



EMPLOYMENT TRIBUNALS

Claimant: Mr Laxman Akula

Respondents: (1) John Lewis Plc
(2) Ms A Brosnan-Guers
(3) Ms R Rodrigues

DECISION ON APPLICATION FOR RECONSIDERATION (Rules 68 – 71 Employment Tribunal Rules 2024)

1. I have seen an email dated 25 March 2025 from Mr Mustafa Ibrahim who is acting as the Claimant's representative. The email was sent to me on 7 April 2025 and I have treated it as an application for reconsideration of the judgment dated 4 March 2025 and sent to the parties on 11 March 2025.
2. The judgment strikes all the claims of unfair dismissal, race discrimination, disability discrimination, breach of contract, whistleblowing/health and safety detriment and claims for holiday pay and unpaid wages against all or any of the Respondents.
3. I have decided to CONFIRM the judgment because I consider that there is no reasonable prospect of it being varied or revoked. THE APPLICATION FOR RECONSIDERATION IS REFUSED.
4. The claims are struck out under Rule 38(1)(e) of the 2024 Rules because I consider that it is no longer possible to have a fair hearing of any of the claims in this case. This means that the Claimant may not continue to pursue these claims and they are all dismissed. The principal reason for taking this decision is that the Claimant has not attended in person any one of the four preliminary hearings which have taken place since his claim was filed on 12 May 2022. He has sent no medical or any other evidence which specifically addresses the question whether and /or when there is any possibility in the reasonably foreseeable future that he might participate in these proceedings.
5. Mr Ibrahim's email does not set out any grounds for the application on behalf of the Claimant for reconsideration except to say that he and the Claimant did not receive any telephone calls on the day of the last hearing on 4 March 2025 when neither of them attended. My notes of the Preliminary Hearing record that Mr Akula was telephoned by the clerk at 10.10 am and received no answer (the hearing was listed to start at 10 am). The Tribunal has no telephone number on record for the representative.

6. Secondly, Mr Ibrahim asks me to reconsider a different decision which is the decision taken by EJ Gardiner on 3 March 2025 not to agree a postponement of the Hearing which was requested the day before at 18.08 on 2 March 2025 in an email from the representative who writes, *'Because Mr Akula needs me to attend with him to support him, we won't be able to attend.'* The reason for the non- attendance of the representative is because he is recovering from a hip replacement.
7. I do not agree to change the decision to refuse a postponement. It was a decision taken by a different Employment Judge for a valid and clearly explained reason in a letter sent by email to the parties from the Tribunal which states:- *'The postponement request is refused. The public Preliminary Hearing listed to take place on 4 March 2025 will proceed as previously directed. There is no medical evidence supporting the application for postponement. The basis of the postponement application concerns the health of the Claimant's representative, not the health of the Claimant himself. In an email dated 20 March 2025[sic] the Claimant indicated that he was able to proceed to represent himself given the ill health of Mr Ibrahim at that point. During the hearing on 4 March 2025 the Tribunal will ensure, so far as it can, that the Claimant is on an equal footing with the Respondent and can effectively represent himself at the hearing.'* This should read 20 March 2024.
8. In response to the refusal of a postponement Mr Ibrahim sent an email dated 3 March 2025 at 20:42 saying that the Claimant would *'try his best to attend alone, to give him the opportunity to speak.'* The Claimant did not in fact attend nor could he be contacted.
9. At the Preliminary Hearing (PH) on 4 March 2025 (at which, I reiterate, neither the Claimant nor his representative attended, despite reasonable steps being taken to ascertain the reason for their absence) I considered again whether to adjourn the Hearing but decided, pursuant to Rule 47 of the 2024 Rules to proceed with the Hearing in their absence.
10. The Respondents were all represented at the PH by Mr D Hobbs of counsel and he presented a skeleton argument and made submissions. There is a PH Bundle of 245 pages. Mr Hobbs points out in paragraphs 1 and 2 of his Strike Out application on behalf of the Respondents that during the last three years of his employment with the First Respondent in 2019-2021 the Claimant's attendance rate at work was very low (page 65 of the PH Bundle); he was dismissed for unsatisfactory attendance on 2 December 2021 and filed his ET1 claim on 12 May 2022. In summary, the Respondents submit that the Claimant hardly attended at work for three years and has not attended at the tribunal proceedings for almost another three years. This is six years of non-engagement with his employment situation and its aftermath consisting of claims initiated by him which he does not properly pursue and where there is no indication of future meaningful participation.
11. I am mindful of the fact that the Claimant makes serious allegations against the two individual Respondents which have been hanging over them, with no resolution of any kind, for three years since ACAS early conciliation began on 1 March 2022.

12. The PH on 4 March 2025 was listed for three hours to consider the Respondents' strike out application dated 28 August 2024 to which the Claimant did not respond. Employment Judge Massarella wrote to the parties on 24 September 2024 (page 130) stating that he was considering striking out the Claimant's case on the basis that it was no longer possible to have a fair hearing.
13. The Notice of Hearing was sent to the parties on 19 December 2024. The Claimant therefore had two and a half months' notice of this serious and significant application by the Respondents and did not apply for a postponement until two days before the PH.
14. The Claimant has not personally attended at any one of the previous preliminary hearings. On 30 June 2023 he did not attend but was represented by a solicitor who is now not on the record because proper instructions could not be obtained from the Claimant. On 27 September 2023 he did not attend but Mr Ibrahim did appear on his behalf. The hearing on 20 December 2024 did not take place because of lack of judicial resource but the Claimant had already requested a postponement on 18 December 2024 because Mr Ibrahim had experienced recent surgery and could not attend. There was in effect a quasi-stay between 20 December 2024 and 4 March 2025 in which period the Claimant took no further action to progress his case. The draft List of Issues on page 100 prepared with the assistance of EJ Jones on 27 September 2023 has not been the subject of any clarification or particularisation by the Claimant. Neither the Claimant nor Mr Ibrahim attended on 4 March 2025.
15. Respondents' counsel's skeleton argument sets out in paragraphs 8-21 a detailed factual history of the lack of progress caused by the Claimant in these proceedings. I accept the accuracy of that summary and need not repeat it here. A similar detailed timetable prepared by their solicitors is in the Respondents' application for strike out on page 240 of the PH Bundle and I accept that it is factually accurate.
16. Thirdly, the Claimant's representative confirms that he and the Claimant are '*both suffering ill health at the moment*' and that it is unfair if another future hearing date is not granted. It is not clear that the Claimant and his representative fully understand that all his claims have been dismissed and may not be pursued any further. I have declined to change that decision.
17. In any event, Mr Ibrahim gives no date in the foreseeable future when either of them may be fit to attend any hearing of any kind or prepare for a final hearing.
18. There was no medical evidence produced to me on 4 March 2025 or attached to Mr Ibrahim's email of 25 March 2025 giving the reasons why the Claimant could not attend or stating any prognosis as to when he and/or Mr Ibrahim might be fit to do so.
19. The Tribunal first ordered the production of medical evidence from the Claimant's GP on 30 June 2023 at a case management hearing conducted by EJ Jones (pages 95 of the digital PH Bundle). That medical evidence was to specifically address the ability of the Claimant to pursue these proceedings and to prepare or assist in the preparation of documents putting forward his case. At the preliminary hearing on 27 September 2023 EJ Jones repeated the requirement for a GP report/letter

covering the matters already set out in her order of 30 June 2023 and emphasising the obligation to obtain and send evidence of the Claimant's '*present state of physical and mental health and an up to date prognosis*' No such GP report addressing these specific issues particularly the question of prognosis has been obtained by the Claimant and sent to the Tribunal and the Respondents.

20. There are two GP letters which the Tribunal has been sent. The first short letter is at page 188 of the PH Bundle dated 5 February 2024 which refers to his severe anxiety and depression and cardiac problems stating '*he is asymptomatic from a cardiac point of view at the moment...he is still very keen to pursue his case and feels that he is well enough to do this*' (my emphasis). The Claimant has however not pursued his case at any subsequent hearing or pursuant to tribunal orders.
21. The second GP letter dated 26 June 2024 on page 231 confirms the Claimant's continuing 'severe' mental health difficulties and concludes '*I am unable to give any prognosis.*'
22. I consider that there is no medical evidence which gives any indication of when, if at all, the Claimant will be able to meaningfully engage in the finalisation of a List of Issues, disclosure and preparation of documents and participation (he is a key witness) in the final hearing.
23. It is deeply unfortunate for him that the Claimant after more than three years is apparently too unwell to pursue his claims and/or instruct others to assist him. There is no evidence that this situation will change in the reasonably foreseeable future; it is not just a question of delay but of indefinite delay. In addition, the Claimant has been persistently in default of tribunal orders despite being given the appropriate judicial explanations and guidance and extra time for compliance. This is highly likely to be repeated with the result of further prejudice to the Respondents and fruitless expenditure of judicial resources.
24. There is an obvious real and substantial prejudice to the Respondents faced with this situation including the time, cost and resources expended on this litigation. The dismissing manager has already left the employment of the First Respondent and the recollection of the remaining witnesses will inevitably fade. The Second and Third Respondents have no particulars of the allegations which the Claimant pursues against them.
25. In all the circumstances of this case I have decided to strike out all the claims because a fair trial for both parties is no longer possible. I decline to vary or revoke that decision and the Claimant's application for a reconsideration of my judgment is therefore refused.

Employment Judge B Elgot
Dated: 25 April 2025