



EMPLOYMENT TRIBUNALS

Claimant: Mr S Fernandes

Respondent: dnata Catering UK Ltd

Heard at: Reading via video

On: 6 January 2026

Before: Employment Judge MJ Smith

Appearances

For the claimant: Mr Hassan N'Dow (representative)

For the respondent: Mr Edward Nuttman (solicitor)

JUDGMENT

1. The complaints of unfair dismissal, redundancy payment, breach of contract and unauthorised deduction of wages are struck out under Employment Tribunal Rule 38(1)(a) because it has no reasonable prospect of success.
2. The complaints of unfair dismissal, redundancy payment, breach of contract and unauthorised deduction of wages are struck out under Employment Tribunal Rule 38(1)(c) because the claimant has not complied with a Tribunal Order dated 4 October 2025.

REASONS

Introduction

3. The claimant is employed as a demi/sous chef by the respondent and commenced his employment on 18 August 2014. The claimant remains employed by the

respondent as at the date of the hearing. Early conciliation started on 28 June 2024 and ended on 2 July 2024. The claim form was presented on 31 July 2024.

4. The response was presented on 20 February 2025 after permission was given for more time. The respondent defends the claim.
5. A private Preliminary Hearing was listed on 26 September 2025 before Employment Judge Hawksworth with all parties in attendance. During that hearing EJ Hawksworth explained the legal test for victimisation and whistleblowing to the claimant and his representative. An order was made requiring the claimant to write to the respondent and the tribunal providing the following information by 7 November 2025 as set out in paragraph 13 of the order dated 4 October 2025 and sent to the parties on 28 October 2025:

13.1 If he thinks anything is wrong or missing from the 'factual complaints' section or the case summary below, he must explain what it is;

13.2 He must give answers to the questions which are underlined in paragraphs 51 and 53 in the 'legal complaints' section of the case summary below;

13.3 He must explain why he did not put the information which is in the factual complaints section (and his further information) in his claim form when he submitted it on 31 July 2024. This is so that the tribunal can decide whether Mr Fernandes should be given permission to amend his claim, if needed.

6. The claimant and his representative were asked to particularise any claims in relation to victimisation and/or whistleblowing in accordance with paragraphs 51 and 53 of the order dated 4 October 2025. The claimant's representative sent an email dated 3 November 2025. The email made reference to a document dated 6 July 2023 which he asserted complied with the order. This document formed part of a bundle of documents which was before the judge at the preliminary hearing on 26 September 2025.
7. Paragraphs 51 and 53 of the order are reproduced below:

51. If Mr Fernandes says that any of the detrimental treatment in his factual complaints was done because of him doing any protected act, then he must say:

51.1 Which of the factual complaints in paragraph 40? (for example, 40.1, 40.2...)

51.2 When did he do a protected act (for example, making a complaint of unlawful discrimination)?

51.3 Who did he make it to?

51.4 What did he say or do which he says was a protected act (for example, what did the complaint say)?

53. If Mr Fernandes says that any of the detrimental treatment in his factual complaints was done because of him making any protected disclosure, then he must say:

53.1 Which of the factual complaints in paragraph 40? (for example, 40.1, 40.2...)

53.2 When did he make a protected disclosure?

53.3 Who did he make it to?

53.4 What did he say?

53.5 Why does he say his disclosure was in the public interest?

53.6 Which of the categories of information a) to f) in the box above does he say his disclosure was about?

8. A further preliminary hearing was set for 6 January 2026 to address the issues identified in the Order of 4 October 2025.

Law

9. Rule 38 of the Employment Tribunal Procedure Rules 2024

38.— Striking out

(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;

(c) for non-compliance with any of these Rules or with an order of the Tribunal

10. The case of ***Cox v Adecco Group UK & Ireland and ors*** 2021 ICR 1307 set out guidance for how the Tribunal should approach cases which involve whistleblowing. Including whether the claim turns on disputed factual matters and whether there has been a reasonable attempt at identifying the issues in the claim.

11. The case of ***Weir Valves and Controls (UK) Ltd v Armitage*** 2004 ICR 371 EAT set out guidance on the approach to be taken by the Tribunal when the strike out argument relates to non-compliance with an order of the Tribunal.

The evidence before me

12. The Tribunal had the following documents at the Preliminary Hearing:

- a) Respondent's Preliminary Hearing bundle of 51 pages
- b) Respondent's Submissions on strike out of 6 pages
- c) Claimant's index to bundle of 2 pages
- d) Bundle prepared by claimant of 46 pages
- e) Email sent by the claimant's representative on 6 January 2026 replying to the respondent's application for strike out.

Strike out application

13. The respondent made an application to strike out the claim on two grounds namely rule 38(1)(a) on the grounds that the claim had no reasonable prospects of success and rule 38(1)(c) on the grounds that the claimant had failed to comply with the order dated 4 October 2025.

Rule 38(1)(a) Claim has no reasonable prospects of success

14. The respondent's submissions related to the insufficient particularisation of the claim such that the respondent would be unable to respond properly and that the claimant had been afforded sufficient time and opportunity to provide particulars but had failed to do so in breach of the order dated 4 October 2025.

15. The claimant's argument was that the email dated 3 November 2025 and the document dated 6 July 2023 represented the particulars of the claimant's claim which were sufficient particularisation such as to comply with the order dated 4 October 2025.

16. The claimant had no further documentation to rely on as part of his claim and stated that all details of the claim were before the Tribunal.

17. The document dated 6 July 2023 was before EJ Hawksworth at the Preliminary Hearing on 26 September 2025 when the order was made requiring particularisation of the claim. Having reviewed this document the tribunal found that it does not contain the level of detail required by paragraphs 51 and 53 of the order of 4 October 2025.

18. The email dated 3 November 2025 post-dated the order of 4 October 2025 and referenced paragraphs 52 and 53 of the order. There was no reference made to paragraph 51 in the email. The email did not address the information required by the order and did not particularise the nature of any claim or the legal basis for any claim.

19. The claimant in his claim form had stated that further particulars would be provided which is additional evidence that the claim was not particularised sufficiently. The claimant and his representative were provided with additional time and guidance on

how to particularise the claim by EJ Hawksworth at the Preliminary Hearing on 26 September 2025 and in the order of 4 October 2025. The claimant and his representative did not provide any additional evidence or documentation to address the issues raised at the previous Preliminary Hearing.

20. The tribunal found that there was insufficient particularisation of the claim to enable the tribunal to determine the legal basis for the claim. The claim had no reasonable prospect of success. The tribunal found that it would be in accordance with the overriding objective in Rule 3 to strike out the claim. This is because the claimant and his representative had reasonable time and opportunity to particularise the claim and failed to do so such as to enable a tribunal to determine the legal basis for the claim.

Rule 38(1)(c) Claimant has failed to comply with a Tribunal Order dated 4 October 2025

21. The respondent's application was made on the basis that the claimant had failed to comply with the order dated 4 October 2025, in particular paragraphs 51 and 53 which required the claimant and his representative to particularise the claim.

22. The claimant and his representative resisted the application on the basis that the order had been complied with via the email dated 3 November 2025 and the document dated 6 July 2023.

23. The tribunal considered the guidance in the case of **Weir Valves and Controls (UK) Ltd v Armitage** 2004 ICR 371, EAT as part of its consideration.

24. The tribunal found that the email and the document did not sufficiently particularise the claim such as to comply with paragraphs 51 and 53 of the order. This was a significant non-compliance as the respondent was unable to respond appropriately to the claim due to not knowing the legal basis for the claim. The failure to comply was a result of the claimant and his representative having failed to follow the wording of the order dated 4 October 2025. The judge explained the legal tests for a number of potential claims and gave detailed directions at the hearing and in the order to enable the claimant and his representative to particularise any claim. The claimant and his representative failed to particularise any claim as per the directions set out in the order.

25. This failure has caused disruption to the proceedings as it has added delay to the proceedings and frustrated the respondent's ability to respond to the claim. It would not be possible to have a fair hearing as the tribunal would be unclear as to the nature and legal basis of the claim and the respondent would not be able to respond appropriately to the claim. There is no other lesser remedy which would be appropriate as the failure to particularise is a fundamental defect in the claim.

26. I considered the overriding objective under Rule 3 to deal with matters justly and expeditiously. The claimant and his representative were given ample time and opportunity to detail the claim. EJ Hawksworth spent time detailing how to

approach matters and set this down in writing. Were this claim to proceed to a final hearing the tribunal would be unable to deal with the claim due to the lack of particularisation as a direct result of the failure to comply with the order dated 4 October 2025.

**Approved by
Employment Judge MJ Smith
26 January 2026**

Judgment sent to the parties on:

16 February 2026

For the Tribunal:

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/