage test. Firstly, one or more grounds in r.38 must be established; if they are, a decision must be made as to whether to exercise the discretion in the particular case.
6. For discrimination claims, the starting point is Anyanwu and anor v South Bank Student Union and anor [2011] ICR 391 UKHL. Here, the House of Lords emphasised that discrimination claims are often fact-sensitive and require close examination of the evidence at a full merits hearing.
7. Further caution has been advised in Bahad v HSBC Bank plc [2022] EAT 83 against striking out claims before a full merits hearing.
8. There are nonetheless caveats to the general approach of caution. In Ahir v British Airways plc [2017] EWCA Civ 1392 CA, Underhill LJ said at [16]:

“Employment tribunals should not be deterred from striking out claims, including discrimination claims, which involve a dispute of fact if they are satisfied that there is indeed no reasonable prospect of the facts necessary to liability being established, and also provided they are keenly aware of the danger of reaching such a conclusion in circumstances where the full evidence has not been heard and explored, perhaps particularly in a discrimination context.”
9. The principles gleaned from more recent cases, such as Cox v Adecco & Others [2021] ICR 1307 and Xie v E'quipe Japan Ltd [2024] EAT 176 are:
 - i. Strike out is draconian and is only appropriate in clear cut cases;

- ii. There is a public interest in discrimination claims proceeding to a full hearing, nevertheless there is no bar to strike out in discrimination claims;
- iii. Where there is a core dispute of fact, strike out is generally inappropriate;
- iv. The claimant's case should generally be taken at its highest; and
- v. Taking a discrimination case at its highest involves assuming that the facts will be established but not necessarily that an inference of discrimination will be made out.

Procedural history

10. On 11 February 2025, the Tribunal wrote to the claimant asking her to better particularise her discrimination and harassment claim and was sent a standard letter detailing the questions she should respond to.
11. She was also invited to say whether she agreed or objected to her two claims being consolidated.
12. The claimant sent a response on 25 February 2025 in which she did object to the consolidation of her claims but did not say why.
13. In the same correspondence, she referred to "attachments" and said she had responded to the case management order to better particularise her claim but nowhere did she answer the questions mentioned above, or otherwise clarify what her discrimination and harassment complaints were about.
14. For instance, she did not say, in a way that can be understood, what the treatment was that formed her complaints, nor why she believes what happened to her was because of any kind of discrimination.
15. A Case Management Hearing then took place before EJ Feeney on 11 August 2025. The claimant did not attend. The EJ believed this was due to technical issues, as the claimant had tried to log on over the weekend. He asked her to confirm the reasons for her non-attendance in an unless order captured in the Case Management Order ("CMO") sent to parties, albeit no separate unless order was sent out.
16. The hearing proceeding in her absence and discussions were had about the lack of clarity with which the claims are currently pleaded; the claimant not having the requisite two years of qualifying service to bring an unfair dismissal claim and the significant point that the claims are 18 months out of time, EJ Feeney made a further unless order that the claimant should respond to the previous order of 11 February 2025 requiring further and better particulars of her claim.
17. A strike out letter was sent to the claimant alerting her to the prospect of her claim being struck out under Rule 38.
18. The claimant did respond on 1 September 2025 within the deadline sent by EJ Feeney and sent further correspondence on 15 October 2025.

19. In neither of these documents are her claims any clearer. She mentions various criticisms of the Judge.

Discussion

Unfair dismissal

20. This claim was struck out on the basis that the Tribunal does not have jurisdiction to hear it. This is because on the claimant's own timeline she does not have the requisite two years of service, working with the respondent for just under one year.
21. Nowhere in her three sets of correspondence does she say why this claim can nonetheless be brought, even where the issue of time limits was expressly mentioned by EJ Feeney in his CMO and case summary.

Remainder of the claims

22. The remainder of the claims were strike out under r38(a) as having no reasonable prospects of success.
23. The primary reason for this is the claimant's delay in bringing her claims. They are significantly out of time, it being just under 18 months between dismissal and the claimant presenting her claims to ACAS.
24. The claimant had a reasonable opportunity to respond to this point. EJ Feeney set out the difficulty she faced in his case summary; a strike out letter was then sent to the claimant inviting her to respond.
25. No where in her two responses that follow, and other correspondence to the Tribunal, does she deal with the reasons for delay, or indeed acknowledge that the claim is out of time.
26. I therefore considered she had no reasonable prospects of succeeding in persuading a Tribunal to grant an extension of time in respect of either of her discrimination complaints or her whistleblowing complaints.
27. This is the primary reason I considered that her claims have no reasonable prospect of success.
28. In addition I concluded that there were additional reasons to strike out her claims under r.38(a) as follows:
29. Her claims are extremely difficult to follow and to understand, due to the terminology and phrasing the claimant has used, such as referring to 'writs of mandamus'; referring to acts of violence and hate speech by a lawyer then in no clear way saying what the act is and how that relates to her claim in this Tribunal.

30. The claimant describes herself as a professor and is a graduate from Reading University. She has not disclosed any language barrier that would impede her ability to communicate her claims clearly, nor any disability that might impede her communication.
31. I had regard to the claimant being a litigant in person and likely unfamiliar with the procedural process of bringing a claim.
32. I also had regard to the fact that she has tried to communicate with the Tribunal and maintains she has been wrongly treated in some way by the respondent.
33. However, the Case Summary on the CMO is clear, as is Tribunal correspondence to her, in setting out what the claimant is to clarify.
34. She was warned that the consequence of not doing so may be that her claims are struck out.
35. In light of this, I considered that the claimant had a reasonable opportunity to respond to the respondent's strike out application up until the point of this hearing.
36. A further opportunity was then afforded the claimant to explain her claims in person.
37. She was told by the Tribunal to attend in person in light of the apparent technical issues she experienced with CVP.
38. The claimant was aware of this direction yet chose not to attend, criticising the Judge for ordering her to attend. She then sent a communication to the Tribunal indicating she wished to be paid her travel costs to attend.
39. In response to an email from the Tribunal on the morning of the hearing asking whether she would be attending today, she said she had not received a response to her previous email, and implicitly, therefore she would not be attending.
40. She did not attend and that appears to have been her voluntary choice. She did not say that she could not afford to attend for example, and – she acknowledged in correspondence on the day that the order explicitly said she must attend.
41. I considered her failure to attend because she had not received a response to be unreasonable in light of the history of this case.
42. The claimant was then given the opportunity to attend by CVP, in light of her physical non-attendance, and again she chose not to do so. The hearing therefore proceeding in her absence under Rule 47.
43. The final consideration I had regard to is the merits of the claims themselves, insofar as they are known.

44. The respondent says it dismissed the claimant as she did not provide evidence that she had a visa or permission to work in the UK beyond January 2022. Nowhere does she dispute this, therefore there did not appear to be a factual dispute on the evidence before me.
45. For all of these reasons, I considered the claims had no reasonable prospects of success. I did not go on to consider the other grounds the respondent relied on, such as not actively pursuing the claim and failure to comply with tribunal orders.
46. Regarding the second stage of the test, for the reasons I have given, I did exercise my discretion to strike out the claims in their entirety. The claimant had ample opportunity to clarify her claims, and when given the opportunity to clarify them in person, she chose not to attend to do so.

Approved by:

Employment Judge McCooey

9 December 2025

JUDGMENT SENT TO THE PARTIES ON

10 December 2025

FOR THE TRIBUNAL OFFICE

Notes

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 here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/