



# **EMPLOYMENT TRIBUNALS**

**Claimant:** Ms D Fakoya

**Respondent:** Iceland Food Limited

## **RELIEF FROM SANCTION – NO HEARING**

The Claimants' application for relief from sanctions is refused. The claims remain dismissed.

## **REASONS**

### **Procedural History**

1. This is the Claimant's application for relief from sanction following her claim being dismissed pursuant to Rule 39(1) on 21 March 2025.
2. This followed the Claimant's failure to comply with an Unless Order dated 4 November 2024, that required the Claimant to provide certain documents to the Respondent and the Tribunal by 11 November 2024 including:
  - a. the letter of 12 August 2024 that the Claimant said was sent to the Tribunal and the Respondent;
  - b. the Schedule of Loss setting out how much compensation for lost earnings or other losses the Claimant is claiming and how the amount has been calculated; and
  - c. copies of the parts of the Claimants GP and other medical records that are relevant to whether the Claimant had a mobility impairment and depression at the time of the events the claim is about and any other evidence relevant to whether the Claimant had the disability at the time.
3. It was made clear in the Unless Order that failure to comply would result in the claims being dismissed without further order in accordance with Rule 39(1).
4. Following the Claimant's failure to materially comply with the Unless Order, a judgment confirming strike-out was sent to the parties under cover of a letter dated 21 March 2025. That letter explicitly advised the Claimant that an application to set aside the judgment could be made within 14 days of the date

of the notice, provided that it was in the interests of justice to do so.

5. On 25 March 2025, the Claimant contacted the Tribunal by telephone in response to the dismissal of her claim. She disputed that she had failed to submit the requested documents but provided no evidence to support this. During that call, the Tribunal reminded the Claimant again that any application to set aside the judgment must be made within 14 days of the notice.
6. On 23 April 2025, the judgment and cover letter were re-sent to the Claimant by post.
7. The application for relief from sanctions was made by the Claimant by email on 2 July 2025.

### **The Law**

8. Under Rule 39(2), a party whose claim, response or reply has been dismissed, in whole or in part, under Rule 39 may apply to the Tribunal in writing, within 14 days of the date that the notice was sent under Rule 39 (1), to have the order set aside on the basis that it is in the interests of justice to do so.
9. Rule 39(3) states that unless an application under Rule 39(2) includes a request for a hearing, the Tribunal may determine it on the basis of written representations.
10. Rule 5(7) states that, the Tribunal may, on its own initiative or on the application of a party, extend or shorten any time limit specified in these Rules or in any decision, whether or not (in the case of an extension) it has expired. The discretion to extend time must also be exercised judicially, consistently with the overriding objective under Rule 2.

### **Determination without a hearing**

11. By letter dated 3 September 2025, the parties were invited to indicate whether the application required an oral hearing or whether it may properly be determined on the papers. Neither party requested an oral hearing. Accordingly, the Tribunal was satisfied that the application can be determined on the basis of written submissions and documents as permitted under Rule 39(3).

### **Conclusion**

12. In the application for relief from sanctions, the Claimant submitted that the judgment should be set aside as she had complied with the Unless Order. In particular, the Claimant cited the following in support of her application:
  - a. That she had provided medical evidence from an A&E admission, and the final referral for physiotherapy which she states she is still undergoing;
  - b. That the schedule of loss was restricted as the Respondent had failed to provide the Claimant's payslips which were electronically stored and her access had been terminated; and
  - c. That the breakdown for one payment was not provided and the outstanding hours paid due to COVID absence was not disclosed.

13. The application was submitted outside the 14-day time limit under Rule 39(2). The delay is substantial (103 days) and unexplained. The Tribunal is satisfied that the Claimant received a copy of this judgment as the Claimant called the Tribunal on 25 March 2025 regarding its contents. There is therefore no question that the application for relief from sanctions is significantly out of time.
14. The Respondent reminded the Tribunal of the history of this claim and made the following submissions in response:
  - a. There is a significant risk of prejudice to the Respondent as a result of the time that has elapsed since the claim was first filed and that time lapse is entirely the Claimant's fault. The key witnesses are no longer employed by the Respondent.
  - b. The Claimant has failed to comply with the same order on five separate occasions and there is no reason to think it would now be complied with.
15. In light of the Tribunal's finding that the application was not in time, the Tribunal then considered whether or not it should exercise its discretion to extend time under Rule 5(7). The Tribunal determined that it should not.
16. When reaching its decision the Tribunal considered the following factors:
  - a. The Claimant has not provided any explanation for the delay in making her application for relief from sanctions;
  - b. The Claimant has not provided any further explanation for her earlier failure to comply with the Unless Order, beyond what was already submitted on 18 November 2024. Those reasons were already fully considered by the Tribunal prior to issuing the strike-out judgment; and
  - c. Whether there are any exceptional circumstances that might justify an extension under Rule 5(7), and found none.
17. Even if an application to set aside the judgment had been made in time (or if time was extended), that application would still fail.
18. The requirements of the Unless Order were not materially complied with. The Claimant was clearly advised as to what she needed to provide and by when during the hearing on 4 November 2024. The Claimant failed to comply with that Unless Order and has not adduced any further evidence that the Unless Order was complied with. The Tribunal is also aware of the long procedural history of this claim and the Claimant's approach to compliance with orders and persistent delay. In furtherance of Rule 2 and the overriding objective, it would not be in the interests of justice, nor a proportionate use of the Court's resources to set aside the decision.
19. The Claimant's application for relief from sanction is refused. It is out of time, and it would not be in the interests of justice to grant an extension.
20. The Claimant's complaints of unfair dismissal, unlawful deduction of wages, and disability discrimination remain struck out.

**Case No: 2303241/2022**

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**Employment Judge Yardley**

Date: 30 September 2025