



EMPLOYMENT TRIBUNALS

Claimant: Mrs A Petrachi Birzoi

Respondents: Al-Khair Foundation
Mr S Yusaf
Mr A Hossain

JUDGMENT having been given to the parties on 9 and 10 February 2026 and written reasons having been requested by the claimant on the 19 February 2026 in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, by the claimant, the following reasons are provided:

WRITTEN REASONS

1. The claimant made an application that the respondents' response be struck out under Rule 38. The application and accompanying documents ran to 132-pages.
2. The claimant submitted that the respondent had ignored Tribunal Orders, only responded after judicial intervention, complied late and selectively and only engaged in the process when threatened with sanctions.
3. There had been preliminary hearings on the: 4 December 2024; 23 June 2025; and 2 October 2025. The June hearing was caused by the respondents' failure to provide a response to the second claim. The October 2025 hearing was necessary as the respondents had not complied with an Order for disclosure and with the subsequent Order to confirm they had complied.
4. At the October 2025 hearing, Employment Judge Leith noted that it was unacceptable for represented party to adopt 'such an apparently lax attitude to compliance'. He declined to list a preliminary hearing to consider striking out the response as pragmatically it was unlikely the Tribunal would be able to do so before the final hearing. In addition, he made the point that at a preliminary hearing, it would be considered likely that a fair trial was still possible at a final hearing (which at that time was still some months in the future). He considered any application would be best considered at the outset of the final hearing.

5. Furthermore, Employment Judge Leith declined to make an unless order as it would be difficult to measure compliance and such an order would be unsuitable. Instead, he made further Case Management Orders. That the respondents would send an updated disclosure bundle to the claimant by the 23 October 2025, to send a draft joint bundle to the claimant by the 27 November 2025 and the parties must agree the content of the final bundle by the 11 December 2025. The final date was the respondents must send the claimant an electronic copy of the bundle by the 19 December 2025. The respondents, in reality Peninsula (the respondents' representative) did not do this.
6. There was a further failure by the respondent, which caused Employment Judge Leith to write on the 3 November 2025:

The Respondents' expressed position is that all relevant documents have been disclosed. I cannot order a party to disclose that which does not exist.

The Respondents must by 18 November 2025, send to the Tribunal and the Claimant a witness statement, endorsed by a statement of truth, detailing the searches undertaken by the Respondents in order to comply with their disclosure obligations. The witness statement may come from one of the Respondents personally, or from their representative. I consider that it is proportionate for me to order the Respondents to do so given their previous history of poor compliance with Tribunal orders within this litigation, and in order to satisfy the Tribunal that a thorough disclosure exercise has been carried out.

I remind the parties of what I said in paragraph 4 of the Hearing Summary from the Preliminary Hearing of 2 October 2025. The Tribunal may properly draw inferences from a failure to disclose relevant documents, if it becomes apparent during the course of the trial that further documents did, in fact, exist but were not disclosed (or not disclosed timeously). The Tribunal may also properly draw inferences from the non-existence of a document which the Tribunal might ordinarily expect would have existed at the relevant time. In that context, the non-disclosure of a document includes the redaction, without proper cause, of a disclosed document.

The parties can address the Tribunal, at final hearing, regarding any inferences which they say ought to be drawn. Further lengthy correspondence regarding disclosure is unlikely to be of assistance to the Tribunal or the parties. The parties are reminded of their obligation, under rule 3 of the Employment Tribunal Rules of Procedure, to assist the Tribunal to further the overriding objective and to cooperate with each other. The overriding objective of the Tribunal is to deal with the case fairly and justly, which expressly includes dealing with it in a proportionate manner.

The Tribunal's Orders of 2 October 2025 remain in force and must continue to be complied with.

7. Peninsula failed to comply with this Order. The witness statement produced in purported compliance was defective.
8. The bundle the respondent produced was also defective. It was not sent to the claimant until two working days before the hearing. This disadvantaged the claimant as witness statements were Ordered to be exchanged on the 9 January 2026, four weeks before the final hearing.
9. Electronic copies of the bundle and witness statements were not provided to the Tribunal. This was a breach of the Order that Peninsula were to provide electronic copies to the Tribunal 14 days in advance of the hearing. Mr Williams for Peninsula arrived on the morning of the hearing with hard copies.
10. It seems that Mr Williams' predecessor had left Peninsula after the hearing on the 2 October 2025. It is not clear when Mr Williams took over conduct of the case. He did not however inform the Tribunal that he had replaced his predecessor.
11. Even based upon a cursory glance, it was clear the respondents' bundle was not fit for purpose. Mr Williams gave page references which did not match up. The index did not correspond to the page references given. It was clear to the Tribunal this had disadvantaged the claimant.
12. In addition, the list of issues, which was incomplete, had not been updated since the 4 December 2024 hearing. R2's witness statement was 36-paragraphs over six-pages and R3's was 14-paragraphs over four-pages.
13. Orders of the Tribunal were missing from the bundle. This was a case listed before a full Tribunal panel and therefore, it was important that the non-legal members had access to all of the relevant documentation.
14. The Tribunal took the view the respondents (in fact Peninsula) had had numerous opportunities to ensure the bundle was sufficient for the case to be heard during the current trial window. It had not done so. The non-compliance appeared to be wilful. Certainly, there was no credible explanation provided. When Mr Williams was asked why the incorrect grounds of resistance was in the bundle for the first claim (it referred to the second claim, which did not exist at the time of the first claim), he said it was a draft. That was not accepted.
15. Rule 38 on striking out provides:

(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.

16. Any such decision has to be exercised in accordance with the overriding objective, set out at Rule 3, which provides:

Overriding objective

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

20. In Emuemukoro v Croma Vigilant (Scotland) Ltd UKEAT/0014/20, the EAT stated:

18 ...

Where an application to strike-out is considered on the first day of trial, it is clearly a highly relevant consideration as to whether a fair trial is possible within that trial window. In my judgment, where a party's unreasonable conduct has resulted in a fair trial not being possible within that window, the power to strike-out is triggered. Whether or not the power ought to be exercised would depend on whether or not it is proportionate to do so.

19 ...

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 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 [counsel for the respondent'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.

21. The EAT goes on to set out that there are two conditions for exercising a power to strike out a response. 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 (quoting from Blockbuster Entertainment v James [2006] EWCA Civ 684). It noted the two conditions are in the alternative.
22. 'Wilful, deliberate or contumelious disobedience' can lead directly to consideration of whether it is proportionate to strike out a party, irrespective of whether or not a fair trial is possible (De Keyser Ltd v Wilson [2001] IRLR 324).
23. The Tribunal considered that the power to strike out was triggered and then paused to consider if there was a less draconian sanction which it could apply. It considered and took into account the overriding objective.
24. Ultimately, it found Peninsula had not advanced the overruling objective and had adopted a cavalier attitude to compliance with Orders of the Tribunal. The dates the Tribunal Orders for compliance are not aspirational, they are deadlines. Having had so much judicial intervention and case management, the Tribunal had no confidence that if it gave the respondent more time (that included time during the hearing, for example to Order Peninsula to prepare a satisfactory and compliant bundle on day one) it would still then comply with that Order. Peninsula simply had not done so to date.
25. A postponement would impact upon other litigants. This hearing slot would be lost and it could not be used by other litigants. A postponement would result in that date being unavailable to other parties. A postponement clearly increase the time (and potentially the cost) spent on this claim. The claimant will not be in a vacuum between this hearing and a future hearing. A postponement would also result in more judicial time being spent on this case and that is a resource this region does not have. This region's resources are extremely stretched and are finite. There was no satisfactory explanation for Peninsula's failure to comply with the Tribunal's Orders. It was wilful and it resulted in a fair trial no longer being possible in the trial window.
26. On the second day of the hearing, Peninsula made a reconsideration application. By that point in time, the Tribunal was aware of further issues with the bundle. It was clear the bundle was significantly deficient. The

following documents were not in the bundle: the grievance outcome letter of the 26 September 2023; the claimant's permanent contract of employment due to commence on 3 December 2023; without prejudice correspondence over which the claimant and respondent had waived privilege; the grievance appeal report dated 29 February 2024 (which Mr Williams submitted was a useful document and which set out the respondent's position on the constructive dismissal); the email of 27 July 2023 identified as the protected act on 4 December 2024.

27. Mr Petrachi made the point that the second claim had not been referred to at all by the respondents.
28. A less draconian alternative to strike out had been considered and was reconsidered. The suggestions Mr Williams made at paragraph 30 of his application would all involve the hearing being postponed.
29. He suggested postponing the hearing for the claimant to provide documents she said were missing from the bundle and for the respondent to prepare a bundle. He said this would mean that a fair trial was possible on a different date. Besides the fact this would be contrary to the overriding objective in that it would cause delay; the Tribunal had no confidence that in giving Peninsula yet another opportunity to prepare a bundle, that it would do so. There had been significant judicial intervention and in particular following the 2 October 2025 hearing. That has not resulted in Peninsula providing a compliant bundle. Or, in complying with the Tribunal's Order. Peninsula already had had that opportunity.
30. Mr Williams also suggested a deposit order against the respondents. That would not result in a compliant bundle being available for use during this trial window and so would result in a postponement.
31. He proposed a preparation time order against the respondents. This suggestion did not address the issue with the bundle. In any event, the Tribunal had no confidence that even if granted more time, Peninsula would change its approach and provide a compliant bundle.
32. His last suggestion was an unless order. Beside the difficulties with that which had already been identified (ultimately, that did not guarantee that a compliant bundle would be provided) it would also mean this trial listing would be lost.
33. The one thing it may have been possible for Peninsula to do as part of a reconsideration would have been to use the time after the Tribunal adjourned on day one (at 1pm) to have provided an addition to the bundle which contained the missing documents, by the start of day two. The claimant had provided a six-page list of missing documents. Peninsula could have rectified its defect.
34. In the absence of a compliant bundle and taking into account the numerous breaches of the Tribunal's Orders, the Tribunal declined to grant the reconsideration and decided there was no possibility of its earlier decision being varied or revoked.

Approved by:

Employment Judge Wright

5 March 2026

JUDGMENT SENT TO THE PARTIES
ON 19 March 2026

FOR THE TRIBUNAL OFFICE

P Wing